

AUSTRALIAN CAPITAL TERRITORY

EVIDENCE (AMENDMENT) ORDINANCE (No. 2) 1990

EXPLANATORY STATEMENT

No. 10, 1990

The Ordinance amends the Evidence Ordinance 1971 to correct errors made in previous amending Ordinances. At the same time the opportunity is taken to make the language gender-neutral in section 73.

Subsection 76F(1) of the Evidence Ordinance, which was inserted in 1985, abolished any rule of law or practice requiring the corroboration of evidence or requiring the judge to give the jury in criminal proceedings a warning to the effect that it is unsafe to convict a person on uncorroborated evidence in so far as the rule applies to evidence of the complainant in the trial of a person for a prescribed sexual offence.

Paragraph 76F(3)(b) placed a qualification on subsection 76F(1) in providing that nothing in the section affects the operation of any rule of law or practice requiring a judge, on the trial of any person, to give the jury a warning that it is unsafe to convict on the uncorroborated sworn evidence of a child.

Subsection 76F(1) impliedly repeals subsection 64(3) of the Evidence Ordinance in relation to evidence given by a complainant of less than 14 years of age in the trial of a person for a prescribed sexual offence. Subsection 64(3) provides that the unsworn evidence of a child of less than 14 years of age received in the trial of any person charged with a criminal offence under subsection 64(1) should be disregarded unless corroborated by other evidence implicating that person.

The consequence of the implied repeal of subsection 64(3) is that, while a warning to a jury about the need for corroboration is necessary when a child of less than 14 years gives sworn evidence as a complainant on the trial of a person for a prescribed sexual offence, no such warning is needed if the child gives unsworn evidence. This was not intended when section 76F was inserted into the Evidence Ordinance.

The error has been rectified by an amendment which provides that nothing in section 76F affects the operation of subsection 64(3) of the Ordinance.

Another amendment corrects incorrect references to provisions in the Magistrates Court Ordinance 1930 which appear in section 73 of the Ordinance. As well, gender-specific language in that section is replaced by gender-neutral language.

Details of the clauses in the proposed Ordinance are set out in the attachment.

Attachment

Details of proposed Evidence (Amendment) Ordinance
(No. 2) 1990

Clause 1 provides for the citation of the Ordinance.

Clause 2 defines "Principal Ordinance" to mean the Evidence Ordinance 1971.

Clause 3 amends section 73 of the Principal Ordinance to:

- (a) replace gender-specific language with gender-neutral language; and
- (b) correct several incorrect references to provisions of the Magistrates Court Ordinance 1930.

Clause 4 inserts in the Principal Ordinance a new subsection 76F(4) which provides that nothing in section 76F affects the operation of subsection 64(3). That subsection provides that unsworn evidence of a child of less than 14 years admitted in the trial of any person charged with a criminal offence pursuant to subsection 64(1) shall be disregarded unless it is corroborated by other evidence implicating that person.