



Australian Capital Territory

# **Evidence (Miscellaneous Provisions) Act 1991**

**A1991-34**

**Republication No 36**

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(republication for amendments by [A2016-42](#)  
as amended by [A2017-10](#))

## About this republication

### The republished law

This is a republication of the *Evidence (Miscellaneous Provisions) Act 1991* (including any amendment made under the [Legislation Act 2001](#), part 11.3 (Editorial changes)) as in force on 1 May 2017. It also includes any commencement, amendment, repeal or expiry affecting this republished law to 1 May 2017.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

### Kinds of republications

The Parliamentary Counsel's Office prepares 2 kinds of republications of ACT laws (see the ACT legislation register at [www.legislation.act.gov.au](http://www.legislation.act.gov.au)):

- authorised republications to which the [Legislation Act 2001](#) applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

### Editorial changes

The [Legislation Act 2001](#), part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see [Legislation Act 2001](#), s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

### Uncommenced provisions and amendments

If a provision of the republished law has not commenced, the symbol **U** appears immediately before the provision heading. Any uncommenced amendments that affect this republished law are accessible on the ACT legislation register ([www.legislation.act.gov.au](http://www.legislation.act.gov.au)). For more information, see the home page for this law on the register.

### Modifications

If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see the [Legislation Act 2001](#), section 95.

### Penalties

At the republication date, the value of a penalty unit for an offence against this law is \$150 for an individual and \$750 for a corporation (see [Legislation Act 2001](#), s 133).



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Australian Capital Territory

# **Evidence (Miscellaneous Provisions) Act 1991**

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An Act about evidence

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## Chapter 1 Preliminary

### 1 Name of Act

This Act is the *Evidence (Miscellaneous Provisions) Act 1991*.

### 2 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition '*participating State*, for chapter 3 (Use of audiovisual links and audio links)—see section 16.' means that the term 'participating State' is defined in section 16 for chapter 3.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

### 3 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

## 4 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1 Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2 Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

## Chapter 2 Evidence of children

### 5 Definitions—ch 2

In this chapter:

*court* means—

- (a) the Supreme Court; or
- (b) the Magistrates Court; or
- (c) the Coroner's Court.

*Magistrates Court* includes—

- (a) the Childrens Court; and
- (b) the Industrial Court.

*proceeding* means a proceeding to which this chapter applies.

### 6 Meaning of *give evidence in a proceeding by audiovisual link*—ch 2

In this chapter:

*give evidence in a proceeding by audiovisual link* means to give evidence in the proceeding by audiovisual link from an external place which is linked to the courtroom by an audiovisual link.

### 7 Sworn or unsworn evidence

For this chapter, it does not matter whether evidence is to be, or is being, given on oath or otherwise.

## 8 Proceedings to which ch 2 applies

This chapter applies to—

- (a) a proceeding in the Supreme Court—
  - (i) for a trial on indictment in relation to the alleged commission of an offence against a law in force in the ACT; or
  - (ii) for the passing of sentence in relation to the commission of an offence against a law in force in the ACT; or
  - (iii) by way of an appeal from a conviction, order, sentence or other decision of the Magistrates Court in a proceeding in relation to which this chapter applies; or
- (b) a proceeding in the Magistrates Court on an information in relation to the alleged commission, or commission, of an offence against a law in force in the ACT; or
- (c) a proceeding under the *Family Violence Act 2016*; or
- (d) a proceeding under the care and protection chapters of the *Children and Young People Act 2008*; or
- (e) a proceeding under the *Victims of Crime (Financial Assistance) Act 1983*; or
- (f) a proceeding by way of an inquest or inquiry in the Coroner's Court.

## 9 Child giving evidence by audiovisual link

- (1) This section applies if—
  - (a) a child is to give evidence in a proceeding; and
  - (b) the proceeding is to be heard in a courtroom; and
  - (c) the courtroom and an external place are linked by an audiovisual link.

- (2) The child's evidence must be given by audiovisual link unless the court otherwise orders.
- (3) However, the evidence of a child who is an accused person in a proceeding is not to be given by audiovisual link.
- (4) The court may make an order under subsection (2) only if satisfied that—
  - (a) the child prefers to give evidence in the courtroom; or
  - (b) if the order is not made—
    - (i) the proceeding may be unreasonably delayed; or
    - (ii) there is a substantial risk that the court will not be able to ensure that the proceeding is conducted fairly.
- (5) While the child is at the external place to give evidence, the place is taken to be part of the courtroom.

## **10 Representation of child**

- (1) This section applies if—
  - (a) a child is to give evidence in a proceeding by audiovisual link; and
  - (b) the child is not separately represented by someone else; and
  - (c) the court considers that the child should be separately represented by someone else.
- (2) The court may—
  - (a) order that the child be separately represented by someone else; and
  - (b) make any other order it considers necessary to arrange the separate representation.



**11 Consequential orders—ch 2**

- (1) This section applies if a child is to give evidence in a proceeding by audiovisual link.
- (2) The court may make any order it considers appropriate—
  - (a) to ensure that the proceeding is conducted fairly; or
  - (b) to allow the child to identify a person or thing; or
  - (c) to allow the child to take part in a view or to watch a demonstration or experiment; or
  - (d) to allow part of the proceeding to be heard somewhere other than in the courtroom.
- (3) The court may make any other order it considers appropriate, including, for example, an order stating—
  - (a) who may be with the child at the external place; or
  - (b) who must not be with the child at the external place; or
  - (c) who, in the courtroom, is to be able, or must not be able, to be heard, or seen and heard, by the child and people in the external place with the child; or
  - (d) who, in the courtroom, is to be able to see and hear the child and anyone else in the external place with the child; or
  - (e) how the audiovisual link is to operate.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (4) The court may order that a person be excluded from the external place while the child is giving evidence.
- (5) The court may direct that an order under this section apply only to a particular part of the proceeding.

**12 Making of orders—ch 2**

- (1) The court may make an order under this chapter in a proceeding on its own initiative or on the application of—
  - (a) a party to the proceeding; or
  - (b) the child or a person acting on the child’s behalf; or
  - (c) the child’s parent or guardian.
- (2) For the purpose of making an order under this chapter, the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

**13 Jury warning about inferences from child giving evidence by audiovisual link**

- (1) This section applies if—
  - (a) a child gives evidence in a proceeding by audiovisual link; and
  - (b) the proceeding is before a jury.
- (2) The judge must warn the jury to the effect that the jury should not draw any inference against an accused person in the proceeding from the fact that the child’s evidence is given by audiovisual link.

**14 Failure to comply with ch 2**

- (1) If the evidence of a child is not given in accordance with this chapter, the evidence is not inadmissible for that reason only.
- (2) Failure to comply with this chapter in relation to a proceeding does not affect the validity of the proceeding.

**15 Child turns 18 during proceeding**

If a child is to give evidence in a proceeding and the child turns 18 years old before the proceeding is finally disposed of, this chapter continues to apply to the person for the proceeding.

## Chapter 3 Use of audiovisual links and audio links

### Part 3.1 Preliminary—ch 3

#### 16 Definitions—ch 3

In this chapter:

**audio link** means a system of 2-way communication linking different places so that a person speaking at any of them can be heard at the other places.

**participating State** means another State where provisions of an Act in terms substantially corresponding to this chapter are in force.

**recognised court** means a court or tribunal of a participating State that is authorised by the provision of an Act of the State in terms substantially corresponding to this chapter to direct that evidence be taken or a submission made by audiovisual link or audio link from the ACT.

**State** includes Territory.

**territory court** means—

- (a) a court constituted under a territory law; or
- (b) a royal commission under the *Royal Commissions Act 1991*; or
- (c) a judicial commission under the *Judicial Commissions Act 1994*; or
- (d) a tribunal of the Territory; or
- (e) an arbitrator or umpire conducting a proceeding under the *Commercial Arbitration Act 1986*; or
- (f) the sentence administration board; or

- (g) a presiding officer under the *Corrections Management Act 2007*, chapter 11 (Disciplinary inquiries); or
- (h) a review officer under the *Children and Young People Act 2008*, chapter 9 (Conduct of disciplinary review—general).

*tribunal*, in relation to a State, means an entity authorised under the law of the State to take evidence on oath.

## 17 Application—ch 3

This chapter applies in relation to all proceedings, including—

- (a) proceedings pending at the commencement of this chapter; and
- (b) proceedings started after the commencement of this chapter that arise from circumstances, matters or events that arose or happened before that commencement.

## 18 Operation of other Acts

- (1) This chapter is not intended to exclude or limit the operation of any territory law that makes provision for the taking of evidence or making of a submission in an external place for a proceeding in the ACT.
- (2) In this section:

*external place* means a place within or outside the ACT but within Australia that is outside the courtroom or other place where the court is sitting.

## Part 3.2 Use of audiovisual links or audio links with participating States in ACT proceedings

### 19 Application—pt 3.2

This part applies to any proceeding before a territory court.

*Note* *Proceeding*—see the [Legislation Act](#), dictionary, pt 1.

### 20 Territory courts may take evidence and submissions from participating States

- (1) A territory court may, on the application of a party to a proceeding before the court or on its own initiative, direct that evidence be taken or a submission made by audiovisual link or audio link, from a participating State.
- (2) The court may make the direction only if satisfied that—
  - (a) the necessary facilities are available or can reasonably be made available; and
  - (b) the evidence or submission can more conveniently be given or made from the participating State; and
  - (c) the making of the direction is not unfair to a party opposing the making of the direction.
- (3) The court may exercise in the participating State, in relation to taking evidence or receiving a submission by audiovisual link or audio link, any of its powers that the court is permitted, under the law of the participating State, to exercise in the participating State.
- (4) The court may at any time amend or revoke a direction under this part, either on the application of a party to the proceeding or on its own initiative.

**21 Legal practitioners entitled to practise**

A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a legal practitioner—

- (a) in relation to the examination in chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audiovisual link or audio link in a proceeding before a territory court; and
- (b) in relation to the making of a submission by audiovisual link or audio link from the participating State in a proceeding before a territory court.

## **Part 3.3                    Use of interstate audiovisual links or audio links in proceedings in participating States**

### **22                    Application—pt 3.3**

This part applies to any proceeding before a recognised court.

### **23                    Recognised courts may take evidence or receive submissions from people in ACT**

A recognised court may, for a proceeding before it, take evidence or receive a submission by audiovisual link or audio link from a person in the ACT.

### **24                    Powers of recognised courts**

- (1) The recognised court may, for the proceeding, exercise in the ACT, in relation to taking evidence or receiving a submission by audiovisual link or audio link, any of its powers except its powers—
  - (a) to punish for contempt; and
  - (b) to enforce or execute its judgments or process.
- (2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by operation of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving a submission by audiovisual link or audio link from a person in the ACT.
- (3) For the exercise by the recognised court of its powers, the place in the ACT where evidence is given or a submission is made is taken to be part of the court.

**25 Orders made by recognised court**

Without limiting section 24, the recognised court may, by order—

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private; or
- (b) require a person to leave a place in the ACT where the giving of evidence or the making of a submission is taking place or is going to take place; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

**26 Enforcement of order**

- (1) Subject to rules of court, an order under section 25 may be enforced by the Supreme Court as if the order were an order of that court.
- (2) Without limiting subsection (1), a person who contravenes the order—
  - (a) is taken to be in contempt of the Supreme Court; and
  - (b) is punishable accordingly;

unless the person establishes that the contravention should be excused.

**27 Privileges, protection and immunity of participants in proceedings in courts of participating States**

- (1) A judge or other person presiding at or otherwise taking part in a proceeding before a recognised court has, in relation to evidence being taken or a submission being received by audiovisual link or audio link from a person in the ACT, the same privileges, protection and immunity as a judge of the Supreme Court.



- (2) A person appearing as a legal practitioner in a proceeding before a recognised court has, in relation to evidence being taken or a submission being received by audiovisual link or audio link from a person in the ACT, the same protection and immunity as a barrister has in appearing for a party in a proceeding before the Supreme Court.
- (3) A person appearing as a witness in a proceeding before a recognised court by audiovisual link or audio link from the ACT has the same protection as a witness in a proceeding before the Supreme Court.

## **28 Recognised court may administer oath in ACT**

- (1) A recognised court may, for the purpose of obtaining in a proceeding, by audiovisual link or audio link, the testimony of a person in the ACT, administer an oath in accordance with the practice and procedure of the recognised court.
- (2) A proceeding in which evidence is given on oath administered under subsection (1) is a legal proceeding for the [Criminal Code](#), chapter 7 (Administration of justice offences).

*Note* That chapter includes offences (eg perjury, falsifying evidence, failing to attend and refusing to be sworn) applying in relation to tribunal proceedings.

## **29 Assistance to recognised court**

An officer of a territory court may, at the request of a recognised court—

- (a) attend at the place in the ACT where evidence is to be or is being taken, or a submission is to be or is being made, in the proceeding; and
- (b) take the action that the recognised court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognised court of an oath.

## Part 3.4 Use of audiovisual links or audio links with places other than participating States in ACT proceedings

### 31 Application—pt 3.4

This part applies to any proceeding before a territory court.

### 32 Territory courts may take evidence and submissions from place other than participating State

- (1) Subject to any Act or rules of court, a territory court may, on the application of a party to a proceeding before it or on its own initiative, direct that a person, whether or not a party to the proceeding, appear before, or give evidence or make a submission to, the court by audiovisual link or audio link from—
- (a) a place in the ACT that is outside the courtroom or other place where the court is sitting; or
  - (b) a place outside the ACT but within Australia (other than a participating State).

*Note* The *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), pt 4 (Use of video links or telephones in Australian proceedings) and the *Court Procedures Rules 2006*, div 6.10.7 (Taking evidence from New Zealand by video link or telephone) apply to the taking of evidence and submissions by audiovisual links or audio links from New Zealand.

- (2) The court may make the direction only if satisfied that—
- (a) the necessary facilities are available or can reasonably be made available; and
  - (b) the evidence or submission can more conveniently be given or made from the place; and

- (c) the making of the direction is not unfair to any party opposing the making of the direction.
- (3) The court may at any time amend or revoke a direction made under this part, either on the application of a party to the proceeding or its own initiative.
- (4) While a person is at a place giving evidence or making a submission, the place is taken to be part of the court.

## Part 3.5                      Protection of certain communications and documents in criminal proceedings

### 33                      Application—pt 3.5

This part applies to a communication made, and a document transmitted, by audiovisual link or audio link between an accused person and his or her legal representative during the course of a proceeding in relation to which, or to a part of which, an audiovisual or audio link has been used under this chapter or a provision of another territory law.

### 34                      Protection of confidentiality

Without limiting any other protection that applies to it, a communication or document to which this part applies is as confidential and inadmissible in any proceeding as it would be if it had been made or produced while the accused person and his or her legal representative were in each other's presence.

### 35                      Application of Listening Devices Act

The *Listening Devices Act 1992* applies to a communication or document to which this part applies as if—

- (a) for a communication—the communication were a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and

- (b) for a document—
- (i) any data, text or visual images in the transmitted document were words spoken to or by a person in a private conversation within the meaning of that Act to which the parties were the accused person and his or her legal representative; and
  - (ii) a reference in that Act to the use of a listening device to overhear, record, monitor or listen to a private conversation included a reference to reading the document.

## **Part 3.6**                      **Costs and expenses**

### **36**                      **Power to order payment of costs**

A territory court that directs evidence to be taken, or a submission to be made, by audiovisual link or audio link under section 20 (1) (Territory courts may take evidence and submissions from participating States) or section 32 (1) (Territory courts may take evidence and submissions from place other than participating State) may make the orders it considers just for the payment of the costs and expenses incurred in relation to taking the evidence or making the submission, including any amounts prescribed by regulation.

## Chapter 4 Evidence in sexual, violent and family violence offence proceedings

### Part 4.1 Preliminary—ch 4

#### 36A Failure to comply with ch 4

- (1) If the evidence of the complainant or a similar act witness is not given in accordance with this chapter, the evidence is not inadmissible for that reason only.
- (2) Failure to comply with this chapter in relation to a proceeding does not affect the validity of the proceeding.

#### 36B Meaning of *relevant person*—ch 4

- (1) In this chapter:

*relevant person*, in relation to a person (the *original person*) means—

- (a) a domestic partner or former domestic partner of the original person; or

*Note* A *domestic partner* need not be an adult (see [Legislation Act](#), s 169).

- (b) an intimate partner or former intimate partner of the original person; or
- (c) a relative of the original person; or
- (d) a child of a domestic partner or former domestic partner of the original person; or
- (e) a parent of a child of the original person.

(2) In this section:

*intimate partner*, of a person—

- (a) means someone with whom the person has an intimate relationship, whether they are members of the same household or not; but
- (b) does not include—
  - (i) a domestic partner; or
  - (ii) another person with whom the person has a relationship only because a service is provided between them—
    - (A) for fee or reward; or
    - (B) on behalf of another person (including a government or corporation); or
    - (C) on behalf of an organisation the principal objects or purposes of which are charitable or benevolent.
- (3) For subsection (2), factors that indicate whether there is an intimate relationship between 2 people include, but are not limited to, the following:
  - (a) the extent to which each is personally dependent on the other;
  - (b) the extent to which each is financially dependent on the other (including any arrangements for financial support);
  - (c) the length of the relationship;
  - (d) the frequency of contact between each other;
  - (e) if there is, or has been, a sexual relationship;
  - (f) the extent to which each is involved in, or knows about, the other's personal life;
  - (g) the degree of mutual commitment to a shared life;



- (h) if the 2 people share care or support for children or other dependents.

### 36C Meaning of *relative*—ch 4

- (1) In this chapter:

*relative of a person (the original person)*—

- (a) means the original person's—
- (i) father, mother, grandfather, grandmother, stepfather, stepmother, father-in-law or mother-in-law; or
  - (ii) son, daughter, grandson, granddaughter, stepson, stepdaughter, son-in-law or daughter-in-law; or
  - (iii) brother, sister, half-brother, half-sister, stepbrother, stepsister, brother-in-law or sister-in-law; or
  - (iv) uncle, aunt, uncle-in-law or aunt-in-law; or
  - (v) nephew, niece or cousin; and
- (b) if the original person has or had a domestic partner (other than a spouse or civil union partner)—includes someone who would have been a relative mentioned in paragraph (a) if the original person had been married to or in a civil union with the domestic partner; and

*Note* For the meaning of *domestic partner*, see the [Legislation Act](#), s 169.

For ACT law, a person acquires relatives through civil union in the same way as they acquire them through marriage (see [Civil Unions Act 2012](#), s 6 (2)).

- (c) includes—
- (i) someone who has been a relative mentioned in paragraph (a) or (b) of the original person; and

- (ii) if the original person is an Aboriginal or Torres Strait Islander person, the following people:
  - (A) someone the original person has responsibility for, or an interest in, in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community;
  - (B) someone who has responsibility for, or an interest in, the original person in accordance with the traditions and customs of the original person's Aboriginal or Torres Strait Islander community; and
- (iii) someone regarded and treated by the original person as a relative; and
- (iv) anyone else who could reasonably be considered to be, or have been, a relative of the original person.

(2) In this section:

***Aboriginal or Torres Strait Islander person*** means a person who—

- (a) is a descendant of an Aboriginal person or a Torres Strait Islander person; and
- (b) identifies as an Aboriginal person or a Torres Strait Islander person; and
- (c) is accepted as an Aboriginal person or a Torres Strait Islander person by an Aboriginal community or Torres Strait Islander community.

### **36D Meaning of *intellectually impaired*—ch 4**

In this chapter:

***intellectually impaired***—a person is ***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 an acquired brain injury, neurological disorder or a developmental disorder; or
- (c) any other intellectual disability.

## Part 4.2 Evidence in sexual and violent offence proceedings

### Division 4.2.1 Preliminary—pt 4.2

#### 37 Definitions—pt 4.2

In this part:

*less serious violent offence* means—

- (a) an offence against any of the following provisions of the *Crimes Act 1900*:
  - (i) section 21 (1) (Wounding);
  - (ii) section 22 (Assault with intent to commit other offence);
  - (iii) section 23 (1) (Inflicting actual bodily harm);
  - (iv) section 24 (1) (Assault occasioning actual bodily harm);
  - (v) section 25 (Causing grievous bodily harm);
  - (vi) section 26 (Common assault);
  - (vii) section 28 (Acts endangering health etc);
  - (viii) section 29 (4) and (5) (Culpable driving of motor vehicle);
  - (ix) section 31 (Threat to inflict grievous bodily harm);
  - (x) section 37 (Abduction of young person);
  - (xi) section 41 (Exposing or abandoning child);
  - (xii) section 116 (Destroying or damaging property); or
- (b) an offence against the *Criminal Code*, section 403 (Damaging property); or

- (c) an offence against the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order); or
- (d) an offence against the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).

***serious violent offence*** means—

- (a) an offence against any of the following provisions of the *Crimes Act 1900*:
  - (i) section 12 (Murder);
  - (ii) section 15 (Manslaughter);
  - (iii) section 19 (Intentionally inflicting grievous bodily harm);
  - (iv) section 20 (Recklessly inflicting grievous bodily harm);
  - (v) section 21 (2) (Wounding);
  - (vi) section 23 (2) (Inflicting actual bodily harm);
  - (vii) section 24 (2) (Assault occasioning actual bodily harm);
  - (viii) section 27 (Acts endangering life etc);
  - (ix) section 29 (2) and (3) (Culpable driving of motor vehicle);
  - (x) section 30 (Threat to kill);
  - (xi) section 32 (Demands accompanied by threats);
  - (xii) section 34 (Forcible confinement);
  - (xiii) section 35 (Stalking);
  - (xiv) section 36 (Torture);
  - (xv) section 38 (Kidnapping);
  - (xvi) section 40 (Unlawfully taking child etc);
  - (xvii) section 42 (Child destruction);

- (xviii) section 43 (Childbirth—grievous bodily harm); or
- (b) an offence against any of the following provisions of the *Criminal Code 2002*:
  - (i) section 309 (Robbery);
  - (ii) section 310 (Aggravated robbery);
  - (iii) section 311 (Burglary) if the complainant was in the building at the time of the offence;
  - (iv) section 312 (Aggravated burglary) if the complainant was in the building at the time of the offence.

**sexual offence** means an offence against the *Crimes Act 1900*, part 3 (Sexual offences), part 4 (Female genital mutilation) or part 5 (Sexual servitude).

*Note* A reference to an offence against a territory law includes a reference to a related ancillary offence, eg attempt (see *Legislation Act*, s 189).

**sexual or violent offence** means—

- (a) a sexual offence; or
- (b) a violent offence.

**sexual or violent offence proceeding** means—

- (a) a sexual offence proceeding; or
- (b) a violent offence proceeding.

**similar act witness** means a witness in a sexual or violent offence proceeding who gives, or intends to give, evidence in the proceeding that—

- (a) relates to an act committed on or in the presence of the witness by the accused; and
- (b) is tendency evidence or coincidence evidence under the *Evidence Act 2011*.

*violent offence* means a serious violent offence or a less serious violent offence.

*witness with a disability* means a person who gives, or intends to give, evidence in a proceeding and has a mental or physical disability that affects the person's ability to give evidence.

## Division 4.2.2            Sexual and violent offence proceedings—general

### 38            Meaning of *complainant* and *sexual offence proceeding*—div 4.2.2

- (1) For this division, the *complainant* in relation to a sexual or violent offence proceeding, is the person, or any of the people, against whom a sexual or violent offence the subject of the proceeding is alleged, or has been found, to have been committed.
- (2) For this division, a *sexual offence proceeding* is—
  - (a) a proceeding for a sexual offence; or
  - (b) a proceeding in relation to bail for a person charged with a sexual offence, whether or not the person is also charged with any other offence; or
  - (c) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (d) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraphs (a) to (c); or
  - (e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).
- (3) For subsection (2) (a), a *proceeding for a sexual offence* includes—
  - (a) a proceeding for a sexual offence and any other offence; and

- (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
  - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.
- (4) To remove any doubt, for this section, a *proceeding* includes a committal hearing.

*Note 1* A complainant is not required to attend and give evidence at a committal proceeding in relation to a sexual offence (see *Magistrates Court Act 1930*, s 90AA (8)).

*Note 2* A witness must not be cross-examined at a committal hearing in relation to a sexual offence if the witness is a complainant in relation to the offence (see *Magistrates Court Act 1930*, s 90AB (1)).

### **38A Meaning of *violent offence proceeding*—div 4.2.2**

- (1) For this division, a *violent offence proceeding* is—
- (a) a proceeding for a violent offence; or
  - (b) a proceeding in relation to bail for a person charged with a violent offence, whether or not the person is also charged with any other offence; or
  - (c) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (d) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraphs (a) to (c); or
  - (e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).
- (2) For subsection (1) (a), a *proceeding for a violent offence* includes—
- (a) a proceeding for a violent offence and any other offence; and



- (b) a proceeding for a violent offence and any other offence as an alternative to the violent offence; and
  - (c) a proceeding for a violent offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.
- (3) To remove any doubt, for this section, a *proceeding* includes a committal hearing.

### **38C Accused may be screened from witness in court**

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in—
- (a) a sexual offence proceeding; or
  - (b) a violent offence proceeding in relation to a serious violent offence; or
  - (c) a violent offence proceeding in relation to a less serious violent offence if—
    - (i) the witness is a relevant person in relation to the accused person; or
    - (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

#### **Examples—par (c) (ii)**

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) For subsection (1) (c) (ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) The court may order that the courtroom be arranged in a way that, while the witness is giving evidence, the witness cannot see—
  - (a) the accused person; or
  - (b) anyone else the court considers should be screened from the witness.
- (4) However, the witness must be visible to—
  - (a) the presiding judicial officer; and
  - (b) if the proceeding is a trial by jury—the jury; and
  - (c) the accused person; and
  - (d) the accused person’s lawyer; and
  - (e) if the court has ordered that someone should be screened from the complainant or similar act witness—the person; and
  - (f) the prosecutor.

**38D Examination of witness by self-represented accused person—procedure**

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in—
  - (a) a sexual offence proceeding; or
  - (b) a violent offence proceeding in relation to a serious violent offence; or
  - (c) a violent offence proceeding in relation to a less serious violent offence if—
    - (i) the witness is a relevant person in relation to the accused person; or

- (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

**Examples—par (c) (ii)**

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) For subsection (1) (c) (ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) This section also applies to a child or witness with a disability (the *witness*) giving evidence for the prosecution in a sexual or violent offence proceeding.
- (4) The witness must not be examined personally by the accused person but may be examined instead by—
  - (a) the accused person's legal representative; or
  - (b) if the accused person does not have a legal representative—a person appointed by the court.
- (5) If the accused person does not have a legal representative, the court must, as soon as practicable, tell the person—
  - (a) about the terms of subsection (4); and
  - (b) that the person may not present evidence from another witness in relation to a fact in issue to contradict the evidence of the witness in relation to the fact if the fact in the other witness's evidence intended to contradict the witness's evidence has not been put to the witness in cross-examination.

- (6) A person appointed by the court for subsection (4) (b) may ask the witness only the questions that the accused person asks the person to put to the witness, and must not independently give the accused person legal or other advice.

*Note* If the court considers a question to be unduly annoying, harassing, intimidating etc, the court must disallow it or tell the witness that it need not be answered (see *Evidence Act 2011*, s 41 (1) (Improper questions)).

- (7) If the accused person does not have a legal representative, the court may, if it considers it is in the interests of justice, do 1 or more of the following:
- (a) adjourn the proceeding to enable the person to obtain a legal representative to conduct the examination;
  - (b) make—
    - (i) an order that the person obtain legal representation; and
    - (ii) any other order the court considers necessary to secure legal representation for the person.
- (8) If the proceeding is a trial by jury, the court must tell the jury that—
- (a) the accused person may not examine the witness personally; and
  - (b) obtaining, or being provided with, legal representation to examine the witness, or having the accused person's questions put to the witness by a person appointed by the court, is a usual practice; and
  - (c) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the examination is not conducted personally by the accused person.
- (9) In this section:
- examine*** includes cross-examine and re-examine.

**38E Sexual and violent offence proceeding—witness may have support person in court**

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in—
- (a) a sexual offence proceeding; or
  - (b) a violent offence proceeding in relation to a serious violent offence; or
  - (c) a violent offence proceeding in relation to a less serious violent offence if—
    - (i) the witness is a relevant person in relation to the accused person; or
    - (ii) the court considers that the witness has a vulnerability that affects the witness’s ability to give evidence because of the circumstances of the proceeding or the witness’s circumstances.

**Examples—par (c) (ii)**

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness’s relationship to the accused person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) For subsection (1) (c) (ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) The court must, on application by a party who intends to call a witness, order that the witness have a person (a *support person*) in the court close to, and within the witness’s sight, while the witness gives evidence.
- (4) The court may order that a witness have more than 1 support person if it considers it is in the interests of justice.

- (5) The support person must not—
  - (a) speak for the witness during the proceeding; or
  - (b) otherwise interfere in the proceeding.
- (6) Unless the court otherwise orders, the support person must not be, or be likely to be, a witness or party in the proceeding.
- (7) If the proceeding is a trial by jury, the court must tell the jury that—
  - (a) a witness having a support person in the court while giving evidence is a usual practice; and
  - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the support person is present.

**39 Sexual and violent offence proceeding—evidence to be given in closed court**

- (1) This section applies to the complainant or a similar act witness (the *witness*) giving evidence in—
  - (a) a sexual offence proceeding; or
  - (b) a violent offence proceeding in relation to a serious violent offence; or
  - (c) a violent offence proceeding in relation to a less serious violent offence if—
    - (i) the witness is a relevant person in relation to the accused person; or

- (ii) the court considers that the witness has a vulnerability that affects the witness's ability to give evidence because of the circumstances of the proceeding or the witness's circumstances.

**Examples—par (c) (ii)**

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness's relationship to the accused person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) For subsection (1) (c) (ii), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.
- (3) The court may order that the court be closed to the public while all or part of the witness's evidence (including evidence given under cross-examination) is given.

*Note* The accused is entitled to a fair and public hearing, but the court may exclude the press and public in certain circumstances (see [Human Rights Act 2004](#), s 21 (2)).

- (4) In deciding whether to order that the court be closed to the public, the court must consider whether—
  - (a) the witness wants to give evidence in open court; and
  - (b) it is in the interests of justice that the witness give evidence in open court.
- (5) However, an order under this section does not stop the following people from being in court when the witness gives evidence:
  - (a) a person nominated by the witness;

- (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.

*Note* Publishing certain information in relation to sexual offence proceedings is an offence (see s 40).

- (6) In this section, a reference to a person giving evidence includes the person giving evidence by the playing of an audiovisual recording of the evidence at a hearing under division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence), division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing) or by the person giving evidence by audiovisual link under division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link).

#### **40 Sexual offence proceeding—prohibition of publication of complainant's identity**

- (1) A person commits an offence if the person publishes, in relation to a sexual offence proceeding—
- (a) the complainant's name; or
  - (b) protected identity information about the complainant; or
  - (c) a reference or allusion that discloses the complainant's identity; or
  - (d) a reference or allusion from which the complainant's identity might reasonably be worked out.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) It is a defence to a prosecution for an offence against this section if the person establishes that the complainant consented to the publication before the publication happened.
- (3) An offence against this section is a strict liability offence.



(4) In this section:

*protected identity information* means information about, or allowing someone to find out, the private, business or official address, email address or telephone number of a person.

### **Division 4.2.2A Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence**

#### **40AA Meaning of *sexual offence* and *violent offence*—div 4.2.2A**

- (1) For this division, a *sexual offence* includes an offence under the following provisions in relation to another sexual offence:
  - (a) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
  - (b) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).
- (2) For this division, a *violent offence* includes an offence under the following provisions in relation to another violent offence:
  - (a) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
  - (b) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).

#### **40B Meaning of *sexual offence proceeding*—div 4.2.2A**

- (1) For this division, a *sexual offence proceeding* is—
  - (a) a proceeding for a sexual offence; or

- (b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (c) an appeal arising out of a proceeding mentioned in paragraph (a) or (b).
- (2) For subsection (1) (a), a *proceeding for a sexual offence* includes—
- (a) a proceeding for a sexual offence and any other offence; and
  - (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
  - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

**40C Meaning of *violent offence proceeding*—div 4.2.2A**

- (1) For this division, a *violent offence proceeding* is—
- (a) a proceeding for a violent offence; or
  - (b) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (c) an appeal arising out of a proceeding mentioned in paragraph (a) or (b).
- (2) For subsection (1) (a), a *proceeding for a violent offence* includes—
- (a) a proceeding for a violent offence and any other offence; and
  - (b) a proceeding for a violent offence and any other offence as an alternative to the violent offence; and
  - (c) a proceeding for a violent offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

#### 40D Meaning of *witness*—div 4.2.2A

- (1) For this division, a *witness* is a witness in a sexual offence or a violent offence proceeding who—
- (a) is a child on the day an audiovisual recording is made; or
  - (b) is intellectually impaired; or
- Note* **Intellectually impaired**—see s 36D.
- (c) is a complainant or similar act witness in the proceeding.

- (2) In this section:

***complainant***, in a sexual or a violent offence proceeding, means the person, or any of the people, against whom a sexual or violent offence the subject of the proceeding is alleged, or has been found, to have been committed.

***similar act witness*** means a witness in a sexual or violent offence proceeding who gives, or intends to give, evidence in the proceeding that—

- (a) relates to an act committed on or in the presence of the witness by the accused; and
- (b) is tendency evidence or coincidence evidence under the *Evidence Act 2011*.

#### 40E Meaning of *audiovisual recording*—div 4.2.2A

- (1) For this division, an *audiovisual recording* is an audiovisual recording that is of a witness answering questions of a prescribed person in relation to the investigation of a sexual or violent offence.
- (2) The audiovisual recording must include the following:
- (a) the date when, and the place where, the recording was made;
  - (b) the times when the recording started and ended;

- (c) the times when any break in questioning started and ended, and the reason for the break;
  - (d) the name of each person present during any part of the recording;
  - (e) for each person present during any part of the recording—the part when the person was present.
- (3) The audiovisual recording must—
- (a) be certified by a prescribed person as an accurate record of the witness answering the questions; and
  - (b) not be edited or changed, unless the court hearing the proceeding in which the recording is tendered otherwise orders.

**Example—court ordering change**

editing the recording to omit inadmissible material

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**40F Audiovisual recording may be admitted as evidence**

- (1) An audiovisual recording may—
- (a) be played at the hearing of a proceeding for the sexual or violent offence to which it relates; and
  - (b) if the recording is played at the hearing—be admitted as the witness’s evidence in chief in the proceeding as if the witness gave the evidence at the hearing in person.
- (2) However, the court may refuse to admit all or any part of the audiovisual recording.
- (3) The witness must not be in the courtroom, or visible to anyone in the courtroom by audiovisual link, when the audiovisual recording is played at the hearing.

- (4) This section is subject to section 40J.

**40G Audiovisual recording—notice**

- (1) This section applies if the prosecutor in a sexual or violent offence proceeding intends to tender an audiovisual recording as evidence.
- (2) The prosecutor must give to the accused person or the person's lawyer—
- (a) written notice that the prosecutor intends to tender the audiovisual recording; and
  - (b) a copy of a transcript of the recording.
- (3) The notice must state the following:
- (a) each audiovisual recording the prosecutor intends to tender;
  - (b) that the accused person and the person's lawyer are entitled to see and listen to each recording at a police station or somewhere else decided by the chief police officer;
  - (c) the person responsible (the *responsible person*) for arranging access to each recording.
- (4) For subsection (3) (c), the notice must state the responsible person by—
- (a) naming the person; or
  - (b) stating the occupant of a position prescribed by regulation.

**40H Audiovisual recording—notice for access**

- (1) The accused person, or the person's lawyer, must give written notice to the responsible person to have access to an audiovisual recording.
- (2) The notice must state the following:
- (a) the name of the accused person, and the person's lawyer;
  - (b) each audiovisual recording for which access is required.

**40I Audiovisual recording—access to accused person**

- (1) This section applies if an accused person, or the person’s lawyer, gives notice under section 40H requesting access to an audiovisual recording.
- (2) The responsible person must give the person who gave notice access to see and listen to the audiovisual recording as soon as practicable after receiving the notice under section 40H.
- (3) The person who gave notice may have access to an audiovisual recording more than once.
- (4) The accused person, and the person’s lawyer, must not be given, or take a copy of, an audiovisual recording.

**40J Audiovisual recording—admissibility**

- (1) An audiovisual recording is admissible in a sexual or violent offence proceeding only if—
  - (a) notice is given under section 40G; and
  - (b) a copy of a transcript of the recording is given to the accused person, or the person’s lawyer, a reasonable time before the start of the hearing of the proceeding; and
  - (c) the accused person, and the person’s lawyer, are given a reasonable opportunity to see and listen to the recording.
- (2) However, if the prosecutor fails to give notice under section 40G, the audiovisual recording is admissible if—
  - (a) a copy of a transcript of the recording is given to the accused person, or the person’s lawyer, a reasonable time before the start of the hearing of the proceeding; and
  - (b) the accused person, and the person’s lawyer, are given a reasonable opportunity to see and listen to the recording; and

- (c) the court considers it is in the interests of justice to admit the recording.
- (3) This section does not prevent the parties consenting to the admission in evidence of an audiovisual recording.

#### **40K Audiovisual recording—jury trial**

- (1) This section applies if—
  - (a) a sexual or violent offence proceeding is a trial by jury; and
  - (b) an audiovisual recording is admitted in evidence in the proceeding.
- (2) The court must tell the jury that—
  - (a) admission of the audiovisual recording is a usual practice; and
  - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the evidence is given in that way.
- (3) If the court considers that a transcript of the audiovisual recording would be likely to help the jury’s understanding of the evidence, the court may order that the transcript be made available to the jury.

#### **40L Transcript of audiovisual recording—access to court**

If an audiovisual recording is admitted in evidence in a sexual or violent offence proceeding, the court may order that a transcript of the recording be made available to the court.

#### **40M Audiovisual recording—offences**

- (1) A person commits an offence if the person, without authority—
  - (a) possesses an audiovisual recording; or
  - (b) supplies, or offers to supply, an audiovisual recording to another person; or

- (c) plays, copies or erases, or allows someone else to play, copy or erase, an audiovisual recording.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (2) For this section, a person has *authority* in relation to an audiovisual recording only if the person possesses the recording, or does something with the recording, in connection with—
  - (a) the investigation of, or a proceeding for, an offence in relation to which the recording is prepared; or
  - (b) a re-hearing, re-trial or appeal in relation to the proceeding; or
  - (c) another proceeding in which the recording is or may be admitted in evidence under section 40V.

## **Division 4.2.2B Sexual offence proceedings—giving evidence at pre-trial hearing**

### **40N Meaning of *complainant*—div 4.2.2B**

For this division, the *complainant*, in relation to a sexual offence proceeding, is the person, or any of the people, against whom a sexual offence the subject of the proceeding is alleged, or has been found, to have been committed.

### **40NA Meaning of *sexual offence*—div 4.2.2B**

For this division, a *sexual offence* includes an offence under the following provisions in relation to another sexual offence:

- (a) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
- (b) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order).



**400 Meaning of *sexual offence proceeding*—div 4.2.2B**

- (1) For this division, a *sexual offence proceeding* is—
- (a) a proceeding for a sexual offence; or
  - (b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (c) a proceeding for contravening a protection order under the following provisions in relation to a sexual offence:
    - (i) the *Family Violence Act 2016*, section 43 (Offence—contravention of family violence order);
    - (ii) the *Personal Violence Act 2016*, section 35 (Offence—contravention of protection order); or
  - (d) an appeal arising out of a proceeding mentioned in paragraphs (a) to (c).
- (2) For subsection (1) (a), a *proceeding for a sexual offence* includes—
- (a) a proceeding for a sexual offence and any other offence; and
  - (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
  - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

**40P Meaning of *witness*—div 4.2.2B**

- (1) For this division, a *witness* is a prosecution witness in a sexual offence proceeding who—
- (a) is a child on the day the proceeding started in the Magistrates Court; or
  - (b) is intellectually impaired; or

- (c) is a complainant who the court considers must give evidence as soon as practicable because the complainant is likely to—
  - (i) suffer severe emotional trauma; or
  - (ii) be intimidated or distressed.
- (2) For subsection (1) (c), the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

*Note* **Intellectually impaired**—see s 36D.

#### **40Q Witness may give evidence at pre-trial hearing**

- (1) A witness may give evidence at a pre-trial hearing.
- (2) The evidence must be given by audiovisual link from a place that—
  - (a) is not the courtroom in which the pre-trial hearing is held; but
  - (b) is linked to the courtroom by an audiovisual link.
- (3) However, the witness's evidence in chief given at a pre-trial hearing may include an audiovisual recording under division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence).
- (4) If an audiovisual recording under division 4.2.2A is played at the pre-trial hearing, the witness must not be visible to anyone in the courtroom by audiovisual link when the audiovisual recording is played.
- (5) While the witness is at the place to give evidence, the place is taken for all purposes (other than subsection (4)) to be part of the courtroom in which the pre-trial hearing is held.
- (6) While the witness is at the place to give evidence—
  - (a) the accused person must not be at the place; and
  - (b) the witness must not be able to see or hear the accused person; and

- (c) the accused person must be able to see and hear the witness give evidence; and
- (d) the accused person must be able to communicate with the person's lawyer.

**40R Who may be present at pre-trial hearing**

- (1) Only the following people may be present in the courtroom at the pre-trial hearing:
  - (a) the presiding judicial officer;
  - (b) the prosecutor;
  - (c) the accused person;
  - (d) the accused person's lawyer;
  - (e) anyone else the court considers appropriate.
- (2) While the witness is at a place to give evidence, only the following people may be present at the place:
  - (a) a support person under section 38E (3) or section 101;
  - (b) anyone else the court considers appropriate.
- (3) Each person who is present at the place where the witness is to give evidence must be recorded on the audiovisual recording recorded under section 40S.
- (4) The judicial officer who presides at the pre-trial hearing need not be the judicial officer who presides at the trial at which the audiovisual recording of the witness's evidence is tendered.

**40S Evidence of witness at pre-trial hearing to be evidence at hearing**

- (1) The evidence of a witness (including cross-examination and re-examination) given under this division must be recorded as an audiovisual recording.

- (2) The evidence in chief of the witness may include an audiovisual recording under section 40E (Meaning of *audiovisual recording*—div 4.2.2A).
- (3) The audiovisual recording of the witness's evidence must—
  - (a) be played at the hearing of the sexual offence proceeding for which the pre-trial hearing was held; and
  - (b) be admitted in evidence as the witness's evidence at the hearing as if the witness gave the evidence at the hearing in person.
- (4) The witness must not be in the courtroom when the audiovisual recording is played at the hearing.

**40T Witness may be required to attend hearing**

- (1) This section applies if an audiovisual recording of a witness's evidence given at a pre-trial hearing is admitted in evidence at the hearing of a sexual offence proceeding.
- (2) The accused person may apply to the court for an order that the witness attend the hearing of the sexual offence proceeding to give further evidence.
- (3) The court must not make the order unless satisfied that—
  - (a) if the witness had given evidence in person at the hearing of the sexual offence proceeding, the witness could be recalled; and
  - (b) it is in the interests of justice to make the order.
- (4) If the courtroom where the proceeding is heard and another place are linked by an audiovisual link, a witness recalled to give evidence under this section must give evidence by audiovisual link under division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link), unless the court otherwise orders.

- (5) The court may make an order under subsection (4) only if satisfied that—
- (a) the witness prefers to give evidence in the courtroom; or
  - (b) if the order is not made—
    - (i) the sexual offence proceeding may be unreasonably delayed; or
    - (ii) there is a substantial risk that the court will not be able to ensure that the sexual offence proceeding is conducted fairly.
- (6) While the witness is at the other place to give evidence, the place is taken for all purposes (other than section 40S (4)) to be part of the courtroom.

#### **40U Evidence of witness at pre-trial hearing—jury trial**

- (1) This section applies if—
- (a) a sexual offence proceeding is a trial by jury; and
  - (b) an audiovisual recording of a witness's evidence given at a pre-trial hearing is admitted in evidence at the hearing of the proceeding.
- (2) The court must tell the jury that—
- (a) the witness gave the evidence by audiovisual link at a pre-trial hearing; and
  - (b) admission of the audiovisual recording is a usual practice; and
  - (c) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the evidence was given in that way.

**40V Recording of witness’s evidence at pre-trial hearing admissible in related hearing**

- (1) This section applies if an audiovisual recording of a witness’s evidence given at a pre-trial hearing is admitted in evidence at the hearing of a sexual offence proceeding.
- (2) The recording is admissible as the witness’s evidence in a related proceeding unless the court in the related proceeding otherwise orders.
- (3) However, the court in the related proceeding may—
  - (a) refuse to admit all or any part of the audiovisual recording in evidence; and
  - (b) if the court refuses to admit part of the recording in evidence—order that the part that is not admitted be deleted from the recording.
- (4) A party in the related proceeding may apply to the court for an order that the witness attend the hearing to give further evidence.
- (5) The court must not make the order unless satisfied that—
  - (a) the applicant has become aware of something that the applicant did not know or could not reasonably have known when the audiovisual recording was recorded; and
  - (b) if the witness had given evidence in person at the hearing, the witness could be recalled; and
  - (c) it is in the interests of justice to make the order.
- (6) In this section:

***related proceeding***, in relation to the proceeding in which the audiovisual recording was admitted in evidence, means—

  - (a) a re-hearing or re-trial of, or appeal from, the hearing of the proceeding; or

- (b) another proceeding in the same court as the proceeding for the offence, or another offence arising from the same, or the same set of, circumstances; or
- (c) a civil proceeding arising from the offence.

**40W Audiovisual recording of child’s evidence—admissibility**

- (1) This section applies if—
  - (a) a child has given evidence under this division; and
  - (b) the evidence is recorded as an audiovisual recording; and
  - (c) the child turns 18 years old before the audiovisual recording is admitted in evidence.
- (2) The admissibility of the audiovisual recording as evidence is not affected only because the child turns 18 years old.

**Division 4.2.3 Sexual and violent offence proceedings—giving evidence by audiovisual link**

**40X Definitions—div 4.2.3**

In this division:

*give evidence in a proceeding by audiovisual link* means to give evidence in the proceeding by audiovisual link from an external place which is linked to the courtroom by an audiovisual link.

*proceeding* means a proceeding to which this division applies.

**41 Meaning of *complainant* and *sexual offence proceeding*—  
div 4.2.3**

- (1) For this division, the *complainant*, in relation to a sexual or violent offence proceeding, is the person, or any of the people, against whom a sexual or violent offence the subject of the proceeding is alleged, or has been found, to have been committed.
- (2) For this division, a *sexual offence proceeding* is—
  - (a) a proceeding for a sexual offence; or
  - (b) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (c) a proceeding under the *Victims of Crime (Financial Assistance) Act 1983* in relation to a sexual offence; or
  - (d) a proceeding by way of an inquest or inquiry in the Coroner's Court in relation to a sexual offence; or
  - (e) an appeal arising out of a proceeding mentioned in paragraphs (a) to (d).
- (3) For subsection (2) (a), a *proceeding for a sexual offence* includes—
  - (a) a proceeding for a sexual offence and any other offence; and
  - (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
  - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.



- (4) To remove any doubt, for this section, a *proceeding* includes a committal hearing.

*Note 1* A complainant is not required to attend and give evidence at a committal proceeding in relation to a sexual offence (see *Magistrates Court Act 1930*, s 90AA (8)).

*Note 2* A witness must not be cross-examined at a committal hearing in relation to a sexual offence if the witness is a complainant in relation to the offence (see *Magistrates Court Act 1930*, s 90AB (1)).

#### **41A Meaning of violent offence proceeding—div 4.2.3**

- (1) For this division, a *violent offence proceeding* is—
- (a) a proceeding for a violent offence; or
  - (b) a sentencing proceeding for a person convicted or found guilty of a violent offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (c) an appeal arising out of a proceeding mentioned in paragraphs (a) and (b).
- (2) For subsection (1) (a), a *proceeding for a violent offence* includes—
- (a) a proceeding for a violent offence and any other offence; and
  - (b) a proceeding for a violent offence and any other offence as an alternative to the violent offence; and
  - (c) a proceeding for a violent offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.
- (3) To remove any doubt, for this section, a *proceeding* includes a committal hearing.

#### **42 Proceedings to which div 4.2.3 applies**

- (1) This division applies to the following proceedings:
- (a) a sexual offence proceeding;

- (b) a violent offence proceeding in relation to a serious violent offence;
- (c) a violent offence proceeding in relation to a less serious violent offence if—
  - (i) the complainant or similar act witness (the *witness*) is a relevant person in relation to the accused person; or  
*Note* **Relevant person**—see s 38B.
  - (ii) the court considers that the witness has a vulnerability that affects the witness’s ability to give evidence because of the circumstances of the proceeding or the witness’s circumstances.

**Examples—par (c) (ii)**

- 1 the witness is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the witness is intimidated or distressed because of the witness’s relationship to the accused person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) For this division, it does not matter whether evidence is to be, or is being, given on oath or otherwise.

**43 Complainant or similar act witness giving evidence by audiovisual link**

- (1) This section applies if—
  - (a) a complainant or similar act witness is to give evidence in a proceeding; and
  - (b) the proceeding is to be heard in a courtroom; and
  - (c) the courtroom and an external place are linked by an audiovisual link.

- (2) The complainant's or similar act witness's evidence must be given by audiovisual link unless the court otherwise orders.
- (3) The court may make an order under subsection (2) only if satisfied—
  - (a) that—
    - (i) for the complainant—the complainant prefers to give evidence in the courtroom; and
    - (ii) for a similar act witness—the witness prefers to give evidence in the courtroom; or
  - (b) if the order is not made—
    - (i) the proceeding may be unreasonably delayed; or
    - (ii) there is a substantial risk that the court will not be able to ensure that the proceeding is conducted fairly.
- (4) While the complainant or similar act witness is at the external place to give evidence, the place is taken for all purposes (other than section 40F (3)) to be part of the courtroom.
- (5) While the complainant or similar act witness is at the external place to give evidence—
  - (a) the accused person must not be at the place; and
  - (b) the witness must not be able to see or hear the accused person; and
  - (c) the accused person must be able to see and hear the witness give evidence; and
  - (d) the accused person must be able to communicate with the person's lawyer.

**43A Recording evidence given by audiovisual link in sexual offence proceedings**

- (1) This section applies if—
  - (a) a complainant or similar act witness gives evidence in a proceeding by audiovisual link under section 43; and
  - (b) the proceeding is a sexual offence proceeding.
- (2) The complainant's or similar act witness's evidence given by audiovisual link must be recorded as an audiovisual recording.
- (3) The recording is admissible as the complainant's or similar act witness's evidence in a related proceeding unless the court in the related proceeding otherwise orders.
- (4) However, the court in the related proceeding may—
  - (a) refuse to admit any part of the recording in evidence; and
  - (b) if the court refuses to admit part of the recording in evidence—order that the part that is not admitted be deleted from the recording.
- (5) A party to a related proceeding may apply to the court for an order that the complainant or similar act witness attend the hearing to give further evidence.
- (6) The court must not make the order unless satisfied that—
  - (a) the applicant has become aware of something that the applicant did not know or could not reasonably have known when the recording was made; and
  - (b) if the complainant or similar act witness had given evidence in person at the hearing, the complainant or similar act witness could be recalled; and
  - (c) it is in the interests of justice to make the order.

(7) In this section:

*related proceeding*, in relation to the proceeding in which the evidence given by audiovisual link was recorded, means—

- (a) a re-hearing or re-trial of, or appeal from, the hearing of the proceeding; or
- (b) another proceeding in the same court as the proceeding for the offence, or another offence arising from the same, or the same set of, circumstances; or
- (c) a civil proceeding arising from the offence.

**44 Consequential orders—div 4.2.3**

- (1) This section applies if a complainant or similar act witness is to give evidence in a proceeding by audiovisual link.
- (2) The court may make any order it considers appropriate—
  - (a) to ensure that the proceeding is conducted fairly; or
  - (b) to allow the complainant or similar act witness to identify a person or thing; or
  - (c) to allow the complainant or similar act witness to take part in a view or to watch a demonstration or experiment; or
  - (d) to allow part of the proceeding to be heard somewhere other than in the courtroom.
- (3) The court may make any other order it considers appropriate, including, for example, an order stating—
  - (a) who may be with the complainant or similar act witness at the external place; or
  - (b) who must not be with the complainant or similar act witness at the external place; or

- (c) who, in the courtroom, is to be able, or must not be able, to be heard, or seen and heard, by the complainant or similar act witness and people in the external place with the complainant or similar act witness; or
- (d) who, in the courtroom, is to be able to see and hear the complainant or similar act witness and anyone else in the external place with the complainant or similar act witness; or
- (e) how the audiovisual link is to operate.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (4) The court may order that a person be excluded from the other place while the complainant or similar act witness is giving evidence.
- (5) The court may direct that an order under this section apply only to a particular part of the proceeding.

#### **45 Making of orders—div 4.2.3**

- (1) The court may make an order under this division in a proceeding on its own initiative or on the application of—
  - (a) a party to the proceeding; or
  - (b) the complainant; or
  - (c) a similar act witness.
- (2) For the purpose of making an order under this division, the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

**46 Jury warning about inferences from complainant or similar act witness giving evidence by audiovisual link**

- (1) This section applies if—
  - (a) a complainant or similar act witness gives evidence in a proceeding by audiovisual link; and
  - (b) the proceeding is before a jury.
- (2) The judge must warn the jury to the effect that the jury should not draw any inference against an accused person in the proceeding from the fact that the evidence of the complainant or similar act witness is given by audiovisual link.

**Division 4.2.4 Evidence of complainant's sexual reputation and activities**

**48 Meaning of *complainant* and *sexual offence proceeding*—div 4.2.4**

- (1) For this division, the *complainant*, in relation to a sexual offence proceeding, is the person, or any of the people, against whom a sexual offence the subject of the proceeding is alleged, or has been found, to have been committed.
- (2) For this division, a *sexual offence proceeding* is—
  - (a) a proceeding for a sexual offence; or
  - (b) a proceeding in relation to bail for a person charged with a sexual offence, whether or not the person is also charged with any other offence; or
  - (c) a sentencing proceeding for a person convicted or found guilty of a sexual offence, whether or not the person is also convicted or found guilty of any other offence; or
  - (d) an appeal arising out of a proceeding mentioned in paragraphs (a) to (c).

- (3) For subsection (2) (a), a *proceeding for a sexual offence* includes—
- (a) a proceeding for a sexual offence and any other offence; and
  - (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence; and
  - (c) a proceeding for a sexual offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.
- (4) To remove any doubt, for this section, a *proceeding* includes a committal proceeding.

**49 When does div 4.2.4 apply?**

This division applies to evidence in a sexual offence proceeding.

**50 Immunity of sexual reputation**

Evidence of the complainant's sexual reputation is not admissible.

**51 General immunity of evidence of complainant's sexual activities**

- (1) Evidence of the sexual activities of the complainant is not admissible in a sexual offence proceeding without leave of the court dealing with the proceeding.
- (2) Subsection (1) does not apply to evidence of the specific sexual activities of the complainant with an accused person in the sexual offence proceeding.

**52 Application for leave under s 51**

Application for leave under section 51 (General immunity of evidence of complainant's sexual activities) in a sexual offence proceeding must be made—

- (a) in writing; and



- (b) if the proceeding is before a jury—in the absence of the jury;  
and
- (c) in the absence of the complainant, if an accused person in the proceeding requests.

### 53 Decision to give leave under s 51

- (1) The court must not give leave under section 51 (General immunity of evidence of complainant's sexual activities) unless satisfied that the evidence—
  - (a) has substantial relevance to the facts in issue; or
  - (b) is a proper matter for cross-examination about credit.
- (2) Evidence (*sexual activity evidence*) that relates to, or tends to establish, the fact that the complainant was accustomed to engage in sexual activities is not to be regarded as having a substantial relevance to the facts in issue because of any inference it may raise about general disposition.
- (3) Sexual activity evidence is not to be regarded as being a proper matter for cross-examination about credit unless the evidence, if accepted, would be likely to substantially impair confidence in the reliability of the complainant's evidence.
- (4) If the court gives leave under section 51, it must give written reasons for its decision.
- (5) In this section:  
*proper matter for cross-examination about credit*—evidence is a *proper matter for cross-examination about credit* if the credibility rule under the *Evidence Act 2011*, section 102 does not apply to the evidence because of that Act, section 103 (Exception—cross-examination as to credibility).

## Division 4.2.5 Protection of counselling communications

### 54 Definitions—div 4.2.5

In this division:

*civil proceeding* does not include a criminal proceeding.

*counselling* means counselling, therapy or treatment for an emotional or psychological condition, whether or not the counselling, therapy or treatment is provided for remuneration.

*counsellor* means a person who—

- (a) has undertaken training or study, or has experience, relevant to the process of counselling people who have suffered harm; or
- (b) is supervised by someone to whom paragraph (a) applies.

*criminal proceeding* means—

- (a) a proceeding for any offence; or
- (b) a sentencing proceeding for a person convicted or found guilty of any offence; or
- (c) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraph (a) or (b); or
- (d) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c);

but does not include a preliminary criminal proceeding.

*document recording a protected confidence* includes—

- (a) a copy, reproduction, republication, duplicate or summary of, or extract from, a document recording a protected confidence; and

- (b) the part of a document recording a protected confidence; and
- (c) the part of a document containing a report, observation, opinion, advice, recommendation or anything else in relation to a protected confidence that is—
  - (i) made or given by the person who made the protected confidence; or
  - (ii) made or given by a third party mentioned in section 55 (4) in whose presence the protected confidence is made; and
- (d) a copy, reproduction, republication, duplicate or summary of, or extract from, the part of a document mentioned in paragraph (b) or (c).

***harm*** includes—

- (a) actual physical harm; and
- (b) stress or shock; and
- (c) prejudice to privacy; and
- (d) emotional or psychological harm, including, for example, shame, humiliation and fear; and
- (e) damage to reputation; and
- (f) financial loss.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

***preliminary criminal proceeding*** means—

- (a) a committal proceeding for any offence; or
- (b) a proceeding in relation to bail for a person charged with any offence; or

- (c) an appeal or other review (whether by prerogative order or otherwise) arising out of a proceeding mentioned in paragraph (a) or (b); or
- (d) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).

*proceeding* means a civil or criminal proceeding.

*protected confidence*—see section 55.

*protected confidence evidence* means—

- (a) oral or written evidence that would disclose a protected confidence; or
- (b) a document recording a protected confidence; or
- (c) oral or written evidence that would disclose the contents of a document recording a protected confidence.

## **55 Meaning of *protected confidence*—div 4.2.5**

- (1) For this division, a *protected confidence* is a counselling communication made by, to or about a person against whom a sexual offence was, or is alleged to have been, committed (the *counselled person*).
- (2) A counselling communication is a protected confidence even if—
  - (a) it is made before the happening, or alleged happening, of the acts constituting the sexual offence; or
  - (b) it is not made in relation to—
    - (i) the sexual offence or any sexual offence; or
    - (ii) a condition arising from the sexual offence or any sexual offence.

- (3) For this section, a *counselling communication* is a communication made in circumstances that give rise to a reasonable expectation of confidentiality or a duty of confidentiality—
- (a) by the counselled person to a counsellor for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or
  - (b) to or about the counselled person by the counsellor for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or
  - (c) by the counselled person to a third party mentioned in subsection (4) for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or
  - (d) to the counselled person by a third party mentioned in subsection (4) for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor; or
  - (e) about the counselled person by a third party mentioned in subsection (4) for the purpose, or in the course, of the counselling relationship between the counselled person and the counsellor to—
    - (i) the counselled person; or
    - (ii) the counsellor; or
    - (iii) another third party to whom subsection (4) applies; or
  - (f) about the counselled person by a counsellor to someone else who has also been a counsellor for the counselled person; or
  - (g) about the counselled person to a counsellor by someone else who has also been a counsellor for the counselled person.

- (4) For this section, in deciding whether a communication was made in circumstances that gave rise to a reasonable expectation of confidentiality, it does not matter that the communication was made in the presence of a third party, if the third party was present to assist or encourage communication between the counselled person and counsellor or otherwise assist the counselling process.

**Examples—third parties**

- 1 a parent, partner, carer, spiritual adviser or other supportive person
- 2 a person present at the request of the counsellor to take notes of the counselling session

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (5) In this section:

*sexual offence* includes alleged sexual offence.

**56 When does div 4.2.5 apply?**

This division applies to a protected confidence made before or after the commencement of this division.

**57 Immunity for protected confidences in preliminary criminal proceedings**

- (1) A protected confidence must not be disclosed in, or for the purposes of, a preliminary criminal proceeding.
- (2) Without limiting subsection (1)—
  - (a) a person cannot be required (whether by subpoena, application, notice or any other procedure), in or in relation to a preliminary criminal proceeding, to produce a document recording a protected confidence; and

(b) protected confidence evidence is not admissible in the preliminary criminal proceeding.

**Example for par (a)**

A person could not be required to disclose a protected confidence in response to a request for production of documents in a preliminary criminal proceeding.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

**58 General immunity for protected confidences**

- (1) This section applies in relation to a proceeding.
- (2) A protected confidence must not be disclosed in, or for the purposes of, the proceeding unless the court dealing with the proceeding gives leave for the disclosure.
- (3) Without limiting subsection (2)—
  - (a) a person cannot be required (whether by subpoena, application, notice or any other procedure), in or in relation to the proceeding, to produce a document recording a protected confidence, unless the court gives leave; and
  - (b) protected confidence evidence is not admissible in the proceeding, unless the court gives leave.

**Example for par (a)**

A person could not be required to disclose a protected confidence in response to a request for production of documents in a proceeding unless the court gives leave.

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## **59 Application for leave to disclose protected confidence**

- (1) An application for leave must—
  - (a) be in writing; and
  - (b) set out the leave sought; and
  - (c) set out the applicant’s arguments in support of the application (including the matters mentioned in section 60 (2) (Threshold test—legitimate forensic purpose)).
- (2) The application must also—
  - (a) set out briefly the nature of the protected confidence evidence (if known); and
  - (b) set out, or be accompanied by a copy of, any relevant documents.

## **60 Threshold test—legitimate forensic purpose**

- (1) The court must refuse the leave sought under section 59 if not satisfied that the applicant has established a legitimate forensic purpose for seeking the leave.
- (2) To establish a legitimate forensic purpose, the applicant must—
  - (a) identify a legitimate forensic purpose for seeking the leave; and
  - (b) satisfy the court that there is an arguable case that the evidence in relation to which the leave is sought would materially assist the applicant in his or her case in the proceeding.
- (3) The court must decide whether or not to refuse the application under this section before it conducts a preliminary examination of the protected confidence evidence under section 61.



**61 Preliminary examination of protected confidence evidence**

- (1) If the court is satisfied that the applicant has established a legitimate forensic purpose for seeking the leave, the court must then conduct a preliminary examination of the protected confidence evidence to decide whether leave should be given.
- (2) For the preliminary examination, the court may—
  - (a) require anyone who has custody or control of a document recording a protected confidence to produce the document to the court for inspection; or
  - (b) require the counsellor or, if the counsellor provides counselling on behalf of an entity, the principal or another representative of the entity—
    - (i) to give the court written answers to any questions; or
    - (ii) to attend the court for oral examination.
- (3) The court must not order a person to attend for oral examination under subsection (2) (b) (ii) unless the oral examination of the person is necessary for the effective conduct of the preliminary examination.
- (4) Only a person mentioned in subsection (2) may be ordered to answer questions or be examined under this section.
- (5) The preliminary examination must be conducted—
  - (a) in the absence of the public and the jury (if any); and
  - (b) in the absence of the parties to the proceeding and their lawyers, except to the extent otherwise decided by the court.
- (6) Evidence taken at the preliminary examination must not be disclosed to the parties or their lawyers, except to the extent otherwise decided by the court or an appellate court under section 62 (6).

- (7) A record of the preliminary examination must be made, but must not be made available for public access.

## **62 Giving of leave to disclose protected confidence**

- (1) After conducting the preliminary examination of the protected confidence evidence, the court may give leave for the disclosure of the protected confidence only if satisfied that—
- (a) for a civil proceeding—the public interest in ensuring the proceeding is conducted fairly outweighs the public interest in preserving the confidentiality of the protected confidence; or
  - (b) for a criminal proceeding—the public interest in ensuring an accused person in the proceeding is given a fair trial outweighs the public interest in preserving the confidentiality of the protected confidence.
- (2) To remove any doubt, if the court is satisfied under subsection (1) about part of a document only, it may give leave in relation to that part and refuse leave for the rest of the document.
- (3) In making a decision under subsection (1), the court must have regard to—
- (a) for a criminal proceeding—the extent to which disclosure of the protected confidence is necessary for an accused person to make a full defence; and
  - (b) the public interest in ensuring that victims of sexual offences receive effective counselling or other treatment; and
  - (c) the extent to which disclosure of protected confidences may dissuade victims of sexual offences from seeking counselling or other treatment or diminish the value of counselling or other treatment; and

- (d) whether the evidence will have a substantial probative value to a fact in issue and whether other evidence of similar or greater probative value is available about the matters to which the evidence relates; and
  - (e) the likelihood that disclosure of the protected confidence will affect the outcome of the case; and
  - (f) whether disclosure of the protected confidence is sought on the basis of a discriminatory belief or bias; and
  - (g) whether the person to or by whom the protected confidence was made objects to the disclosure of the protected confidence; and
  - (h) the nature and extent of the reasonable expectation of confidentiality for the protected confidence and the potential prejudice to the privacy of anyone, including to the extent to which any interest in confidentiality or privacy has been lessened by the passage of time or the happening of any event since the protected confidence was made.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) Leave under this section may be given subject to conditions.
- (6) If the court refuses to give leave, and an appeal is made against the refusal, or a ground of an appeal is the refusal, the appellate court may examine the evidence taken at the preliminary examination under section 61 (Preliminary examination of protected confidence evidence), and may make the orders about the disclosure of the evidence it considers appropriate.

**63 Ancillary orders for protection of person who made protected confidence**

- (1) The court may make the orders it considers appropriate to limit possible harm, or the extent of possible harm, to a person who made a protected confidence by the disclosure of protected confidence evidence.
- (2) Without limiting subsection (1), the court may—
  - (a) order that the court be closed to the public while all or part of the protected confidence evidence is presented; or
  - (b) for a document recording a protected confidence—order that a document be edited as directed by the court or that a copy of a document (or part of a document) be disclosed instead of the original; or
  - (c) make orders in relation to the suppression or publication of all or any part of the protected confidence evidence; or
  - (d) for a document recording a protected confidence—make orders about the production or inspection of the document; or
  - (e) make orders in relation to the disclosure of—
    - (i) protected identity information about the person who made the protected confidence; or
    - (ii) information that discloses the identity of the person who made the protected confidence; or
    - (iii) information from which the identity of the person who made the protected confidence might reasonably be inferred.
- (3) This section is in addition to section 40 (Sexual offence proceeding—prohibition of publication of complainant’s identity).

(4) In this section:

*protected identity information* means information about, or allowing someone to find out, the private, business or official address, email address or telephone number of a person.

**64 No waiver of protected confidence immunity**

This division applies whether or not a person who has made a protected confidence consents or does not object to the disclosure of the protected confidence.

**65 No protected confidence immunity for medical information**

This division does not apply in relation to—

- (a) information obtained by a doctor because of a physical examination of a person against whom a sexual offence was, or is alleged to have been, committed; or
- (b) any communication made in the course, or because, of the examination.

**66 No protected confidence immunity for communications for criminal investigations and proceedings**

This division does not apply to a communication made for the purpose of—

- (a) an investigation by a law enforcement entity into the commission or alleged commission of a sexual offence; or
- (b) a preliminary criminal proceeding or criminal proceeding arising from the commission or alleged commission of a sexual offence.

**67 No protected confidence immunity in case of misconduct**

- (1) This division does not apply in relation to a communication made, or a document prepared, in the furtherance of the commission of an offence, a fraud or an act that makes a person liable to a civil penalty.
- (2) A court may find that a communication was made, or a document was prepared, in the furtherance of the commission of an offence, a fraud or an act if there are reasonable grounds for finding that—
  - (a) the offence, fraud or act was committed; and
  - (b) the communication was made, or document prepared, in the furtherance of the offence, fraud or act.

**Division 4.2.6 Sexual offence proceedings—  
directions and warnings to juries**

*Note* The *Supreme Court Act 1933*, s 68C (3) provides that in a criminal proceeding tried by a judge alone, if a territory law requires a warning or direction to be given, or a comment to be made, to a jury in the proceeding, the judge must take the warning, direction or comment into account in considering his or her verdict.

**68 Meaning of *complainant* and *sexual offence proceeding*—  
div 4.2.6**

- (1) For this division, the *complainant*, in relation to a sexual offence proceeding, is the person, or any of the people, against whom a sexual offence the subject of the proceeding is alleged to have been committed.
- (2) For this division, a *sexual offence proceeding* is a proceeding for a sexual offence before a jury, and includes any of the following before a jury:
  - (a) a proceeding for a sexual offence and any other offence;

- (b) a proceeding for a sexual offence and any other offence as an alternative to the sexual offence;
- (c) a proceeding for a sexual offence that may result in a finding of guilt for any other offence.

**69 Comments on complainants' evidence**

If evidence is given by a complainant in a sexual offence proceeding, the judge must not give the jury any warning or suggestion to the effect that the law regards complainants to be an unreliable class of witnesses.

**70 Comments on children's evidence**

If evidence is given by a child in a sexual offence proceeding, the judge must not give the jury any warning or suggestion to the effect that the law regards children to be an unreliable class of witnesses.

**71 Comments about lack of, or delays in making, complaint**

- (1) This section applies if, in a sexual offence proceeding, evidence is given, or a question is asked of a witness, that tends to suggest that—
  - (a) the complainant made no complaint about the alleged offence; or
  - (b) there was a delay in making a complaint.
- (2) The judge must—
  - (a) give the jury a warning to the effect that the absence of, or the delay in making, the complaint does not necessarily indicate that the allegation that the offence was committed is false; and
  - (b) tell the jury that there may be good reasons why a victim of a sexual offence may not make, or may hesitate in making, a complaint about the offence.

## **72 Directions about implied consent**

In a sexual offence proceeding, the judge must, in a relevant case, direct the jury that a person is not to be regarded as having consented to a sexual act just because—

- (a) the person did not say or do anything to indicate that the person did not consent; or
- (b) the person did not protest or physically resist; or
- (c) the person did not sustain a physical injury; or
- (d) on that or an earlier occasion, the person had consented to engage in a sexual act (whether or not of the same kind) with the accused person or someone else.

## **73 Directions about mistaken belief about consent**

In a sexual offence proceeding, the judge must, in a relevant case, direct the jury that, in deciding whether the accused person was under a mistaken belief that a person consented to a sexual act, the jury may consider whether the belief was reasonable in the circumstances.



## Part 4.3 Evidence in family violence proceedings

### Division 4.3.1 Definitions—pt 4.3

#### 74 Meaning of *family violence offence*—pt 4.3

In this part:

*family violence offence*—see the [Family Violence Act 2016](#), dictionary.

*Note* **Complainant**, for a family violence offence proceeding, is an adult who is a relevant person in relation to the accused (see s 76).

**Relevant person**—see s 36B.

#### 75 Meaning of *family violence offence proceeding*—pt 4.3

(1) In this part:

*family violence offence proceeding* means—

- (a) a proceeding for a family violence offence; or
- (b) a proceeding in relation to bail for a person charged with a family violence offence, whether or not the person is also charged with any other offence; or
- (c) a sentencing proceeding for a person convicted or found guilty of a family violence offence, whether or not the person is also convicted or found guilty of any other offence; or
- (d) an appeal arising out of a proceeding mentioned in paragraphs (a) to (c); or
- (e) an interlocutory proceeding in, or a proceeding ancillary to, a proceeding mentioned in paragraphs (a) to (c).

(2) In this section:

*proceeding for a family violence offence* includes—

- (a) a proceeding for a family violence offence and any other offence; and
- (b) a proceeding for a family violence offence and any other offence as an alternative to the family violence offence; and
- (c) a proceeding for a family violence offence that may result in a finding of guilt (or committal for trial or sentence) for any other offence.

## **76 Meaning of *complainant*—pt 4.3**

In this part:

*complainant*, for a family violence offence proceeding—

- (a) means a person—
  - (i) against whom a family violence offence the subject of the proceeding is alleged, or has been found, to have been committed; and
  - (ii) who is a relevant person in relation to the accused person; but
- (b) does not include a person who—
  - (i) is a child on the day a recorded statement is made; or
  - (ii) is intellectually impaired.

*Note* **Relevant person**—see s 36B.

*Note 1* **Intellectually impaired**—see s 36D.

*Note 2* Audiovisual recording and the evidence of children and people with intellectual impairment is dealt with in div 4.2.2A.

**77 Meaning of *recorded statement*—pt 4.3**

(1) In this part:

*recorded statement* means—

- (a) an audiovisual recording—
  - (i) of a complainant answering questions of a police officer in relation to the investigation of a family violence offence; and
  - (ii) made by a police officer; or
- (b) an audio recording that complies with paragraph (a)—
  - (i) if the complainant does not consent to an audiovisual recording; or
  - (ii) in exceptional circumstances.

**Example—exceptional circumstances**

technical difficulties with the visual aspect of the recording identified following the making of the recording

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(2) A police officer must, before making a recorded statement, tell the complainant that—

- (a) the recorded statement may be used in evidence at a hearing; and
- (b) if the recorded statement is used in evidence at a hearing, the complainant may be called to give evidence under cross-examination in person at the hearing; and
- (c) the complainant does not have to consent to the recording.

(3) In this section:

***police officer*** includes a person who is a member of the police force of a State or another Territory if—

- (a) provisions of the law of that State or Territory correspond (or substantially correspond) to this part; and
- (b) the person is trained in the taking of evidence under those provisions.

*Note* ***Police officer***—see the [Legislation Act](#), dictionary, pt 1.

## **Division 4.3.2 Evidence may be given in closed court**

### **78 Evidence may be given in closed court**

(1) This section applies to the complainant giving evidence in a family violence offence proceeding if the court considers that the complainant has a vulnerability that affects the complainant's ability to give evidence because of the circumstances of the proceeding or the complainant's circumstances.

**Examples—complainant vulnerability**

- 1 the complainant is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the complainant is intimidated or distressed because of the complainant's relationship to the accused person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

(2) The court is not bound by the rules of evidence and may inform itself as it considers appropriate.

- (3) The court may order that the court be closed to the public while all or part of the complainant's evidence (including evidence given under cross-examination) is given.

*Note* The accused is entitled to a fair and public hearing, but the court may exclude the public in certain circumstances (see *Human Rights Act 2004*, s 21 (2)).

- (4) In deciding whether to order that the court be closed to the public, the court must consider whether—
- (a) the complainant wants to give evidence in open court; and
  - (b) it is in the interests of justice that the complainant give evidence in open court.
- (5) However, an order under this section does not stop the following people from being in court when the complainant gives evidence:
- (a) a person nominated by the complainant;
  - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.

*Note* Publishing certain information in relation to sexual offence proceedings is an offence (see s 40).

- (6) In this section, a reference to a person giving evidence includes the person giving evidence by the playing of a recorded statement of the evidence under division 4.3.3.

## **Division 4.3.3 Recorded statement of police interview admissible as evidence—family violence offence proceedings**

### **79 Recorded statement—requirements**

- (1) A recorded statement must be made—
- (a) as soon as practicable after the events mentioned in the statement happened; and
  - (b) in the form of questions and answers.

*Note* If the recorded statement is to be admitted as evidence in a proceeding, the rules of evidence apply to the content of the statement.

- (2) A recorded statement of a complainant must include the following:
- (a) the name of each person present during any part of the recording;
  - (b) a statement by the complainant—
    - (i) of the complainant's name, age and whether the complainant lives in the ACT; and
    - (ii) about the truth of the representations made by the complainant in the recorded statement;
  - (c) any other matter prescribed by regulation.
- (3) As far as is practicable, a recorded statement must not contain an image of—
- (a) a child; or
  - (b) a person who is intellectually impaired.

*Note 1* **Intellectually impaired**—see s 36D.

*Note 2* Audiovisual recording and the evidence of children and people with intellectual impairment is dealt with in div 4.2.2A.

- (4) If any part of a recorded statement is in a language other than English—
  - (a) the recorded statement must contain an English translation of the part; or
  - (b) a separate written English translation of the part must accompany the recorded statement.
- (5) A recorded statement must not be edited or changed unless—
  - (a) both parties consent to the edits or changes; or
  - (b) the court hearing the proceeding in which the recorded statement is tendered otherwise orders.

**Example—court ordering change**

editing the recorded statement to omit inadmissible material

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

## **80 Recorded statement—may be admitted as evidence**

- (1) A recorded statement may—
  - (a) be played at the hearing of a proceeding for the family violence offence to which it relates; and
  - (b) if the recorded statement is played at the hearing—be admitted as all or part of the complainant’s evidence in chief in the proceeding as if the complainant gave the evidence at the hearing in person.
- (2) However, the court may refuse to admit all or any part of the recorded statement if the court considers it is in the interests of justice to do so.
- (3) The complainant may choose not to be present in the courtroom while the court is viewing or listening to the recorded statement.

- (4) If the complainant is giving evidence by audiovisual link from an external place under division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link), the complainant must not be visible or audible to anyone in the courtroom by closed-circuit television or by means of similar technology while the court is viewing or listening to the recorded statement.
- (5) To remove any doubt, if a recorded statement is admitted as part of a complainant's evidence in chief in a proceeding, the complainant may give further evidence in chief.
- (6) This section is subject to section 81D (Recorded statement—admissibility).

## **81 Recorded statement—hearsay rule and opinion rule**

- (1) The hearsay rule and the opinion rule do not prevent the admission or use of evidence of a representation in the form of a recorded statement only because it is in that form.

*Note* The hearsay rule and opinion rule will apply to the content of the recorded statement to be admitted as evidence.

- (2) In this section:

*hearsay rule*—see the *Evidence Act 2011*, dictionary, part 1.

*opinion rule*—see the *Evidence Act 2011*, dictionary, part 1.

## **81A Validity of proceeding not affected**

- (1) The failure of a police officer to record a representation in the form of a recorded statement in accordance with the requirements of this division or any regulation does not affect the validity of a proceeding in which evidence of the representation is given.
- (2) The failure of a complainant to give evidence in accordance with this part does not affect the validity of a proceeding or any decision made in connection with the proceeding.



**81B Recorded statement—represented accused person to be given copy**

- (1) This section applies if—
  - (a) a recorded statement has been made in relation to a family violence offence that is the subject of a proceeding; and
  - (b) the accused person is represented by a lawyer in the proceeding.
- (2) The lawyer representing the accused person must be given a copy of the recorded statement as soon as practicable after the proceeding is commenced.

*Note* For how documents may be served, see the [Legislation Act](#), pt 19.5.

- (3) The lawyer representing the accused person must return the copy of the recorded statement by giving it to the prosecutor not later than 16 weeks after the proceeding is finalised.
- (4) The accused person must not be given, or take a copy of, the recorded statement.

**81C Recorded statement—unrepresented accused person to be given access**

- (1) This section applies if—
  - (a) a recorded statement has been made in relation to a family violence offence that is the subject of a proceeding; and
  - (b) the accused person is not represented by a lawyer in the proceeding.
- (2) The accused person must be given an audio copy of the recorded statement as soon as practicable after the proceeding is commenced.

- (3) Also, if it is reasonably practicable, the accused person must be given an opportunity to view a recorded statement that is in the form of a video recording at a police station on at least 1 of the following occasions:
- (a) when the accused person is being questioned in relation to the alleged family violence offence;
  - (b) at the request of the accused person, on a day arranged with the accused person;
  - (c) on another day stated in a written notice given to the accused person before committal proceedings or the trial commences.
- (4) If compliance with subsection (3) is not reasonably practicable, the accused person must be given the opportunity to view the recorded statement on a day on which proceedings relating to the offence are being held.

#### **81D Recorded statement—admissibility**

Evidence of a representation of a complainant given in the form of a recorded statement is not to be admitted if section 81B or section 81C have not been complied with, unless the court is satisfied that—

- (a) the parties consent to the recorded statement being admitted; or
- (b) the accused person or the accused person's lawyer (if any) have been given a reasonable opportunity to listen to or view the recorded statement and it would be in the interests of justice to admit the recorded statement.

#### **81E Recorded statement—accused person to be given audio copy**

- (1) This section applies if—
- (a) the prosecutor in a family violence offence proceeding intends to tender a recorded statement as evidence; and

- (b) the court accepts a plea of not guilty from the accused person;  
and
  - (c) the accused person has not already been given an audio copy of  
the recorded statement under section 81C (Recorded  
statement—unrepresented accused person to be given access).
- (2) The accused person must be given an audio copy of the recorded  
statement.

**81F Recorded statement—jury trial**

- (1) This section applies if—
- (a) a family violence offence proceeding is a trial by jury; and
  - (b) a recorded statement is admitted in evidence in the proceeding.
- (2) The court must tell the jury that—
- (a) admission of a recorded statement is a usual practice; and
  - (b) the jury must not draw any inference against the accused  
person, or give the evidence more or less weight, because the  
evidence is given in that way.
- (3) If the court considers that a transcript of the recorded statement  
would be likely to help the jury’s understanding of the evidence, the  
court may order that the transcript be made available to the jury.

**81G Recorded statement—offence to publish**

- (1) A person commits an offence if the person—
- (a) publishes a recorded statement; and
  - (b) does not have authority to publish the recorded statement.

Maximum penalty: 50 penalty units, imprisonment for 6 months or  
both.

- (2) For this section, a person has *authority* to publish a recorded statement only if the person publishes the recorded statement in connection with—
- (a) the investigation of, or a proceeding for, an offence in relation to which the recorded statement is prepared; or
  - (b) a re-hearing, re-trial or appeal in relation to the proceeding; or
  - (c) a proceeding for an application for a protection order under the *Family Violence Act 2016* if—
    - (i) the affected person in relation to the application for the protection order is the complainant in relation to the recorded statement; and
    - (ii) the respondent to the application for the protection order is the person against whom the family violence offence, the subject of the recorded statement, is alleged.
- (3) In this section:

*person* includes the complainant in relation to the recorded statement.

*publish* means communicate or disseminate information in a way or to an extent that makes it available to, or likely to come to the notice of, the public or a section of the public or anyone else not lawfully entitled to the information.

## **Division 4.3.4      Recorded statement of police interview admissible as evidence— application for protection order**

### **81H      Recorded statement—may be admitted as evidence in application for family violence protection order**

- (1) This section applies if a recorded statement is made in relation to an alleged family violence offence.
- (2) The recorded statement may be admitted by the Magistrates Court in a proceeding for an application for a protection order under the *Family Violence Act 2016* if—
  - (a) the affected person in relation to the application for the protection order is the complainant in relation to the recorded statement; and
  - (b) the respondent to the application for the protection order is the person against whom the family violence offence is alleged.

## Chapter 5                      Certain evidence under court rules not admissible

### 82                      Evidence not admissible in court—neutral evaluation

- (1) This section applies if, under rules under the *Court Procedures Act 2004* (the *rules*), the Supreme Court or Magistrates Court has referred a civil proceeding, or part of a civil proceeding, for neutral evaluation.
- (2) Evidence of anything said, or of any admission made, in a neutral evaluation session under the rules is not admissible in any proceeding before a court or tribunal.
- (3) A document prepared for, in the course of, or because of, a neutral evaluation session under the rules is not admissible in any proceeding before a court or tribunal.
- (4) Subsections (2) and (3) do not apply to any evidence or document—
  - (a) for evidence—if the people attending, or identified during, the neutral evaluation session consent to the admission of the evidence; or
  - (b) for a document—if the people attending, or identified during, the neutral evaluation session and all the people identified in the document, consent to the admission of the document; or
  - (c) in a proceeding (including a criminal proceeding) brought in relation to an act or omission in relation to which a disclosure has been made under the rules because an evaluator has reasonable grounds to believe the disclosure is necessary or desirable to prevent or reduce the danger of death or injury to anyone or damage to any property.

- (5) In this section:

*neutral evaluation session* includes any steps taken in the course of making arrangements for the session or in the course of the follow-up of the session.

### **83 Evidence not admissible in court—expert report**

- (1) This section applies if—
- (a) a party to a civil proceeding in the Supreme Court or Magistrates Court (the *court*) engages an expert witness; and
  - (b) the expert witness prepares a report (an *expert report*); and
  - (c) the expert report does not contain an acknowledgment by the expert witness who prepared the report that the expert witness has read the code of conduct for expert witnesses prescribed by the rules under the *Court Procedures Act 2004* applying to the expert witness and agrees to be bound by it.
- (2) The expert report is not admissible in evidence in the proceeding, unless the court otherwise orders.

### **84 Evidence not admissible in court—meeting of experts**

- (1) This section applies if, in a civil proceeding in the Supreme Court or Magistrates Court (the *court*), the court directs the expert witnesses in the proceeding to meet—
- (a) to identify the matters on which they agree; and
  - (b) to identify the matters on which they disagree and the reasons why; and
  - (c) to try to resolve any disagreement.

- (2) Unless the court otherwise orders, evidence of anything done or said, or an admission made, at the meeting is admissible at a trial of the proceeding only if all the parties to the proceeding that are active parties under the rules under the *Court Procedures Act 2004* applying to the proceeding (the *rules*) agree.
- (3) However, subsection (2) does not apply to a document produced in accordance with a direction made by the court under the rules that the expert witnesses produce a document for the court's use, identifying—
  - (a) the matters on which they agree; and
  - (b) the matters on which they disagree; and
  - (c) the reasons for any failure to reach agreement on any matter.

## **85 Evidence not admissible in court—evidence taken in examination**

- (1) This section applies if—
  - (a) in a civil or criminal proceeding, the Supreme Court or the Magistrates Court (the *court*) makes an order under the rules under the *Court Procedures Act 2004*—
    - (i) for the examination of a person on oath at a place in or outside the ACT (including outside Australia) before a person appointed by the court; or
    - (ii) for the issue of a commission for the examination of a person on oath at a place in or outside the ACT (including outside Australia); or
    - (iii) for the issue of a letter of request to a judicial authority of a place outside the ACT (including outside Australia) to take the evidence of a person (or cause it to be taken); and
  - (b) the person's evidence is taken in an examination held in accordance with the order; and



- (c) a party to the proceeding tenders the person's evidence as evidence in the proceeding.
- (2) Unless the court otherwise orders, the person's evidence is not admissible if, at the hearing of the proceeding, the court is satisfied that the person is in the ACT and is able to attend the hearing.

## Chapter 6 Evidence in criminal proceedings—dangerously ill people

### 90 Meaning of *dangerously ill person*—ch 6

In this chapter:

*dangerously ill person* means a person who is dangerously ill and is not likely to recover from the illness.

### 91 Application—ch 6

This chapter applies if a court is satisfied that—

- (a) a dangerously ill person is or may be able to give evidence in a proceeding for an indictable offence or on behalf of a person who has been, or may be, charged with an indictable offence; and
- (b) because of the illness, the dangerously ill person is or may be unable to give evidence in the proceeding.

### 92 Recording of evidence of dangerously ill person

- (1) The court may take the evidence of the dangerously ill person (including cross-examination and re-examination) by audio or audiovisual recording.
- (2) The recording must include the following:
  - (a) the date when, and the place where, the recording was made;
  - (b) the times when the recording started and ended;
  - (c) the times when any break in recording started and ended, and the reason for the break;
  - (d) the name of each person present during any part of the recording;

- (e) for each person present during any part of the recording—the part when the person was present.

### **93 Notice of evidence of dangerously ill person**

- (1) Before taking the evidence of the dangerously ill person, the court must give a notice that the court proposes to take the evidence and of the time and place where it will be taken—
  - (a) to the person charged or who may be charged; and
  - (b) if the evidence is evidence on behalf of the person charged and it is practicable to do so—to the DPP or a person authorised by the DPP.
- (2) A person given a notice under subsection (1) (the *notified person*) may—
  - (a) be present while the evidence is being taken; and
  - (b) cross-examine the person giving the evidence.
- (3) However, subsection (2) does not apply if this Act or another territory law prohibits the notified person from doing a thing mentioned in the subsection.

### **94 Admissibility of recording of evidence of dangerously ill person**

- (1) This section applies if—
  - (a) an audio or audiovisual recording of evidence by a dangerously ill person is made; and
  - (b) in the proceeding for the offence to which the evidence in the recording relates, the court is satisfied that—
    - (i) the dangerously ill person is dead, or is, because of illness, unable to attend the proceeding; and

- (ii) reasonable notice of the time and place fixed for the taking of the evidence was given in accordance with section 93 (1).
- (2) The audio or audiovisual recording of the evidence is admissible to the extent that the evidence would have been admissible at the proceeding if given orally.

## Chapter 7 Evidence in any proceedings— other matters

### Part 7.1 Evidence of witnesses with disabilities or vulnerabilities

#### 100 Meaning of *witness with a disability*—pt 7.1

For this part, a *witness with a disability* is a person who gives evidence in a proceeding and has a mental or physical disability that affects the person's ability to give evidence.

#### 101 Child or witness with disability may have support person in court

- (1) This section applies to any of the following people (a *witness*) giving evidence in a proceeding:
  - (a) a child;
  - (b) a witness with a disability.
- (2) The court must, on application by a party that intends to call a witness, order that, while the witness gives evidence, the witness have a person (a *support person*) in the court who is—
  - (a) for a witness with a vision impairment—close enough to the witness for the court to be satisfied that the witness is aware of the person's presence; or
  - (b) for any other witness—close to the witness and within the witness's sight.
- (3) The court may order that a witness have more than 1 support person if it considers it is in the interests of justice.
- (4) The support person must not—
  - (a) speak for the witness during the proceeding; or

- (b) otherwise interfere in the proceeding.
- (5) Unless the court otherwise orders, the support person must not be, or be likely to be, a witness or party in the proceeding.
- (6) If the proceeding is a trial by jury, the court must tell the jury that—
  - (a) a witness having a support person in the court while giving evidence is a usual practice; and
  - (b) the jury must not draw any inference against the accused person, or give the evidence more or less weight, because the support person is present.

## 102 **Witness with vulnerability may give evidence in closed court**

- (1) This section applies to a person (the *witness*) giving evidence in a proceeding if the court considers that the person has a vulnerability that affects the person's ability to give evidence because of—
  - (a) the circumstances of the proceeding; or
  - (b) the person's circumstances.

### **Examples**

- 1 the person is likely to suffer severe emotional trauma because of the nature of the alleged offence
- 2 the person is intimidated or distressed because of the person's relationship to the accused person

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The court may order that the court be closed to the public while all or part of the witness's evidence (including evidence under cross-examination) is given.

*Note* The accused is entitled to a fair and public hearing, but the court may exclude the press and public in certain circumstances (see [Human Rights Act 2004](#), s 21 (2)).

- (3) In deciding whether to order that the court be closed to the public, the court must consider whether—
- (a) the witness wants to give evidence in open court; and
  - (b) it is in the interests of justice that the witness give evidence in open court.
- (4) However, an order under this section does not stop the following people from being in court when the witness gives evidence:
- (a) a person nominated by the witness;
  - (b) a person who attends the proceeding to prepare a news report of the proceeding and is authorised to attend for that purpose by the person's employer.

*Note* Publishing certain information in relation to sexual offence proceedings is an offence (see s 40).

- (5) In this section, a reference to a person giving evidence includes the person giving evidence by the playing of an audiovisual recording of the evidence at a hearing under division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence) or division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing).

### **103 Making of s 101 and s 102 orders—court not bound by rules of evidence**

For the purpose of making an order under section 101 or section 102, the court is not bound by the rules of evidence and may inform itself as it considers appropriate.

## Part 7.2 Evidence in any proceedings— miscellaneous

### 104 Proof of document under law of Commonwealth country

- (1) This section applies if it is proved in a proceeding that a document is, under the law of a Commonwealth country, admissible in evidence in the courts in that country by the production of a copy of the document.

*Note 1* **Proceeding**—see the [Legislation Act](#), dictionary, pt 1.

*Note 2* The [Evidence Act 2011](#), s 48 and s 49 deal with other documents in foreign countries in proceedings in an ACT court.

- (2) Evidence of the document, or of an extract from the document, may be given in the proceeding by producing—
- (a) a copy of the document or an extract from the document that is proved to be an examined copy of the document or extract; or
  - (b) a document (the **copy document**) that is or purports to be a copy of the document or extract if there is endorsed on or annexed to the copy document a certificate by the person having custody of the original document that the document is a true copy of the document or extract of which it is or purports to be a copy.
- (3) The production of a document that is or purports to be a certificate mentioned in subsection (2) (b) is evidence in a proceeding that the person by whom the certificate purports to be signed is the person who has custody of the original document or extract mentioned in the certificate without further proof of that fact.



- (4) This section does not apply to a document mentioned in subsection (1) unless—
- (a) the party who presents evidence of the contents of the document has, not less than 28 days (or any other period prescribed by regulation or by rules of court) before the day on which the evidence is presented, served on each other party a copy of the document proposed to be tendered; or
  - (b) the court directs that it must apply.
- (5) In this section:  
*court* means an ACT court or evidence receiving entity.

## Part 7.3 Evidence in any proceedings— extended application of Evidence Act

### 105 Extended application of Evidence Act—interpreters

The *Evidence Act 2011*, section 30 applies to a proceeding in an evidence receiving entity.

*Note 1* **Proceeding**—see the [Legislation Act](#), dictionary, pt 1.

*Note 2* The *Evidence Act 2011*, s 30 provides that a witness in a proceeding in an ACT court may give evidence through an interpreter unless the witness can understand and speak the English language sufficiently to enable the witness to understand, and to make an adequate reply to, a question put to the witness.

## Chapter 8 Publication of evidence

### 110 Application—ch 8

This chapter applies to—

- (a) a proceeding in the Supreme Court; or
- (b) a proceeding in the Magistrates Court; or
- (c) an inquest or inquiry under the *Coroners Act 1997*.

### 111 Prohibition of publication of evidence etc

- (1) This section applies if a court considers that—
  - (a) the publication of evidence given, or intended to be given, in a proceeding is likely to prejudice the administration of justice; or
  - (b) in the interests of the administration of justice the names of any of the following people should not be published:
    - (i) a party to the proceeding;
    - (ii) a witness, or intended witness, in the proceeding.
- (2) The court may, at any time during or after the hearing of the proceeding, make an order forbidding the publication of—
  - (a) the evidence or a stated part of the evidence; or
  - (b) a report of the evidence; or
  - (c) the name of the party or witness.
- (3) The court may make an order under subsection (2) (a) or (b) subject to any stated condition or for any period the court considers appropriate.

- (4) If a court makes an order under subsection (2), the court may, if it considers it appropriate, direct that stated people, or everyone except stated people, remain outside the courtroom for a stated period.
- (5) For this section, the publication of a reference or allusion to a person is taken to be a publication of the person's name if—
  - (a) the reference or allusion discloses the person's identity; or
  - (b) the person's identity might reasonably be worked out from the reference or allusion.

**112 Noncompliance with s 111 order**

A person commits an offence if the person does not comply with an order or direction under section 111.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

## Chapter 9                      Miscellaneous

### 120            **Approved forms**

- (1) The Minister may approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for the purpose.

*Note*        For other provisions about forms, see the [Legislation Act](#), s 255.

- (3) An approved form is a notifiable instrument.

*Note*        A notifiable instrument must be notified under the [Legislation Act](#).

### 121            **Regulation-making power**

- (1) The Executive may make regulations for this Act.

*Note*        A regulation must be notified, and presented to the Legislative Assembly, under the [Legislation Act](#).

- (2) A regulation may prescribe the amounts, or the way of working out amounts, payable to a territory court in relation to the cost of, or incidental to, the provision of an audiovisual link or audio link and ancillary equipment for chapter 3 (Use of audiovisual links and audio links).
- (3) In this section:

*audio link*—see section 16 (Definitions—ch 3).

*territory court*—see section 16 (Definitions—ch 3).

## Dictionary

(see s 2)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- adult
- child
- Childrens Court
- Commonwealth country
- Coroner’s Court
- doctor
- document
- DPP
- entity
- Executive
- foreign country
- found guilty
- Governor-General
- lawyer
- may (see s 146)
- Minister (see s 162)
- must (see s 146)
- oath
- sentence administration board
- take (an oath).

***ACT court***—see the [Evidence Act 2011](#), dictionary, part 1.

*Note* ***ACT court*** means the Supreme Court or Magistrates Court, and includes an entity that, in exercising a function under a territory law, is required to apply the laws of evidence.

***audio link***, for chapter 3 (Use of audiovisual links and audio links)—see section 16.

**audiovisual link** means a system of 2-way communication linking different places so that a person at any of them can be seen and heard at the other places.

**audiovisual recording**, for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40E.

**civil proceeding**, for division 4.2.5 (Protection of counselling communications)—see section 54.

**complainant**—

- (a) for division 4.2.2 (Sexual and violent offence proceedings—general)—see section 38; and
- (b) for division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing)—see section 40N; and
- (c) for division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 41 (1); and
- (d) for division 4.2.4 (Evidence of complainant’s sexual reputation and activities)—see section 48; and
- (e) for division 4.2.6 (Sexual offence proceedings—directions and warnings to juries)—see section 68; and
- (f) for part 4.3 (Evidence in family violence proceedings)—see section 76.

**counsellor**, for division 4.2.5 (Protection of counselling communications)—see section 54.

**court**, for chapter 2 (Evidence of children)—see section 5.

**criminal proceeding**—

- (a) for this Act generally—see the [Court Procedures Rules 2006](#), dictionary; and
- (b) for division 4.2.5 (Protection of counselling communications)—see section 54.

***dangerously ill person***, for chapter 6 (Evidence in criminal proceedings—dangerously ill people)—see section 90.

***document recording a protected confidence***, for division 4.2.5 (Protection of counselling communications)—see section 54.

***evidence receiving entity*** means an entity other than an ACT court that is authorised under a law in force in the ACT, or by consent of parties, to receive evidence.

**Examples**

- 1 ACAT
- 2 judicial commission
- 3 remuneration tribunal
- 4 sentence administration board

*Note* An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

***external place***, for a proceeding, means a place other than the courtroom where the proceeding is heard.

***family violence offence***, for part 4.3 (Evidence in family violence proceedings)—see the [Family Violence Act 2016](#), dictionary.

***family violence offence proceeding***, for part 4.3 (Evidence in family violence proceedings)—see section 75.

***give evidence in a proceeding by audiovisual link***—

- (a) for chapter 2 (Evidence of children)—see section 6; and
- (b) for division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 40X.

***harm***, for division 4.2.5 (Protection of counselling communications)—see section 54.

***intellectually impaired***, for chapter 4 (Evidence in sexual, violent and family violence offence proceedings)—see section 36D.



***less serious violent offence***, for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37.

***Magistrates Court***, for chapter 2 (Evidence of children)—see section 5.

***participating State***, for chapter 3 (Use of audiovisual links and audio links)—see section 16.

***preliminary criminal proceeding***, for division 4.2.5 (Protection of counselling communications)—see section 54.

***proceeding***—

- (a) for this Act generally—see the [Legislation Act](#), dictionary, part 1; and
- (b) for chapter 2 (Evidence of children)—see section 5; and
- (c) for division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 40X; and
- (d) for division 4.2.5 (Protection of counselling communications)—see section 54.

***protected confidence***, for division 4.2.5 (Protection of counselling communications)—see section 55.

***protected confidence evidence***, for division 4.2.5 (Protection of counselling communications)—see section 54.

***recognised court***, for chapter 3 (Use of audiovisual links and audio links)—see section 16.

***recorded statement***, for part 4.3 (Evidence in family violence proceedings)—see section 77.

***relative***, for chapter 4 (Evidence in sexual, violent and family violence offence proceedings)—see section 36C.

***relevant person***, in relation to a person, for chapter 4 (Evidence in sexual, violent and family violence offence proceedings)—see section 36B.

***serious violent offence***, for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37.

***sexual offence***—

- (a) for part 4.2 (Evidence in sexual and violent offence proceedings) generally—see section 37; and
- (b) for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40AA (1); and
- (c) for division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing)—see section 40NA.

***sexual offence proceeding***—

- (a) for division 4.2.2 (Sexual and violent offence proceedings—general)—see section 38; and
- (b) for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40B; and
- (c) for division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing)—see section 40O; and
- (d) for division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 41 (2); and
- (e) for division 4.2.4 (Evidence of complainant’s sexual reputation and activities)—see section 48; and
- (f) for division 4.2.6 (Sexual offence proceedings—directions and warnings to juries)—see section 68.

***sexual or violent offence***, for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37.

***sexual or violent offence proceeding***, for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37.

**similar act witness**—for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37.

**State**, for chapter 3 (Use of audiovisual links and audio links)—see section 16.

**territory court**, for chapter 3 (Use of audiovisual links and audio links)—see section 16.

**tribunal**, in relation to a State, for chapter 3 (Use of audiovisual links and audio links)—see section 16.

**violent offence**—

- (a) for part 4.2 (Evidence in sexual and violent offence proceedings) generally—see section 37; and
- (b) for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40AA (2).

**violent offence proceeding**—

- (a) for division 4.2.2 (Sexual and violent offence proceedings—general)—see section 38A; and
- (b) for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40C; and
- (c) for division 4.2.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 41A.

**witness**—

- (a) for division 4.2.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40D; and
- (b) for division 4.2.2B (Sexual offence proceedings—giving evidence at pre-trial hearing)—see section 40P.

***witness with a disability***—

- (a) for part 4.2 (Evidence in sexual and violent offence proceedings)—see section 37; and
- (b) for part 7.1 (Evidence of witnesses with disabilities or vulnerabilities)—see section 100.

## Endnotes

### 1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws are not included in the republished law. The details of these laws are underlined in the legislation history. Uncommenced expiries are underlined in the legislation history and amendment history.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

### 2 Abbreviation key

A = Act	NI = Notifiable instrument
AF = Approved form	o = order
am = amended	om = omitted/repealed
amdt = amendment	ord = ordinance
AR = Assembly resolution	orig = original
ch = chapter	par = paragraph/subparagraph
CN = Commencement notice	pres = present
def = definition	prev = previous
DI = Disallowable instrument	(prev...) = previously
dict = dictionary	pt = part
disallowed = disallowed by the Legislative Assembly	r = rule/subrule
div = division	reloc = relocated
exp = expires/expired	renum = renumbered
Gaz = gazette	R[X] = Republication No
hdg = heading	RI = reissue
IA = Interpretation Act 1967	s = section/subsection
ins = inserted/added	sch = schedule
LA = Legislation Act 2001	sdiv = subdivision
LR = legislation register	SL = Subordinate law
LRA = Legislation (Republication) Act 1996	sub = substituted
mod = modified/modification	<u>underlining</u> = whole or part not commenced or to be expired

## Endnotes

3 Legislation history

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### 3 Legislation history

The *Evidence (Miscellaneous Provisions) Act 1991* was formerly the *Evidence (Closed-Circuit Television) Act 1991*. It was renamed by the *Justice and Community Safety Legislation Amendment Act 2000 (No 3)* No 17 (see sch 1).

After 11 May 1989 and before 10 November 1999, Acts commenced on notification day unless otherwise stated (see *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 25).

#### **Evidence (Miscellaneous Provisions) Act 1991 A1991-34**

notified 21 August 1991 ([Gaz 1991 No S84](#))

commenced 21 August 1991

as amended by

#### **Evidence (Closed-Circuit Television) (Amendment) Act 1992**

##### **A1992-80**

notified 24 December 1992 ([Gaz 1992 No S236](#))

commenced 24 December 1992 (s 2)

#### **Evidence (Closed-Circuit Television) (Amendment) Act 1994**

##### **A1994-24**

notified 31 May 1994 ([Gaz 1994 No S93](#))

commenced 31 May 1994 (s 2)

#### **Evidence (Closed-Circuit Television) (Amendment) Act (No 2) 1994**

##### **A1994-96**

notified 15 December 1994 ([Gaz 1994 No S280](#))

commenced 15 December 1994 (s 2)

#### **Evidence (Closed-Circuit Television) (Amendment) Act 1996**

##### **A1996-25**

notified 21 June 1996 ([Gaz 1996 No S124](#))

commenced 21 June 1996 (s 2)

#### **Evidence (Closed-Circuit Television) (Amendment) Act 1998**

##### **A1998-45**

notified 30 October 1998 ([Gaz 1998 No S204](#))

commenced 30 October 1998 (s 2)

**Children and Young People (Consequential Amendments) Act 1999****A1999-64 sch 2**

notified 10 November 1999 ([Gaz 1999 No 45](#))  
s 1, s 2 commenced 10 November 1999 (IA s 10B)  
sch 2 commenced 10 May 2000 (s 2 (2))

**Victims of Crime (Financial Assistance) (Amendment) Act 1999****A1999-91 sch 2**

notified 23 December 1999 ([Gaz 1999 No S65](#))  
s 1, s 2 commenced 23 December 1999 (IA s 10B)  
sch 2 commenced 24 December 1999 (s 2 (2) and [Gaz 1999 No S69](#))

**Justice and Community Safety Legislation Amendment Act 2000****(No 3) A2000-17 sch 1**

notified 1 June 2000 ([Gaz 2000 No 22](#))  
sch 1 commenced 1 June 2000 (s 2)

**Legislation (Consequential Amendments) Act 2001 A2001-44 pt 136**

notified 26 July 2001 ([Gaz 2001 No 30](#))  
s 1, s 2 commenced 26 July 2001 (IA s 10B)  
pt 136 commenced 12 September 2001 (s 2 and see [Gaz 2001 No S65](#))

**Rehabilitation of Offenders (Interim) Act 2001 A2001-82 sch 1 pt 1.3**

notified 10 September 2001 ([Gaz 2001 No S66](#))  
s 1, s 2 commenced 10 September 2001 (IA s 10B)  
sch 1 pt 1.3 commenced 24 September 2001 (s 2 and CN 2001 No 4)

**Protection Orders (Consequential Amendments) Act 2001 A2001-90****pt 6**

notified LR 27 September 2001  
s 1, s 2 commenced 27 September 2001 (LA s 75)  
pt 6 commenced 27 March 2002 (LA s 79)

**Statute Law Amendment Act 2002 A2002-30 pt 1.1**

notified LR 16 September 2002  
s 1, s 2 taken to have commenced 19 May 1997 (LA s 75 (2))  
pt 1.1 commenced 17 September 2002 (s 2 (1))

## Endnotes

3 Legislation history

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### **Statute Law Amendment Act 2002 (No 2) A2002-49 pt 3.7**

notified LR 20 December 2002  
s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))  
pt 3.7 commenced 17 January 2003 (s 2 (1))

### **Evidence (Miscellaneous Provisions) Amendment Act 2003 A2003-48 s 4, sch 1 (as am A2004-18 pt 7)**

notified LR 31 October 2003  
s 1, s 2 commenced 31 October 2003 (LA s 75 (1))  
s 4, sch 1 commenced 30 April 2004 (s 2 and LA s 79)

### **Sexuality Discrimination Legislation Amendment Act 2004 A2004-2 sch 2 pt 2.5**

notified LR 18 February 2004  
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))  
amdt 2.11 commenced 22 March 2004 (s 2 and [CN2004-4](#))  
remainder sch 2 pt 2.5 commenced 30 April 2004 (s 2 and LA s 79A)

### **Justice and Community Safety Legislation Amendment Act 2004 A2004-18 pt 7**

notified LR 6 April 2004  
s 1, s 2 commenced 6 April 2004 (LA s 75 (1))  
pt 7 commenced 30 April 2004 (s 2 and LA s 79A)  
*Note* This Act only amends the [Evidence \(Miscellaneous Provisions\) Amendment Act 2003 A2003-48](#).

### **Domestic Violence and Protection Orders Amendment Act 2005 A2005-13 sch 1 pt 1.8**

notified LR 24 March 2005  
s 1, s 2 commenced 24 March 2005 (LA s 75 (1))  
sch 1 pt 1.8 commenced 25 March 2005 (s 2)

### **Criminal Code (Administration of Justice Offences) Amendment Act 2005 A2005-53 sch 1 pt 1.10**

notified LR 26 October 2005  
s 1, s 2 commenced 26 October 2005 (LA s 75 (1))  
sch 1 pt 1.10 commenced 23 November 2005 (s 2)



**Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.17**

notified LR 18 May 2006

s 1, s 2 commenced 18 May 2006 (LA s 75 (1))

sch 1 pt 1.17 commenced 2 June 2006 (s 2 (1) and see [Crimes \(Sentence Administration\) Act 2005](#) A2005-59 s 2, [Crimes \(Sentencing\) Act 2005](#) A2005-58, s 2 and LA s 79)

**Justice and Community Safety Legislation Amendment Act 2006 A2006-40 sch 2 pt 2.16, amdt 2.90**

notified LR 28 September 2006

s 1, s 2 commenced 28 September 2006 (LA s 75 (1))

sch 2 pt 2.16, amdt 2.90 commenced 29 September 2006 (s 2 (1))

**Corrections Management Act 2007 A2007-15 sch 1 pt 1.4**

notified LR 18 June 2007

s 1, s 2 commenced 18 June 2007 (LA s 75 (1))

sch 1 pt 1.4 commenced 18 December 2007 (s 2 and LA s 79)

**Children and Young People Act 2008 A2008-19 sch 1 pt 1.7**

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

sch 1 pt 1.7 commenced 27 February 2009 (s 2 and [CN2008-17](#) (and see [CN2008-13](#)))

**Children and Young People (Consequential Amendments) Act 2008 A2008-20 sch 2 pt 2.7, sch 3 pt 3.13, sch 4 pt 4.15**

notified LR 17 July 2008

s 1, s 2 commenced 17 July 2008 (LA s 75 (1))

s 3 commenced 18 July 2008 (s 2 (1))

sch 2 pt 2.7 commenced 9 September 2008 (s 2 (3) and see [Children and Young People Act 2008](#) A2008-19, s 2 and [CN2008-13](#))

sch 3 pt 3.13 commenced 27 October 2008 (s 2 (4) and see [Children and Young People Act 2008](#) A2008-19, s 2 and [CN2008-13](#))

sch 4 pt 4.15 commenced 27 February 2009 (s 2 (5) and see [Children and Young People Act 2008](#) A2008-19, s 2 and [CN2008-17](#) (and see [CN2008-13](#)))

**Sexual and Violent Offences Legislation Amendment Act 2008 A2008-41 pt 2**

notified LR 8 September 2008

s 1, s 2 commenced 8 September (LA s 75 (1))

pt 2 commenced 30 May 2009 (s 2 and [CN2009-3](#))

## Endnotes

3 Legislation history

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**Crimes Legislation Amendment Act 2008 A2008-44 sch 1 pt 1.9**

notified LR 9 September 2008  
s 1, s 2 commenced 9 September 2008  
sch 1 pt 1.9 commenced 30 May 2009 (s 2 and [CN2009-4](#))

**Domestic Violence and Protection Orders Act 2008 A2008-46 sch 3 pt 3.9**

notified LR 10 September 2008  
s 1, s 2 commenced 10 September 2008 (LA s 75 (1))  
amdt 3.21 commenced 30 March 2009 (s 2)  
sch 3 pt 3.9 remainder commenced 30 May 2009 (LA s 79A and see [A2008-41](#))

**Justice and Community Safety Legislation Amendment Act 2009 A2009-7 sch 1 pt 1.6**

notified LR 5 March 2009  
s 1, s 2 commenced 5 March 2009 (LA s 75 (1))  
sch 1 pt 1.6 commenced 30 May 2009 (s 2 (4) and see [Crimes Legislation Amendment Act 2008 A2008-44](#), s 2 and [CN2009-4](#))

**Crimes Legislation Amendment Act 2009 A2009-24 sch 1 pt 1.8**

notified LR 3 September 2009  
s 1, s 2 commenced 3 September 2009 (LA s 75 (1))  
sch 1 pt 1.8 commenced 4 September 2009 (s 2)

**Education (Participation) Amendment Act 2009 A2009-40 sch 1 pt 1.2**

notified LR 17 November 2009  
s 1, s 2 commenced 17 November 2009 (LA s 75 (1))  
sch 1 pt 1.2 commenced 1 January 2010 (s 2)

**Justice and Community Safety Legislation Amendment Act 2010 (No 3) A2010-40 sch 2 pt 2.8**

notified LR 5 October 2010  
s 1, s 2 commenced 5 October 2010 (LA s 75 (1))  
s 3 commenced 6 October 2010 (s 2 (1))  
sch 2 pt 2.8 commenced 2 November 2010 (s 2 (2))

**Evidence (Miscellaneous Provisions) Amendment Act 2011 A2011-29**

notified LR 31 August 2011  
s 1, s 2 commenced 31 August 2011 (LA s 75 (1))  
remainder commenced 1 March 2012 (s 2 and see [Evidence Act 2011 A2011-12](#), s 2 and [CN2012-4](#))

**Evidence (Consequential Amendments) Act 2011 A2011-48 sch 1 pt 1.19**

notified LR 22 November 2011  
s 1, s 2 commenced 22 November 2011 (LA s 75 (1))  
sch 1 pt 1.19 commenced 1 March 2012 (s 2 (1) and see [Evidence Act 2011 A2011-12, s 2](#) and [CN2012-4](#))

**Civil Unions Act 2012 A2012-40 sch 3 pt 3.13**

notified LR 4 September 2012  
s 1, s 2 commenced 4 September 2012 (LA s 75 (1))  
sch 3 pt 3.13 commenced 11 September 2012 (s 2)

**Crimes Legislation Amendment Act 2013 A2013-12 pt 7**

notified LR 17 April 2013  
s 1, s 2 commenced 17 April 2013 (LA s 75 (1))  
pt 7 commenced 24 April 2013 (s 2)

**Statute Law Amendment Act 2013 A2013-19 sch 3 pt 3.18**

notified LR 24 May 2013  
s 1, s 2 commenced 24 May 2013 (LA s 75 (1))  
sch 3 pt 3.18 commenced 14 June 2013 (s 2)

**Marriage Equality (Same Sex) Act 2013 A2013-39 sch 2 pt 2.14**

notified LR 4 November 2013  
s 1, s 2 commenced 4 November 2013 (LA s 75 (1))  
sch 2 pt 2.14 commenced 7 November 2013 (s 2 and [CN2013-11](#))

*Note* The High Court held this Act to be of no effect (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)

**Magistrates Court (Industrial Proceedings) Amendment Act 2013 A2013-43 sch 1 pt 1.2**

notified LR 7 November 2013  
s 1, s 2 commenced 7 November 2013 (LA s 75 (1))  
sch 1 pt 1.2 commenced 8 November 2013 (s 2)

**Crimes (Domestic and Family Violence) Legislation Amendment Act 2015 A2015-40 pt 4**

notified LR 4 November 2015  
s 1, s 2 commenced 4 November 2015 (LA s 75 (1))  
pt 4 commenced 4 May 2016 (s 2 (2))

## Endnotes

3 Legislation history

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**Family Violence Act 2016 A2016-42 sch 2 pt 2.4, sch 3 pt 3.14 (as amended by A2017-10 s 7)**

notified LR 18 August 2016

s 1, s 2 commenced 18 August 2016 (LA s 75 (1))

sch 2 pt 2.4, sch 3 pt 3.14 commence 1 May 2017 (s 2 (2) as amended by A2017-10 s 7)

**Commercial Arbitration Act 2017 A2017-7 sch 1 pt 1.2**

notified LR 4 April 2017

s 1A, s 1B commenced 4 April 2017 (LA s 75 (1))

sch 1 pt 1.2 awaiting commencement (s 1B)

*Note* default commencement under LA s 79: 4 October 2017

**Family and Personal Violence Legislation Amendment Act 2017 A2017-10 pt 2, s 7**

notified LR 6 April 2017

s 1, s 2 commenced 6 April 2017 (LA s 75 (1))

pt 2, s 7 commenced 30 April 2017 (s 2 (1))

*Note* This Act, s 7 only amends the Family Violence Act 2016 A2016-42.

## 4 Amendment history

### Title

title sub [A2000-17](#) sch 1

### Preliminary

ch 1 hdg (prev pt 1 hdg) ins [A2000-17](#) sch 1  
renum as ch 1 hdg [A2015-40](#) s 49

### Preliminary

pt 1 hdg renum as ch 1 hdg

### Name of Act

s 1 sub [A2000-17](#) sch 1

### Dictionary

s 2 hdg sub [A2000-17](#) sch 1  
s 2 am [1994-24](#); [A1994-96](#); [A2000-17](#) sch 1  
om [A2003-48](#) amdt 1.3  
ins [A2003-48](#) amdt 1.1  
am [A2015-40](#) s 104

### Notes

s 3 orig s 3 renum as s 6  
ins [A2003-48](#) amdt 1.1  
am [A2011-29](#) s 4  
(2), (3) exp 1 March 2013 (s 3 (3))

### Prescribed witnesses

s 3A renum as s 4

### Offences against Act—application of Criminal Code etc

s 4 (prev s 3A) ins [A1994-96](#)  
am [A1996-25](#); [A1998-45](#); [A2000-17](#) sch 1  
renum [A2000-17](#) sch 1  
am [A2002-30](#) amdt 1.1  
om [A2004-48](#) amdt 1.5  
ins [A2003-48](#) amdt 1.1  
am [A2005-53](#) amdt 1.49

### Location of child giving evidence

s 4A renum as s 6

### Evidence of children

ch 2 hdg (prev pt 2 hdg) ins [A2000-17](#) sch 1  
sub [A2002-49](#) amdt 3.54; [A2003-48](#) amdt 1.2  
renum as ch 2 hdg [A2015-40](#) s 49

## Endnotes

4 Amendment history

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### Evidence of children

pt 2 hdg renum as ch 2 hdg

### Definitions—ch 2

s 5 hdg am [A2015-40](#) s 106  
s 5 (prev s 4) am [A1994-24](#); [A1999-64](#) s 4 sch 2; [A1999-91](#) s 13  
sch 2; [A2000-17](#) sch 1; [A2001-90](#) amdts 1.60-1.62; pars  
renum R6 LA (see [A2001-90](#) amdt 1.63)  
renum as s 5 [A2000-17](#) sch 1  
renum as s 7 [A2003-48](#) amdt 1.6  
ins [A2003-48](#) amdt 1.3  
am [A2015-40](#) s 104  
def **court** ins [A2003-48](#) amdt 1.3  
def **Magistrates court** ins [A2003-48](#) amdt 1.3  
sub [A2013-43](#) amdt 1.2  
def **prescribed witness** ins [A2003-48](#) amdt 1.3  
om [A2011-29](#) s 5  
def **proceeding** ins [A2003-48](#) amdt 1.3  
am [A2011-29](#) s 6

### Meaning of *give evidence in a proceeding by audiovisual link*—ch 2

s 6 hdg am [A2015-40](#) s 106  
s 6 (prev s 4A) ins [A1994-24](#)  
am [A1994-96](#)  
renum as s 6 [A2000-17](#) sch 1  
renum as s 8 [A2003-48](#) amdt 1.9  
(prev s 3) am [A2000-17](#) sch 1  
renum as s 6 [A2003-48](#) amdt 1.4  
sub [A2011-29](#) s 7  
am [A2015-40](#) s 104

### Sworn or unsworn evidence

s 7 orig s 7 om [A1994-24](#)  
(prev s 5) renum as s 7 and then s 9  
(prev s 5) renum as s 7 and then s 8  
ins [A2011-29](#) s 7  
am [A2015-40](#) s 104

**Proceedings to which ch 2 applies**

s 8 hdg am [A2015-40](#) s 106  
s 8 (prev s 6) sub [A1994-24](#)  
am [A1994-96](#)  
renum as s 8 [A2000-17](#) sch 1  
renum as s 10 [A2003-48](#) amdt 1.16  
(prev s 6) am [A2003-48](#) amdt 1.7, amdt 1.8  
renum as s 8 [A2003-48](#) amdt 1.9  
om [A2011-29](#) s 9  
(prev s 5) renum as s 7 [A2003-48](#) amdt 1.6  
am [A2005-13](#) amdt 1.33; [A2008-20](#) amdt 3.27; [A2008-46](#)  
amdt 3.21  
renum as s 8 [A2011-29](#) s 8  
am [A2015-40](#) s 104; [A2016-42](#) amdt 3.61

**Court's discretions reorders**

s 8A renum as s 10 and then s 12

**Child giving evidence by audiovisual link**

s 9 (prev s 8) am [A1994-24](#)  
renum as s 9 [A2000-17](#) sch 1  
renum as s 11 [A2003-48](#) amdt 1.18  
(prev s 5) am [A1994-24](#); [A1994-96](#)  
renum as s 7 [A2000-17](#) sch 1  
am [A2003-48](#) amdts 1.10-1.12  
renum as s 9 [A2003-48](#) amdt 1.13  
sub [A2011-29](#) s 9

**Representation of child**

s 10 (prev s 8A) ins [A1994-24](#)  
am [A1994-96](#); [A2000-17](#) sch 1  
renum as s 10 [A2000-17](#) sch 1  
renum as s 12 [A2003-48](#) amdt 1.20  
(prev s 8) am [A2003-48](#) amdt 1.14, amdt 1.15  
renum as s 10 [A2003-48](#) amdt 1.16  
sub [A2011-29](#) s 9

**Consequential orders—ch 2**

s 11 hdg am [A2015-40](#) s 106  
s 11 (prev s 9) am [A1994-24](#)  
renum as s 11 [A2000-17](#) sch 1  
renum as s 13 [A2003-48](#) amdt 1.20  
(prev s 9) am [A2003-48](#) amdt 1.17  
renum as s 11 [A2003-48](#) amdt 1.18  
sub [A2011-29](#) s 9

## Endnotes

4 Amendment history

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### **Making of orders—ch 2**

s 12 hdg (prev s 10 hdg) am [A2000-17](#) sch 1; [A2015-40](#) s 106  
s 12 (prev s 10) sub [A1994-24](#)  
am [A1994-96](#); [A2000-17](#) sch 1  
renum as s 12 [A2000-17](#) sch 1  
renum as s 14 [A2003-48](#) amdt 1.20  
(prev s 10) am [A2003-48](#) amdt 1.19  
renum as s 12 [A2003-48](#) amdt 1.20  
sub [A2011-29](#) s 9  
am [A2015-40](#) s 104

### **Jury warning about inferences from child giving evidence by audiovisual link**

s 13 (prev s 11) om [A1992-80](#)  
ins [A1994-24](#)  
sub [A1994-96](#)  
renum as s 13 [A2000-17](#) sch 1  
renum as s 15 [A2003-48](#) amdt 1.21  
(prev s 11) renum as s 13 [A2003-48](#) amdt 1.20  
sub [A2011-29](#) s 9

### **Failure to comply with ch 2**

s 14 hdg am [A2015-40](#) s 106  
s 14 orig s 14 renum as s 16 [A2003-48](#) amdt 1.23  
(prev s 12) renum as s 14 [A2003-48](#) amdt 1.20  
sub [A2011-29](#) s 9  
am [A2015-40](#) s 104

### **Child turns 18 during proceeding**

s 15 hdg (prev s 13 hdg) sub [A2003-48](#) amdt 1.21  
s 15 orig s 15 renum as s 17 [A2003-48](#) amdt 1.23  
(prev s 13) am [A2003-48](#) amdt 1.21  
renum as s 15 [A2003-48](#) amdt 1.21  
sub [A2011-29](#) s 9  
am [A2015-40](#) s 104

### **Use of audiovisual links and audio links**

ch 3 hdg (prev pt 3 hdg) ins [A2000-17](#) sch 1  
renum as ch 3 hdg [A2015-40](#) s 49

### **Use of audiovisual links and audio links**

pt 3 hdg renum as ch 3 hdg

### **Preliminary—ch 3**

pt 3.1 hdg (prev div 3.1 hdg) sub as pt 3.1 hdg [A2015-40](#) s 50

### **Preliminary—pt 3**

div 3.1 hdg sub as pt 3.1 hdg



**Definitions—ch 3**

s 16 hdg am [A2015-40](#) s 106  
 s 16 orig s 16 renum as s 18 [A2003-48](#) amdt 1.23  
 (prev s 14) ins [A2000-17](#) sch 1  
 am [A2001-82](#) amdt 1.5  
 renum as s 16 [A2003-48](#) amdt 1.23  
 am [A2015-40](#) s 104  
 def **audiovisual link** om [A2003-48](#) amdt 1.22  
 def **territory court** am [A2006-23](#) amdt 1.196; [A2007-15](#)  
 amdt 1.25; [A2008-20](#) amdt 2.18; [A2013-19](#) amdt 3.151  
 def **tribunal** am [A2005-53](#) amdt 1.50

**Application—ch 3**

s 17 hdg am [A2015-40](#) s 106  
 s 17 orig s 17 renum as s 19 [A2003-48](#) amdt 1.23  
 (prev s 15) ins [A2000-17](#) sch 1  
 renum as s 17 [A2003-48](#) amdt 1.23  
 am [A2015-40](#) s 104

**Operation of other Acts**

s 18 orig s 18 renum as s 20 [A2003-48](#) amdt 1.23  
 (prev s 16) ins [A2000-17](#) sch 1  
 renum as s 18 [A2003-48](#) amdt 1.23  
 sub [A2010-40](#) amdt 2.9  
 am [A2015-40](#) s 104

**Use of audiovisual links or audio links with participating States in ACT proceedings**

pt 3.2 hdg (prev div 3.2 hdg) ins [A2000-17](#) sch 1  
 sub [A2010-40](#) amdt 2.10  
 renum as pt 3.2 hdg [A2015-40](#) s 51

**Use of audiovisual links or audio links with participating States in ACT proceedings**

div 3.2 hdg renum as pt 3.2 hdg

**Application—pt 3.2**

s 19 hdg am [A2015-40](#) s 102  
 s 19 orig s 19 renum as s 21 [A2003-48](#) amdt 1.23  
 (prev s 17) ins [A2000-17](#) sch 1  
 renum as s 19 [A2003-48](#) amdt 1.23  
 am [A2011-29](#) s 10; [A2015-40](#) s 103

**Territory courts may take evidence and submissions from participating States**

s 20 hdg sub [A2010-40](#) amdt 2.11  
 s 20 orig s 20 renum as s 22 [A2003-48](#) amdt 1.23  
 (prev s 18) ins [A2000-17](#) sch 1  
 renum as s 20 [A2003-48](#) amdt 1.23  
 am [A2015-40](#) s 103

## Endnotes

4 Amendment history

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### **Legal practitioners entitled to practice**

s 21 orig s 21 renum as s 23 [A2003-48](#) amdt 1.23  
(prev s 19) ins [A2000-17](#) sch 1  
renum as s 21 [A2003-48](#) amdt 1.23

### **Use of interstate audiovisual links or audio links in proceedings in participating States**

pt 3.3 hdg (prev div 3.3 hdg) ins [A2000-17](#) sch 1  
renum as pt 3.3 hdg [A2015-40](#) s 51

### **Use of interstate audiovisual links or audio links in proceedings in participating States**

div 3.3 hdg renum as pt 3.3 hdg

### **Application—pt 3.3**

s 22 hdg am [A2015-40](#) s 102  
s 22 orig s 22 renum as s 24 [A2003-48](#) amdt 1.23  
(prev s 20) ins [A2000-17](#) sch 1  
renum as s 22 [A2003-48](#) amdt 1.23  
am [A2015-40](#) s 103

### **Recognised courts may take evidence or receive submissions from people in ACT**

s 23 orig s 23 renum as s 25 [A2003-48](#) amdt 1.25  
(prev s 21) ins [A2000-17](#) sch 1  
renum as s 23 [A2003-48](#) amdt 1.23

### **Powers of recognised courts**

s 24 orig s 24 renum as s 26 [A2003-48](#) amdt 1.27  
(prev s 22) ins [A2000-17](#) sch 1  
renum as s 24 [A2003-48](#) amdt 1.23

### **Orders made by recognised court**

s 25 orig s 25 renum as s 27 [A2003-48](#) amdt 1.27  
(prev s 23) ins [A2000-17](#) sch 1  
am [A2003-48](#) amdt 1.24  
renum as s 25 [A2003-48](#) amdt 1.25

### **Enforcement of order**

s 26 orig s 26 renum as s 28 [A2003-48](#) amdt 1.27  
(prev s 24) ins [A2000-17](#) sch 1  
am [A2003-48](#) amdt 1.26  
renum as s 26 [A2003-48](#) amdt 1.27

### **Privileges, protection and immunity of participants in proceedings in courts of participating States**

s 27 orig s 27 renum as s 29 [A2003-48](#) amdt 1.27  
(prev s 25) ins [A2000-17](#) sch 1  
renum as s 27 [A2003-48](#) amdt 1.27

**Recognised court may administer oath in ACT**

s 28 orig s 28 renum as s 30 [A2003-48](#) amdt 1.29  
 (prev s 26) ins [A2000-17](#) sch 1  
 renum as s 28 [A2003-48](#) amdt 1.27  
 am [A2005-53](#) amdt 1.51, amdt 1.52

**Assistance to recognised court**

s 29 orig s 29 renum as s 31 [A2003-48](#) amdt 1.29  
 (prev s 27) ins [A2000-17](#) sch 1  
 renum as s 29 [A2003-48](#) amdt 1.27  
 am [A2005-53](#) amdt 1.53

**Contempt of recognised courts**

s 30 orig s 30 renum as s 32 [A2003-48](#) amdt 1.29  
 (prev s 28) ins [A2000-17](#) sch 1  
 am [A2003-48](#) amdt 1.28  
 renum as s 30 [A2003-48](#) amdt 1.29  
 om [A2005-53](#) amdt 1.54

**Use of audiovisual links or audio links with places other than participating States in ACT proceedings**

pt 3.4 hdg (prev div 3.4 hdg) ins [A2000-17](#) sch 1  
 sub [A2010-40](#) amdt 2.12  
 renum as pt 3.4 hdg [A2015-40](#) s 51

**Use of audiovisual links or audio links with places other than participating States in ACT proceedings**

div 3.4 hdg renum as pt 3.4 hdg

**Application—pt 3.4**

s 31 hdg am [A2015-40](#) s 102  
 s 31 orig s 31 renum as s 33 [A2003-48](#) amdt 1.29  
 (prev s 29) ins [A2000-17](#) sch 1  
 renum as s 31 [A2003-48](#) amdt 1.29  
 sub [A2006-40](#) amdt 2.106; [A2010-40](#) amdt 2.12  
 am [A2015-40](#) s 103

**Territory courts may take evidence and submissions from place other than participating State**

s 32 orig s 32 renum as s 34 [A2003-48](#) amdt 1.29  
 (prev s 30) ins [A2000-17](#) sch 1  
 renum as s 32 [A2003-48](#) amdt 1.29  
 sub [A2010-40](#) amdt 2.12  
 am [A2011-29](#) s 11; [A2015-40](#) s 103

**Protection of certain communications and documents in criminal proceedings**

pt 3.5 hdg (prev div 3.5 hdg) ins [A2000-17](#) sch 1  
 renum as pt 3.5 hdg [A2015-40](#) s 51

## Endnotes

4 Amendment history

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### **Protection of certain communications and documents in criminal proceedings**

div 3.5 hdg renum as pt 3.5 hdg

#### **Application—pt 3.5**

s 33 hdg am [A2015-40](#) s 102  
s 33 orig s 33 renum as s 35 [A2003-48](#) amdt 1.29  
(prev s 31) ins [A2000-17](#) sch 1  
renum as s 33 [A2003-48](#) amdt 1.29  
am [A2015-40](#) s 103, s 104

#### **Protection of confidentiality**

s 34 orig s 34 renum as s 36 [A2003-48](#) amdt 1.31  
(prev s 32) ins [A2000-17](#) sch 1  
renum as s 34 [A2003-48](#) amdt 1.29  
am [A2015-40](#) s 103

#### **Application of Listening Devices Act**

s 35 orig s 35 ins [A2000-17](#) sch 1  
am [A2001-44](#) amdt 1.1581  
om [A2003-48](#) s 5 (as am [A2004-18](#) s 21)  
(prev s 33) ins [A2000-17](#) sch 1  
renum as s 35 [A2003-48](#) amdt 1.29  
am [A2015-40](#) s 103

#### **Costs and expenses**

pt 3.6 hdg (prev div 3.6 hdg) ins [A2000-17](#) sch 1  
renum as pt 3.6 hdg [A2015-40](#) s 51

#### **Costs and expenses**

div 3.6 hdg renum as pt 3.6 hdg

#### **Power to order payment of costs**

s 36 (prev s 34) ins [A2000-17](#) sch 1  
am [A2003-48](#) amdt 1.30  
renum as s 36 [A2003-48](#) amdt 1.31  
am [A2010-40](#) amdt 2.13

#### **Evidence in sexual, violent and family violence offence proceedings**

ch 4 hdg (prev pt 4 hdg) ins [A2000-17](#) sch 1  
sub [A2003-48](#) s 4 (as am [A2004-18](#) s 20); [A2011-29](#) s 12  
sub as ch 4 hdg [A2015-40](#) s 52  
sub [A2016-42](#) amdt 3.62

#### **Evidence in sexual and violent offence proceedings**

pt 4 hdg sub as ch 4 hdg

#### **Preliminary—ch 4**

pt 4.1 hdg ins [A2015-40](#) s 52

**Preliminary—pt 4**

div 4.1 hdg sub as div 4.2.1 hdg

**Failure to comply with ch 4**s 36A ins [A2015-40](#) s 52**Meaning of *relevant person*—ch 4**s 36B hdg (prev s 38B hdg) sub [A2015-40](#) s 60s 36B (prev s 38B) ins [A2008-41](#) s 8sub [A2009-7](#) amdt 1.18am [A2011-29](#) s 16; [A2012-40](#) amdt 3.49; [A2015-40](#) s 61reloc and renum as s 36B [A2015-40](#) s 62am [A2016-42](#) amdts 3.63-3.65; pars renum R36 LA**Meaning of *relative*—ch 4**s 36C hdg (prev s 38BA hdg) sub [A2015-40](#) s 63s 36C (prev s 38BA) ins [A2009-7](#) amdt 1.18am [A2012-40](#) amdts 3.50-3.52; [A2013-39](#) amdt 2.30( [A2013-39](#) never effective (see *Commonwealth v Australian Capital Territory* [2013] HCA 55)); [A2015-40](#) s 64reloc and renum as s 36C [A2015-40](#) s 65am [A2016-42](#) amdts 3.66-3.68; pars renum R36 LA**Meaning of *intellectually impaired*—ch 4**s 36D ins [A2015-40](#) s 52**Evidence in sexual and violent offence proceedings**pt 4.2 hdg ins [A2015-40](#) s 52**Preliminary—pt 4.2**div 4.2.1 hdg (prev div 4.1 hdg) ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)sub as div 4.2.1 hdg [A2015-40](#) s 53**Definitions—pt 4.2**s 37 hdg sub [A2015-40](#) s 54s 37 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)am [A2005-53](#) amdt 1.55sub [A2008-41](#) s 4def ***less serious violent offence*** ins [A2008-41](#) s 4sub [A2015-40](#) s 55am [A2016-42](#) amdt 3.69def ***serious violent offence*** ins [A2008-41](#) s 4am [A2011-29](#) s 13; [A2015-40](#) s 56, s 57; pars renum R34

LA

def ***sexual offence*** ins [A2008-41](#) s 4def ***sexual or violent offence*** ins [A2015-40](#) s 58def ***sexual or violent offence proceeding*** ins [A2015-40](#) s 58

## Endnotes

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def **similar act witness** ins [A2008-41](#) s 4  
am [A2011-29](#) s 14; [A2016-42](#) amdt 2.4  
def **violent offence** ins [A2008-41](#) s 4  
def **witness with a disability** ins [A2008-41](#) s 4

### **Sexual and violent offence proceedings—general**

div 4.2 hdg renum as div 4.2.2 hdg

### **Sexual and violent offence proceedings—general**

div 4.2.2 hdg (prev div 4.2 hdg) ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
sub [A2008-41](#) s 5  
renum as div 4.2.2 hdg [A2015-40](#) s 59

### **Meaning of complainant and sexual offence proceeding—div 4.2.2**

s 38 hdg sub [A2011-29](#) s 15  
am [A2015-40](#) s 95  
s 38 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2006-40](#) amdt 2.107; [A2008-41](#) s 6, s 7; [A2008-44](#)  
amdt 1.56, amdt 1.57; [A2009-7](#) amdt 1.15, amdt 1.16

### **Meaning of violent offence proceeding—div 4.2.2**

s 38A hdg am [A2015-40](#) s 95  
s 38A ins [A2008-41](#) s 8  
am [A2008-44](#) amdt 1.58; [A2009-7](#) amdt 1.17

### **Meaning of relevant person—ch 4**

s 38B reloc and renum as s 36B

### **Meaning of relative—ch 4**

s 38BA reloc and renum as s 36C

### **Accused may be screened from witness in court**

s 38C ins [A2008-41](#) s 8  
am [A2009-7](#) amdt 1.19; [A2009-24](#) amdt 1.20; [A2011-29](#) s 17;  
ss renum R26 LA

### **Examination of witness by self-represented accused person—procedure**

s 38D ins [A2008-41](#) s 8  
sub [A2009-24](#) amdt 1.21  
am [A2011-29](#) ss 18-20; ss renum R26 LA

### **Sexual and violent offence proceeding—witness may have support person in court**

s 38E hdg sub [A2011-29](#) s 21  
s 38E ins [A2008-41](#) s 8  
am [A2009-24](#) amdt 1.22; [A2011-29](#) s 22; ss renum R26 LA

### **Sexual and violent offence proceeding—evidence to be given in closed court**

s 39 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
sub [A2008-41](#) s 9  
am [A2009-24](#) amdt 1.23; [A2011-29](#) s 23, s 24; ss renum R26  
LA; [A2015-40](#) ss 96-98

**Sexual offence proceeding—prohibition of publication of complainant's identity**

s 40 hdg sub [A2008-41](#) s 10  
s 40 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 25

**Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence**

div 4.2A hdg renum as div 4.2.2A

**Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence**

div 4.2.2A hdg (prev div 4.2A hdg) ins [A2008-41](#) s 11  
renum as div 4.2.2A hdg [A2015-40](#) s 66

**Meaning of *complainant*—div 4.2A**

s 40A ins [A2008-41](#) s 11  
om [A2015-40](#) s 67

**Meaning of *sexual offence and violent offence*—div 4.2.2A**

s 40AA hdg am [A2015-40](#) s 96  
s 40AA ins [A2011-29](#) s 26  
am [A2015-40](#) s 96  
sub [A2016-42](#) amdt 3.70

**Meaning of *sexual offence proceeding*—div 4.2.2A**

s 40B hdg sub [A2015-40](#) s 68  
s 40B ins [A2008-41](#) s 11  
am [A2008-46](#) amdt 3.22; [A2009-7](#) amdt 1.20; [A2011-29](#) s 27;  
[A2015-40](#) s 69

**Meaning of *violent offence proceeding*—div 4.2.2A**

s 40C hdg sub [A2015-40](#) s 70  
s 40C ins [A2008-41](#) s 11  
am [A2008-46](#) amdt 3.23; [A2009-7](#) amdt 1.21; [A2011-29](#) s 28;  
[A2015-40](#) s 71

**Meaning of *witness*—div 4.2.2A**

s 40D hdg sub [A2015-40](#) s 72  
s 40D ins [A2008-41](#) s 11  
am [A2013-12](#) s 33, s 34; [A2015-40](#) s 73; [A2016-42](#) amdt 2.5,  
amdt 2.6

**Meaning of *audiovisual recording*—div 4.2.2A**

s 40E hdg am [A2015-40](#) s 96  
s 40E ins [A2008-41](#) s 11

**Audiovisual recording may be admitted as evidence**

s 40F ins [A2008-41](#) s 11

## Endnotes

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### **Audiovisual recording—notice**

s 40G ins [A2008-41](#) s 11  
am [A2009-7](#) amdt 1.22, amdt 1.23

### **Audiovisual recording—notice for access**

s 40H ins [A2008-41](#) s 11

### **Audiovisual recording—access to accused person**

s 40I ins [A2008-41](#) s 11

### **Audiovisual recording—admissibility**

s 40J ins [A2008-41](#) s 11

### **Audiovisual recording—jury trial**

s 40K ins [A2008-41](#) s 11

### **Transcript of audiovisual recording—access to court**

s 40L ins [A2008-41](#) s 11

### **Audiovisual recording—offences**

s 40M ins [A2008-41](#) s 11  
am [A2009-24](#) amdt 1.24

### **Sexual offence proceedings—giving evidence at pre-trial hearing**

div 4.2B hdg renum as div 4.2.2B hdg

### **Sexual offence proceedings—giving evidence at pre-trial hearing**

div 4.2.2B hdg (prev div 4.2B hdg) ins [A2008-41](#) s 11  
renum as div 4.2.2B hdg [A2015-40](#) s 74

### **Meaning of *complainant*—div 4.2.2B**

s 40N hdg am [A2015-40](#) s 97  
s 40N ins [A2008-41](#) s 11

### **Meaning of *sexual offence*—div 4.2.2B**

s 40NA hdg am [A2015-40](#) s 97  
s 40NA ins [A2011-29](#) s 29  
sub [A2016-42](#) amdt 3.71

### **Meaning of *sexual offence proceeding*—div 4.2.2B**

s 40O hdg am [A2015-40](#) s 97  
s 40O ins [A2008-41](#) s 11  
am [A2008-46](#) amdt 3.24; [A2009-7](#) amdt 1.24; [A2011-29](#) s 30;  
[A2016-42](#) amdt 3.72

### **Meaning of *witness*—div 4.2.2B**

s 40P hdg sub [A2015-40](#) s 75  
s 40P ins [A2008-41](#) s 11  
am [A2011-29](#) s 31; ss renum R26 LA; [A2013-12](#) s 35;  
[A2015-40](#) s 76



**Witness may give evidence at pre-trial hearing**

s 40Q hdg sub [A2009-24](#) amdt 1.25  
 s 40Q ins [A2008-41](#) s 11  
 am [A2009-24](#) amdts 1.26-1.28; ss renum R22 LA; [A2015-40](#) s 96

**Who may be present at pre-trial hearing**

s 40R ins [A2008-41](#) s 11  
 am [A2011-29](#) s 32

**Evidence of witness at pre-trial hearing to be evidence at hearing**

s 40S ins [A2008-41](#) s 11  
 am [A2015-40](#) s 96

**Witness may be required to attend hearing**

s 40T ins [A2008-41](#) s 11  
 am [A2009-24](#) amdt 1.29; [A2011-29](#) s 33; [A2015-40](#) s 98

**Evidence of witness at pre-trial hearing—jury trial**

s 40U ins [A2008-41](#) s 11

**Recording of witness's evidence at pre-trial hearing admissible in related hearing**

s 40V ins [A2008-41](#) s 11

**Audiovisual recording of child's evidence—admissibility**

s 40W ins [A2008-41](#) s 11

**Sexual and violent offence proceedings—giving evidence by audiovisual link**

div 4.2.3 hdg (prev div 4.3 hdg) ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
 sub [A2008-41](#) s 12; [A2011-29](#) s 34  
 renum as div 4.2.3 hdg [A2015-40](#) s 77

**Sexual and violent offence proceedings—giving evidence by audiovisual link**

div 4.3 hdg renum as div 4.2.3 hdg

**Definitions—div 4.2.3**

s 40X hdg am [A2015-40](#) s 98  
 s 40X ins [A2011-29](#) s 35  
 def *give evidence in a proceeding by audiovisual link* ins [A2011-29](#) s 35  
 def *proceeding* ins [A2011-29](#) s 35

**Meaning of complainant and sexual offence proceeding—div 4.2.3**

s 41 hdg sub [A2011-29](#) s 36  
 am [A2015-40](#) s 98  
 s 41 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
 am [A2005-13](#) amdt 1.34; [A2008-41](#) s 13, s 14; [A2008-44](#)  
 amdt 1.59, amdt 1.60; [A2009-7](#) amdt 1.25, amdt 1.26;  
[A2015-40](#) s 78; pars renum R34 LA

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#### **Meaning of *violent offence proceeding*—div 4.2.3**

- s 41A hdg am [A2015-40](#) s 98  
s 41A ins [A2008-41](#) s 15  
am [A2008-44](#) amdt 1.61; [A2008-46](#) amdt 3.25; [A2009-7](#)  
amdt 1.27; [A2011-29](#) s 37; [A2015-40](#) s 79

#### **Meaning of *sexual offence and violent offence*—div 4.3**

- s 41B ins [A2011-29](#) s 38  
om [A2015-40](#) s 80

#### **Proceedings to which div 4.2.3 applies**

- s 42 hdg sub [A2011-29](#) s 39  
am [A2015-40](#) s 98  
s 42 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2005-53](#) amdt 1.56  
sub [A2008-41](#) s 16  
am [A2009-24](#) amdt 1.30; [A2011-29](#) ss 39-41; [A2015-40](#) s 81,  
s 82

#### **Complainant or similar act witness giving evidence by audiovisual link**

- s 43 hdg sub [A2011-29](#) s 42  
s 43 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
sub [A2008-41](#) s 17  
am [A2009-24](#) amdt 1.31; [A2011-29](#) ss 42-44

#### **Recording evidence given by audiovisual link in sexual offence proceedings**

- s 43A ins [A2013-12](#) s 36

#### **Consequential orders—div 4.2.3**

- s 44 hdg sub [A2011-29](#) s 45  
am [A2015-40](#) s 98  
s 44 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2008-41](#) s 18, s 19; [A2011-29](#) ss 45-49

#### **Making of orders—div 4.2.3**

- s 45 hdg sub [A2011-29](#) s 50  
am [A2015-40](#) s 98  
s 45 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2008-41](#) s 20, s 21; [A2011-29](#) s 50

#### **Jury warning about inferences from complainant or similar act witness giving evidence by audiovisual link**

- s 46 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2008-41](#) s 22  
sub [A2011-29](#) s 51

#### **Failure to comply with div 4.3**

- s 47 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2008-41](#) s 23, s 24; [A2011-29](#) s 52  
om [A2015-40](#) s 83

**Evidence of complainant's sexual reputation and activities**

div 4.2.4 hdg (prev div 4.4 hdg) ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
renum as div 4.2.4 hdg [A2015-40](#) s 84

**Evidence of complainant's sexual reputation and activities**

div 4.4 hdg renum as div 4.2.4 hdg

**Meaning of *complainant* and *sexual offence proceeding*—div 4.2.4**

s 48 hdg sub [A2011-29](#) s 53  
am [A2015-40](#) s 99  
s 48 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2009-7](#) amdt 1.28

**When does div 4.2.4 apply?**

s 49 hdg am [A2015-40](#) s 98  
s 49 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

**Immunity of sexual reputation**

s 50 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

**General immunity of evidence of complainant's sexual activities**

s 51 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

**Application for leave under s 51**

s 52 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

**Decision to give leave under s 51**

s 53 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 54

**Protection of counselling communications**

div 4.2.5 hdg (prev div 4.5 hdg) ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
renum as div 4.2.5 hdg [A2015-40](#) s 84

**Protection of counselling communications**

div 4.5 hdg renum as div 4.2.5 hdg

**Definitions—div 4.2.5**

s 54 hdg am [A2015-40](#) s 100  
s 54 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
def ***civil proceeding*** ins [A2011-29](#) s 55  
def ***counselling*** ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
def ***counsellor*** ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
def ***criminal proceeding*** ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2006-40](#) amdt 2.108; [A2009-7](#) amdt 1.29  
def ***document recording a protected confidence*** ins  
[A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
def ***harm*** ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
def ***preliminary criminal proceeding*** ins [A2003-48](#) s 6 (as  
am [A2004-18](#) s 21)  
am [A2006-40](#) amdt 2.108

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def **proceeding** ins [A2011-29](#) s 55  
def **protected confidence** ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
def **protected confidence evidence** ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

#### **Meaning of protected confidence—div 4.2.5**

s 55 hdg sub [A2011-29](#) s 56  
am [A2015-40](#) s 100  
s 55 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 57

#### **When does div 4.2.5 apply?**

s 56 hdg am [A2015-40](#) s 100  
s 56 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
(2), (3) exp 1 January 2005 (s 56 (3))

#### **Immunity for protected confidences in preliminary criminal proceedings**

s 57 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

#### **General immunity for protected confidences**

s 58 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 58

#### **Application for leave to disclose protected confidence**

s 59 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

#### **Threshold test—legitimate forensic purpose**

s 60 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

#### **Preliminary examination of protected confidence evidence**

s 61 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 59, s 60

#### **Giving of leave to disclose protected confidence**

s 62 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 61-63

#### **Ancillary orders for protection of person who made protected confidence**

s 63 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

#### **No waiver of protected confidence immunity**

s 64 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

#### **No protected confidence immunity for medical information**

s 65 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 64

#### **No protected confidence immunity for communications for criminal investigations and proceedings**

s 66 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)

- No protected confidence immunity in case of misconduct**  
s 67 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)
- Sexual offence proceedings—directions and warnings to juries**  
div 4.2.6 hdg (prev div 4.6 hdg) ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
note sub [A2011-29](#) s 65  
renum as div 4.2.6 hdg [A2015-40](#) s 84
- Sexual offence proceedings—directions and warnings to juries**  
div 4.6 hdg renum as div 4.2.6 hdg
- Meaning of *complainant* and *sexual offence proceeding*—div 4.2.6**  
s 68 hdg sub [A2011-29](#) s 66  
am [A2015-40](#) s 101  
s 68 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)
- Comments on complainants' evidence**  
s 69 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)
- Comments on children's evidence**  
s 70 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)
- Comments about lack of, or delays in making, complaint**  
s 71 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)  
am [A2011-29](#) s 67
- Directions about implied consent**  
s 72 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)
- Directions about mistaken belief about consent**  
s 73 ins [A2003-48](#) s 6 (as am [A2004-18](#) s 21)
- Family objections**  
div 4.7 hdg ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68
- Evidence in family violence proceedings**  
pt 4.3 hdg ins [A2015-40](#) s 85  
sub [A2016-42](#) amdt 3.73
- Definitions—pt 4.3**  
div 4.3.1 hdg ins [A2015-40](#) s 85

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### **Meaning of *family violence offence*—pt 4.3**

s 74 ins [A2004-2](#) amdt 2.11  
am [A2005-13](#) amdt 1.35; [A2008-20](#) amdt 4.39; [A2009-40](#)  
amdt 1.10  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85  
sub [A2016-42](#) amdt 3.74

*Note for s 74* s 74 also ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22) and  
renum as s 82 and then s 100

### **Meaning of *family violence offence proceeding*—pt 4.3**

s 75 hdg am [A2016-42](#) amdt 3.75  
s 75 ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

*Note for s 75* s 75 also ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22) and  
renum as s 83 and then s 101

### **Meaning of *complainant*—pt 4.3**

s 76 ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

### **Meaning of *recorded statement*—pt 4.3**

s 77 ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

### **Evidence may be given in closed court**

div 4.3.2 hdg ins [A2015-40](#) s 85

### **Evidence may be given in closed court**

s 78 ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

### **Recorded statement of police interview admissible as evidence—family violence offence proceedings**

div 4.3.3 hdg ins [A2015-40](#) s 85  
sub [A2017-10](#) s 4

**Recorded statement—requirements**

s 79 ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85

**Recorded statement—may be admitted as evidence**

s 80 ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

**Recorded statement—hearsay rule and opinion rule**

s 81 ins [A2004-2](#) amdt 2.11  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85

**Proceedings against young people**

div 4.8 hdg ins [A2008-19](#) amdt 1.85  
om [A2011-29](#) s 68

**Validity of proceeding not affected**

s 81A ins [A2008-19](#) amdt 1.85  
om [A2011-29](#) s 68  
ins [A2015-40](#) s 85

**Evidence in any proceedings**

pt 4A hdg ins [A2008-41](#) s 25  
om [A2011-29](#) s 69

**Recorded statement—represented accused person to be given copy**

s 81B ins [A2008-41](#) s 25  
om [A2011-29](#) s 69  
ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

**Recorded statement—unrepresented accused person to be given access**

s 81C ins [A2008-41](#) s 25  
om [A2011-29](#) s 69  
ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

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### **Recorded statement—admissibility**

s 81D ins [A2008-41](#) s 25  
am [A2009-24](#) amdt 1.32  
om [A2011-29](#) s 69  
ins [A2015-40](#) s 85

### **Recorded statement—accused person to be given audio copy**

s 81E ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

### **Recorded statement—jury trial**

s 81F ins [A2015-40](#) s 85  
am [A2016-42](#) amdt 3.75

### **Recorded statement—offence to publish**

s 81G ins [A2015-40](#) s 85  
am [A2017-10](#) s 5

### **Recorded statement of police interview admissible as evidence—application for protection order**

div 4.3.4 hdg ins [A2017-10](#) s 6

### **Recorded statement—may be admitted as evidence in application for family violence protection order**

s 81H ins [A2017-10](#) s 6

### **Certain evidence under court rules not admissible**

ch 5 hdg (prev pt 5 hdg) ins [A2006-40](#) amdt 2.109  
sub [A2011-29](#) s 70; [A2011-48](#) amdt 1.28  
renum as ch 5 hdg [A2015-40](#) s 86

### **Certain evidence under court rules not admissible**

pt 5 hdg renum as pt 7 hdg and then as ch 5 hdg

### **Evidence not admissible in court—neutral evaluation**

s 82 **orig s 82**  
(prev s 74) renum as s 100  
**pres s 82**  
ins [A2006-40](#) amdt 2.109  
am [A2010-40](#) amdt 2.14

### **Evidence not admissible in court—expert report**

s 83 **orig s 83**  
(prev s 75) renum as s 101  
**pres s 83**  
ins [A2006-40](#) amdt 2.109

### **Evidence not admissible in court—meeting of experts**

s 84 ins [A2006-40](#) amdt 2.109

### **Evidence not admissible in court—evidence taken in examination**

s 85 ins [A2006-40](#) amdt 2.109



**Evidence in criminal proceedings—dangerously ill people**

ch 6 hdg (prev pt 6 hdg) reloc from [Court Procedures Act 2004](#) pt 6  
[A2006-40](#) amdt 2.90  
 sub [A2011-29](#) s 71  
 renum as ch 6 hdg [A2015-40](#) s 86

**Evidence in criminal proceedings—dangerously ill people**

pt 6 hdg renum as ch 6 hdg

**Meaning of *dangerously ill person*—ch 6**

s 90 hdg am [A2015-40](#) s 106  
 s 90 reloc from [Court Procedures Act 2004](#) s 53 [A2006-40](#)  
 amdt 2.90  
 sub [A2011-29](#) s 71  
 am [A2015-40](#) s 104

**Application—ch 6**

s 91 hdg bracketed note exp 1 March 2013 (s 3 (3))  
 am [A2015-40](#) s 106  
 s 91 reloc from [Court Procedures Act 2004](#) s 54 [A2006-40](#)  
 amdt 2.90  
 sub [A2011-29](#) s 71  
 am [A2015-40](#) s 104

**Recording of evidence of dangerously ill person**

s 92 reloc from [Court Procedures Act 2004](#) s 55 [A2006-40](#)  
 amdt 2.90  
 sub [A2011-29](#) s 71

**Notice of evidence of dangerously ill person**

s 93 hdg bracketed note exp 1 March 2013 (s 3 (3))  
 s 93 ins [A2011-29](#) s 71

**Admissibility of recording of evidence of dangerously ill person**

s 94 hdg bracketed note exp 1 March 2013 (s 3 (3))  
 s 94 ins [A2011-29](#) s 71

**Evidence in any proceedings—other matters**

ch 7 hdg (prev pt 5 hdg) ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
 renum as pt 7 hdg [A2006-40](#) amdt 2.110  
 sub [A2011-29](#) s 71  
 renum as ch 7 hdg [A2015-40](#) s 86

**Evidence in any proceedings—other matters**

pt 7 hdg renum as ch 7 hdg

**Evidence of witnesses with disabilities or vulnerabilities**

pt 7.1 hdg (prev div 7.1 hdg) ins [A2011-29](#) s 71  
 renum as pt 7.1 hdg [A2015-40](#) s 87

**Evidence of witnesses with disabilities or vulnerabilities**

div 7.1 hdg renum as pt 7.1 hdg

## Endnotes

4 Amendment history

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### **Meaning of *witness with a disability*—pt 7.1**

s 100 hdg am [A2015-40](#) s 102  
s 100 (prev s 74) ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
renum as s 82 [A2004-2](#) amdt 2.12  
renum as s 100 [A2006-40](#) amdt 2.111  
sub [A2011-29](#) s 71  
am [A2015-40](#) s 103

### **Child or witness with disability may have support person in court**

s 101 (prev s 75) ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
renum as s 83 [A2004-2](#) amdt 2.12  
renum as s 101 [A2006-40](#) amdt 2.111  
sub [A2011-29](#) s 71

### **Witness with vulnerability may give evidence in closed court**

s 102 ins [A2011-29](#) s 71  
am [A2015-40](#) s 96, s 97

### **Making of s 101 and s 102 orders—court not bound by rules of evidence**

s 103 ins [A2011-29](#) s 71

### **Evidence in any proceedings—miscellaneous**

pt 7.2 hdg (prev div 7.2 hdg) ins [A2011-29](#) s 71  
renum as pt 7.2 hdg [A2015-40](#) s 87

### **Evidence in any proceedings—miscellaneous**

div 7.2 hdg renum as pt 7.2 hdg

### **Proof of document under law of Commonwealth country**

s 104 hdg bracketed note exp 1 March 2013 (s 3 (3))  
s 104 ins [A2011-29](#) s 71

### **Evidence in any proceedings—extended application of Evidence Act**

pt 7.3 hdg (prev div 7.3 hdg) ins [A2011-48](#) amdt 1.29  
renum as pt 7.3 hdg [A2015-40](#) s 87

### **Evidence in any proceedings—extended application of Evidence Act**

div 7.3 hdg renum as pt 7.3 hdg

### **Extended application of Evidence Act—interpreters**

s 105 ins [A2011-48](#) amdt 1.29

### **Publication of evidence**

ch 8 hdg (prev pt 8 hdg) ins [A2011-29](#) s 71  
renum as ch 8 hdg [A2015-40](#) s 88

### **Publication of evidence**

pt 8 hdg renum as ch 8 hdg

**Application—ch 8**

s 110 hdg am [A2015-40](#) s 106  
s 110 ins [A2011-29](#) s 71  
am [A2015-40](#) s 104

**Prohibition of publication of evidence etc**

s 111 ins [A2011-29](#) s 71

**Noncompliance with s 111 order**

s 112 ins [A2011-29](#) s 71

**Miscellaneous**

ch 9 hdg (prev pt 9 hdg) ins [A2011-29](#) s 71  
renum as ch 9 hdg [A2015-40](#) s 88

**Miscellaneous**

pt 9 hdg renum as ch 9 hdg

**Approved forms**

s 120 ins [A2011-29](#) s 71

**Regulation-making power**

s 121 ins [A2011-29](#) s 71  
am [A2015-40](#) s 104, s 106

**Transitional—Sexual and Violent Offences Legislation Amendment Act 2008**

pt 10 hdg ins [A2008-41](#) s 26  
exp 30 May 2010 (s 151)

**Application of amendments**

s 150 ins [A2008-41](#) s 26  
am [A2009-24](#) amdt 1.33  
exp 30 May 2010 (s 151)

**Expiry—pt 10**

s 151 ins [A2008-41](#) s 26  
exp 30 May 2010 (s 151)

**Transitional—Evidence (Miscellaneous Provisions) Amendment Act 2011**

pt 11 hdg ins [A2011-29](#) s 71  
exp 1 March 2014 (s 163)

**Existing proceedings**

s 160 ins [A2011-29](#) s 71  
exp 1 March 2014 (s 163)

**Protected confidences—div 4.5 proceedings**

s 161 ins [A2011-29](#) s 71  
exp 1 March 2014 (s 163)

**Transitional regulations**

s 162 ins [A2011-29](#) s 71  
exp 1 March 2014 (s 163)

## Endnotes

4 Amendment history

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### Expiry—pt 11 s 163

ins [A2011-29](#) s 71  
exp 1 March 2014 (s 163)

### Dictionary dict

ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2005-53](#) amdt 1.57; [A2006-23](#) amdt 1.197; [A2011-29](#)  
s 72, s 73; [A2013-19](#) amdt 3.152; [A2013-39](#) amdt 2.31  
([A2013-39](#) never effective (see *Commonwealth v Australian  
Capital Territory* [2013] HCA 55)); [A2015-40](#) s 89  
def **ACT court** ins [A2011-29](#) s 74  
am [A2011-48](#) amdt 1.30  
def **audio link** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104  
def **audiovisual link** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
def **audiovisual recording** ins [A2008-41](#) s 27  
am [A2015-40](#) s 96  
def **civil proceeding** ins [A2011-29](#) s 74  
am [A2015-40](#) s 100  
def **complainant** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
sub [A2008-41](#) s 28  
am [A2011-29](#) s 75  
sub [A2015-40](#) s 90  
am [A2016-42](#) amdt 3.75  
def **counsellor** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 100  
def **court** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104  
def **criminal proceeding** ins [A2003-48](#) s 7 (as am [A2004-18](#)  
s 22)  
sub [A2011-29](#) s 76  
am [A2015-40](#) s 100  
def **dangerously ill person** ins [A2011-29](#) s 77  
am [A2015-40](#) s 104  
def **document recording a protected confidence** ins  
[A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 100  
def **domestic violence offence** ins [A2015-40](#) s 91  
om [A2016-42](#) amdt 3.76  
def **domestic violence offence proceeding** ins [A2015-40](#)  
s 91  
om [A2016-42](#) amdt 3.76  
def **evidence receiving entity** ins [A2011-29](#) s 77  
am [A2011-48](#) amdt 1.31  
def **external place** ins [A2011-29](#) s 77  
def **family objection** ins [A2004-2](#) amdt 2.13  
om [A2011-29](#) s 78

- def **family violence offence** ins [A2016-42](#) amdt 3.77
- def **family violence offence proceeding** ins [A2016-42](#) amdt 3.77
- def **give evidence in a proceeding by audiovisual link** ins [A2011-29](#) s 79  
am [A2015-40](#) s 98, s 104
- def **harm** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 100
- def **intellectually impaired** ins [A2015-40](#) s 91  
am [A2016-42](#) amdt 3.78
- def **less serious violent offence** ins [A2008-41](#) s 29  
am [A2011-29](#) s 80; [A2015-40](#) s 105
- def **Magistrates Court** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104
- def **participating State** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104
- def **preliminary criminal proceeding** ins [A2003-48](#) s 7  
(as am [A2004-18](#) s 22)  
am [A2015-40](#) s 100
- def **prescribed witness** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
om [A2011-29](#) s 81
- def **proceeding** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
sub [A2011-29](#) s 82  
am [A2015-40](#) s 98, s 100, s 104
- def **protected confidence** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 100
- def **protected confidence evidence** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 100
- def **recognised court** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104
- def **recorded statement** ins [A2015-40](#) s 91  
am [A2016-42](#) amdt 3.78
- def **relative** ins [A2009-7](#) amdt 1.30  
sub [A2015-40](#) s 92  
am [A2016-42](#) amdt 3.78
- def **relevant person** ins [A2008-41](#) s 29  
sub [A2009-7](#) amdt 1.30; [A2015-40](#) s 92  
am [A2016-42](#) amdt 3.78
- def **serious violent offence** ins [A2008-41](#) s 29  
am [A2011-29](#) s 83; [A2015-40](#) s 105

## Endnotes

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- def **sexual offence** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
sub [A2011-29](#) s 84; [A2015-40](#) s 92
- def **sexual offence proceeding** ins [A2003-48](#) s 7 (as am  
[A2004-18](#) s 22)  
sub [A2008-41](#) s 28  
am [A2011-29](#) s 85; [A2015-40](#) ss 95-99, s 101
- def **sexual or violent offence** ins [A2015-40](#) s 93
- def **sexual or violent offence proceeding** ins [A2015-40](#) s 93
- def **similar act witness** ins [A2008-41](#) s 29  
am [A2011-29](#) s 86; [A2015-40](#) s 105
- def **State** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104
- def **territory court** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104
- def **tribunal** ins [A2003-48](#) s 7 (as am [A2004-18](#) s 22)  
am [A2015-40](#) s 104
- def **violent offence** ins [A2008-41](#) s 29  
sub [A2011-29](#) s 87; [A2015-40](#) s 94
- def **violent offence proceeding** ins [A2008-41](#) s 29  
am [A2011-29](#) s 88; [A2015-40](#) s 95, s 96, s 98
- def **witness** ins [A2008-41](#) s 29  
am [A2015-40](#) s 96, s 97
- def **witness with a disability** ins [A2008-41](#) s 29  
sub [A2011-29](#) s 89  
am [A2015-40](#) s 103, s 105

## 5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (\*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No and date	Effective	Last amendment made by	Republication for
R1 (RI) 20 Aug 2003	24 Dec 1992– 30 May 1994	<a href="#">A1992-80</a>	amendments by <a href="#">A1992-80</a> reissue of printed version
R1A 20 Aug 2003	31 May 1994– 14 Dec 1994	<a href="#">A1994-24</a>	amendments by <a href="#">A1994-24</a>
R2 (RI) 30 Aug 2003	15 Dec 1994– 20 June 1996	<a href="#">A1994-96</a>	amendments by <a href="#">A1994-96</a> reissue of printed version
R3 (RI) 30 Aug 2003	30 Oct 1998– 23 Dec 1999	<a href="#">A1998-45</a>	amendments by <a href="#">A1996-25</a> and <a href="#">A1998-45</a>
R4 (RI) 30 Aug 2003	1 June 2000– 11 Sept 2001	<a href="#">A2000-17</a>	amendments by <a href="#">A1999-64</a> , <a href="#">A1999-91</a> and <a href="#">A2000-17</a> reissue of printed version
R5 13 Dec 2001	12 Sept 2001– 23 Sept 2001	<a href="#">A2001-90</a>	amendments by <a href="#">A2001-44</a>
R6 27 Mar 2002	27 Mar 2002– 16 Sept 2002	<a href="#">A2001-90</a>	amendments by <a href="#">A2001-82</a> and <a href="#">A2001-90</a>
R7 17 Sept 2002	17 Sept 2002– 16 Jan 2003	<a href="#">A2002-30</a>	amendments by <a href="#">A2002-30</a>

## Endnotes

5 Earlier republications

<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R8 17 Jan 2003	17 Jan 2003– 21 Mar 2004	<a href="#">A2002-49</a>	amendments by <a href="#">A2002-49</a>
R9 22 Mar 2004	22 Mar 2004– 29 Apr 2004	<a href="#">A2004-2</a>	amendments by <a href="#">A2004-2</a>
R10* 30 Apr 2004	30 Apr 2004– 1 Jan 2005	<a href="#">A2004-18</a>	amendments by <a href="#">A2003-48</a> , <a href="#">A2004-2</a> and <a href="#">A2004-18</a>
R11 7 Jan 2005	2 Jan 2005– 24 Mar 2005	<a href="#">A2004-18</a>	commenced expiry
R12 25 Mar 2005	25 Mar 2005– 22 Nov 2005	<a href="#">A2005-13</a>	amendments by <a href="#">A2005-13</a>
R13 23 Nov 2005	23 Nov 2005– 1 June 2006	<a href="#">A2005-53</a>	amendments by <a href="#">A2005-53</a>
R14 2 June 2006	2 June 2006– 28 Sept 2006	<a href="#">A2006-23</a>	amendments by <a href="#">A2006-23</a>
R15 29 Sept 2006	29 Sept 2006– 17 Dec 2007	<a href="#">A2006-40</a>	amendments by <a href="#">A2006-40</a>
R16 18 Dec 2007	18 Dec 2007– 8 Sept 2008	<a href="#">A2007-15</a>	amendments by <a href="#">A2007-15</a>
R17 9 Sept 2008	9 Sept 2008– 26 Oct 2008	<a href="#">A2008-44</a>	amendments by <a href="#">A2008-20</a>
R18 27 Oct 2008	27 Oct 2008– 26 Feb 2009	<a href="#">A2008-46</a>	amendments by <a href="#">A2008-20</a>
R19 27 Feb 2009	27 Feb 2009– 29 Mar 2009	<a href="#">A2008-46</a>	amendments by <a href="#">A2008-19</a> and <a href="#">A2008-20</a>
R20 30 Mar 2009	30 Mar 2009– 29 May 2009	<a href="#">A2009-7</a>	amendments by <a href="#">A2008-46</a>
R21* 30 May 2009	30 May 2009– 3 Sept 2009	<a href="#">A2009-7</a>	amendments by <a href="#">A2008-41</a> , <a href="#">A2008-44</a> , <a href="#">A2008-46</a> and <a href="#">A2009-7</a>
R22 4 Sept 2009	4 Sept 2009– 31 Dec 2009	<a href="#">A2009-24</a>	amendments by <a href="#">A2009-24</a>



<b>Republication No and date</b>	<b>Effective</b>	<b>Last amendment made by</b>	<b>Republication for</b>
R23 1 Jan 2010	1 Jan 2010– 30 May 2010	<a href="#">A2009-40</a>	amendments by <a href="#">A2009-40</a>
R24 31 May 2010	31 May 2010– 1 Nov 2010	<a href="#">A2009-40</a>	commenced expiry
R25 2 Nov 2010	2 Nov 2010– 29 Feb 2012	<a href="#">A2010-40</a>	amendments by <a href="#">A2010-40</a>
R26 1 Mar 2012	1 Mar 2012– 10 Sept 2012	<a href="#">A2011-48</a>	amendments by <a href="#">A2011-29</a> and <a href="#">A2011-48</a>
R27 11 Sept 2013	11 Sept 2013– 1 March 2013	<a href="#">A2012-40</a>	amendments by <a href="#">A2012-40</a>
R28 2 Mar 2013	2 Mar 2013– 23 Apr 2013	<a href="#">A2012-40</a>	republication for expiry of provisions (s 3 (2), (3), ss 91, 93, 94, 104 bracketed heading notes)
R29 24 Apr 2013	24 Apr 2013– 13 June 2013	<a href="#">A2013-12</a>	amendments by <a href="#">A2013-12</a>
R30 14 June 2013	14 June 2013– 6 Nov 2013	<a href="#">A2013-19</a>	amendments by <a href="#">A2013-19</a>
R31 7 Nov 2013	never effective	<a href="#">A2013-39</a> (never effective)	amendments by <a href="#">A2013-39</a>
R31 (RI) 24 Feb 2014	7 Nov 2013– 7 Nov 2013	<a href="#">A2013-39</a> (never effective)	reissue because of High Court decision in relation to <a href="#">A2013-39</a>
R32 8 Nov 2013	never effective	<a href="#">A2013-43</a>	amendments by <a href="#">A2013-43</a>
R32 (RI) 24 Feb 2014	8 Nov 2013– 1 Mar 2014	<a href="#">A2013-43</a>	reissue because of High Court decision in relation to <a href="#">A2013-39</a>
R33 2 Mar 2014	2 Mar 2014– 3 May 2016	<a href="#">A2013-43</a>	expiry of transitional provisions (pt 11)

## Endnotes

### 6 Expired transitional or validating provisions

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Republication No and date	Effective	Last amendment made by	Republication for
R34 4 May 2016	4 May 2016– 29 Apr 2017	<a href="#">A2015-40</a>	amendments by <a href="#">A2015-40</a>
R35 30 Apr 2017	30 Apr 2017– 30 Apr 2017	<a href="#">A2017-10</a>	amendments by <a href="#">A2017-10</a>

### 6 Expired transitional or validating provisions

This Act may be affected by transitional or validating provisions that have expired. The expiry does not affect any continuing operation of the provisions (see *Legislation Act 2001*, s 88 (1)).

Expired provisions are removed from the republished law when the expiry takes effect and are listed in the amendment history using the abbreviation ‘exp’ followed by the date of the expiry.

To find the expired provisions see the version of this Act before the expiry took effect. The ACT legislation register has point-in-time versions of this Act.

### 7 Renumbered provisions

This Act was renumbered under the *Legislation (Republication) Act 1996* in R4 (see Act 2000 No 17 sch 1). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R6.

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