



TASMANIA

**EVIDENCE AMENDMENT (CHILDREN AND SPECIAL
WITNESSES) ACT 1995**

No. 37 of 1995

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**EVIDENCE AMENDMENT (CHILDREN AND SPECIAL
WITNESSES) ACT 1995**

No. 37 of 1995

**AN ACT to amend the *Evidence Act 1910* and for related
purposes**

[Royal Assent 1 September 1995]

BE it enacted by His Excellency the Governor of Tasmania,
by and with the advice and consent of the Legislative
Council and House of Assembly, in Parliament assembled, as
follows:—

Short title

1—This Act may be cited as the *Evidence Amendment
(Children and Special Witnesses) Act 1995*.

Commencement

2—This Act commences on a day to be proclaimed.

Principal Act

3—In this Act, the *Evidence Act 1910** is referred to as the Principal Act.

Heading to Part IV amended

4—The Heading to Part IV of the Principal Act is amended by inserting “**GENERALLY**” after “**WITNESSES**”.

Part IVA inserted

5—After section 122 of the Principal Act, the following Part is inserted:—

PART IVA**CHILD AND SPECIAL WITNESSES****Interpretation of Part IVA**

122A—In this Part—

“**affected child**” means—

- (a) a child in respect of whom an application under section 10 or 11 of the *Child Protection Act 1974* is made; or
- (b) a child upon or in respect of whom any of the following crimes is alleged to have been committed:—
 - (i) a crime under section 122, 123, 124, 125, 126, 127, 127A, 128, 129, 185, 186, 298 or 300 of the *Criminal Code*;
 - (ii) a crime under section 299 of the *Criminal Code* in relation to a crime specified in a section referred to in subparagraph (i); or

* 1 Geo. V No. 20. For this Act, as amended to 1 June 1979, see the continuing Reprint of Statutes. Subsequently amended by No. 52 of 1981, Nos. 60 and 75 of 1982, No. 29 of 1984, Nos. 5, 21 and 51 of 1985, No. 34 of 1986, Nos. 55 and 77 of 1987, Nos. 4 and 25 of 1988, No. 5 of 1990, Nos. 1, 25, 27 and 46 of 1991, Nos. 13 and 36 of 1992, Nos. 5, 57, 73, 89 and 100 of 1993, Nos. 25, 64, 68 and 72 of 1994 and No. 30 of 1995.

- (c) a child upon or in respect of whom an offence under section 35 (3) of the *Police Offences Act 1935* is alleged to have been committed;

“**child**” means a person who is under the age of 17 years;

“**defendant**” means—

- (a) in respect of an application under section 10 or 11 of the *Child Protection Act 1974*, the respondent; or
- (b) in respect of any other prescribed proceeding, a person charged with the crime or offence;

“**prescribed proceeding**” means—

- (a) an application under section 10 or 11 of the *Child Protection Act 1974*; or
- (b) a proceeding in which a person has been charged with a crime under section 122, 123, 124, 125, 126, 127, 127A, 128, 129, 185, 186, 298 or 300 of the *Criminal Code*; or
- (c) a proceeding in which a person has been charged with a crime under section 299 of the *Criminal Code* in relation to a crime specified in a section referred to in paragraph (b); or
- (d) a proceeding in which a person has been charged with an offence under section 35 (3) of the *Police Offences Act 1935*;

“**prosecutor**”, in relation to an application under section 10 or 11 of the *Child Protection Act 1974*, means the applicant;

“**trial**” includes the hearing of an application under section 10 or 11 of the *Child Protection Act 1974*.

Sworn evidence of child

122B—(1) A child under the age of 14 years is competent to give evidence on oath or after making solemn affirmation if the judge or person acting judicially is satisfied that the child—

- (a) understands that he or she has, in giving evidence, an obligation to tell the truth that is over and above the ordinary duty to tell the truth; and
- (b) can understand and respond rationally to questions which are put to the child in a manner and language appropriate to the age and understanding of the child.

(2) A jury is not to be present during an inquiry for the purpose of determining the competency of a child to give evidence on oath or after making solemn affirmation under subsection (1).

Unsworn evidence of child

122C—A child under the age of 14 years who is not competent to give evidence under section 122B may give evidence without taking an oath or making a solemn affirmation if the judge or person acting judicially is satisfied that the child can give an intelligible account of events which he or she has observed or experienced.

Corroboration not required

122D—(1) All rules of law or practice which provide that a person may not be convicted of an offence on the uncorroborated evidence of a child are abolished.

(2) A judge is not to warn a jury, or suggest to a jury in any way, that it is unsafe to convict a person of an offence on the uncorroborated evidence of a child because children are classified by the law as unreliable witnesses.

Support person for child

122E—(1) While giving evidence in any proceeding, a child is entitled to have near him or her a person who—

- (a) may provide the child with support; and
- (b) has been approved by the judge.

(2) A judge must not approve a person for the purposes of subsection (1) (b) if that person is a witness in or a party to the proceeding.

Admission of prior statement of affected child

122F—(1) In a prescribed proceeding the judge may, at his or her discretion, admit into evidence a statement made by an affected child and recorded in writing, electronically or otherwise if—

- (a) the statement relates to a matter in issue in the proceeding; and
- (b) the defendant has been given a copy of a written, electronic or other recording of the statement; and
- (c) the defendant is given the opportunity to cross-examine the affected child.

(2) Subsection (1) does not affect the operation of section 56A (6AA) or 57A of the *Justices Act 1959*.

Evidence of affected child to be by closed circuit television

122G—(1) Except where an order under section 122H is in force, the evidence of an affected child in a prescribed proceeding is to be given in a room other than the courtroom but within the court precincts and transmitted to the courtroom by means of closed circuit television.

(2) While an affected child is giving evidence by means of closed circuit television, only the following persons may be present in the room with the child:—

- (a) a person approved under section 122E;
- (b) one person employed at the court in which the child is giving evidence.

Affected child may give oral evidence in court

122H—(1) In a prescribed proceeding, the prosecutor may apply to a judge of the court hearing the proceeding for an order that section 122G does not apply to the proceeding.

(2) On receipt of an application, the judge may make an order declaring that section 122G does not apply to the proceeding if the judge is satisfied that the affected child is able and wishes to give evidence in the presence of the defendant in the courtroom.

(3) A judge of the court hearing a prescribed proceeding may at any time, on the application of the prosecutor or on his or her own motion, vary or revoke an order made under subsection (2).

Special witness

122I—(1) A judge may make an order declaring that a person who is giving, or is to give, evidence in the proceeding is a special witness if the judge is satisfied that—

- (a) by reason of intellectual, mental or physical disability the person is, or is likely to be, unable to satisfactorily give evidence in the ordinary manner; or
- (b) by reason of age, cultural background, relationship to any party to the proceeding, the nature of the subject-matter of the evidence or any other factor the court considers relevant, the person would be likely—
 - (i) to suffer severe emotional trauma; or
 - (ii) to be so intimidated or distressed as to be unable to give evidence or to give evidence satisfactorily.

(2) An order under subsection (1)—

- (a) may be made on the application of a party to the proceeding or the prosecutor or on the motion of the judge; and
- (b) may include any one or more of the following orders:—
 - (i) an order that the special witness have near him or her a person who may provide him or her with support and has been approved by the judge;

- (ii) an order that the evidence of the special witness be given in a room other than the courtroom but within the court precincts and transmitted to the courtroom by means of closed circuit television; and
- (iii) an order that, while the special witness is giving evidence, all persons other than those specified in the order be excluded from the courtroom.

(3) For the purposes of an order of a kind referred to in subsection (2) (b) (i), the judge must not approve a person who is, or is to be, a witness or party to the proceeding.

(4) At any time, a judge may revoke or vary an order made under subsection (1).

(5) A judge may not make an order under subsection (1) in respect of an affected child.

(6) While a special witness is giving evidence by means of closed circuit television, only the following persons may be present in the room with the special witness:—

- (a) a person approved under subsection (2) (b) (i);
- (b) one person employed at the court in which the special witness is giving evidence.

Preliminary hearing

122J—(1) In any proceeding in which a matter affecting a person as a witness is likely to require the giving of an approval under section 122E or the making of an order under section 122I, the prosecutor or the party who is to call that person as a witness is to apply for a preliminary hearing for the purpose of having all such matters dealt with before the hearing of the proceeding or trial is commenced.

(2) A hearing under subsection (1) in relation to a proceeding may be provided for by the rules of the court in which that proceeding is being brought.

Section 128 repealed

6—Section 128 of the Principal Act is repealed.

Funding of closed circuit television equipment

7—(1) In this section—

“**affected child**” has the same meaning as in Part IVA of the *Evidence Act 1910*;

“**special witness**” has the same meaning as in section 122I of the *Evidence Act 1910*.

(2) If the State acquires equipment for the purpose of enabling affected children and special witnesses to give evidence in proceedings by closed circuit television under section 122G of the *Evidence Act 1910* or under an order made under section 122I of that Act, the whole or part of the costs of that acquisition may be met from the Criminal Injuries Compensation Fund established under section 11 of the *Criminal Injuries Compensation Act 1976*.

[Second reading presentation speech made in:—
House of Assembly on 9 May 1995
Legislative Council on 16 August 1995]