

1991

LEGISLATIVE ASSEMBLY FOR
THE AUSTRALIAN CAPITAL TERRITORY

EVIDENCE (CLOSED-CIRCUIT TELEVISION) BILL 1991

EXPLANATORY MEMORANDUM

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the Attorney-General

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OUTLINE

The Bill provides for continuation of the existing system whereby a child may give evidence in the A.C.T. Magistrates Court via a closed-circuit television link when the Court considers that the child is likely to suffer trauma if he or she is required to give evidence in the ordinary way, or if it is likely that the facts will be better ascertained by use of the system. The Bill also provides legislative scope for future introduction of the system into the Supreme Court.

The existing system was introduced by Commonwealth Ordinance in 1989 as a trial project. By operation of a sunset clause, that Ordinance expired on 23 July 1991. The Australian Law Reform Commission is monitoring the project, and its evaluation report will be completed later in 1991.

Because the Ordinance was made after A.C.T. self-government it cannot be amended by the Legislative Assembly. The present Bill is substantively identical to the Commonwealth Ordinance, except that it extends the period of operation of the system to 31 December 1992, extends to the Supreme Court as well as the Magistrates Court, brings applications for keep the peace orders under Part X of the *Magistrates Court Act 1930* within the scope of the legislation, and clarifies the operation of the legislation in cases where a child who gives evidence by video link turns 18 during the course of the proceedings.

FINANCIAL IMPLICATIONS

The cost of extending the system to the Supreme Court is estimated at \$120,000.

CLAUSE NOTES

Clause 1 contains the short title.

Clause 2 contains definitions for the purposes of the Bill:

Clause 2(1) defines:

- . "child" as a person who has not attained the age of 18 years;
- . "Court" as the Supreme Court, the Magistrates Court and the Coroner's Court;
- . "order" as a court order that a child who is to give, or is giving, evidence shall give that evidence from a place other than the courtroom;
- . "proceedings" as proceedings in relation to which the Bill applies.

Clause 2(2) provides that, for the purposes of the Bill, a reference to the Magistrates Court includes that Court when it is known as the Childrens Court.

Clause 3 provides that, for the purpose of the Bill, it is immaterial whether evidence is given on oath or otherwise.

Clause 4 lists proceedings to which the Bill applies. They are:

- . proceedings in the Supreme Court for trial on indictment or by way of appeal from proceedings in the Magistrates Court;
- . proceedings in the Magistrates Court concerning an offence (this includes summary offences, indictable offences tried summarily and committal hearings);
- . proceedings under Part X of the *Magistrates Court Act 1930* (that is, applications for keep the peace orders);
- . proceedings under Part V of the *Children's Services Act 1986* (that is, covering children in need of care);
- . proceedings under the *Domestic Violence Act 1986*;
- . proceedings by way of an inquest or enquiry in the Coroner's Court.

The clause applies the Bill to proceedings instituted before or after the commencement of the Bill.

Clause 5 details the circumstances when an order for taking a child's evidence by closed-circuit television may be made, and what the order may specify.

Clause 5(1) provides that the Court may order that a child who is to give, or is giving, evidence shall do so from a place other than the courtroom in which the proceedings are being held. This order can be made at any stage in the proceeding. As a result, the child may give all or only some of the evidence in this way.

Clause 5(2) permits the Court to make an order of its own motion, or on an application by a party to the proceedings, by or on behalf of the child or by a parent or guardian of the child.

Clause 5(3) enables the Court to specify in an order the way the procedure and system is to operate in each case, in particular:

- the person or persons who may be present with the child in the place from which evidence is given;
- the persons in the courtroom who are able to be heard by, or seen and heard by, the child and the persons with the child;
- the persons in the courtroom whom the child is not able to see or hear, in order to ensure, as may be desirable in a prosecution for sexual assault involving a child, that the child does not see the accused;
- the persons in the courtroom who are to be able to see and hear the child and the person or persons with the child, for example as a protection against fears of "coaching";
- the stages in the proceedings during which the matters specified in the order are to have effect;
- the method of operation of the closed-circuit television system.

Clause 5(4) makes it clear that the Court has power to exclude a person or persons from the place where the child is giving evidence.

Clause 5(5) provides that where the Court orders that a child's evidence be given by closed-circuit television, the place from which the child gives evidence is to be treated as part of the courtroom. This ensures that the Court's powers, for example in relation to contempt, apply.

Clause 6 specifies the circumstances when an order for a child to give evidence by closed-circuit television shall be made.

Clause 6(1) provides that the place from which evidence is to be given must be equipped with closed-circuit television equipment, which must be capable of enabling the persons in the courtroom, and the child and the persons in the other place, to see and hear each other.

Clause 6(2) requires that the Court shall not order that a child's evidence be given by closed-circuit television unless it is satisfied it is likely that:

- the child would suffer mental or emotional harm if he or she was required to give evidence in the courtroom; or
- the facts would be better ascertained if the child's evidence is given by closed-circuit television.

Clause 6(3) requires the court not to order that evidence be given by closed-circuit television if that would be unfair to a party in the proceeding. The purpose of the provision is to ensure that all interests are considered, in particular those of an accused in a criminal proceeding.

Clause 7 lists matters that the Court may take into account in considering whether to make an order. They are:

- the age, personality, intelligence, education and maturity of the child;
- any disability to which the child is or appears to be subject; and
- the nature and importance of the matters on which the child is being called to give evidence.

Clause 8 provides that where the child is not separately represented, and it appears to the Court that the child should be so represented, it may of its own initiative or on application by any person including the child, order separate representation for the child.

Clause 9 provides for the Court to vary or revoke an order.

Clause 10 makes it clear that, once an order has been made, it is immaterial that the child attains his or her majority during the course of the proceedings.

Clause 11 is a sunset clause ending the operation of the legislation on 31 December 1992, but ensuring that the operation of an order made before that date is not affected.