



Australian Capital Territory

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Australian Capital Territory

EVIDENCE (MISCELLANEOUS PROVISIONS) ACT 1991

This consolidation has been prepared by the ACT Parliamentary Counsel's Office

Reprinted as at 31 January 1995

TABLE OF PROVISIONS

Section	
1.	Short title
2.	Interpretation
3.	Sworn or unsworn evidence
3A.	Prescribed witnesses
4.	Application
4A.	Location of prescribed witness giving evidence
5.	Consequential orders
6.	Jury warning about adverse inference
8.	Representation of child
8A.	Court's discretions re orders
9.	Variation or revocation of order
10.	Failure to comply with Act
11.	Attainment of majority during proceedings



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;

“complainant”, in relation to the alleged commission of a sexual offence, means a person—

- (a) upon whom the offender is alleged to have inflicted, assisted in inflicting, attempted to inflict or threatened to inflict grievous or actual bodily harm with intent that the offender or another person engage in sexual intercourse with, or commit an act of indecency upon or in the presence of, the first-mentioned person;
- (b) whom the offender is alleged to have assaulted or attempted to assault, with intent that the offender or another person engage in sexual intercourse with, or

commit an act of indecency upon or in the presence of, the first-mentioned person;

- (c) with whom the offender is alleged to have engaged in or attempted to engage in sexual intercourse;
- (d) with whom the offender is alleged to have maintained a sexual relationship;
- (e) upon whom or in whose presence the offender is alleged to have committed or attempted to commit an act of indecency; or
- (f) whom the offender is alleged to have abducted or detained with intent that the offender or another person engage in sexual intercourse with the first-mentioned person;

as the case requires;

“court” means—

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

“prescribed witness” means a witness prescribed under subsection 3A (1);

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

“sexual offence” means an offence against section 92A, 92B, 92C, 92D, 92E, 92EA, 92F, 92G, 92H, 92J, 92K, 92L or 92M of the *Crimes Act 1900* or an offence of attempting to commit an offence against any of those sections.

(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.

Prescribed witnesses

3A. (1) For the purposes of this Act, the following witnesses are prescribed:

- (a) a child;
- (b) in relation to proceedings of a kind referred to in paragraph 4 (1) (a), (b), (e) or (ea) in respect of the alleged commission of a sexual offence—the complainant.

(2) Paragraph (1) (b) ceases to have effect at the expiration of 18 months after the day on which the *Evidence (Closed-Circuit Television) (Amendment) Act (No. 2) 1994* commences.

(3) Notwithstanding subsection (2), this Act continues to apply in relation to an order made under this Act in respect of a person referred to in paragraph (1) (b) in proceedings that had not been determined before the date on which that paragraph is repealed as if that person continued to be a prescribed witness.

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 prescribed witness giving evidence

4A. (1) Where—

- (a) a prescribed witness 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 witness 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 prescribed witness 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 prescribed witness 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 prescribed witness 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 witness.

- (3)** An order under subsection (1) may specify—
- (a) the persons who may be present at the other place with the prescribed witness;
 - (b) the persons in the courtroom who are to be able to be heard, or to be seen and heard, by the witness and by the persons with the witness;
 - (c) the persons in the courtroom who are not to be able to be heard, or to be seen and heard, by the witness and by the persons with the witness;
 - (d) the persons in the courtroom who are to be able to see and hear the witness and the persons with the witness;
 - (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 prescribed witness 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 witness to identify a person or thing;
- (c) to allow the witness 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 prescribed witness 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 prescribed witness 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 witness 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—

- (a) by a party to the proceedings;
- (b) by or on behalf of a prescribed witness; or
- (c) in relation to a person who is a prescribed witness by reason of being or having been a child—by a parent or guardian of the 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 prescribed witness 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. If a person who was a prescribed witness in proceedings by reason of having been a child attains the age of 18 years before those proceedings are determined, that person continues to be a prescribed witness for the purpose of those proceedings.

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
<i>Evidence (Closed-Circuit Television) (Amendment) Act (No. 2) 1994</i>	96, 1994	15 Dec 1994	15 Dec 1994	—

Table of Amendments

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

Provision	How affected
S. 2	am. Nos. 24 and 96, 1994
S. 3A	ad. No. 96, 1994
S. 4	am. No. 24, 1994
S. 4A	ad. No. 24, 1994 am. No. 96, 1994
S. 5	am. Nos. 24 and 96, 1994
S. 6	rs. No. 24, 1994 am. No. 96, 1994
S. 7	rep. No. 24, 1994
S. 8	am. No. 24, 1994
S. 8A	ad. No. 24, 1994 am. No. 96, 1994
S. 9	am. No. 24, 1994
S. 10	rs. No. 24, 1994 am. No. 96, 1994
S. 11	rep. No. 80, 1992 ad. No. 24, 1994 rs. No. 96, 1994

Evidence (Miscellaneous Provisions) Act 1991

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