



Criminal Procedure Amendment (Sexual Offence Evidence)

Bill.

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [6.35 p.m.]: I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The Criminal Procedure Amendment (Sexual Offence Evidence) Bill proposes amendments to the Criminal Procedure Act 1986 to ensure that victims of sexual assault are automatically allowed to use closed-circuit television and other alternative arrangements when giving evidence in court. A number of high-profile cases have highlighted the distress experienced by complainants giving evidence in sexual assault proceedings. It is extremely harrowing for a person to be in the same room as the accused, and to recount to the court details of what may be the most traumatic, distressing and degrading experience of their life. There is currently some discretion to allow adult complainants in sexual assault matters to give evidence by alternative means, including closed-circuit television. However, this discretion is only exercised occasionally and provides no assurance to the complainant that he or she will be in a position to rely on alternative arrangements at trial.

Providing alternative facilities for giving evidence will help reduce the potential for intimidation of the complainant by shielding him or her from direct contact with the accused, reduce the level of distress complainants experience in relating the circumstances surrounding an alleged assault, and reduce the embarrassment experienced by many complainants in having to be questioned about sexual matters in a public forum. Minimising the trauma for complainants in sexual offence proceedings will also assist in ensuring that they are able to give evidence more confidently and more effectively, allowing courts to hear the best possible evidence available. In some cases the option for a complainant to give evidence by closed-circuit television—or CCTV, as it is commonly known—may mean the difference between proceeding to trial and having to withdraw a prosecution because the complainant is not prepared to give evidence. It is also hoped that the legislation will encourage greater reporting by victims of sexual assault to the authorities, and ensure that more sex offenders are brought to justice.

These reforms deliver on the Government's election commitments to improve support for victims of sexual assault in court and prevent further victimisation of sexual assault complainants by the criminal justice system. They are also consistent with recommendations made by the New South Wales Law Reform Commission in its recent report on questioning of complainants by unrepresented accused in sexual assault trials, and a number of previous inquiries conducted by the New South Wales Bureau of Crime Statistics and Research, the New South Wales Sexual Assault Committee, the New South Wales Legislative Council Standing Committee on Social Issues, and the Australian Law Reform Commission.

Extending the availability of alternative arrangements to sexual assault complainants is also consistent with the approach taken in many other common law jurisdictions, including other States and Territories in Australia. These reforms will complement a wide range of measures the Government has already put in place to support victims of sexual assault, including significantly increasing the number of witness assistance officers available to support victims of crime, restricting cross-examination of sexual assault victims in committal proceedings, piloting a new child sexual assault jurisdiction in Sydney's west and in Dubbo and prohibiting cross-examination of victims of sexual assault by unrepresented accused persons.

The amendments proposed in this bill amend the Criminal Procedure Act 1986 to provide adult victims of sexual assault with similar protections to those already accorded to certain child witnesses under part 4 of the Evidence (Children) Act 1997. The bill amends the Criminal Procedure Act 1986 by inserting a new section 294B into part 5 of chapter 6 of the Act, which applies to evidence in sexual offence proceedings. Proposed section 294B will create a presumption that a complainant who gives evidence in sexual assault proceedings can use alternative arrangements to give evidence unless the court orders otherwise. A sexual offence is defined broadly in proposed section 294B (11) to ensure that complainants in sexual offence proceedings are afforded the protections provided by the legislation wherever possible.

The options available to the complainant under these reforms will include, as a first preference, the option to give evidence from a place outside the courtroom, which is deemed by the legislation to be a part of the court, using CCTV or other similar technology. CCTV and other similar technology such as video conferencing will allow a witness to give

evidence from a remote location, usually a room within the court precincts, which is equipped with the appropriate technology. The evidence is transmitted to the courtroom from the remote site, so the court can see and hear the witness. Alternatively, where the relevant technology is not available, the complainant will have the option to use screens or planned seating arrangements to restrict contact, including visual contact, with the accused and any other person or persons who might, for example, intimidate the complainant in giving his or her evidence.

The complainant will also have the option of choosing a person to sit nearby while he or she is giving evidence for the purpose of providing emotional support. The option of having a support person will be available to the complainant regardless of whether he or she gives evidence using other alternative measures. The process of empowering complainants is about choice and it is important to recognise that some complainants may prefer to give evidence and face their attackers in court. Accordingly, these reforms give complainants the choice to access a variety of alternative measures as well as the option to give their evidence in open court. Under proposed section 294B (5) the court retains a discretion to order that alternative arrangements such as CCTV not be used in a particular case.

However, subsection (6) makes it clear that the court can only make such an order when it is satisfied that there are special reasons in the interests of justice why the complainant should not have access to CCTV facilities. This limitation on the court's discretion will ensure that a defence argument of disadvantage to the accused will not generally be sufficient to overturn the presumption that the victim is entitled to choose to use alternative means to give evidence. This limitation is similar to the limitation imposed by section 93 of the Criminal Procedure Act 1986 on the discretion of a magistrate to require a victim of an offence involving violence to give evidence at committal.

The bill will commence on assent, with the provisions extending to evidence given in proceedings that may have commenced before implementation of the new provisions. This will ensure that complainants who are currently scheduled to give evidence in a retrial will still be able to benefit from these reforms. These new provisions will give sexual assault victims more options. They will have the choice to give evidence by a variety of means, in whichever way they feel is most likely to empower them as individuals. That may well be by giving evidence through a CCTV link to the court, but a victim could equally decide to give evidence in court with the support of a close family friend.

We want to ensure that victims of sexual assault are given every opportunity to present their evidence clearly and calmly. This legislation is a significant step forward in achieving that aim. I commend the bill to the House.

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