



AUSTRALIAN CAPITAL TERRITORY

Evidence (Closed-Circuit Television) Act 1991

No. 34 of 1991

An Act to provide for evidence given by a child in certain proceedings to be observed and heard on a closed-circuit television system

[Notified in ACT Gazette S84: 21 August 1991]

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Short title

1. This Act may be cited as the *Evidence (Closed-Circuit Television) Act 1991*.

Interpretation

2. (1) In this Act, unless the contrary intention appears—

“child” means a person who has not attained the age of 18 years;

“court” means—

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

“order” means an order under subsection 5 (1);

“proceedings” means proceedings in relation to which this Act applies.

(2) In this Act, a reference to the Magistrates Court shall be read as including a reference to that Court when known as the Childrens Court.

Sworn or unsworn evidence

3. For the purposes of this Act, it is immaterial whether evidence is to be, or is being, given on oath or otherwise.

Application

4. (1) This Act applies in relation to—

(a) proceedings in the Supreme Court—

(i) for a trial on indictment in respect of the alleged commission of an offence against a law in force in the Territory; or

(ii) by way of an appeal from a conviction, order, sentence or other decision of the Magistrates Court in proceedings in relation to which this Act applies;

(b) proceedings in the Magistrates Court on an information in respect of the alleged commission of an offence against a law in force in the Territory;

(c) proceedings under Part X of the *Magistrates Court Act 1930*;

(d) proceedings under Part V of the *Children's Services Act 1986*;

(e) proceedings under the *Domestic Violence Act 1986*; or

(f) proceedings by way of an inquest or inquiry in the Coroner's Court.

(2) This Act applies in relation to proceedings instituted before or after the commencement of this Act.

Order for taking child's evidence

5. (1) A court may, at any stage in proceedings, order that a child who is to give, or is giving, evidence give all or part of that evidence from a place other than the courtroom.

(2) An order may be made of the court's own motion or on application by a party to the proceedings, by or on behalf of the child concerned or by a parent or guardian of the child.

(3) An order may specify—

(a) the persons who may be present at the other place with the child concerned;

(b) the persons in the courtroom who are to be able to be heard, or to be seen and heard, by the child and by the persons with the child;

- (c) the persons in the courtroom who are not to be able to be heard, or to be seen and heard, by the child and by the persons with the child;
- (d) the persons in the courtroom who are to be able to see and hear the child and the persons with the child;
- (e) the stages in the proceedings during which a specified part of the order is to have effect; and
- (f) the method of operation of the closed-circuit television system.

(4) Notwithstanding any other law of the Territory, the court may direct that a person be excluded from the other place while the child concerned is giving evidence.

(5) Where an order is made, the other place shall be taken for all purposes to be part of the courtroom while the child concerned is at the place for the purpose of giving evidence.

When order may be made

6. (1) An order shall not be made unless the courtroom and the other place are equipped with, and linked by, a closed-circuit television system that is capable of allowing—

- (a) persons in the courtroom to see and hear the persons at the other place; and
- (b) persons at the other place to hear, or to see and hear, persons in the courtroom.

(2) An order shall not be made unless the court is satisfied that it is likely that—

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

(3) An order shall not be made if the court considers that to do so would be unfair to a party to the proceedings.

Relevant considerations

7. The matters that a court may take into account in considering whether or not an order should be made include—

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

Representation of child

8. Where, on an application for an order—

- (a) the child concerned is not separately represented by another person; and
- (b) it appears to the court that the child should be so represented;

the court may, of its own motion or on application by or on behalf of the child or by any other person, order that the child be separately represented by another person, and the court may make such other order as it thinks necessary to secure that separate representation.

Variation or revocation of order

9. A court may, of its own motion or on application by a party to proceedings, by or on behalf of the person who is or was the child concerned or by a parent or guardian of that person, make an order for the variation or revocation of an order made by the court in the proceedings.

Attainment of majority during proceedings

10. An order does not cease to have effect by reason only that the person in respect of whom the order was made attains the age of 18 years before the proceedings in which the order was made are determined.

Expiration of Act

11. (1) This Act ceases to have effect at the end of 1992 and, by force of this section, is repealed on 1 January 1993.

(2) Notwithstanding subsection (1), this Act continues to apply, on and after 1 January 1993, in relation to an order made before that date in proceedings that had not been determined before that date.

[Presentation speech made in Assembly on 8 August 1991]