

CLAUSE NOTES

Evidence (Children and Special Witnesses) Amendment Bill 2024

- Clause 1 **Short title**
- The short title will be the *Evidence (Children and Special Witnesses) Amendment Act 2024*.
- Clause 2 **Commencement**
- The Amendment Act will commence on the day on which it proclaimed.
- Clause 3 **Principal Act**
- Provides that the *Evidence (Children and Special Witnesses) Amendment Act 2001* is the Principal Act referred to in the amendments.
- Clause 4 **Section 4 amended (Support person for child or affected person)**
- This clause amends section 4 of the Principal Act by omitting subsection (1) and substituting a new subsection that provides that in giving evidence in any proceeding, a child or an affected person is entitled to have a person approved by the judge near the child or affected person, for the purpose of providing the child or affected person with support.
- Currently section 4 provides a support person for a child or prescribed witness. The definition of ‘affected person’ includes a prescribed witness, so the amendment broadens the cohort of witnesses who can have a support person, and now includes adult complainants in proceedings relating to child sexual abuse.
- Clause 5 **Section 6A amended (Special hearing to take and record person’s evidence in full)**
- This clause amends section 6A(2)(b) of the Principal Act by omitting “both parties consent” and substituting “the witness consents”.
- This will provide that the accused will no longer be required to consent when a judge is making an order that a special hearing is to occur, and now only the witnesses consent is required.
- A defendant’s rights in section 6(2) to be served with a copy of a prosecution application and to be heard on the application, are preserved.

Clause 6

Section 7AA inserted (Use of screens, one-way glass or other devices in courtroom)

This clause inserts a new section after section 7, in Part 2 of the Principal Act.

The clause will confirm that if an affected person is to give evidence in the presence of the defendant in the courtroom, the judge may make an order that a screen, one-way glass or other device be placed so that the affected person's view of the defendant is obscured.

'Affected person' is a defined term in the Principal Act and includes children in specific proceedings (including child sexual abuse offences), an adult complainant in child sexual offence proceedings and a witness assisted by an intermediary due to a communication need.

The clause provides that this new order can only be made if the affected person consents and the judge is satisfied it would not be contrary to the interests of justice.

The new order can be made on the application of the prosecutor or on the judge's own motion.

Clause 7

Section 8 amended (Special witness)

This clause amends section 8(2)(b) of the Principal Act by inserting a new subparagraph after (iic).

The new subparagraph (iid) will provide that a judge who has made a special witness declaration under subsection 8(1), may make an order that a screen, one-way glass or other device be placed so that the special witness's view of the defendant is obscured. The provision is to operate as if the special witness were an affected person in respect of whom section 7AA applies.

This will ensure that section 8 includes the new special measure as an order that a judge may make for a declared special witness, along with the other measures currently provided in section 8(2).

Clause 8

Application of amendments made by this Act

This clause provides that an amendment made by the Amending Act applies in relation to proceedings, whether commenced before or after the commencement of the Amending Act. This means that eligible witnesses will be able to benefit from the amendments as soon as the Amendment Act commences, even where proceedings have commenced.

Clause 9

Repeal of Act

The *Evidence (Children and Special Witnesses) Amendment Act 2024* will be automatically repealed after the first anniversary of its commencement.