

Serial 91
Evidence of Children Amendment Bill 2007
Mr Stirling

**A BILL
for
AN ACT**

to amend the *Justices Act*, the *Evidence Act*, and the *Sexual Offences (Evidence and Procedure) Act*

NORTHERN TERRITORY OF AUSTRALIA
EVIDENCE OF CHILDREN AMENDMENT ACT 2007

Act No. [] of 2007

TABLE OF PROVISIONS

Section

PART 1 – PRELIMINARY

1. Short title
2. Commencement

PART 2 – AMENDMENT OF *JUSTICES ACT*

3. Act amended
4. Amendment of section 4 (Interpretation)
5. Amendment of section 105AA (Evidence of child witness in sexual offence matter)
6. Amendment of section 105A (Procedure where prosecutor proposes to tender written or recorded statements to the Court)
7. Amendment of section 105B (Written and recorded statements may be admitted in evidence)

PART 3 – AMENDMENT OF *EVIDENCE ACT*

8. Act amended
9. Amendment of section 21A (Evidence of vulnerable witnesses)
10. Repeal and substitution of sections 21B and 21C
 - 21B. Evidence of vulnerable witnesses in cases of sexual or serious violence offences
 - 21C. Evidence given outside the courtroom
11. Amendment of section 21D (Principles in relation to child witnesses)
12. New sections 21E and 21F
 - 21E. Audiovisual record of evidence of vulnerable witness
 - 21F. Closure of Court in certain cases
13. Amendment of section 26E (Exception to rule against hearsay evidence)

PART 4 – AMENDMENT OF *SEXUAL OFFENCES (EVIDENCE AND
PROCEDURE) ACT*

14. Act amended
15. Amendment of section 3 (Definitions)



NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2007

AN ACT

to amend the *Justices Act*, the *Evidence Act* and the *Sexual Offences (Evidence and Procedure) Act*

[Assented to [] 2007]
[Second reading [] 2007]

The Legislative Assembly of the Northern Territory enacts as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Evidence of Children Amendment Act 2007*.

2. Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

PART 2 – AMENDMENT OF *JUSTICES ACT*

3. Act amended

This Part amends the *Justices Act*.

4. Amendment of section 4 (Interpretation)

Section 4

insert (in alphabetical order)

"child" means a person under the age of 18 years;

"serious violence offence" means an offence against any of the following provisions of the Criminal Code that is punishable by imprisonment for 5 or more years:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A;
- (c) section 211 or 212;
- (d) another provision prescribed by the Regulations;

5. Amendment of section 105AA (Evidence of child witness in sexual offence matter)

Section 105AA(1)

omit, substitute

(1) If a preliminary examination involves a charge of a sexual offence or a serious violence offence (either as the only charge, or one of a number of charges, subject to examination), the evidence of a child must be given by written or recorded statement.

6. Amendment of section 105A (Procedure where prosecutor proposes to tender written or recorded statements to the Court)

(1) Section 105A(2)(c)

omit, substitute

- (c) a copy of each written statement and, for each recorded statement:
 - (i) a transcript of the statement; and
 - (ii) an invitation to contact the prosecutor so that the prosecutor may arrange to have the statement replayed in the presence of the defendant or the defendant's lawyer (or both) under subsection (7); and

(2) Section 105A(7)

omit, substitute

(7) Before the preliminary examination commences, the prosecutor must, at the request of the defendant or the defendant's lawyer:

Evidence of Children Amendment Act 2007

- (a) arrange to have a recorded statement replayed in the presence of the defendant or the defendant's lawyer (or both) at a reasonable time and place nominated by the prosecutor; or
- (b) permit the defendant or the defendant's lawyer (or both) to inspect the documents and things listed under subsection (2)(d).

7. Amendment of section 105B (Written and recorded statements may be admitted in evidence)

- (1) Section 105B(2)(a) and (b)

omit, substitute

- (a) the person making the statement:
 - (i) has made a statutory declaration under the *Oaths Act* verifying its accuracy; or
 - (ii) is a child; and
- (b) the statement:
 - (i) if made by an adult – contains a statement of that fact; and
 - (ii) if made by a child – contains a statement of that fact and of the age of the child; and

- (2) Section 105B(2A)

omit, substitute

(2A) A recorded statement may only be admitted as evidence if the person making the statement:

- (a) verifies its accuracy by statutory declaration under the *Oaths Act*; or
- (b) is a child.

PART 3 – AMENDMENT OF EVIDENCE ACT

8. Act amended

This Part amends the *Evidence Act*.

9. Amendment of section 21A (Evidence of vulnerable witnesses)

(1) Section 21A(1)

insert (in alphabetical order)

"authorised person" means:

- (a) a legal practitioner; or
- (b) a person of a class declared by regulation to be a class of authorised persons for the purposes of this definition;

"examination" of a witness includes cross-examination and re-examination;

"recorded statement" means an interview, recorded on video-tape or by other audiovisual means, in which an authorised person elicits from a vulnerable witness statements of fact which, if true, would be of relevance to legal proceedings;

"serious violence offence" means an offence against any of the following provisions of the Criminal Code that is punishable by imprisonment for 5 or more years:

- (a) Part V, Division 2;
- (b) Part VI, Divisions 3 to 6A;
- (c) section 211 or 212;
- (d) another provision prescribed by the Regulations;

(2) Section 21A(1A)

omit

(3) Section 21A(2)

omit

in a matter where subsection (1A) does not apply,

10. Repeal and substitution of sections 21B and 21C

Sections 21B and 21C

repeal, substitute

21B. Evidence of vulnerable witnesses in cases of sexual or serious violence offences

(1) This section applies proceedings for the trial of a sexual offence or a serious violence offence.

(2) If a vulnerable witness is to give evidence in proceedings to which this section applies, the Court may exercise one or both of the following powers:

- (a) the Court may admit a recorded statement in evidence as the witness's evidence in chief or as part of the witness's evidence in chief;
- (b) the Court may:
 - (i) hold a special sitting for the purpose of conducting the examination, or part of the examination, of the witness; and
 - (ii) have an audiovisual recording made of the examination of the witness at the special sitting and admit the recording in evidence; and
 - (iii) re-play the recording to the jury as the witness's evidence or as part of the witness's evidence (as the case requires).

(3) If the prosecutor asks the Court to admit a recorded statement in evidence or to hold a special sitting under subsection (2), the Court must accede to the request unless there is good reason for not doing so.

(4) Before the Court admits a recorded statement, or the recording of an examination conducted at a special sitting, in evidence under this section, the Court may have it edited to remove irrelevant or otherwise inadmissible material.

(5) A vulnerable witness may (but need not) be present in the courtroom when a recorded statement of evidence of the witness, or an audiovisual recording of the examination (or part of the examination) of the witness, is re-played to the jury.

(6) The vulnerable witness's demeanour, and words spoken or sounds made by the vulnerable witness, during the re-play of a recorded statement of evidence or an audiovisual recording of the examination (or part of the examination) of the witness, are not to be observed or overheard in the courtroom unless the vulnerable witness elects to be present in the courtroom for that part of the proceedings.

21C. Evidence given outside the courtroom

(1) If evidence is given outside the courtroom and contemporaneously transmitted to the courtroom, the following provisions apply:

Evidence of Children Amendment Act 2007

- (a) the place where the vulnerable witness gives the evidence is taken to be within the precincts of the Court;
 - (b) the Court will determine who is to be present in the same room as the witness while the evidence is given;
 - (c) the Court may give directions:
 - (i) to ensure necessary communication between persons in the courtroom and the vulnerable witness; and
 - (ii) to ensure that images of the defendant are not transmitted to the place where the vulnerable witness is giving evidence; and
 - (iii) to ensure that the witness's evidence is audible in the courtroom and that the Judge, counsel and jury can adequately observe the demeanour of the witness while giving evidence; and
 - (iv) to deal with any incidental matter.
- (2) If the Court holds a special sitting to take evidence from a vulnerable witness, the following provisions apply:
- (a) the Court may hold the sitting wherever it thinks appropriate and, if it decides to sit outside the courtroom, the place where the sitting is held is taken to be within the precincts of the Court;
 - (b) in the case of a trial by jury, the special sitting is to be held in the absence of the jury (and may be held before the jury is empanelled);
 - (c) during the examination of the witness, the defendant is not to be present in the same room as the witness, but, if the defendant wants to observe the examination, arrangements are to be made so that:
 - (i) the defendant can contemporaneously hear and observe the witness by audio visual link; and
 - (ii) the defendant (if represented) can communicate with counsel for the defence during the course of the examination;
 - (d) the Court will determine who is to be in the same room as the witness during the course of the examination;
 - (e) the Court may give directions on any matter incidental to the examination or the recording of the examination.

(3) If evidence is taken from a vulnerable witness from a place outside the courtroom at a special sitting of the Court, but it is necessary for the witness to attend in the courtroom to give identification evidence, the Court must, unless there is good reason to the contrary, defer taking the identification evidence until the witness has completed giving all other evidence.

11. Amendment of section 21D (Principles in relation to child witnesses)

After section 21D(2)

insert

(3) However, if the Court is satisfied that a child witness is able, and wants, to give evidence in the presence of the defendant, special measures are not to be taken, contrary to the wishes of the child, to protect the child from the apprehended distress or trauma of giving evidence in the presence of the defendant.

12. New sections 21E and 21F

After section 21D, in Part IIA

insert

21E. Audiovisual record of evidence of vulnerable witness

(1) If a vulnerable witness is to give evidence in criminal proceedings, and facilities are available for making an audiovisual record of the evidence, the Court may direct that an audiovisual record be made of the witness's evidence.

(2) An order may be made under this section whether or not special measures are taken for the protection of the witness.

(3) An audiovisual record made under this section forms part of the records of the Court.

(4) If, in later civil or criminal proceedings, a Court is satisfied that evidence of which an audiovisual record has been made under this section is relevant to the later proceedings, the Court may admit the audiovisual record in evidence.

(5) Before the Court admits an audiovisual record in evidence, it may have the record edited to exclude irrelevant material or material that is otherwise inadmissible in the later proceedings.

(6) If a Court admits an audiovisual record in evidence under this section, the Court may relieve the witness wholly or in part from an obligation to give evidence in the later proceedings.

21F. Closure of Court in certain cases

(1) The Court is to be closed, in a case involving a charge of a sexual offence or a serious violence offence, while the evidence of a vulnerable witness is being taken.

(2) This section extends both to the examination of the vulnerable witness and to the re-play before the Court of an audiovisual record of the witness's evidence.

(3) While the Court is closed under this section, a person must not remain in the courtroom, or a place from which the person can overhear the proceedings in the courtroom, without the Court's permission.

13. Amendment of section 26E (Exception to rule against hearsay evidence)

Section 26E(1)

omit, substitute

(1) In a proceeding arising from a charge of a sexual offence or a serious violence offence, the Court may, despite the rule against hearsay evidence, admit evidence of a statement made by a child to another person as evidence of facts in issue if the Court considers the evidence of sufficient probative value to justify its admission.

PART 4 – AMENDMENT OF *SEXUAL OFFENCES (EVIDENCE AND PROCEDURE) ACT*

14. Act amended

This Part amends the *Sexual Offences (Evidence and Procedure) Act*.

15. Amendment of section 3 (Definitions)

Section 3, definition "sexual offence"

omit, substitute

"sexual offence" means an indictable offence of which an element is:

- (a) sexual intercourse or sexual penetration; or
- (b) a sexual relationship; or
- (c) sexual abuse; or
- (d) indecent touching or an indecent assault; or

Evidence of Children Amendment Act 2007

- (e) any other indecent act (whether or not it involves physical contact between 2 or more persons); or
- (f) the making, collection, exhibition or display of an indecent object or indecent material; or
- (g) sexual servitude or any other form of sexual exploitation; or
- (h) an attempt to commit, an act of procuring, or any other act preparatory to the commission of, any of the above;