

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Evidence (Miscellaneous Provisions) Amendment Bill 2011

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2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Evidence (Miscellaneous Provisions) Amendment Bill 2011

A Bill for

An Act to amend the *Evidence (Miscellaneous Provisions) Act 1991*

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

1 **1 Name of Act**

2 This Act is the *Evidence (Miscellaneous Provisions) Amendment*
3 *Act 2011*.

4 **2 Commencement**

5 This Act commences on the commencement of the *Evidence*
6 *Act 2011*, section 3.

7 *Note* The naming and commencement provisions automatically commence on
8 the notification day (see Legislation Act, s 75 (1)).

9 **3 Legislation amended**

10 This Act amends the *Evidence (Miscellaneous Provisions) Act 1991*.

11 **4 Notes**
12 **New section 3 (2) and (3)**

13 *after the note, insert*

14 (2) In this section:

15 *note* includes material enclosed in brackets in section headings.

16 *Note* Some sections of this Act contain bracketed notes under their headings
17 (eg EA s 72) drawing attention to equivalent or comparable (though not
18 necessarily identical) provisions of the *Evidence Act 1971* (repealed).

19 (3) Subsection (2), the notes mentioned in subsection (2), and this
20 subsection expire 1 year after the day this section commences.

21 **5 Definitions—pt 2**
22 **Section 5, definition of *prescribed witness***

23 *omit*

1 **6 Section 5, definition of *proceeding***

2 *omit*

3 in relation

4 **7 Section 6**

5 *substitute*

6 **6 Meaning of *give evidence in a proceeding by audiovisual link*—pt 2**

7
8 In this part:

9 *give evidence in a proceeding by audiovisual link* means to give
10 evidence in the proceeding by audiovisual link from an external
11 place which is linked to the courtroom by an audiovisual link.

12 **7 Sworn or unsworn evidence**

13 For this part, it does not matter whether evidence is to be, or is
14 being, given on oath or otherwise.

15 **8 Section 7**

16 *omit everything before paragraph (a), substitute*

17 **8 Proceedings to which pt 2 applies**

18 This part applies to—

1 **9 Sections 8 to 15**

2 *substitute*

3 **9 Child giving evidence by audiovisual link**

- 4 (1) This section applies if—
- 5 (a) a child is to give evidence in a proceeding; and
- 6 (b) the proceeding is to be heard in a courtroom; and
- 7 (c) the courtroom and an external place are linked by an
- 8 audiovisual link.
- 9 (2) The child's evidence must be given by audiovisual link unless the
- 10 court otherwise orders.
- 11 (3) However, the evidence of a child who is an accused person in a
- 12 proceeding is not to be given by audiovisual link.
- 13 (4) The court may make an order under subsection (2) only if satisfied
- 14 that—
- 15 (a) the child prefers to give evidence in the courtroom; or
- 16 (b) if the order is not made—
- 17 (i) the proceeding may be unreasonably delayed; or
- 18 (ii) there is a substantial risk that the court will not be able to
- 19 ensure that the proceeding is conducted fairly.
- 20 (5) While the child is at the external place to give evidence, the place is
- 21 taken to be part of the courtroom.

-
- 1 **10 Representation of child**
- 2 (1) This section applies if—
- 3 (a) a child is to give evidence in a proceeding by audiovisual link;
- 4 and
- 5 (b) the child is not separately represented by someone else; and
- 6 (c) the court considers that the child should be separately
- 7 represented by someone else.
- 8 (2) The court may—
- 9 (a) order that the child be separately represented by someone else;
- 10 and
- 11 (b) make any other order it considers necessary to arrange the
- 12 separate representation.
- 13 **11 Consequential orders—pt 2**
- 14 (1) This section applies if a child is to give evidence in a proceeding by
- 15 audiovisual link.
- 16 (2) The court may make any order it considers appropriate—
- 17 (a) to ensure that the proceeding is conducted fairly; or
- 18 (b) to allow the child to identify a person or thing; or
- 19 (c) to allow the child to take part in a view or to watch a
- 20 demonstration or experiment; or
- 21 (d) to allow part of the proceeding to be heard somewhere other
- 22 than in the courtroom.
- 23 (3) The court may make any other order it considers appropriate,
- 24 including, for example, an order stating—
- 25 (a) who may be with the child at the external place; or
- 26 (b) who must not be with the child at the external place; or

- 1 (c) who, in the courtroom, is to be able, or must not be able, to be
2 heard, or seen and heard, by the child and people in the
3 external place with the child; or
- 4 (d) who, in the courtroom, is to be able to see and hear the child
5 and anyone else in the external place with the child; or
- 6 (e) how the audiovisual link is to operate.

7 *Note* An example is part of the Act, is not exhaustive and may extend, but
8 does not limit, the meaning of the provision in which it appears (see
9 Legislation Act, s 126 and s 132).

- 10 (4) The court may order that a person be excluded from the external
11 place while the child is giving evidence.
- 12 (5) The court may direct that an order under this section apply only to a
13 particular part of the proceeding.

14 **12 Making of orders—pt 2**

- 15 (1) The court may make an order under this part in a proceeding on its
16 own initiative or on the application of—
- 17 (a) a party to the proceeding; or
- 18 (b) the child or a person acting on the child's behalf; or
- 19 (c) the child's parent or guardian.
- 20 (2) For the purpose of making an order under this part, the court is not
21 bound by the rules of evidence and may inform itself as it considers
22 appropriate.

23 **13 Jury warning about inferences from child giving evidence**
24 **by audiovisual link**

- 25 (1) This section applies if—
- 26 (a) a child gives evidence in a proceeding by audiovisual link; and
- 27 (b) the proceeding is before a jury.

- 1 (2) The judge must warn the jury to the effect that the jury should not
2 draw any inference against an accused person in the proceeding
3 from the fact that the child's evidence is given by audiovisual link.

4 **14 Failure to comply with pt 2**

- 5 (1) If the evidence of a child is not given in accordance with this part,
6 the evidence is not inadmissible for that reason only.
7 (2) Failure to comply with this part in relation to a proceeding does not
8 affect the validity of the proceeding.

9 **15 Child turns 18 during proceeding**

10 If a child is to give evidence in a proceeding and the child turns
11 18 years old before the proceeding is finally disposed of, this part
12 continues to apply to the person for the proceeding.

13 **10 Application—div 3.2**
14 **Section 19, new note**

15 *insert*

16 *Note* **Proceeding**—see the Legislation Act, dictionary, pt 1.

17 **11 Territory courts may take evidence and submissions from**
18 **place other than participating State**
19 **Section 32 (4)**

20 *omit*

21 for all purposes

1 **12 Part 4 heading**

2 *substitute*

3 **Part 4 Evidence in sexual and violent**
4 **offence proceedings**

5 **13 Definitions—pt 4**
6 **Section 37, definition of *serious violent offence*,**
7 **paragraph (a) (xvii)**

8 *omit*

9 and

10 *substitute*

11 or

12 **14 Section 37, definition of *similar act witness*, paragraph (b)**

13 *omit*

14 *Evidence Act 1995 (Cwlth)*

15 *substitute*

16 *Evidence Act 2011*

17 **15 Section 38 heading**

18 *substitute*

19 **38 Meaning of *complainant* and *sexual offence proceeding*—**
20 **div 4.2**

1 **16** **Meaning of *relevant person*—div 4.2**
2 **Section 38B (3)**

3 *omit*

4 , but are not limited to,

5 **17** **Accused may be screened from witness in court**
6 **New section 38C (1A)**

7 *insert*

8 (1A) For subsection (1) (c) (ii), the court is not bound by the rules of
9 evidence and may inform itself as it considers appropriate.

10 **18** **Examination of witness by self-represented accused**
11 **person—procedure**
12 **New section 38D (1A)**

13 *insert*

14 (1A) For subsection (1) (c) (ii), the court is not bound by the rules of
15 evidence and may inform itself as it considers appropriate.

16 **19** **Section 38D (4) (b)**

17 *omit*

18 *adduce*

19 *substitute*

20 *present*

21 **20** **Section 38D (5), notes 1 and 2**

22 *substitute*

23 *Note* If the court considers a question to be unduly annoying, harassing,
24 intimidating etc, the court must disallow it or tell the witness that it need
25 not be answered (see *Evidence Act 2011*, s 41 (1) (Improper questions)).

- 1 **21 Section 38E heading**
- 2 *substitute*
- 3 **38E Sexual and violent offence proceeding—witness may**
4 **have support person in court**
- 5 **22 New section 38E (1A)**
- 6 *insert*
- 7 (1A) For subsection (1) (c) (ii), the court is not bound by the rules of
8 evidence and may inform itself as it considers appropriate.
- 9 **23 Sexual and violent offence proceeding—evidence to be**
10 **given in closed court**
11 **New section 39 (1A)**
- 12 *insert*
- 13 (1A) For subsection (1) (c) (ii), the court is not bound by the rules of
14 evidence and may inform itself as it considers appropriate.
- 15 **24 Section 39 (5)**
- 16 *omit*
- 17 from places other than courtrooms
- 18 *substitute*
- 19 by audiovisual link

1 **25 Sexual offence proceeding—prohibition of publication of**
2 **complainant’s identity**
3 **Section 40 (1) (d)**

4 *omit*

5 *inferred*

6 *substitute*

7 *worked out*

8 **26 New section 40AA**

9 *insert*

10 **40AA Meaning of sexual offence and violent offence—div 4.2A**

11 (1) For this division, a *sexual offence* includes an offence under the
12 *Domestic Violence and Protection Orders Act 2008*, section 90
13 (Offence for contravention of protection order) in relation to another
14 sexual offence.

15 (2) For this division, a *violent offence* includes an offence under the
16 *Domestic Violence and Protection Orders Act 2008*, section 90
17 (Offence for contravention of protection order) in relation to another
18 violent offence.

19 **27 Meaning of sexual offence proceeding—div 4.2A**
20 **Section 40B (1) (c) to (f)**

21 *substitute*

22 (c) a proceeding for contravening a protection order under the
23 *Domestic Violence and Protection Orders Act 2008* in relation
24 to a sexual offence; or

25 (d) an appeal arising out of a proceeding mentioned in
26 paragraphs (a) to (c).

1 **28** **Meaning of *violent offence proceeding*—div 4.2A**
2 **Section 40C (1) (c) to (f)**

3 *substitute*

4 (c) a proceeding for contravening a protection order under the
5 *Domestic Violence and Protection Orders Act 2008* in relation
6 to a violent offence; or

7 (d) an appeal arising out of a proceeding mentioned in
8 paragraphs (a) to (c).

9 **29** **New section 40NA**

10 *insert*

11 **40NA** **Meaning of *sexual offence*—div 4.2B**

12 For this division, a *sexual offence* includes an offence under the
13 *Domestic Violence and Protection Orders Act 2008*, section 90
14 (Offence for contravention of protection order) in relation to another
15 sexual offence.

16 **30** **Meaning of *sexual offence proceeding*—div 4.2B**
17 **Section 40O (1) (c) to (f)**

18 *substitute*

19 (c) a proceeding for contravening a protection order under the
20 *Domestic Violence and Protection Orders Act 2008* in relation
21 to a sexual offence; or

22 (d) an appeal arising out of a proceeding mentioned in
23 paragraphs (a) to (c).

- 1 **31** **Meaning of *witness*—div 4.2B**
2 **New section 40P (1A)**
- 3 *insert*
- 4 (1A) For subsection (1) (c), the court is not bound by the rules of
5 evidence and may inform itself as it considers appropriate.
- 6 **32** **Who may be present at pre-trial hearing**
7 **Section 40R (2) (a)**
- 8 *omit*
- 9 81C
- 10 *substitute*
- 11 101
- 12 **33** **Witness may be required to attend hearing**
13 **Section 40T (4)**
- 14 *omit*
- 15 from places other than courtrooms
- 16 *substitute*
- 17 by audiovisual link
- 18 **34** **Division 4.3 heading**
- 19 *substitute*
- 20 **Division 4.3** **Sexual and violent offence**
21 **proceedings—giving evidence by**
22 **audiovisual link**

- 1 **35** **New section 40X**
- 2 *in division 4.3, insert*
- 3 **40X** **Definitions—div 4.3**
- 4 In this division:
- 5 *give evidence in a proceeding by audiovisual link* means to give
6 evidence in the proceeding by audiovisual link from an external
7 place which is linked to the courtroom by an audiovisual link.
- 8 *proceeding* means a proceeding to which this division applies.
- 9 **36** **Section 41 heading**
- 10 *substitute*
- 11 **41** **Meaning of *complainant* and *sexual offence proceeding*—**
12 **div 4.3**
- 13 **37** **Meaning of *violent offence proceeding*—div 4.3**
14 **Section 41A (1) (c) to (f)**
- 15 *substitute*
- 16 (c) a proceeding for contravening a protection order under the
17 *Domestic Violence and Protection Orders Act 2008* in relation
18 to a violent offence; or
- 19 (d) an appeal arising out of a proceeding mentioned in
20 paragraphs (a) to (c).

38 New section 41B

insert

41B Meaning of *sexual offence* and *violent offence*—div 4.3

- (1) For this division, a *sexual offence* includes an offence under the *Domestic Violence and Protection Orders Act 2008*, section 90 (Offence for contravention of protection order) in relation to another sexual offence.
- (2) For this division, a *violent offence* includes an offence under the *Domestic Violence and Protection Orders Act 2008*, section 90 (Offence for contravention of protection order) in relation to another violent offence.

39 Section 42 (1)

omit everything before paragraph (a), substitute

42 Proceedings to which div 4.3 applies

- (1) This division applies to the following proceedings:

40 Section 42 (1) (c) (i)

substitute

- (i) the complainant or similar act witness (the *witness*) is a relevant person in relation to the accused person; or

41 Section 42 (2)

substitute

- (2) For this division, it does not matter whether evidence is to be, or is being, given on oath or otherwise.
- (3) In this section:
- relevant person*—see section 38B (1).

- 1 **42 Section 43**
- 2 *omit everything before subsection (3), substitute*
- 3 **43 Complainant or similar act witness giving evidence by**
4 **audiovisual link**
- 5 (1) This section applies if—
- 6 (a) a complainant or similar act witness is to give evidence in a
7 proceeding; and
- 8 (b) the proceeding is to be heard in a courtroom; and
- 9 (c) the courtroom and an external place are linked by an
10 audiovisual link.
- 11 (2) The complainant's or similar act witness's evidence must be given
12 by audiovisual link unless the court otherwise orders.
- 13 **43 Section 43 (3) (b) (i) and (ii)**
- 14 *omit*
- 15 sexual or violent offence
- 16 **44 Section 43 (4) and (5)**
- 17 *omit*
- 18 other place
- 19 *substitute*
- 20 external place

- 1 **45 Section 44**
- 2 *omit everything before subsection (2), substitute*
- 3 **44 Consequential orders—div 4.3**
- 4 (1) This section applies if a complainant or similar act witness is to give
- 5 evidence in a proceeding by audiovisual link.
- 6 **46 Section 44 (2) (a) and (d)**
- 7 *omit*
- 8 sexual or violent offence
- 9 **47 Section 44 (3)**
- 10 *omit*
- 11 specifying
- 12 *substitute*
- 13 stating
- 14 **48 Section 44 (3)**
- 15 *omit*
- 16 other place
- 17 *substitute*
- 18 external place
- 19 **49 Section 44 (5)**
- 20 *omit*
- 21 sexual or violent offence

- 1 **50 Section 45**
- 2 *omit everything before subsection (2), substitute*
- 3 **45 Making of orders—div 4.3**
- 4 (1) The court may make an order under this division in a proceeding on
- 5 its own initiative or on the application of—
- 6 (a) a party to the proceeding; or
- 7 (b) the complainant; or
- 8 (c) a similar act witness.
- 9 **51 Section 46**
- 10 *substitute*
- 11 **46 Jury warning about inferences from complainant or**
- 12 **similar act witness giving evidence by audiovisual link**
- 13 (1) This section applies if—
- 14 (a) a complainant or similar act witness gives evidence in a
- 15 proceeding by audiovisual link; and
- 16 (b) the proceeding is before a jury.
- 17 (2) The judge must warn the jury to the effect that the jury should not
- 18 draw any inference against an accused person in the proceeding
- 19 from the fact that the evidence of the complainant or similar act
- 20 witness is given by audiovisual link.
- 21 **52 Failure to comply with div 4.3**
- 22 **Section 47 (2)**
- 23 *omit*
- 24 sexual or violent offence

- 1 **53 Section 48 heading**
- 2 *substitute*
- 3 **48 Meaning of *complainant* and *sexual offence proceeding*—**
4 **div 4.4**
- 5 **54 Decision to give leave under s 51**
6 **Section 53 (5)**
- 7 *substitute*
- 8 (5) In this section:
- 9 *proper matter for cross-examination about credit*—evidence is a
10 *proper matter for cross-examination about credit* if the credibility
11 rule under the *Evidence Act 2011*, section 102 does not apply to the
12 evidence because of that Act, section 103 (Exception—
13 cross-examination as to credibility).
- 14 **55 Definitions—div 4.5**
15 **Section 54, new definitions**
- 16 *insert*
- 17 *civil proceeding* does not include a criminal proceeding.
18 *proceeding* means a civil or criminal proceeding.
- 19 **56 Section 55 heading**
- 20 *substitute*
- 21 **55 Meaning of *protected confidence*—div 4.5**

- 1 **57 Section 55 (4), example heading**
- 2 *substitute*
- 3 **Examples—third parties**
- 4 **58 General immunity for protected confidences**
- 5 **Section 58**
- 6 *omit*
- 7 criminal
- 8 **59 Preliminary examination of protected confidence**
- 9 **evidence**
- 10 **Section 61 (2) (b)**
- 11 *omit*
- 12 concerned
- 13 **60 Section 61 (5) (b)**
- 14 *omit*
- 15 criminal
- 16 **61 Giving of leave to disclose protected confidence**
- 17 **Section 62 (1)**
- 18 *substitute*
- 19 (1) After conducting the preliminary examination of the protected
- 20 confidence evidence, the court may give leave for the disclosure of
- 21 the protected confidence only if satisfied that—
- 22 (a) for a civil proceeding—the public interest in ensuring the
- 23 proceeding is conducted fairly outweighs the public interest in
- 24 preserving the confidentiality of the protected confidence; or

1 (b) for a criminal proceeding—the public interest in ensuring an
2 accused person in the proceeding is given a fair trial outweighs
3 the public interest in preserving the confidentiality of the
4 protected confidence.

5 **62 Section 62 (3) (a)**

6 *before*
7 the extent
8 *insert*
9 for a criminal proceeding—

10 **63 Section 62 (5)**

11 *omit*
12 restrictions
13 *substitute*
14 conditions

15 **64 No protected confidence immunity for medical**
16 **information**
17 **Section 65 (1) (b)**

18 *omit*
19 such an
20 *substitute*
21 the

- 1 **65** **Division 4.6 heading, note**
- 2 *substitute*
- 3 *Note* The *Supreme Court Act 1933*, s 68C (3) provides that in a criminal
4 proceeding tried by a judge alone, if a territory law requires a warning
5 or direction to be given, or a comment to be made, to a jury in the
6 proceeding, the judge must take the warning, direction or comment into
7 account in considering his or her verdict.
- 8 **66** **Section 68 heading**
- 9 *substitute*
- 10 **68** **Meaning of *complainant* and *sexual offence proceeding*—**
11 **div 4.6**
- 12 **67** **Comments about lack of, or delays in making, complaint**
13 **Section 71 (2), note**
- 14 *omit*
- 15 **68** **Divisions 4.7 and 4.8**
- 16 *omit*
- 17 **69** **Evidence in any proceedings**
18 **Part 4A**
- 19 *omit*

1 **70 Part 5 heading**

2 *substitute*

3 **Part 5 Evidence in civil proceedings—**
4 **other matters**

5 **71 Parts 6 and 7**

6 *substitute*

7 **Part 6 Evidence in criminal**
8 **proceedings—dangerously ill**
9 **people**

10 **90 Meaning of *dangerously ill person*—pt 6**

11 In this part:

12 *dangerously ill person* means a person who is dangerously ill and is
13 not likely to recover from the illness.

14 **91 Application—pt 6**

15 (EA s 72)

16 This part applies if a court is satisfied that—

- 17 (a) a dangerously ill person is or may be able to give evidence in a
18 proceeding for an indictable offence or on behalf of a person
19 who has been, or may be, charged with an indictable offence;
20 and
21 (b) because of the illness, the dangerously ill person is or may be
22 unable to give evidence in the proceeding.

- 1 **92 Recording of evidence of dangerously ill person**
- 2 (1) The court may take the evidence of the dangerously ill person
- 3 (including cross-examination and re-examination) by audio or
- 4 audiovisual recording.
- 5 (2) The recording must include the following:
- 6 (a) the date when, and the place where, the recording was made;
- 7 (b) the times when the recording started and ended;
- 8 (c) the times when any break in recording started and ended, and
- 9 the reason for the break;
- 10 (d) the name of each person present during any part of the
- 11 recording;
- 12 (e) for each person present during any part of the recording—the
- 13 part when the person was present.
- 14 **93 Notice of evidence of dangerously ill person**
- 15 (EA s 72)
- 16 (1) Before taking the evidence of the dangerously ill person, the court
- 17 must give a notice that the court proposes to take the evidence and
- 18 of the time and place where it will be taken—
- 19 (a) to the person charged or who may be charged; and
- 20 (b) if the evidence is evidence on behalf of the person charged and
- 21 it is practicable to do so—to the DPP or a person authorised by
- 22 the DPP.
- 23 (2) A person given a notice under subsection (1) (the *notified person*)
- 24 may—
- 25 (a) be present while the evidence is being taken; and
- 26 (b) cross-examine the person giving the evidence.

- 1 (3) However, subsection (2) does not apply if this Act or another
2 territory law prohibits the notified person from doing a thing
3 mentioned in the subsection.

4 **94 Admissibility of recording of evidence of dangerously ill**
5 **person**

6 (EA s 72)

- 7 (1) This section applies if—
- 8 (a) an audio or audiovisual recording of evidence by a dangerously
9 ill person is made; and
- 10 (b) in the proceeding for the offence to which the evidence in the
11 recording relates, the court is satisfied that—
- 12 (i) the dangerously ill person is dead, or is, because of
13 illness, unable to attend the proceeding; and
- 14 (ii) reasonable notice of the time and place fixed for the
15 taking of the evidence was given in accordance with
16 section 93 (1).
- 17 (2) The audio or audiovisual recording of the evidence is admissible to
18 the extent that the evidence would have been admissible at the
19 proceeding if given orally.

1 **Part 7** **Evidence in any proceedings—**
2 **other matters**

3 **Division 7.1** **Evidence of witnesses with**
4 **disabilities or vulnerabilities**

5 **100** **Meaning of *witness with a disability*—div 7.1**

6 For this division, a *witness with a disability* is a person who gives
7 evidence in a proceeding and has a mental or physical disability that
8 affects the person’s ability to give evidence.

9 **101** **Child or witness with disability may have support person**
10 **in court**

11 (1) This section applies to any of the following people (a *witness*)
12 giving evidence in a proceeding:

- 13 (a) a child;
14 (b) a witness with a disability.

15 (2) The court must, on application by a party that intends to call a
16 witness, order that, while the witness gives evidence, the witness
17 have a person (a *support person*) in the court who is—

- 18 (a) for a witness with a vision impairment—close enough to the
19 witness for the court to be satisfied that the witness is aware of
20 the person’s presence; or
21 (b) for any other witness—close to the witness and within the
22 witness’s sight.

23 (3) The court may order that a witness have more than 1 support person
24 if it considers it is in the interests of justice.

25 (4) The support person must not—

- 26 (a) speak for the witness during the proceeding; or

- 1 (b) otherwise interfere in the proceeding.
- 2 (5) Unless the court otherwise orders, the support person must not be, or
3 be likely to be, a witness or party in the proceeding.
- 4 (6) If the proceeding is a trial by jury, the court must tell the jury that—
- 5 (a) a witness having a support person in the court while giving
6 evidence is a usual practice; and
- 7 (b) the jury must not draw any inference against the accused
8 person, or give the evidence more or less weight, because the
9 support person is present.

10 **102 Witness with vulnerability may give evidence in closed**
11 **court**

- 12 (1) This section applies to a person (the *witness*) giving evidence in a
13 proceeding if the court considers that the person has a vulnerability
14 that affects the person's ability to give evidence because of—
- 15 (a) the circumstances of the proceeding; or
- 16 (b) the person's circumstances.

17 **Examples**

- 18 1 the person is likely to suffer severe emotional trauma because of the nature
19 of the alleged offence
- 20 2 the person is intimidated or distressed because of the person's relationship to
21 the accused person

22 *Note* An example is part of the Act, is not exhaustive and may extend, but
23 does not limit, the meaning of the provision in which it appears (see
24 Legislation Act, s 126 and s 132).

- 25 (2) The court may order that the court be closed to the public while all
26 or part of the witness's evidence (including evidence under
27 cross-examination) is given.

28 *Note* The accused is entitled to a fair and public hearing, but the court may
29 exclude the press and public in certain circumstances (see *Human*
30 *Rights Act 2004*, s 21 (2)).

- 1 (3) In deciding whether to order that the court be closed to the public,
2 the court must consider whether—
- 3 (a) the witness wants to give evidence in open court; and
- 4 (b) it is in the interests of justice that the witness give evidence in
5 open court.
- 6 (4) However, an order under this section does not stop the following
7 people from being in court when the witness gives evidence:
- 8 (a) a person nominated by the witness;
- 9 (b) a person who attends the proceeding to prepare a news report
10 of the proceeding and is authorised to attend for that purpose
11 by the person's employer.
- 12 *Note* Publishing certain information in relation to sexual offence
13 proceedings is an offence (see s 40).
- 14 (5) In this section, a reference to a person giving evidence includes the
15 person giving evidence by the playing of an audiovisual recording
16 of the evidence at a hearing under division 4.2A (Sexual and violent
17 offence proceedings—audiovisual recording of police interview
18 admissible as evidence) or division 4.2B (Sexual offence
19 proceedings—giving evidence at pre-trial hearing).

20 **103 Making of s 101 and s 102 orders—court not bound by**
21 **rules of evidence**

22 For the purpose of making an order under section 101 or
23 section 102, the court is not bound by the rules of evidence and may
24 inform itself as it considers appropriate.

1 **Division 7.2 Evidence in any proceedings—**
2 **miscellaneous**

3 **104 Proof of document under law of Commonwealth country**
4 (EA s 50 and 51)

- 5 (1) This section applies if it is proved in a proceeding that a document
6 is, under the law of a Commonwealth country, admissible in
7 evidence in the courts in that country by the production of a copy of
8 the document.

9 *Note 1 Proceeding*—see the Legislation Act, dictionary, pt 1.

10 *Note 2 The Evidence Act 2011, s 48 and s 49 deal with other documents in*
11 foreign countries in proceedings in an ACT court.

- 12 (2) Evidence of the document, or of an extract from the document, may
13 be given in the proceeding by producing—

14 (a) a copy of the document or an extract from the document that is
15 proved to be an examined copy of the document or extract; or

16 (b) a document (the *copy document*) that is or purports to be a
17 copy of the document or extract if there is endorsed on or
18 annexed to the copy document a certificate by the person
19 having custody of the original document that the document is a
20 true copy of the document or extract of which it is or purports
21 to be a copy.

- 22 (3) The production of a document that is or purports to be a certificate
23 mentioned in subsection (2) (b) is evidence in a proceeding that the
24 person by whom the certificate purports to be signed is the person
25 who has custody of the original document or extract mentioned in
26 the certificate without further proof of that fact.

- 1 (4) This section does not apply to a document mentioned in
2 subsection (1) unless—
- 3 (a) the party who presents evidence of the contents of the
4 document has, not less than 28 days (or any other period
5 prescribed by regulation or by rules of court) before the day on
6 which the evidence is presented, served on each other party a
7 copy of the document proposed to be tendered; or
- 8 (b) the court directs that it must apply.
- 9 (5) In this section:
10 *court* means an ACT court or evidence receiving entity.

11 **Part 8** **Publication of evidence**

12 **110 Application—pt 8**

13 This part applies to—

- 14 (a) a proceeding in the Supreme Court; or
15 (b) a proceeding in the Magistrates Court; or
16 (c) an inquest or inquiry under the *Coroners Act 1997*.

17 **111 Prohibition of publication of evidence etc**

- 18 (1) This section applies if a court considers that—
- 19 (a) the publication of evidence given, or intended to be given, in a
20 proceeding is likely to prejudice the administration of justice;
21 or
- 22 (b) in the interests of the administration of justice the names of any
23 of the following people should not be published:
- 24 (i) a party to the proceeding;
25 (ii) a witness, or intended witness, in the proceeding.

- 1 (2) The court may, at any time during or after the hearing of the
2 proceeding, make an order forbidding the publication of—
3 (a) the evidence or a stated part of the evidence; or
4 (b) a report of the evidence; or
5 (c) the name of the party or witness.
- 6 (3) The court may make an order under subsection (2) (a) or (b) subject
7 to any stated condition or for any period the court considers
8 appropriate.
- 9 (4) If a court makes an order under subsection (2), the court may, if it
10 considers it appropriate, direct that stated people, or everyone except
11 stated people, remain outside the courtroom for a stated period.
- 12 (5) For this section, the publication of a reference or allusion to a person
13 is taken to be a publication of the person's name if—
14 (a) the reference or allusion discloses the person's identity; or
15 (b) the person's identity might reasonably be worked out from the
16 reference or allusion.

17 **112 Noncompliance with s 111 order**

18 A person commits an offence if the person does not comply with an
19 order or direction under section 111.

20 Maximum penalty: 50 penalty units, imprisonment for 6 months or
21 both.

1 **Part 9** **Miscellaneous**

2 **120** **Approved forms**

- 3 (1) The Minister may approve forms for this Act.
4 (2) If the Minister approves a form for a particular purpose, the
5 approved form must be used for the purpose.

6 *Note* For other provisions about forms, see the Legislation Act, s 255.

- 7 (3) An approved form is a notifiable instrument.

8 *Note* A notifiable instrument must be notified under the Legislation Act.

9 **121** **Regulation-making power**

- 10 (1) The Executive may make regulations for this Act.

11 *Note* A regulation must be notified, and presented to the Legislative
12 Assembly, under the Legislation Act.

- 13 (2) A regulation may prescribe the amounts, or the way of working out
14 amounts, payable to a territory court in relation to the cost of, or
15 incidental to, the provision of an audiovisual link or audio link and
16 ancillary equipment for part 3 (Use of audiovisual links and audio
17 links).

- 18 (3) In this section:

19 *audio link*—see section 16 (Definitions—pt 3).

20 *territory court*—see section 16 (Definitions—pt 3).

1 **Part 11** **Transitional—Evidence**
2 **(Miscellaneous Provisions)**
3 **Amendment Act 2011**

4 **160 Existing proceedings**

- 5 (1) The amendments to this Act made by the *Evidence (Miscellaneous*
6 *Provisions) Amendment Act 2011* do not apply to a proceeding in a
7 court if the hearing of the proceeding has started before the
8 commencement of that Act.
- 9 (2) For subsection (1), the hearing of a proceeding has started if the
10 court has begun to take oral or written evidence in the proceeding
11 (other than in relation to bail or any other interlocutory matter).

- 12 (3) In this section:

13 *court* means an ACT court or evidence receiving entity.

14 **161 Protected confidences—div 4.5 proceedings**

- 15 (1) This section applies to a proceeding under division 4.5.
- 16 (2) Division 4.5 applies to a protected confidence made before or after
17 the commencement of the *Evidence (Miscellaneous Provisions)*
18 *Amendment Act 2011*.
- 19 (3) However, this section is subject to section 160.

20 **162 Transitional regulations**

- 21 (1) A regulation may prescribe transitional matters necessary or
22 convenient to be prescribed because of the enactment of the
23 *Evidence (Miscellaneous Provisions) Amendment Act 2011*.

1 (2) A regulation may modify this part (including in relation to another
2 territory law) to make provision in relation to anything that, in the
3 Executive's opinion, is not, or is not adequately or appropriately,
4 dealt with in this part.

5 (3) A regulation under subsection (2) has effect despite anything
6 elsewhere in this Act or another territory law.

7 **163 Expiry—pt 11**

8 This part expires 2 years after the day it commences.

9 **72 Dictionary, note 2**

10 *insert*

- 11 • Commonwealth country
12 • DPP
13 • foreign country
14 • Governor-General

15 **73 Dictionary, note 2**

16 *omit*

- 17 • proceeding (for this Act, pt 3)

18 **74 Dictionary, new definitions**

19 *insert*

20 *ACT court*—see the *Evidence Act 2011*, dictionary, part 1.

21 *civil proceeding*, for division 4.5 (Protection of counselling
22 communications)—see section 54.

75 Dictionary, definition of *complainant*, paragraph (d)

substitute

(d) for division 4.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 41 (1); and

76 Dictionary, definition of *criminal proceeding*

substitute

criminal proceeding—

(a) for this Act generally—see the *Court Procedure Rules 2006*, dictionary; and

(b) for division 4.5 (Protection of counselling communications)—see section 54.

77 Dictionary, new definitions

insert

dangerously ill person, for part 6 (Evidence in criminal proceedings—dangerously ill people)—see section 90.

evidence receiving entity means an entity other than an ACT court that is authorised under a law in force in the ACT, or by consent of parties, to receive evidence.

external place, for a proceeding, means a place other than the courtroom where the proceeding is heard.

78 Dictionary, definition of *family objection*

omit

- 1 **79 Dictionary, new definition of *give evidence in a***
2 ***proceeding by audiovisual link***
- 3 *insert*
- 4 ***give evidence in a proceeding by audiovisual link—***
- 5 (a) for part 2 (Evidence of children)—see section 6; and
- 6 (b) for division 4.3 (Sexual and violent offence proceedings—
7 giving evidence by audiovisual link)—see section 40X.
- 8 **80 Dictionary, definition of *less serious violent offence***
- 9 *omit*
- 10 (Evidence in criminal proceedings)
- 11 *substitute*
- 12 (Evidence in sexual and violent offence proceedings)
- 13 **81 Dictionary, definition of *prescribed witness***
- 14 *omit*
- 15 **82 Dictionary, definition of *proceeding***
- 16 *substitute*
- 17 ***proceeding—***
- 18 (a) for this Act generally—see the Legislation Act, dictionary,
19 part 1; and
- 20 (b) for part 2 (Evidence of children)—see section 5; and
- 21 (c) for division 4.3 (Sexual and violent offence proceedings—
22 giving evidence by audiovisual link)—see section 40X; and
- 23 (d) for division 4.5 (Protection of counselling communications)—
24 see section 54.

83 Dictionary, definition of *serious violent offence*

omit

(Evidence in criminal proceedings)

substitute

(Evidence in sexual and violent offence proceedings)

84 Dictionary, definition of *sexual offence*

substitute

sexual offence—

(a) for part 4 (Evidence in sexual and violent offence proceedings) generally—see section 37; and

(b) for division 4.2A (Sexual and violent offence proceedings—audiovisual recording of police interview admissible as evidence)—see section 40AA (1); and

(c) for division 4.2B (Sexual offence proceedings—giving evidence at pre-trial hearing)—see section 40NA; and

(d) for division 4.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 41B (1).

85 Dictionary, definition of *sexual offence proceeding, paragraph (d)*

substitute

(d) for division 4.3 (Sexual and violent offence proceedings—giving evidence by audiovisual link)—see section 41 (2); and

1 **86 Dictionary, definition of *similar act witness***

2 *omit*

3 (Evidence in criminal proceedings)

4 *substitute*

5 (Evidence in sexual and violent offence proceedings)

6 **87 Dictionary, definition of *violent offence***

7 *substitute*

8 ***violent offence***—

9 (a) for part 4 (Evidence in sexual and violent offence proceedings)
10 generally—see section 37; and

11 (b) for division 4.2A (Sexual and violent offence proceedings—
12 audiovisual recording of police interview admissible as
13 evidence)—see section 40AA (2); and

14 (c) for division 4.3 (Sexual and violent offence proceedings—
15 giving evidence by audiovisual link)—see section 41B (2).

16 **88 Dictionary, definition of *violent offence proceeding*,**
17 **paragraph (c)**

18 *substitute*

19 (c) for division 4.3 (Sexual and violent offence proceedings—
20 giving evidence by audiovisual link)—see section 41A.

- 1 **89 Dictionary, definition of *witness with a disability***
- 2 *substitute*
- 3 ***witness with a disability***—
- 4 (a) for part 4 (Evidence in sexual and violent offence
- 5 proceedings)—see section 37; and
- 6 (b) for division 7.1 (Evidence of witnesses with disabilities or
- 7 vulnerabilities)—see section 100.
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2011.
- 2 **Notification**
Notified under the Legislation Act on 2011.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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