



Australian Capital Territory

Evidence (Miscellaneous Provisions) Act 1991 No 34

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About this republication

The republished law

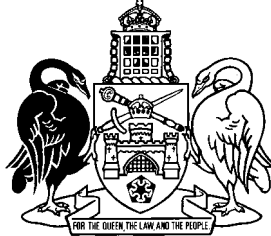
This is a republication of the *Evidence (Miscellaneous Provisions) Act 1991* effective from 31 May 1994 to 14 December 1994.

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Australian Capital Territory

EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1991

As at 31 May 1994

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Australian Capital Territory

EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 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

Short title

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

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;

“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;
 - (ia) for the passing of sentence in respect of the 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, or 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*;
- (ea) proceedings under the *Criminal Injuries Compensation Act 1983*;
or
- (f) proceedings by way of an inquest or inquiry in the Coroner's Court.

Location of child giving evidence

4A. (1) Where—

- (a) a child is to give evidence in proceedings; and
- (b) the courtroom and a place other than the courtroom are equipped with, and linked by, a closed-circuit television system that is capable of allowing—
 - (i) persons in the courtroom to see and hear the persons at the other place; and

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

the evidence of the child shall be given from that other place by means of that system unless the court otherwise orders.

(2) A court shall not make an order under subsection (1) unless satisfied that—

- (a) the child prefers to give evidence in the courtroom;
- (b) the proceedings will be unreasonably delayed if an order is not made; or
- (c) there is a substantial risk of the court being unable to ensure that the proceedings are conducted fairly if an order is not made.

(3) Notwithstanding subsection (1), the evidence of a child who is an accused person in proceedings is not to be given in the manner described in that subsection.

(4) While a child is at a place other than a courtroom for the purpose of giving evidence in accordance with subsection (1), that place shall be taken for all purposes to be part of the courtroom.

Consequential orders

5. (1) Where a child is to give evidence from a place other than a courtroom in accordance with subsection 4A (1), the court may make such orders as it considers appropriate in relation to the giving of evidence by the child.

- (3)** An order under subsection (1) 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.

(3A) Where a child is to give evidence from a place other than a courtroom in accordance with subsection 4A (1), the court may make such order as it considers appropriate if satisfied that it is desirable to do so—

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

(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) Nothing in subsection (3), (3A) or (4) limits the power of the court to make an order under subsection (1).

Jury warning about adverse inference

6. Where, in proceedings referred to in subparagraph 4 (1) (a) (i), a child is to give evidence from a place other than the courtroom in accordance with subsection 4A (1), the Judge shall warn the jury to the effect that an inference adverse to the accused should not be drawn from the fact that the child is giving evidence from that other place.

Representation of child

8. Where—

- (aa) a child is to give evidence from a place other than a courtroom in accordance with subsection 4A (1);
- (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 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.

Court's discretions re orders

8A. (1) An order under this Act may be made of the court's own motion or on application by a party to the proceedings, by or on behalf of the person who is or was the child concerned or by a parent or guardian of that person.

(2) The court may inform itself as it sees fit for the purposes of making an order under this Act.

Variation or revocation of order

9. A court may make an order for the variation or revocation of an order made by the court in the proceedings.

Failure to comply with Act

10. (1) The evidence of a child in proceedings is not inadmissible by reason only that the evidence was not given in accordance with this Act.

(2) The validity of proceedings shall not be taken to be affected by a failure to comply with this Act.

Attainment of majority during proceedings

11. This Act does not cease to apply in relation to a person by reason only that the person attains the age of 18 years before the relevant proceedings are determined.

NOTE

1. The *Evidence (Closed-Circuit Television) Act 1991* as shown in this reprint comprises Act No. 34, 1991 amended as indicated in the Tables below.

Table of Acts

| Act | Number and year | Date of notification in <i>Gazette</i> | Date of commencement | Application, saving or transitional provisions |
|--|-----------------|--|----------------------|--|
| <i>Evidence (Closed-Circuit Television) Act 1991</i> | 34, 1991 | 21 Aug 1991 | 21 Aug 1991 | |
| <i>Evidence (Closed-Circuit Television) (Amendment) Act 1992</i> | 80, 1992 | 24 Dec 1992 | 24 Dec 1992 | — |
| <i>Evidence (Closed-Circuit Television) (Amendment) Act 1994</i> | 24, 1994 | 31 May 1994 | 31 May 1994 | S. 13 |

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

| Provision | How affected |
|-------------|-------------------|
| S. 2 | am. No. 24, 1994 |
| S. 4 | am. No. 24, 1994 |
| S. 4A | ad. No. 24, 1994 |
| S. 5 | am. No. 24, 1994 |
| S. 6 | rs. No. 24, 1994 |
| S. 7 | rep. No. 24, 1994 |
| S. 8 | am. No. 24, 1994 |
| S. 8A | ad. No. 24, 1994 |
| S. 9 | am. No. 24, 1994 |
| S. 10 | rs. No. 24, 1994 |
| S. 11 | rep. No. 80, 1992 |
| | ad. No. 24, 1994 |