

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

**EVIDENCE (CLOSED-CIRCUIT TELEVISION)
(AMENDMENT) BILL (No. 2) 1994**

EXPLANATORY MEMORANDUM

**Circulated by authority of
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AUSTRALIAN CAPITAL TERRITORY

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OUTLINE

This Bill implements the recommendation of the ACT Community Law Reform Committee to extend the use of closed-circuit television to adult victims of sexual or indecent assault. This extension is on a trial basis for eighteen months. Closed-circuit television facilities will be available to adult victims of sexual or indecent assault in criminal matters, in applications for criminal injuries compensation and in applications for domestic violence protection orders.

**Short title and
Commencement
Clauses 1 and 2**

Clauses 1 and 2 are formal requirements. They refer to the short title of the Bill, and commencement of the Bill, which is to be on a day fixed by the Minister by notice in the Gazette.

**Principal Act
Clause 3**

This clause refers to the Evidence (Closed-Circuit Television) Act 1991 which will be amended by this Bill.

**Interpretation
Clause 4**

Clause 4 will amend the interpretation section of the Principal Act. It inserts and defines the terms 'complainant', 'prescribed witness' and 'sexual offence'.

'complainant' is the term used instead of the imprecise and ambiguous 'adult victim'. The following sub-paragraphs define the term 'complainant' with reference to offences under the Crimes Act 1900.

Under **sub-paragraph (a)** the complainant is the person upon whom the alleged offender inflicts, attempts to inflict or threatens to inflict grievous or actual bodily harm with the intent that the offender or another person engage in sexual intercourse or commit an act of indecency with or in the presence of the complainant. The infliction of harm and the intent to engage in sexual intercourse or commit an act of indecency must both be directed at the one person for that person to come within the definition of the complainant.

Sub-paragraph (b) has a similar effect but relates to common assault.

Sub-paragraph (c) defines the complainant as the person with whom sexual intercourse is alleged to have been engaged in or attempted or upon whom or in whose presence an act of indecency is alleged to have been committed or attempted. As all these definitions are related to the alleged commission of a sexual offence, the definition of sexual intercourse is the same as defined in the Crimes Act 1900.

Sub-paragraph (d) defines the complainant as the person with whom the offender is alleged to have maintained a sexual

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relationship. Sexual relationship is as defined in the Crimes Act 1900.

Sub-paragraph (e) defines the complainant as the person upon whom or in whose presence the offender is alleged to have committed or attempted to commit an act of indecency.

Sub-paragraph (f) defines the complainant as the person whom the offender is alleged to have abducted or detained with intent that the offender or another person engage in sexual intercourse with that person.

'prescribed witness' is defined in a new subsection 3A(1) which will be inserted by clause 5.

'sexual offence' is defined by listing the relevant offences under the Crimes Act 1900. These are sexual assault in the first, second and third degree, sexual intercourse without consent, sexual intercourse with a young person, maintaining a sexual relationship with a young person, act of indecency in the first, second and third degree, act of indecency without consent, act of indecency with young persons, incest and similar offences and abduction. Attempting to commit any of these offences is also within the definition of sexual offence. Offences with respect to children and young people have been included in the definition as adult complainants may have to give evidence about sexual offences that occurred whilst they were children, where the charge is laid under one of the sections of the Crimes Act 1900 dealing with sexual offences against children.

Prescribed witnesses
Clause 5

This clause will insert a new section 3A in the Principal Act. **Subsection (1)** of this section prescribes witnesses for the purposes of the Act. The first prescribed witness is a child. The second prescribed witness is a complainant giving evidence with respect to an alleged sexual offence. The proceedings in which a complainant is a prescribed witness are criminal proceedings in the Magistrates Court or the Supreme Court, proceedings under the Criminal Injuries Compensation Act 1983 and proceedings under the Domestic Violence Act 1986, with respect to a sexual offence as defined. **Subsection (2)** is a sunset clause. It will provide that a complainant ceases to be a prescribed witness at the expiration of 18 months from the commencement of the section. **Subsection (3)** is a savings provision. It will ensure that the Act continues to apply to complainants giving evidence in proceedings that had been commenced but not determined before the sunset clause becomes operative.

Location of prescribed
witness giving evidence
Clause 6

This clause will amend section 4A of the Principal Act wherever that section refers to "child". Instead of "child" the term "prescribed witness" or "witness" will be inserted.

Consequential orders

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Clause 7

This clause will amend section 5 of the Principal Act wherever that section refers to "child" or "child concerned". Instead of "child" the term "prescribed witness" or "witness" will be inserted.

**Jury warning about
adverse inference**

Clause 8

This clause will amend section 6 of the Principal Act wherever that section refers to "child". Instead of "child" the term "prescribed witness" or "witness" will be inserted.

**Court's discretions
re orders**

Clause 9

This clause will amend section 8A of the Principal Act by inserting a new subsection (1). The effect of the amendment will be to allow an application to the court for orders under this Act to be made by or on behalf of a prescribed witness.

**Failure to comply
with Act**

Clause 10

This clause will amend section 10 of the Principal Act by omitting "child" and inserting "prescribed witness".

**Attainment of majority
during proceedings**

Clause 11

This clause will repeal section 11 of the Principal Act and substitute a new section 11. This amendment does not change the effect of section 11, which is to ensure that the Act continues to apply to a child who turns 18 before the determination of proceedings. The new section 11 will refer to a "prescribed witness in proceedings by reason of having been a child" instead of a "child".