

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

#### Overview of Bill

The objects of this Bill are as follows:

- (a) to amend the Criminal Procedure Act 1986 to make further provision with respect to the giving of evidence in criminal proceedings by certain vulnerable persons (namely, children and intellectually impaired persons) in the form of recordings of previous representations and by closed-circuit television in court proceedings,
- (b) to consequentially repeal the Evidence (Children) Act 1997,
- (c) to make other miscellaneous amendments of a minor, consequential or savings or transitional nature.

#### Outline of provisions

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 is a formal provision that gives effect to the amendments to the Criminal Procedure Act 1986 set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the Acts set out in Schedule 2.

Clause 5 repeals the Evidence (Children) Act 1997.

Clause 6 repeals the Evidence (Children) Regulation 2004.

Clause 7 provides for the repeal of the proposed Act after all the amendments made by the proposed Act have commenced. Once the amendments have commenced the proposed Act will be spent and section 30 of the Interpretation Act 1987 provides that the repeal of an amending Act does not affect the amendments made by that Act.

#### Schedule 1 Amendment of Criminal Procedure Act

1986

#### Amendments relating to evidence given by vulnerable persons

Schedule 1 [13] inserts a new Part 6 (proposed sections 306M–306ZP) into Chapter 6 of the Criminal Procedure Act 1986 dealing with the giving of evidence in certain proceedings by ‘vulnerable persons’ (defined as children and intellectually impaired persons). For the purposes of the proposed Part, a person is defined to be intellectually impaired if the person has:

- (a) an appreciably below average general intellectual function, or
- (b) a cognitive impairment (including dementia or autism) arising from, or as a result of, an acquired brain injury, neurological disorder or a developmental disorder, or
- (c) any other intellectual disability.

The proposed Part substantially re-enacts, with some minor modifications, the provisions of the Evidence (Children) Act 1997 (which is repealed by clause 5) so as to:

- (a) enable electronically recorded interviews made by investigating officials with a witness who is a vulnerable person to be admitted into evidence as part or all of such a person’s evidence in chief in any criminal proceedings, and
- (b) confer an entitlement on vulnerable persons to give evidence in criminal and certain other proceedings by means of closed-circuit television facilities or other similar technology, rather than by attending the proceedings to give oral evidence.

In relation to intellectually impaired persons, the proposed Part will only apply to evidence given by such persons in the manner provided by the Part if the court is satisfied that the facts of the case may be better ascertained if the person’s evidence is given in such a manner.

The minor modifications contained in the proposed Part include the following:

- (a) Section 7 of the Evidence (Children) Act 1997, which has not been

commenced because of operational difficulties, requires an investigating official who questions a child 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. The equivalent section proposed to be inserted into the Criminal Procedure Act 1986 provides that the regulations may require an investigating official to record interviews with vulnerable persons (see proposed section 306Q).

(b) At present, section 11 of the Evidence (Children) Act 1997 provides that a child is entitled to give evidence in chief of a previous representation in the form of a recording made by an investigating official of an interview in the course of which the previous representation was made. In particular, section 11 (1A) of that Act currently provides that a child who is 16 years of age or more but less than 18 years of age at the time evidence is given is only entitled to give evidence in the form of a recording of a previous representation made by the child when the child was less than 16 years of age. The equivalent section proposed to be inserted into the Criminal Procedure Act 1986 provides, instead, that such evidence may be admitted no matter what age the person is at the time evidence is given (see proposed section 306U).

(c) Section 12 of the Evidence (Children) Act 1997 currently provides 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 (in accordance with regulations that set out certain notice requirements) to listen to, and in the case of a video recording, view the recording. The equivalent section proposed to be inserted into the Criminal Procedure Act 1986 further provides that if the notice requirements under the regulations have not been complied with, the recording may still be admitted if the court is satisfied that the parties consent and the accused person and his or her lawyer have been given a reasonable opportunity (otherwise than in accordance with the regulations) to listen to or view the recording (see proposed section 306V).

(d) Section 21 of the Evidence (Children) Act 1997 currently provides 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. The equivalent section proposed to be inserted into the Criminal Procedure Act 1986 further provides that identification evidence may still be given by means of closed-circuit television facilities or any other similar technology that relates to evidence that is not a fact in issue (see proposed section 306ZE).

#### Other amendments

Section 91 of the Criminal Procedure Act 1986 provides that a person who made a written statement tendered as evidence in committal proceedings may be directed by a Magistrate to attend at the proceedings. Schedule 1 [2] provides that a direction may not be given under section 91 so as to require the attendance of the complainant in certain sexual offence proceedings if the complainant is intellectually impaired. Schedule 1 [1] and [3]–[12] amend various sections of the Criminal Procedure Act 1986 as a consequence of the repeal of the Evidence (Children) Act 1997 and the amendments made by Schedule 1 [13].

Schedule 1 [14] enables savings and transitional regulations to be made as a consequence of the proposed Act.

Schedule 1 [15] inserts savings and transitional provisions as a consequence of the

enactment of the proposed Act.

Schedule 2 Consequential amendment of other Acts

Schedule 2 amends the Children (Criminal Proceedings) Act 1987, the Crimes Act 1900 and the Evidence (Audio and Audio Visual Links) Act 1998 as a consequence of the repeal of the Evidence (Children) Act 1997 and the amendments made by Schedule 1 [13].