



New South Wales

Criminal Procedure Amendment (Sexual Offence Evidence) Bill 2003

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.

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.

First print



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New South Wales

Criminal Procedure Amendment (Sexual Offence Evidence) Bill 2003

No. , 2003

A Bill for

An Act to amend the *Criminal Procedure Act 1986* to protect a complainant in certain sexual offence proceedings from being questioned directly by the accused person.

| | |
|--|--------|
| The Legislature of New South Wales enacts: | 1 |
| 1 Name of Act | 2 |
| This Act is the <i>Criminal Procedure Amendment (Sexual Offence Evidence) Act 2003</i> . | 3 4 |
| 2 Commencement | 5 |
| This Act commences on the date of assent. | 6 |
| 3 Amendment of Criminal Procedure Act 1986 No 209 | 7 |
| The <i>Criminal Procedure Act 1986</i> is amended as set out in Schedule 1. | 8 9 |

Schedule 1 Amendments

(Section 3)

[1] Section 294A

Insert after section 294:

294A Arrangements for complainant in sexual offence proceedings giving evidence when accused person is unrepresented

- (1) This section applies to sexual offence proceedings during which the accused person is not represented by counsel.
- (2) 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.
- (3) The person appointed by the court is to ask the complainant only the questions that the accused person requests that person to put to the complainant.
- (4) Any such person, when acting in the course of an appointment under this section, must not independently give the accused person legal or other advice.
- (5) The court does not have a discretion to decline to appoint a person under this section, despite anything to the contrary in section 28 of the *Evidence (Children) Act 1997* or any other Act or law.
- (6) This section applies whether or not closed-circuit television facilities or other similar technology (or alternative arrangements) are used by the complainant to give evidence.
- (7) 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 to give the evidence any greater or lesser weight because of the use of that arrangement.
- (8) This section extends to proceedings instituted before the commencement of this section, including proceedings that have been partly heard.

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- (9) In this section: 1
- accused person**, in relation to any proceedings, means the 2
person who stands, or any of the persons who stand, charged 3
in those proceedings with a sexual offence. 4
- complainant**, in relation to any proceedings, means the 5
person, or any of the persons, on whom a sexual offence with 6
which the accused person stands charged in those proceedings 7
is alleged to have been committed, and includes: 8
- (a) in relation to an offence under section 91D, 91E or 91F 9
of the *Crimes Act 1900*, the person under the age of 18 10
years who is alleged to have participated in an act of 11
child prostitution, and 12
- (b) in relation to an offence under section 91G of the 13
Crimes Act 1900, the person under the age of 18 years 14
who is alleged to have been used for pornographic 15
purposes. 16
- sexual offence** means: 17
- (a) a prescribed sexual offence, or 18
- (b) an offence against section 73, 78A, 78B, 80D, 91A, 19
91B, 91D, 91E, 91F or 91G of the *Crimes Act 1900*, or 20
- (c) an offence that includes the commission of, or an 21
intention to commit, an offence referred to in paragraph 22
(a) or (b), or
- (d) an offence of attempting, or of conspiracy or 24
incitement, to commit an offence referred to in 25
paragraph (a), (b) or (c). 26
- sexual offence proceedings** means proceedings in which 27
a person stands charged with a sexual offence, whether the 28
person stands charged with that offence alone or together with 29
any other offence (as an additional or alternative count) and 30
whether or not the person is liable, on the charge, to be found 31
guilty of any other offence. 32

[2] Schedule 2 Savings, transitional and other provisions

1

Insert at the end of clause 1 (1):

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*Criminal Procedure Amendment (Sexual Offence Evidence)
Act 2003*

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