

Serial 309
Evidence
Amendment
Mr Manzie

NORTHERN TERRITORY OF AUSTRALIA
EVIDENCE AMENDMENT BILL 1994

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NORTHERN TERRITORY OF AUSTRALIA

A BILL for AN ACT

to amend the *Evidence Act*

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Evidence Amendment Act 1994*.

2. COMMENCEMENT

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. NEW PART

The *Evidence Act* is amended by inserting after Part II the following:

"PART IIA - VULNERABLE WITNESSES

"21A. EVIDENCE OF VULNERABLE WITNESSES

"(1) In this Part -

'vulnerable witness' means -

- (a) a witness who has not attained the age of 16 years;
- (b) a witness who suffers from an intellectual disability;
- (c) a witness who is the alleged victim of a sexual offence to which the proceedings relate; or

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- (d) a witness who is, in the opinion of the Court, under a special disability because of the circumstances of the case, or the circumstances of the witness;

'sexual offence' means a sexual offence within the meaning of the *Sexual Offences (Evidence and Procedure) Act*.

"(2) Where a vulnerable witness is to give or is giving evidence in any proceeding, the Court may, of its own motion, upon application made by a party to the proceeding or a vulnerable witness, make one or more of the following orders:

- (a) that the evidence of the vulnerable witness be given at a place outside the courtroom and transmitted to the courtroom by means of closed circuit television;
- (b) that a screen, partition or one-way glass be placed to obscure the witness's view of a party to whom the evidence relates but not so as to obstruct the view of the witness by the magistrate or the judge and jury;
- (c) that the vulnerable witness be accompanied by a relative or friend for the purpose of providing emotional support;
- (d) that the Court be closed while evidence is being given by the vulnerable witness in the proceeding (including evidence given under cross-examination) and that no persons remain in or enter a room or place in which the Court is being held, or remain within the hearing of the Court, without its permission.

"(3) Where an order is made under subsection (2) (a) or (b), the judge, at a trial by jury, shall cause a warning to be issued to the jury to the effect that -

- (a) the procedure is a routine practice of the Court;
- (b) no adverse inference is to be drawn against the accused as a result of the issue of these orders; and
- (c) the evidence of the witness is not to be given any greater or lesser weight because of the use of such orders.

"(4) Where an order is made under subsection (2) (c), the relative or friend accompanying the vulnerable witness shall be visible to the parties, the Court and (at a trial by jury) the jury while the witness is giving evidence.

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"(5) Notwithstanding anything contained in subsection (2)(d), where the defendant has not or apparently has not attained the age of 16 years, the Court shall not make an order causing persons to be excluded from the Court or place where the examination is being taken, where those persons are required or permitted under the *Juvenile Justice Act* to be present.

"(6) An order under this section may be made, varied or revoked on the Court's own initiative or on the application of a party or witness.

"21B. CHILD WITNESSES

"(1) Where a vulnerable witness in a proceeding is a child who has not attained the age of 16 years, the judge or magistrate may disallow any question put to the witness in the proceeding that is confusing, misleading or phrased in inappropriate language.

"(2) In deciding whether to disallow a question in accordance with subsection (1) the Court shall have regard to the age, culture and level of understanding of the child.

"21C. USE OF CLOSED CIRCUIT TELEVISION

"(1) An order made under section 21A(2)(a), that evidence be given by closed circuit television, may include, but is not limited to, one or more of the following provisions:

- (a) who may be present at that other place with the vulnerable witness;
- (b) who in the courtroom is able to, or not able to, be heard, or to be seen and heard by the vulnerable witness;
- (c) who in the courtroom is able to see and hear the vulnerable witness.

"(2) The place at which a vulnerable witness gives evidence pursuant to an order under section 21A(2)(a) shall be deemed to be part of the Court in which the proceeding is being held."

