



AUSTRALIAN CAPITAL TERRITORY

## **Evidence (Closed-Circuit Television) (Amendment) Act 1994**

No. 24 of 1994

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### **An Act to amend the *Evidence (Closed-Circuit Television) Act 1991***

*[Notified in ACT Gazette S93: 31 May 1994]*

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) (Amendment) Act 1994*.

#### **Commencement**

2. This Act commences on the day on which it is notified in the *Gazette*.

#### **Principal Act**

3. In this Act, “Principal Act” means the *Evidence (Closed-Circuit Television) Act 1991*.<sup>1</sup>

#### **Interpretation**

4. Section 2 of the Principal Act is amended by omitting from subsection (1) the definition of “order”.

### **Application**

5. Section 4 of the Principal Act is amended—
- (a) by omitting from subparagraph (1) (a) (i) “or”;
  - (b) by inserting after subparagraph (1) (a) (i) the following subparagraph:
    - “(ia) for the passing of sentence in respect of the commission of an offence against a law in force in the Territory; or”;
  - (c) by inserting in paragraph (1) (b) “, or commission,” after “alleged commission”;
  - (d) by omitting from paragraph (1) (e) “or”;
  - (e) by inserting after paragraph (1) (e) the following paragraph:
    - “(ea) proceedings under the *Criminal Injuries Compensation Act 1983*; or”; and
  - (f) by omitting subsection (2).

### **Insertion**

6. After section 4 of the Principal Act the following section is inserted:

#### **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**

7. Section 5 of the Principal Act is amended—

- (a) by omitting subsections (1) and (2) and substituting the following subsection:

“(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.”;

- (b) by inserting in subsection (3) “under subsection (1)” after “An order”;

- (c) by inserting after subsection (3) the following subsection:

“(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.”; and

- (d) by omitting subsection (5) and substituting the following subsection:

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

### **Substitution**

**8.** Sections 6 and 7 of the Principal Act are repealed and the following section is substituted:

#### **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**

**9.** Section 8 of the Principal Act is amended—

- (a) by omitting “, on an application for an order”;
- (b) by inserting before paragraph (a) the following paragraph:
  - “(aa) a child is to give evidence from a place other than a courtroom in accordance with subsection 4A (1);”;
- (c) by omitting “, of its own motion or on application by or on behalf of the child or by any other person,”.

#### **Insertion**

**10.** After section 8 of the Principal Act the following section is inserted:

#### **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**

**11.** Section 9 of the Principal Act is amended by omitting all the words from and including “, of its own motion” to and including “that person,”.

### **Substitution**

**12.** Section 10 of the Principal Act is repealed and the following sections are substituted:

#### **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.”

#### **Application**

**13. (1)** The Principal Act as amended by this Act applies in relation to proceedings the hearing of which commences on or after the commencement of this Act.

**(2)** The Principal Act continues to apply in relation to proceedings the hearing of which had commenced but not been completed before the commencement of this Act.

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#### **NOTE**

1. Reprinted as at 31 August 1993.

*[Presentation speech made in Assembly on 21 April 1994]*