

**1994**

**LEGISLATIVE ASSEMBLY  
FOR THE  
AUSTRALIAN CAPITAL TERRITORY**

**EVIDENCE (CLOSED-CIRCUIT TELEVISION)  
(AMENDMENT) BILL 1994**

**EXPLANATORY MEMORANDUM**

**Circulated by authority of  
Mr Terry Connolly MLA  
Attorney General**

## OUTLINE

The *Evidence (Closed-Circuit Television) Act 1991* ('the Principal Act') enables a court to order that a child who gives evidence in specified kinds of proceedings shall give that evidence by closed-circuit television. A court may not make such an order unless satisfied it is likely the child would suffer mental or emotional harm if required to give evidence in the courtroom, or that the facts would be better ascertained if the child's evidence is given by closed-circuit television. The Act applies to criminal proceedings in both the Supreme Court and the Magistrates Court, and also to proceedings regarding restraining orders under Part X of the *Magistrates Court Act 1930*, child care proceedings under Part V of the *Children's Services Act 1986*, proceedings under the *Domestic Violence Act 1986* and Coroner's Court proceedings.

The Evidence (Closed-Circuit Television) (Amendment) Bill 1994 ('the Bill') amends the Principal Act, most significantly by removing the need for a court to make an order that a child give evidence by closed-circuit television. The Bill will make it the general rule that a child (other than a child who is accused of a criminal offence) who gives evidence in court shall do so using closed-circuit television. A court may order that a child give evidence in the ordinary way rather than by closed-circuit television if the child prefers to give evidence in the courtroom, if the proceedings would be unreasonably delayed if closed-circuit television were to be used, or if there is a substantial risk of the court being unable to ensure that the proceedings are conducted fairly if the child gives evidence by closed-circuit television.

The amendments relate to recommendations made by the Australian Law Reform Commission in its Report No. 63 entitled 'Children's Evidence: Closed Circuit TV'. That report followed an earlier Research Paper entitled 'The use of closed-circuit television for child witnesses in the ACT' which was commissioned by the Australian Law Reform Commission.

**Financial Considerations:** None.

## DETAILS OF INDIVIDUAL CLAUSES

### Formal clauses

Clauses 1, 2 and 3 are formal provisions relating to the short title of the Bill, its commencement on a date notified in the Gazette and defining the term 'Principal Act' to mean the *Evidence (Closed-Circuit Television) Act 1991*.

### Interpretation

Clause 4 amends section 2 of the Act to omit the definition of the term 'order'.

### Application

Subclauses 5(a) and 5(b) insert new subparagraph 4(1)(a)(ia) to make it clear that the legislation applies to sentencing proceedings in the Supreme Court.

**Subclause 5(c)** amends paragraph 4(1)(b) to make it clear that the legislation applies to sentencing proceedings in the Magistrates Court.

**Subclauses 5(d) and 5(e)** insert new paragraph 4(1)(ea) to include proceedings under the *Criminal Injuries Compensation Act 1983* in the list of kinds of proceedings to which the Act applies.

**Subclause 5(f)** omits subsection 4(2) which no longer has any effect.

#### **Location of child giving evidence**

**Clause 6** inserts new section 4A. Where a child is to give evidence and the courtroom is equipped with a closed-circuit television system linking it with a place other than the courtroom, then the evidence of the child shall be given from the other place by means of that system unless the court orders otherwise (subsection 4A(1)). A court shall not order that a child give evidence other than by closed-circuit television unless it is satisfied that the child prefers to give evidence in the courtroom, that the proceedings would be unreasonably delayed if an order is not made or that there is a substantial risk of the court being unable to ensure that the proceedings are conducted fairly if an order is not made (subsection 4A(2)). Notwithstanding the above, a child defendant is not entitled to give evidence by closed-circuit television (subsection (4A(3))). New subsection 4A(4) continues the effect of subsection 5(5) of the Principal Act which is omitted by clause 7(d).

#### **Consequential orders**

**Subclause 7(a)** omits subsections 5(1) and 5(2) and inserts a new subsection 5(1) which enables a court to make consequential orders in relation to the giving of evidence by a child by closed-circuit television.

**Subclause 7(b)** clarifies the meaning of the words 'an order' in subsection 5(3).

**Subclause 7(c)** inserts new subsection 5(3A) which provides that a court may make consequential orders in relation to the giving of evidence by a child by closed-circuit television if the court is satisfied it is desirable to do so:

- to ensure that the proceedings are conducted fairly;
- to allow the child to identify a person or thing;
- to allow the child to take part in a view or to watch a demonstration or an experiment; or
- to allow part of the proceedings to be heard other than in the courtroom.

**Subclause 7(d)** omits subsection 5(5) (the substance of which is continued in new subsection 4A(4)) and inserts a new subsection 5(5) which provides that a court's power to make consequential orders is not limited by the specific provisions of section 5.

### **Jury warning about adverse inference**

Clause 8 omits sections 6 and 7 and inserts a new section 6 providing that, where a child is to give evidence by closed-circuit television in a trial by jury, the judge shall warn the jury that an inference adverse to the accused should not be drawn from the fact that the child is giving evidence by closed-circuit television.

### **Representation of child**

Subclauses 9(a) and 9(b) amend section 8 as a consequence of new subsection 4A(1) whereby there is no need for a court order when a child is to give evidence by closed-circuit television.

Subclause 9(c) omits words from section 8, the effect of which are continued in new subsection 8A(1).

### **Court's discretion re orders**

Clause 10 inserts new subsection 8A(1) which enables more straightforward drafting of sections 8 and 9, and new subsection 8A(2) which provides that a court may inform itself as it sees fit for the purposes of making an order.

### **Variation or revocation of order**

Clause 11 omits from section 9 words which are moved to subsection 8A(1).

### **Failure to comply with Act**

Clause 12 repeals section 10. It substitutes new subsection 10(1) which provides that a child's evidence is not inadmissible by reason only that it was not given in accordance with the Act, and new subsection 10(2) which provides that the validity of proceedings shall not be affected by a failure to comply with the Act.

### **Attainment of majority during proceedings**

Clause 12 also inserts new section 11 which continues the effect of existing section 10 (which is repealed by this clause); that is, the Act does not cease to apply to a person by reason only that the person turns 18 during the course of proceedings.

### **Application**

Subclause 13(1) provides that the Principal Act as amended applies to proceedings the hearing of which commence on or after the commencement of the amending Act, and subclause 13(2) provides that the Principal Act continues to apply to proceedings the hearing of which had commenced but not been completed before the commencement of the amending Act.