

Explanatory note

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

Overview of Bill

The object of this Bill is to protect a complainant in sexual offence proceedings by providing that the accused cannot directly question the complainant and by providing instead for questions asked by an unrepresented accused to be put to the complainant by a person appointed by the court for that purpose. At present, that arrangement applies only to child witnesses under 16 years of age in any criminal proceedings and in certain civil proceedings.

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 the date of assent.

Clause 3 is a formal provision that gives effect to the amendments to the *Criminal Procedure Act 1986* set out in Schedule 1.

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Criminal Procedure Amendment (Sexual Offence Evidence) Bill 2003

Explanatory note

Schedule 1 Amendments

Schedule 1 [1] inserts proposed section 294A in the *Criminal Procedure Act 1986*.

The proposed section applies to sexual offence proceedings during which the accused person is not represented by counsel.

The proposed section provides that the complainant cannot be examined in chief, cross-examined or re-examined by the accused person, but may be so examined instead by a person appointed by the court. The court does not have a discretion to decline to appoint such a person. The person so appointed is to ask the complainant only the questions that the accused person requests the person to put to the complainant and must not independently give the accused person legal or other advice.

The proposed section applies whether or not closed-circuit television facilities or other similar technology (or alternative arrangements) are used by the complainant to give evidence.

The proposed section provides that if such a person is appointed in proceedings before a jury, the judge must:

- (a) inform the jury that it is standard procedure in such cases to appoint the person to put the questions to the complainant, 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 that arrangement.

The proposed section extends to proceedings instituted before the date of assent to the proposed Act, including proceedings that have been partly heard.

For the purposes of the proposed section, **sexual offence** is defined to include all sexual assault offences, sexual offences against children (including child prostitution or pornography offences), sexual servitude offences, and other sexual offences.

Schedule 1 [2] enables savings and transitional regulations to be made as a consequence of the enactment of the proposed Act.