

**CRIMES (CHILD VICTIM EVIDENCE) AMENDMENT
ACT 1990 No. 49**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Crimes Act 1900 No. 40
4. Amendment of Crimes (Personal and Family Violence) Amendment Act 1987 No. 184

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900

**CRIMES (CHILD VICTIM EVIDENCE) AMENDMENT
ACT 1990 No. 49**

NEW SOUTH WALES



Act No. 49, 1990

An Act to amend the Crimes Act 1900 with respect to the giving of evidence in criminal proceedings by child victims of sexual assaults and other offences; and to make a consequential amendment to the Crimes (Personal and Family Violence) Amendment Act 1987. [Assented to 28 June 1990]

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Child Victim Evidence) Amendment Act 1990.

Commencement

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

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Amendment of Crimes (Personal and Family Violence) Amendment Act 1987 No. 184

4. The Crimes (Personal and Family Violence) Amendment Act 1987 is amended by omitting item (6) of Schedule 3.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

(1) Section 1 (**Short title and contents of Act**):

From the matter relating to item (2) of Part 11, omit "405C", insert instead "405I".

(2) After section 405C, insert:

Closed-circuit television may be used for giving child victim's evidence

405D. (1) In any criminal proceedings in which it is alleged that the accused person has committed a prescribed sexual offence on a child, the court may, on the application of the prosecution, make an order permitting the child's evidence to be given by means of closed-circuit television facilities.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

(2) The court may, for that purpose, adjourn any part of the proceedings to other premises and may also order a court officer to be present at those premises, or any other person to be present with the child as a support or interpreter, or both.

(3) An order may only be made under subsection (1) if the court is satisfied:

- (a) that it is likely that the child would suffer mental or emotional harm if required to give evidence in the ordinary way; or
- (b) that it is likely that the facts would be better ascertained if the child's evidence is given in accordance with such an order.

(4) The court may vary or revoke an order made under this section, either of its own motion or on application by a party to the proceedings.

(5) In this section, "**child**", in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in the proceedings.

Use of closed-circuit television facilities

405E. (1) Closed-circuit television facilities 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 proceedings are able to see the child (and any person present with the child) on the same or another television monitor.

(2) The Governor may make regulations for or with respect to the use of closed-circuit television facilities for the giving of evidence by children in accordance with an order made under section 405D.

(3) Rules of court may (subject to the regulations) also make provision for or with respect to the use of closed-circuit television facilities for the giving of evidence by children in accordance with an order made under section 405D.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

Alternative arrangements for child victim's evidence

405F. (1) In any criminal proceedings in which it is alleged that the accused person has committed a personal assault offence on a child, the court may, of its own motion or on the application of the prosecution, direct alternative arrangements to be made for the giving of evidence by the child.

(2) Without limiting the generality of subsection (1), the following alternative arrangements may be directed to be made:

- (a) seating arrangements for persons who have an interest in the proceedings (including the level at which they are seated and the persons in the child's line of vision);
- (b) the use of screens;
- (c) adjournment of any part of the proceedings to other premises.

(3) The court may vary or revoke a direction made under this section, either of its own motion or on application by a party to the proceedings.

(4) Nothing in this section limits any discretion that a court has with respect to the conduct of proceedings in any case.

(5) In this section:

"child", in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in the proceedings;

"personal assault offence" means an offence under:

- (a) Part 3; or
- (b) section 25 of the Children (Care and Protection) Act 1987,

or an offence of attempting, or of conspiracy or incitement, to commit such an offence (but does not include any offence exempted from this section by the regulations).

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

Premises to be considered part of court

405G. Any premises to which proceedings are adjourned for the purposes of section 405D or 405F are to be taken to be part of the court in which the proceedings are being held.

Warning to jury

405H. (1) In any criminal proceedings in which the evidence of a child is given by means of closed-circuit television facilities, the Judge or Magistrate 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.

(2) In any criminal proceedings in which alternative arrangements for the giving of evidence by a child are directed to be made under section 405F, the Judge or Magistrate 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 alternative arrangements.

Validity of proceedings not affected

405I. The failure of a child to give evidence in accordance with an order made under section 405D or a direction made under section 405F does not affect the validity of the proceedings or any decision made in connection with those proceedings.

[*Minister's second reading speech made in -
Legislative Assembly on 4 April 1990
Legislative Council on 23 May 1990 a.m.*]

FIRST PRINT

**CRIMES (CHILD VICTIM EVIDENCE) AMENDMENT BILL
1990**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to amend the Crimes Act 1900 so as to enable the child victims of sexual assaults to give evidence using closed-circuit television facilities and to also enable the use of alternative arrangements for the giving of evidence by those victims as well as child victims of other personal assault offences.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act commences on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the Crimes Act 1900.

Clause 4 repeals an uncommenced amendment to the Crimes Act 1900 relating to the giving of evidence by child victims, contained in the Crimes (Personal and Family Violence) Amendment Act 1987.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900

Schedule 1 (2) inserts the following proposed sections:

- * Proposed section 405D enables a court, in criminal proceedings relating to an alleged sexual offence against a child aged 16 or under and on the prosecution's application, to make an order permitting the child to give evidence by means of closed-circuit television facilities.
- * Proposed section 405E sets out the way in which closed-circuit television facilities are to be used and enables regulations and rules of court to be made with respect to their use.

Crimes (Child Victim Evidence) Amendment 1990

- * Proposed section 405F enables a court, in criminal proceedings relating to an alleged personal assault offence against a child aged 16 or under, on the prosecution's application or its own motion, to direct that alternative arrangements are to be used for the giving of evidence by the child. Such arrangements may include the use of particular seating arrangements, the use of screens and adjournment to other premises.
- * Proposed section 405G makes it clear that any premises to which proceedings are adjourned under proposed section 405D or 405F are to be taken to be part of the court.
- * Proposed section 405H requires the Judge or Magistrate to warn the jury not to draw adverse inferences when evidence is given by a means or using an arrangement permitted under proposed section 405D or 405F.
- * Proposed section 405I provides that the validity of proceedings is not affected by the failure of a child to give evidence in accordance with an order under proposed section 405D or a direction under proposed section 405F.

Schedule 1 (1) makes a consequential amendment.

FIRST PRINT

**CRIMES (CHILD VICTIM EVIDENCE) AMENDMENT BILL
1990**

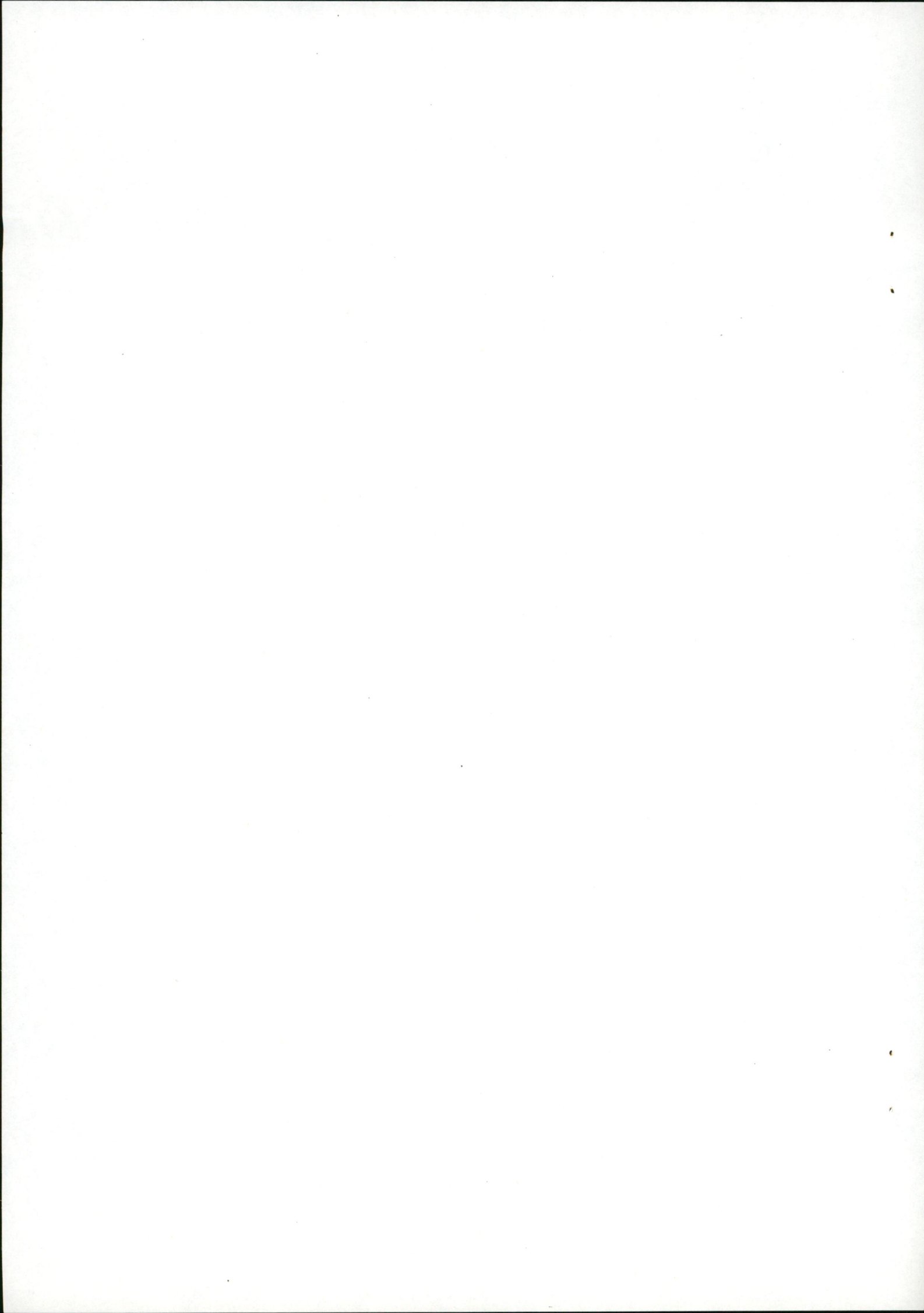
NEW SOUTH WALES



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SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900



**CRIMES (CHILD VICTIM EVIDENCE) AMENDMENT BILL
1990**

NEW SOUTH WALES



No. , 1990

A BILL FOR

An Act to amend the Crimes Act 1900 with respect to the giving of evidence in criminal proceedings by child victims of sexual assaults and other offences; and to make a consequential amendment to the Crimes (Personal and Family Violence) Amendment Act 1987.

Crimes (Child Victim Evidence) Amendment 1990

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Crimes (Child Victim Evidence) Amendment Act 1990.

Commencement

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

Amendment of Crimes Act 1900 No. 40

3. The Crimes Act 1900 is amended as set out in Schedule 1.

Amendment of Crimes (Personal and Family Violence) Amendment Act 1987 No. 184

4. The Crimes (Personal and Family Violence) Amendment Act 1987 is amended by omitting item (6) of Schedule 3.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900

(Sec. 3)

(1) Section 1 (Short title and contents of Act):

From the matter relating to item (2) of Part 11, omit "405C", insert instead "405I".

(2) After section 405C, insert:

Closed-circuit television may be used for giving child victim's evidence

405D. (1) In any criminal proceedings in which it is alleged that the accused person has committed a prescribed sexual offence on a child, the court may, on the application of the prosecution, make an order permitting the child's evidence to be given by means of closed-circuit television facilities.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

(2) The court may, for that purpose, adjourn any part of the proceedings to other premises and may also order a court officer to be present at those premises, or any other person to be present with the child as a support or interpreter, or both.

(3) An order may only be made under subsection (1) if the court is satisfied:

- (a) that it is likely that the child would suffer mental or emotional harm if required to give evidence in the ordinary way; or
- (b) that it is likely that the facts would be better ascertained if the child's evidence is given in accordance with such an order.

(4) The court may vary or revoke an order made under this section, either of its own motion or on application by a party to the proceedings.

(5) In this section, "child", in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in the proceedings.

Use of closed-circuit television facilities

405E. (1) Closed-circuit television facilities 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 proceedings are able to see the child (and any person present with the child) on the same or another television monitor.

(2) The Governor may make regulations for or with respect to the use of closed-circuit television facilities for the giving of evidence by children in accordance with an order made under section 405D.

(3) Rules of court may (subject to the regulations) also make provision for or with respect to the use of closed-circuit television facilities for the giving of evidence by children in accordance with an order made under section 405D.

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

Alternative arrangements for child victim's evidence

405F. (1) In any criminal proceedings in which it is alleged that the accused person has committed a personal assault offence on a child, the court may, of its own motion or on the application of the prosecution, direct alternative arrangements to be made for the giving of evidence by the child.

(2) Without limiting the generality of subsection (1), the following alternative arrangements may be directed to be made:

- (a) seating arrangements for persons who have an interest in the proceedings (including the level at which they are seated and the persons in the child's line of vision);
- (b) the use of screens;
- (c) adjournment of any part of the proceedings to other premises.

(3) The court may vary or revoke a direction made under this section, either of its own motion or on application by a party to the proceedings.

(4) Nothing in this section limits any discretion that a court has with respect to the conduct of proceedings in any case.

(5) In this section:

"**child**", in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in the proceedings;

"**personal assault offence**" means an offence under:

- (a) Part 3; or
- (b) section 25 of the Children (Care and Protection) Act 1987,

or an offence of attempting, or of conspiracy or incitement, to commit such an offence (but does not include any offence exempted from this section by the regulations).

SCHEDULE 1 - AMENDMENT OF CRIMES ACT 1900 - *continued*

Premises to be considered part of court

405G. Any premises to which proceedings are adjourned for the purposes of section 405D or 405F are to be taken to be part of the court in which the proceedings are being held.

Warning to jury

405H. (1) In any criminal proceedings in which the evidence of a child is given by means of closed-circuit television facilities, the Judge or Magistrate 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.

(2) In any criminal proceedings in which alternative arrangements for the giving of evidence by a child are directed to be made under section 405F, the Judge or Magistrate 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 alternative arrangements.

Validity of proceedings not affected

405I. The failure of a child to give evidence in accordance with an order made under section 405D or a direction made under section 405F does not affect the validity of the proceedings or any decision made in connection with those proceedings.
