

CLAUSE NOTES

Evidence (Children and Special Witnesses) Amendment Bill **2013**

- Clause 1:** Short title
- Clause 2:** Commencement date
- Clause 3:** Principal Act for Part 2
- Clause 4:** Amends section 3 of the Principal Act to extend the definitions of “affected child” to include victims of specified serious crimes of violence and to include witnesses to the listed crimes; to extend the definition of “prescribed proceedings” to include specified serious crimes of violence; and to include a definition of Crown Law Officer”.
- Clause 5:** Inserts a new Part 1A listing the principles to be applied when dealing with a child witness
- Clause 6:** Amends section 5 to clarify that the section applies to a special hearing ordered under section 6A.
- Clause 7:** Repeals existing section 6 and substitutes a section providing that the prosecutor may apply that the whole of an affected child’s evidence be given at a special hearing and audio-visually recorded and presented at trial in the form of the audio-visual recording. The affected child need not be present at trial.
- Inserts a new section 6A that provides that the judge hearing an application under section 6

may make such orders as he or she thinks fit, including ordering a special hearing.

Inserts a new section 6B that replicates existing section 6 and provides that an affected child is to give evidence by audio-visual link unless an order under section 7 is in force.

Clause 8: Amends cross references in section 7

Clause 9: Inserts new sections 7A, 7B & 7C which provide that where facilities are available an audio-visual recording is to be made of an affected child's or special witness's evidence given at trial, whether or not the evidence is given by audio-visual link; that this audio-visual record (edited if necessary) may be admitted into later civil or criminal proceedings to which it is relevant and the witness wholly or partially excused from giving evidence in the later proceeding; and penalties for unauthorised possession or dealing in such audio-visual record.

Clause 10: Inserts a new heading after section 7C

Clause 11: Amends section 8 to insert three new orders available to the judge to be made in respect of a special witness.

Clause 12: Inserts a new Part 4 into the Act which provides that an unrepresented defendant in a prescribed proceeding is not permitted to personally cross-examine a witness who is the alleged victim of the offence. The unrepresented defendant must be warned of this limitation, informed that he or she may be

entitled to legal aid and given an opportunity to obtain the assistance of counsel.

Provides that where counsel's assistance is obtained for cross-examination the judge must explain to the jury the limitations imposed by the section and warn that no adverse inference is to be drawn against the defendant.

- Clause 13:** Inserts a new heading before section 9
- Clause 14:** Amends section 5 to insert a cross-reference to section 6A.
- Clause 15:** Omits an obsolete heading.
- Clause 16:** Principal Act for Part 3
- Clause 17:** Omits subsection 178(2) of Schedule I of the *Criminal Code Act 1924* as it is inconsistent with provisions in the *Evidence Act 2001*.
- Clause 18:** Principal Act for Part 4.
- Clause 19:** Inserts a new paragraph in subsection 19(1) of the Principal Act to cover an application for legal aid by an unrepresented accused in a prescribed proceeding for the purpose of cross-examining the alleged victim of the offence and inserts a new paragraph in subsection 19 (2) to make the provisions of section 8A of the *Evidence (Children and Special Witnesses) Act* a relevant matter to be taken into account by the Commission.
- Clause 20:** Provides for the automatic repeal of the amending Act.