



New South Wales

## Evidence (Children) Bill 1997

### Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

#### Overview of Bill

Many children who are witnesses in criminal or other proceedings are required to attend and give oral evidence in the proceedings. The *Crimes Amendment (Children's Evidence) Act 1996* reformed the law by conferring an entitlement on children to instead give evidence in criminal and certain other proceedings by means of closed-circuit television facilities or other similar technology and made related changes to the law relating to children's evidence in such proceedings (sections 405C–405I of the *Crimes Act 1900*).

The objects of this Bill are:

- (a) to further reform the law relating to children's evidence in criminal and certain other proceedings by:
    - (i) requiring police officers and certain other investigating officials to electronically record interviews with children concerning the commission or possible commission of an offence, and
    - (ii) enabling electronically recorded interviews with a child witness (other than a defendant) to be admitted into evidence as part or all of a child's evidence in chief in any criminal proceeding, and
  - (b) to repeal and re-enact (with some minor modifications) sections 405C–405I of the *Crimes Act 1900*.
-

A number of clauses contain bracketed notes in headings, drawing attention ("cf") to the equivalent (though not necessarily identical) provision of the *Crimes Act 1900* proposed to be repealed and re-enacted by this Bill.

## Outline of provisions

### Part 1 Preliminary

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** defines certain words and expressions used in the proposed Act. These include *investigating official*, *personal assault offence* and *recording*. Investigating official is defined so that it will include certain police officers and persons engaged, in conjunction with such investigating officials, in an investigation under section 22 (Notification of child abuse) of the *Children (Care and Protection) Act 1987*. A *recording* means an audio or video recording or a video recording accompanied by a separately but contemporaneously recorded audio recording.

**Clause 4** provides for words and expressions used in the *Evidence Act 1995* and the proposed Act to generally have the same meanings as they have in the *Evidence Act 1995*.

**Clause 5** makes it clear that the provisions of the proposed Act are in addition to the provisions of the *Evidence Act 1995* and do not, unless the contrary intention is shown, affect the operation of that Act.

**Clause 6** provides that the proposed Act generally applies in relation to evidence given by a child who is under the age of 16 years at the time the evidence is given.

### Part 2 Recording out of court statements

**Clause 7** requires an investigating official who questions a child, who the investigating official has reason to believe is under the age of 16 years, in connection with the investigation of the commission or possible commission of an offence by the child or any other person to ensure that any representation made by the child in the course of the interview, and that the investigating official considers may be adduced as evidence in a court, is recorded.



### **Part 3      Giving evidence of children's out of court representations**

Part 3 makes the reforms to the law described in paragraph (a) of the objects of the Bill set out in the Overview of the Bill.

**Clause 8** provides for the proposed Part to apply to evidence of a previous representation of a child made (after the commencement of the Part) in the course of questioning by an investigating official in connection with the investigation of the commission or possible commission of an offence. The expressions *previous representation* and *representation* are defined in the *Evidence Act 1995*.

A *previous representation* means a representation made otherwise than in the course of giving evidence in the proceeding in which evidence of the representation is sought to be adduced. A *representation* includes (among other things) an express or implied representation (whether oral or in writing) or a representation to be inferred from conduct.

**Clause 9** sets out 3 alternative ways in which a child may give evidence of a previous representation made by the child. A child may give evidence in the form of a recording of the previous representation made in accordance with clause 7, orally in the courtroom or in accordance with alternative arrangements made as referred to in clause 13.

**Clause 10** requires the wishes of a child to be taken into account before a child is called to give evidence of a previous representation to which the proposed Part applies otherwise than in the form of a recording.

**Clause 11** creates a presumption that a child is entitled to give evidence in chief of a previous representation made to an investigating official in the form of a recording made as required by clause 7, regardless of whether the child is the accused person in the proceeding or is giving evidence against the accused person. However, if a child other than an accused person gives such evidence the child must be available for cross-examination or re-examination either orally in the courtroom or in accordance with alternative arrangements made as referred to in clause 13.

**Clause 12** ensures that the hearsay rule and the opinion rule do not prevent the admission or use of a recording of a child's previous representation. However, if the child is not the accused person in the proceeding, the recording is to be admissible only if it is proved that the accused person and his or her lawyer (if any) were given a reasonable opportunity to listen to, and in the case of a video recording, view, the recording.



**Clause 13** provides for a court to direct that alternative arrangements be made in accordance with Part 4 for the giving of evidence by a child in certain proceedings.

**Clause 14** requires a judge in proceedings in which there is a jury to warn the jury not to draw any inference adverse to the accused or to give the evidence any greater or lesser weight because evidence of a child is given in the form of a recording.

**Clause 15** prevents a child from giving evidence in chief in a proceeding in the form of a recording if the court so orders. A court may make such an order if satisfied that it would not be in the interests of justice for evidence to be given by a recording.

#### **Part 4      Giving of children's evidence by closed-circuit television**

Part 4 re-enacts the provisions (other than sections 405CA, 405FA and 405I) of the *Crimes Act 1900* to be repealed by proposed Schedule 1. (Sections 405CA, 405FA and 405I are re-enacted in proposed Part 5).

**Clause 16** contains definitions of expressions used in the proposed Part.

**Clause 17** states the proceedings to which the proposed Part applies.

**Clause 18** sets out the presumption that the evidence of any child witness is to be given by means of closed-circuit television facilities or other similar technology, regardless of whether or not the child is the victim. Such facilities will not be used if the child witness does not wish to use them, or if the court is satisfied that it is not in the interests of justice for them to be used.

**Clause 19** makes provision for children who are accused persons in proceedings and who give evidence in the court. The court is given the power to order the use of closed-circuit television facilities or other similar technology for the purposes of a child's evidence, but such an order can only be made if the court is satisfied that the child would suffer mental or emotional harm if evidence were given by ordinary means, or that the facts would be better ascertained if evidence were given by means of closed-circuit television facilities or other similar technology.

**Clause 20** treats a place outside a court at which a child gives evidence as part of the court and enables the court to order certain persons (such as interpreters and court officials) to be present.



**Clause 21** makes it clear that closed-circuit television facilities and other similar technology used for giving the evidence of a child are not to be used for the giving of identification evidence.

**Clause 22** enables a court to adjourn a proceeding to another place if the place where the court is sitting is not equipped with closed-circuit television facilities.

**Clause 23** provides for closed circuit-television facilities or other similar technology used for giving the evidence of a child to be operated in a manner that enables persons who are interested in the proceedings to see the child (and any person present with the child) on the same or another television monitor.

**Clause 24** requires alternative arrangements to be made when a child entitled or permitted to give evidence by means of closed-circuit television does not do so. Special arrangements may be made to minimise as much as possible the contact between the child and any person or persons, and to minimise the effect of that contact on the child's evidence.

**Clause 25** requires a court to give certain warnings in proceedings in which a child gives evidence by closed-circuit television or by means of any "alternative arrangements" under the proposed Part.

## **Part 5      Miscellaneous**

**Clause 26** makes it clear that the failure of a child to give evidence in accordance with certain provisions of the proposed Act does not affect the validity of the proceeding or any decision made in connection with the proceeding and that failure of an investigating official to record a previous representation in accordance with clause 7 does not affect the validity of any proceeding in which evidence of the previous representation is given.

**Clause 27** re-enacts section 405CA of the *Crimes Act 1900*. It states that it is an absolute right for all children who give evidence in specified proceedings to have a person of their choice with them. That person may be there to give support, assistance with a language problem or assistance with any difficulty associated with a disability.

**Clause 28** re-enacts section 405FA of the *Crimes Act 1900*. It makes special provision for proceedings in which the accused person or defendant is not represented by a lawyer. The court may make alternative arrangements to avoid the child having to be questioned directly by the accused person, or having to hear the accused person's voice. Clause 28 contains a modification to section 405FA to remove any implication that a person appointed by a court to examine a child in proceedings when the accused person is unrepresented should be a lawyer.



**Clause 29** provides for the making of court orders.

**Clause 30** makes it clear that the proposed Act does not, unless the contrary intention is shown, limit any discretion of a court.

**Clause 31** provides for the making of regulations.

**Clause 32** provides for the making of rules of court.

**Clause 33** gives effect to the Schedule of amendments.

**Clause 34** gives effect to the Schedule of savings and transitional provisions.

**Clause 35** provides for review of the proposed Act after a period of 5 years after the date of assent to the Act.

## **Schedule 1      Amendment of Acts**

**Schedule 1** repeals sections 405C–405I of the *Crimes Act 1900* and makes a consequential amendment to the *Children (Criminal Proceedings) Act 1987* to make it clear that the prohibition on the publication and broadcasting of a child's name extends to a child who gives recorded evidence. The Schedule also repeals section 562NA (4) of the *Crimes Act 1900* (a provision to the same effect as the repealed provision is included in clause 27 (1) (c) of the proposed Act).

## **Schedule 2      Savings, transitional and other provisions**

**Schedule 2** enables regulations of a savings or transitional nature to be made as a consequence of the enactment of the proposed Act and contains a transitional provision that provides that the new provisions about children's evidence do not have effect in relation to proceedings that commenced before the commencement of the provisions.





New South Wales

# Evidence (Children) Bill 1997

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New South Wales

## **Evidence (Children) Bill 1997**

No , 1997

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### **A Bill for**

An Act with respect to the giving of evidence by children in criminal and certain other related proceedings; to make consequential amendments to certain Acts; and for other purposes.

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The Legislature of New South Wales enacts:

## Part 1        Preliminary

### 1    Name of Act

This Act is the *Evidence (Children) Act 1997*.

### 2    Commencement

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This Act commences on a day or days to be appointed by proclamation.

### 3    Definitions

(1)    In this Act:

***apprehended violence order*** means an apprehended violence order made under Part 15A of the *Crimes Act 1900* and includes an interim apprehended violence order made under that Part. 10

***exercise*** a function includes perform a duty.

***function*** includes a power, authority or duty.

***investigating official*** means: 15

- (a)    a police officer (other than a police officer who is engaged in covert investigations under the orders of a superior), or
- (b)    a person who is engaged, in conjunction with an investigating official described in paragraph (a), in an investigation caused to be made by the Director-General of the Department of Community Services under section 22 (Notification of child abuse) of the *Children (Care and Protection) Act 1987*, or 20
- (c)    any other person prescribed by the regulations for the purposes of this definition. 25

***personal assault offence*** means any of the following offences:

- (a)    an offence under Part 3 (Offences against the person) of the *Crimes Act 1900*,



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- (b) an offence under section 562AB (Stalking, intimidation with intent to cause fear for personal safety) of the *Crimes Act 1900*,
  - (c) an offence under section 562I (Offence of contravening an apprehended violence order) of the *Crimes Act 1900*, 5
  - (d) an offence under section 25 (Child abuse) of the *Children (Care and Protection) Act 1987*,
  - (e) an offence which includes the commission of, or an intention to commit, any of the above offences,
  - (f) an offence of attempting, or of conspiracy or incitement, to 10  
commit any of the above offences.

**recording** means:

- (a) an audio recording, or
  - (b) a video recording, or
  - (c) a video recording accompanied by a separately but 15  
contemporaneously recorded audio recording.
- (2) Notes included in this Act do not form part of this Act.

#### 4 Words and expressions used in Evidence Act 1995

- (1) Words and expressions that are defined in the *Evidence Act 1995* and that are used in this Act have the same meanings in this Act 20  
as they have in the *Evidence Act 1995*.
- (2) This section applies except so far as the context or subject-matter otherwise indicates or requires.
- (3) However, this section does not apply to a word or expression 25  
defined in section 3.

**Note.** Examples of words and expressions that are defined in the *Evidence Act 1995* that are used in this Act are:

**court** means NSW court.

**criminal proceeding** means a prosecution for an offence and includes:

- (a) a proceeding for the committal of a person for trial or sentence for an 30  
offence, and
- (b) a proceeding relating to bail,

but does not include a prosecution for an offence that is a prescribed taxation offence within the meaning of Part III of the *Taxation Administration Act 1953* 35  
of the Commonwealth.

**judge**, in relation to a proceeding, means the judge, magistrate or other person before whom the proceeding is being held.

**NSW court** means:

- (a) the Supreme Court, or
  - (b) any other court created by Parliament, 5
- (including such a court exercising federal jurisdiction) and includes any person or body (other than a court) that, in exercising a function under the law of the State, is required to apply the laws of evidence.

**previous representation** means a representation made otherwise than in the course of giving evidence in the proceeding in which evidence of the representation is sought to be adduced. 10

**representation** includes:

- (a) an express or implied representation (whether oral or in writing), or
- (b) a representation to be inferred from conduct, or
- (c) a representation not intended by its maker to be communicated to or 15
- seen by another person, or
- (d) a representation that for any reason is not communicated.

## 5 Relationship to Evidence Act 1995

The provisions of this Act are in addition to the provisions of the *Evidence Act 1995* and do not, unless a contrary intention is shown, affect the operation of that Act. 20

## 6 Children's evidence to which this Act applies

This Act applies (unless a contrary intention is shown) in relation to evidence given by a child who is under the age of 16 years at the time the evidence is given. 25



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## **Part 2      Recording out of court statements**

### **7   Interviews with children to be recorded**

An investigating official who questions a child, who the investigating official has reason to believe is under the age of 16 years, in connection with the investigation of the commission or possible commission of an offence by the child or any other person is to ensure that any representation made by the child in the course of the interview during which the child is questioned, and that the investigating official considers may be adduced as evidence in a court, is recorded.

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Clause 8	Evidence (Children) Bill 1997
Part 3	Giving evidence of children's out of court representations

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## **Part 3 Giving evidence of children's out of court representations**

### **8 Evidence to which this Part applies**

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|-----|---|----|
| (1) | This Part applies to evidence of a previous representation of a child made in the course of an interview during which the child is questioned by an investigating official in connection with the investigation of the commission or possible commission of an offence. | 5  |
| (2) | This Part does not apply to evidence of a previous representation made before the commencement of this Part.  | 10 |

### **9 Ways in which evidence of child may be given**

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|-----|---|----|
| (1) | Subject to this Act, a child may give evidence of a previous representation to which this Part applies made by the child in any criminal proceeding wholly or partly:   |    |
| (a) | in the form of a recording of the previous representation made by an investigating official of the interview in the course of which the previous representation was made and that is viewed or heard, or both, by the court, or   | 15 |
| (b) | orally in the courtroom, or   |    |
| (c) | if the evidence is given in any proceeding to which Part 4 applies—in accordance with alternative arrangements made under section 13.   | 20 |
|     | <b>Note.</b> See section 17.  |    |
| (2) | Nothing in this section affects the giving of evidence by means of a written statement for the purposes of Subdivision 7A (Written statements in committal proceedings) of Division 1 of Part 4 of the <i>Justices Act 1902</i> . | 25 |

**Note.** See also section 30.

### **10 Wishes of child to be taken into account**

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|--|---|----|
|  | A person must not call a child to give evidence of a previous representation to which this Part applies made by the child by means other than a recording made by an investigating official of the interview in the course of which the previous representation | 30 |
|--|---|----|



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was made unless the person has taken into account the wishes of the child (considered in the light of the child's age and understanding). However, nothing in this section permits a person to require a child to express his or her wishes in relation to the matter.

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#### **11 Child entitled to give evidence in chief in form of recording**

- (1) A child is entitled to give, and may give, evidence in chief of a previous representation to which this Part applies made by the child wholly or partly in the form of a recording made by an investigating official of the interview in the course of which the previous representation was made and that is viewed or heard, or both, by the court.
- (2) If a child who gives evidence as referred to in subsection (1) is not the accused person in the proceeding, the child must be available for cross-examination and re-examination:
- (a) orally in the courtroom, or
  - (b) if the evidence is given in any proceeding to which Part 4 applies—in accordance with alternative arrangements made under section 13.

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#### **12 Admissibility of recorded evidence**

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- (1) The hearsay rule and the opinion rule (within the meaning of the *Evidence Act 1995*) do not prevent the admission or use of evidence of a previous representation to which this Part applies given by a child under this Part, in the form of a recording made by an investigating official.
- (2) Evidence of a previous representation to which this Part applies of a child who is not the accused person in a proceeding that is given by the child in the form of a recording made by an investigating official is not to be admitted unless it is proved that the accused person and his or her lawyer (if any) were given, in accordance with the regulations, a reasonable opportunity to listen to and, in the case of a video recording, view the recording.
- (3) The court may rule as inadmissible the whole or any part of the contents of a recording adduced as evidence under this Part.

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**13 Alternative arrangements for giving evidence**

The court may order that alternative arrangements be made in accordance with Part 4 for the giving of evidence by the child in any proceeding to which that Part applies.

**14 Warning to jury**

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If a child gives evidence of a previous representation wholly or partly in the form of a recording made by an investigating official in accordance with this Part in any proceedings in which there is a jury, the judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the evidence being given in that way.

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**15 Evidence not to be given in form of recording if contrary to interests of justice**

- (1) A child must not give evidence by means of a recording made by an investigating official in accordance with this Part if the court orders that such means not be used.
- (2) The court may only make such an order if it is satisfied that it is not in the interests of justice for the child's evidence to be given by a recording.

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## Part 4 Giving of children's evidence by closed-circuit television

### 16 Definitions

In this Part:

*court*, in relation to a proceeding referred to in section 17 (d), includes the Victims Compensation Tribunal. 5

*courtroom*, in relation to a proceeding referred to in section 17 (d), includes the place where the Victims Compensation Tribunal is sitting.

### 17 Proceedings to which Part applies (cf Crimes Act ss 405D (1) and 405DA) 10

This Part applies to:

- (a) a proceeding in which it is alleged that a person has committed a personal assault offence, and
- (b) a proceeding in relation to a complaint for an apprehended violence order, and 15
- (c) a civil proceeding arising from the commission of a personal assault offence, and
- (d) a proceeding before the Victims Compensation Tribunal in respect of the hearing of a matter arising from the commission of a personal assault offence that is the subject of an appeal or a reference to it. 20

### 18 Children have a right to give evidence by closed-circuit television (cf Crimes Act s 405D (2)–(5), (7) and (9))

- (1) Subject to this Act, a child who gives evidence in any proceeding to which this Part applies is entitled to give that evidence by means of closed-circuit television facilities or by means of any other similar technology prescribed for the purposes of this section. 25
- (2) A child may choose not to give evidence by those means. 30
- (3) A child must not give evidence by means of closed-circuit television facilities or any other prescribed technology if the court orders that such means not be used.

- (4) The court may only make such an order if it is satisfied that it is not in the interests of justice for the child's evidence to be given by such means or that the urgency of the matter makes their use inappropriate.
  - (5) This section does not apply to a child: 5
    - (a) who is the accused or defendant in any proceeding referred to in section 17 (a), (b) or (c), or
    - (b) who is or was accused of committing the offence that gave rise to a proceeding referred to in section 17 (d).
  - (6) Nothing in this section affects the operation of section 13 of the *Evidence Act 1995*. 10
- 19 Accused children may be allowed to give evidence by closed-circuit television** (cf Crimes Act s 405DA (2)–(4))
- (1) This section applies to a child who is the accused person, or person against whom a complaint is made, in any proceeding to which this Part applies. 15
  - (2) The court may make an order permitting a child's evidence in a proceeding to which this Part applies to be given by means of closed-circuit television facilities or any other similar technology prescribed for the purposes of this section. 20
  - (3) Such an order may be made only if the court is satisfied:
    - (a) that the child may suffer mental or emotional harm if required to give evidence in the ordinary way, or
    - (b) that the facts may be better ascertained if the child's evidence is given in accordance with such an order. 25
  - (4) A child may choose not to give evidence by means of closed-circuit television facilities or other similar technology.
- 20 Giving evidence by closed-circuit television** (cf Crimes Act s 405DB (1)–(3))
- (1) If the evidence of a child who is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Part is given from a location outside a court, that location is taken to be part of the court in which the proceeding is being held. 30







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- (2) If the evidence of a child who is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Part is given from a location outside a court, the court may order:
- (a) that a court officer be present at that other location, and 5
  - (b) that any other person be present with the child as an interpreter, for the purpose of assisting the child with any difficulty in giving evidence associated with a disability, or for the purpose of providing the child with other support.
- (3) Any such order does not limit the entitlement that a child has under section 27 (Children have a right to the presence of a supportive person while giving evidence) to choose another person to be present with him or her when giving evidence. 10

**21 Giving identification evidence when closed-circuit television is used** (cf Crimes Act s 405DC) 15

- (1) If a child is entitled to give evidence by means of closed-circuit television facilities or any other similar technology that child may not give identification evidence by those means.
- (2) However, such a child is entitled to refuse to give identification evidence until after the completion of the child's other evidence (including examination in chief, cross-examination and re-examination). 20
- (3) In addition, the court must ensure that such a child is not in the presence of the accused for any longer than is necessary for the child to give identification evidence. 25

**Note.** *Identification evidence* is defined in the *Evidence Act 1995*.

**22 Proceedings may be moved to allow use of closed-circuit television facilities** (cf Crimes Act s 405DD)

- (1) This section applies if a child is entitled or permitted to give evidence by means of closed-circuit television facilities or any other similar technology under this Part. 30
- (2) If the court is not equipped with such facilities or technology, or it otherwise considers it appropriate to do so, the court may adjourn the proceeding or any part of the proceeding to a court or place that is equipped with such facilities or technology so that the child's evidence may be given by such means. 35



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**23 Use of closed-circuit television or similar technology** (cf Crimes Act s 405E (1))

Closed-circuit television facilities or similar technology used for the giving of evidence by a child are to be operated in such a manner that the persons who have an interest in the proceeding are able to see the child (and any person present with the child) on the same or another television monitor. 5

**24 Children have a right to alternative arrangements for giving evidence when closed-circuit television facilities not available** (cf Crimes Act s 405F) 10

(1) This section applies to any proceeding in which a child is entitled or permitted to give evidence by means of closed-circuit television facilities or other similar technology (by virtue of section 18 or an order made under section 19) but does not do so because: 15

- (a) such facilities and such technology are not available (and the court does not move the proceeding under section 22), or
- (b) the child chooses not to give evidence by those means, or
- (c) the court orders that the child may not give evidence by those means (or, in the case of a child to whom section 19 applies, the court does not order that the child may give evidence by those means). 20

(2) In such a proceeding, the court must make alternative arrangements for the giving of evidence by the child, in order to restrict contact (including visual contact) between the child and any other person or persons. 25

(3) Those alternative arrangements may include any of the following:

- (a) the use of screens, 30
- (b) planned seating arrangements for people who have an interest in the proceeding (including the level at which they are seated and the people in the child's line of vision),
- (c) the adjournment of the proceeding or any part of the proceeding to other premises. 35

(4) A child may choose not to use any such alternative arrangements. In that case, the court must direct that the child be permitted to give evidence orally in the courtroom.



- (5) Any premises to which a proceeding is adjourned under this section are taken to be part of the court in which the proceeding is being heard.

**25 Warning to jury** (cf Crimes Act s 405H)

- (1) In any criminal proceeding in which the evidence of a child is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 18), the judge must: 5
- (a) inform the jury that it is standard procedure for children's evidence in such cases to be given by those means, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology. 10
- (2) In any criminal proceeding in which the evidence of a child is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 19), the judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology. 15
- (3) In any criminal proceeding in which arrangements are made for a person to be with a child giving evidence (by virtue of section 20 or 27), the judge must: 20
- (a) inform the jury that it is standard procedure in such cases for children to choose a person to be with them, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the presence of that person. 25
- (4) In any criminal proceeding in which alternative arrangements for the giving of evidence by a child are made (by virtue of section 24 or 28), the judge must: 30
- (a) inform the jury that it is standard procedure in such cases for alternative arrangements to be used when children give evidence, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those alternative arrangements. 35



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## Part 5 Miscellaneous

### 26 Validity of proceedings not affected (cf Crimes Act s 405I)

- (1) The failure of a child to give evidence in accordance with a provision of this Act does not affect the validity of any proceeding or any decision made in connection with that proceeding. 5
- (2) The failure of an investigating official to record a previous representation of a child in accordance with section 7 does not affect the validity of any proceeding in which evidence of the previous representation is given. 10

### 27 Children have a right to presence of a supportive person while giving evidence (cf Crimes Act s 405CA)

- (1) This section applies to:
  - (a) a criminal proceeding in any court, and
  - (b) a civil proceeding arising from the commission of a personal assault offence, and 15
  - (c) a proceeding in relation to a complaint for an apprehended violence order, and
  - (d) a proceeding before the Victims Compensation Tribunal in respect of the hearing of a matter arising from the commission of a personal assault offence that is the subject of an appeal or a reference to it. 20
- (2) A child who gives evidence in a proceeding to which this section applies is entitled to choose a person whom the child would like to have present near him or her when giving evidence. 25
- (3) Without limiting a child's right to choose such a person, that person:
  - (a) may be a parent, guardian, relative, friend or support person of the child, and
  - (b) may be with the child as an interpreter, for the purpose of assisting the child with any difficulty in giving evidence associated with a disability, or for the purpose of providing the child with other support. 30



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- (4) To the extent that the court or tribunal considers it reasonable to do so, the court or tribunal must make whatever direction is appropriate to give effect to a child's decision to have such a person present near the child, and within the child's sight, when the child is giving evidence. 5
  - (5) The court or tribunal may permit more than one support person to be present with the child if the court or tribunal thinks that it is in the interests of justice to do so.
  - (6) This section extends to a child who is the accused or the defendant in the relevant proceeding. 10

**28 Children have a right to alternative arrangements for giving evidence when accused is unrepresented** (cf Crimes Act s 405FA)

- (1) This section applies to a criminal proceeding in any court, or a civil proceeding arising from the commission of a personal assault offence, in which the accused or defendant is not represented by a lawyer. 15
- (2) A child who is a witness (other than the accused or the defendant) in a proceeding to which this section applies is to be examined in chief, cross-examined or re-examined by a person appointed by the court instead of by the accused or the defendant. 20
- (3) If any such person is appointed, that person is to ask the child any questions that the accused or the defendant requests the person to put to the child.
- (4) The court may choose not to appoint such a person if the court considers that it is not in the interests of justice to do so. 25
- (5) This section applies whether or not closed-circuit television facilities or other similar technology is used to give evidence, and whether or not alternative arrangements under section 24 are used in the proceedings.

**29 Court orders** (cf Crimes Act ss 405D (6), 405DA (5) and 405DB (4)) 30

The court may make, vary or revoke an order under a provision of this Act either on its own motion or on application by a party to the proceeding or by the child giving evidence.



**30 General discretion of court not affected**

Unless a contrary intention is shown, nothing in this Act limits any discretion that a court has with respect to the conduct of a proceeding.

**Note.** See, for example, Part 3.11 (Discretions to exclude evidence) of the *Evidence Act 1995*. 5

**31 Regulations** (cf Crimes Act ss 405D (8), 405DA (6) and 405E (2))

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act. 10
- (2) In particular, the regulations may make provision for or with respect to the use of closed-circuit television facilities or other similar technology for the giving of evidence by children in accordance with this Act. 15

**32 Rules of court** (cf Crimes Act s 405E (3))

- (1) Rules of court may (subject to the regulations) be made in respect of the giving of evidence under this Act.
- (2) In particular, rules of court may (subject to the regulations) also make provision for or with respect to the use of closed-circuit television facilities or other similar technology for the giving of evidence by children in accordance with this Act. 20

**33 Amendment of Acts**

Each Act specified in Schedule 1 is amended as set out in that Schedule. 25

**34 Savings, transitional and other provisions**

Schedule 2 has effect.

**35 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. 30

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- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
  - (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

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## **Schedule 1      Amendment of Acts**

(Section 33)

### **1.1      Children (Criminal Proceedings) Act 1987 No 55**

#### **Section 11 Publication and broadcasting of names**

Insert after section 11 (5): 5

- (6) For the purposes of this section, a reference to a child who appears as a witness before a court in any criminal proceedings includes a reference to a child who gives evidence in the form of a recording in proceedings in accordance with Part 3 of the *Evidence (Children) Act 1997*. 10

### **1.2      Crimes Act 1900 No 40**

#### **[1]      Sections 405C–405I**

Omit the sections.

#### **[2]      Section 562NA Measures to protect children in AVO proceedings 15**

Omit section 562NA (4).

#### **[3]      Eleventh Schedule Savings and transitional provisions**

Omit Part 9.

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## **Schedule 2    Savings, transitional and other provisions**

(Section 34)

### **1    Regulations**

- (1)    The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts: 5
- this Act
- (2)    Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date. 10
- (3)    To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a)    to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or 15
- (b)    to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication. 20

### **2    Proceeding involving children's evidence**

A provision of this Act does not extend to a proceeding that commenced before the commencement of the provision and any such proceeding may continue as if this Act had not been enacted. 25



