

AUSTRALIAN CAPITAL TERRITORY

EVIDENCE (CLOSED CIRCUIT TELEVISION) ORDINANCE 1989

EXPLANATORY STATEMENT

No. 53 of 1989

The Ordinance provides that a child may give evidence, in the A.C.T. Magistrates Court, via a closed circuit television system where the Court considers that the child is likely to suffer trauma if he or she is required to give evidence in the ordinary way or that it is likely that the facts will be better ascertained by allowing the use of the system.

The Ordinance applies when a child is to give evidence in a criminal proceeding, a domestic violence proceeding, a 'care' proceeding in the Magistrates Court or a coronial inquiry in the Coroners Court.

Late last year the Chief Magistrate was requested to introduce, with the assistance of the Law Reform Commission, video link technology into the Magistrates Court on a trial basis. This followed recommendations by a Committee established by the Chief Magistrate that the law be changed to enable the use of a closed circuit live video link for the giving of evidence by children in Court and the videotaping of police interviews with children. The Committee was formed to look at ways of minimising the trauma of court appearances for child victims of sexual abuse. The Committee included representatives of the Director of Public Prosecutions, the Australian Federal Police (Juvenile Aid Bureau), the ACT Law Society, the ACT Administration and ACT Health Authority.

The Ordinance, which has been prepared by the Law Reform Commission in consultation with the Attorney-General's Department and interested persons and organisations in the



Territory, contains the legislation required to enable this trial to take place. During the trial period the use of the technology and the operation of the Ordinance will be evaluated by the Commission. To ensure the evaluation is completed, and any proposals for amendment of the legislation are made, within a reasonable time the Ordinance provides that it ceases to operate 12 months after it commences.

During the trial period the Commission will also be considering whether video or audio taped statements made by children during the process of investigating an offence should be admissible and, if so, what conditions should be applied.

Details of the sections in the Ordinance are as follows:

Section 1 and 2 provide for the citation and the commencement of the Ordinance. The Ordinance is to come into operation on a day to be fixed by notice in the Gazette.

Section 3 contains definitions for the purposes of the Ordinance:

- . "child" is defined as a person who is under the age of 18 years;
- . "Court" is defined as the Magistrates Court (including that Court when it is known as the Childrens Court) and the Coroners Court;
- . "evidence" is defined to include unsworn evidence.

Section 4 lists the proceedings in the Court to which the Ordinance applies. They are:

- . a proceeding concerning an offence (this includes summary offences, indictable offences tried summarily and committal hearings);



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- . a proceeding under Part V of the (ACT) Children's Services Act 1986 (that is, covering children in need of care);
- . a proceeding under the (ACT) Domestic Violence Act 1986.
- . a proceeding under the Coroners Ordinance 1956.

The section applies the Ordinance to proceedings instituted before or after the commencement of the Ordinance.

Subsection 5(1) provides that the Court may order that a child give evidence in a place other than the courtroom in which the proceedings are being held. This order can be made at any stage in the proceeding. As a result the child may give all or only some of the evidence in this way.

Subsection 5(2) provides that the place from which evidence is to be given must be equipped with closed circuit television equipment which must be capable of enabling the persons in the courtroom, and the child and the persons in the other place, to see and hear each other.

Subsection 5(3) enables the Court to specify in an order the way the procedure and system is to operate in each case. The Court may specify the person or persons who may be present with the child in the place and the persons in the courtroom who are to be able to be heard by, or seen and heard by, the child and the persons with the child in the other place.

The order may specify who the child is not to be able to see in the courtroom to ensure, as may be desirable in a prosecution for sexual assault involving a child, that the child does not see the accused while giving evidence.

The order may also specify the persons in the courtroom who are to be able to see and hear the child and the person or persons in the other place, for example, as a protection



against fears of 'coaching'. The Court may specify the stage or stages of the proceeding during which the matters specified in the order are to have effect and may specify the method of operation of the closed circuit television system.

Subsection 5(4) makes it clear that the Court has power to exclude a person or persons from the place where the child is giving evidence.

Subsection 5(5) provides that where the Court orders that a child's evidence is given at a place other than the courtroom, the place is to be treated as part of the courtroom. This ensures that the Court's powers, for example, in relation to contempt, apply.

Subsection 6(1) requires the Court, before it makes an order, to be satisfied that:

- . the child would suffer mental or emotional harm if required to give evidence in the courtroom; or
- . the facts would be better ascertained if the child's evidence is given in accordance with the order.

Subsection 6(2) lists matters that may be taken into account by the Court in reaching its decision. They are:

- . the age, personality, intelligence, education and maturity of the child;
- . any disability to which the child is or appears to be subject and;
- . the nature and importance of the matters on which the child is being called to give evidence.

Section 7 requires the Court not to make an order that would be unfair to a party in the proceeding. The purpose of the provision is to ensure that all interests, in particular those



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of an accused in a criminal proceeding, are considered.

Subsection 8(1) permits the Court to make an order of its own motion, on an application by a party to the proceeding, by a parent or guardian of the child or by or on behalf of the child.

Subsection 8(2) provides that where the child is not separately represented, and it appears to the Court that the child should be so represented, it may of its own initiative or on application by any person, including the child, order separate representation for the child.

Section 9 provides for the Court to vary or revoke an order.

Section 10 provides for the Ordinance to cease to operate 12 months after the day on which it comes into operation, but ensures that the operation of an order made before the expiration of that period is not affected.

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Authorised by the
Attorney-General

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