



New South Wales

# **Crimes Amendment (Children's Evidence) Act 1996 No 68**

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New South Wales

# **Crimes Amendment (Children's Evidence) Act 1996 No 68**

Act No 68, 1996

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An Act to amend the *Crimes Act 1900* to give all children the right to have a supportive person present when they give evidence in criminal proceedings and certain other proceedings, to provide for the use of closed-circuit television facilities, and other special arrangements, by children giving evidence in proceedings involving personal assaults or apprehended violence orders, and for other purposes. [Assented to 27 September 1996]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Crimes Amendment (Children's Evidence) Act 1996*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Crimes Act 1900 No 40**

The *Crimes Act 1900* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Sections 405C and 405CA

Insert after section 405B:

#### **405C Definitions relating to children's evidence**

In sections 405CA–405I:

*apprehended violence order* means an apprehended violence order made under Part 15A and includes an interim apprehended violence order made under that Part.

*child*, in relation to any proceedings, means a child under the age of 16 years at the time that the child is giving evidence in the proceedings.

*personal assault offence* means any of the following offences:

- (a) an offence under Part 3 (Offences against the person),
- (b) an offence under section 562AB (Stalking, intimidation with intent to cause fear for personal safety),
- (c) an offence under section 562I (Offence of contravening an apprehended violence order),
- (d) an offence under section 25 (Child abuse) of the *Children (Care and Protection) Act 1987*,
- (e) an offence which includes the commission, or an intention to commit, any of the above offences,
- (f) an offence of attempting, or of conspiracy or incitement, to commit any of the above offences.

*tribunal*, in respect of proceedings before the Victims Compensation Tribunal, means that Tribunal.

**405CA Children have a right to the presence of a supportive person while giving evidence**

- (1) This section applies to:
  - (a) all criminal proceedings in any court, and
  - (b) civil proceedings arising from the commission of a personal assault offence, and
  - (c) proceedings before the Victims Compensation Tribunal arising from the commission of a personal assault offence.
- (2) A child who gives evidence in any such proceedings is entitled to choose a person whom the child would like to have present near him or her when giving evidence.
- (3) Without limiting a child's right to choose such a person, that person:
  - (a) may be a parent, guardian, relative, friend or support person of the child, and
  - (b) may be with the child as an interpreter, for the purpose of assisting the child with any difficulty in giving evidence associated with a disability, or for the purpose of providing the child with other support.
- (4) To the extent that the court or tribunal considers it reasonable to do so, the court or tribunal must make whatever direction is appropriate to give effect to a child's decision to have such a person present near the child, and within the child's sight, when the child is giving evidence.
- (5) The court or tribunal may permit more than one support person to be present with the child if the court or tribunal thinks that it is in the interests of justice to do so.
- (6) Nothing in this section limits any discretion that a court or tribunal has with respect to the conduct of proceedings in any case.
- (7) This section extends to a child who is the accused or the defendant in the relevant proceedings.

## [2] Sections 405D–405DD

Omit section 405D. Insert instead:

### **405D Children have a right to give evidence by closed-circuit television**

- (1) This section applies to:
  - (a) proceedings in which it is alleged that a person has committed a personal assault offence, and
  - (b) proceedings in relation to a complaint for an apprehended violence order, and
  - (c) civil proceedings arising from the commission of a personal assault offence, and
  - (d) proceedings before the Victims Compensation Tribunal arising from the commission of a personal assault offence.
- (2) Subject to this Act, a child who gives evidence in any such proceedings is entitled to give that evidence by means of closed-circuit television facilities or by means of any other similar technology prescribed for the purposes of this section.
- (3) A child may choose not to give evidence by those means.
- (4) A child must not give evidence by means of closed-circuit television facilities or any other prescribed technology if the court or tribunal orders that such means not be used.
- (5) The court or tribunal may only make such an order if it is satisfied that it is not in the interests of justice for the child's evidence to be given by such means or that the urgency of the matter makes their use inappropriate.
- (6) The court or tribunal may make, vary or revoke an order under this section either of its own motion or on application by a party to the proceedings.
- (7) This section does not apply to a child:
  - (a) who is the accused or defendant in any of the proceedings referred to in subsection (1) (a), (b) or (c), or

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- (b) who is or was accused of committing the offence that gave rise to proceedings referred to in subsection (1) (d).
- (8) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.
- (9) Nothing in this section affects the operation of section 13 of the *Evidence Act 1995*.

**405DA Accused children may be allowed to give evidence by closed-circuit television**

- (1) This section applies to a child in any of the following proceedings:
  - (a) proceedings in which it is alleged that the child has committed a personal assault offence, and
  - (b) proceedings in relation to a complaint for an apprehended violence order against the child, and
  - (c) civil proceedings arising from the commission of a personal assault offence by the child, and
  - (d) proceedings before the Victim's Compensation Tribunal arising from the commission of a personal assault offence by the child.
- (2) The court or tribunal may make an order permitting a child's evidence to be given by means of closed-circuit television or any other similar technology prescribed for the purposes of this section.
- (3) Such an order may be made only if the court or tribunal is satisfied:
  - (a) that the child may suffer mental or emotional harm if required to give evidence in the ordinary way, or
  - (b) that the facts may be better ascertained if the child's evidence is given in accordance with such an order.

- (4) A child may choose not to give evidence by means of closed-circuit television facilities or other similar technology.
- (5) The court or tribunal may make, vary or revoke an order under this section either of its own motion or on application by a party to the proceedings.
- (6) The Governor may make regulations, not inconsistent with this Act, prescribing any matter required or permitted to be prescribed under this section.

**405DB Giving evidence by closed-circuit television**

- (1) If a child's evidence is given from a location outside a court, or outside a place at which a tribunal is sitting, (by virtue of section 405D or 405DA), that location is taken to be part of the court in which the proceedings are being held, or part of the place in which the tribunal is sitting.
- (2) If a child's evidence is given from a location outside a court, or outside a place at which a tribunal is sitting, (by virtue of section 405D or 405DA), the court or tribunal may order:
  - (a) that a court officer, or an officer of the tribunal, be present at that other location, and
  - (b) that any other person be present with the child as an interpreter, for the purpose of assisting the child with any difficulty in giving evidence associated with a disability, or for the purpose of providing the child with other support.
- (3) Any such order does not limit the entitlement that a child has (under section 405CA) to choose another person to be present with him or her when giving evidence.
- (4) The court or tribunal may make, vary or revoke an order under this section either of its own motion or on application by a party to the proceedings or by the relevant child.

**405DC Giving identification evidence when closed-circuit television is used**

- (1) If a child is entitled to give evidence by means of closed-circuit television facilities, or any other similar technology, that child may not give identification evidence by those means.
- (2) However, such a child is entitled to refuse to give identification evidence until after the completion of the child's other evidence (including examination in chief, cross-examination and re-examination).
- (3) In addition, the court must ensure that such a child is not in the presence of the accused for any longer than is necessary for the child to give identification evidence.
- (4) In this section:  
*identification evidence* has the same meaning as in the *Evidence Act 1995*.

**405DD Proceedings may be moved to allow use of closed-circuit television facilities**

- (1) This section applies if a child is entitled to give evidence by means of closed-circuit television facilities or any other similar technology (by virtue of section 405D or an order made under section 405DA).
- (2) If the court, or place at which the tribunal is sitting, is not equipped with such facilities or technology, or it otherwise considers it appropriate to do so, the court or tribunal may adjourn the proceedings or any part of the proceedings to a court or place that is equipped with such facilities or technology so that the child's evidence may be given by such means.

**[3] Section 405E Use of closed-circuit television or similar technology**

Insert "or similar technology" after "television facilities" wherever occurring.

**[4] Section 405E (2) and (3)**

Omit “an order made under section 405D” wherever occurring.  
Insert instead “this Act”.

**[5] Sections 405F and 405FA**

Omit section 405F. Insert instead:

**405F Children have a right to alternative arrangements for giving evidence when closed-circuit television facilities not available**

- (1) This section applies to proceedings in which a child is entitled to give evidence by means of closed-circuit television facilities or other similar technology (by virtue of section 405D or an order made under section 405DA) but does not do so because:
  - (a) such facilities and such technology are not available (and the court or tribunal does not move the proceedings under section 405DD), or
  - (b) the child chooses not to give evidence by those means, or
  - (c) the court or tribunal orders that the child may not give evidence by those means (or, in the case of a child to whom section 405DA applies, the court or tribunal does not order that the child may give evidence by those means).
- (2) In such proceedings, the court or tribunal must make alternative arrangements for the giving of evidence by the child, in order to restrict contact (including visual contact) between the child and any other person or persons.
- (3) Those alternative arrangements may include any of the following:
  - (a) the use of screens,
  - (b) planned seating arrangements for people who have an interest in the proceedings (including the level at which they are seated and the people in the child’s line of vision),

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- (c) the adjournment of the proceedings or any part of the proceedings to other premises.
- (4) A child may choose not to use any such alternative arrangements. In that case, the court or tribunal must direct that the child be permitted to give evidence in the ordinary way.
- (5) Any premises to which proceedings are adjourned for this purpose are taken to be part of the court or tribunal in which the proceedings are being heard.

**405FA Children have a right to alternative arrangements for giving evidence when the accused is unrepresented**

- (1) This section applies to the following proceedings, if the accused or defendant is not represented by a legal practitioner:
  - (a) all criminal proceedings in any court,
  - (b) civil proceedings arising from the commission of a personal assault offence.
- (2) In such proceedings, the court may appoint a person to conduct the examination in chief, cross-examination, or re-examination of any witness (other than the accused or the defendant) who is a child.
- (3) If any such person is appointed, that person must act on the instructions of the accused or the defendant.
- (4) The court may choose not to appoint such a person if the court considers that it is not in the interests of justice to do so.
- (5) This section applies whether or not closed-circuit television facilities or similar technology is used to give evidence, and whether or not alternative arrangements under section 405F are used in the proceedings.

## [6] Section 405H

Omit the section. Insert instead:

### 405H Warning to jury

- (1) In any criminal proceedings in which the evidence of a child is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 405D), the Judge must:
  - (a) inform the jury that it is standard procedure for children's evidence in such cases to be given by those means, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology.
- (2) In any criminal proceedings in which the evidence of a child is given by means of closed-circuit television facilities or any other similar technology (by virtue of section 405DA), the Judge must warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those facilities or that technology.
- (3) In any criminal proceedings in which arrangements are made for a person to be with a child giving evidence (by virtue of section 405CA or 405DB), the Judge must:
  - (a) inform the jury that it is standard procedure in such cases for children to choose a person to be with them, and
  - (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the presence of that person.
- (4) In any criminal proceedings in which alternative arrangements for the giving of evidence by a child are made (by virtue of section 405F and 405FA), the Judge must:
  - (a) inform the jury that it is standard procedure in such cases for alternative arrangements to be used when children give evidence, and

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- (b) warn the jury not to draw any inference adverse to the accused person or give the evidence any greater or lesser weight because of the use of those alternative arrangements.

## [7] Section 405I Validity of proceedings not affected

Omit “an order made under section 405D or a direction made under section 405F”.

Insert instead “section 405CA, 405D, 405DA, 405DB, 405DC, 405F or 405FA”.

## [8] Eleventh Schedule Savings and transitional provisions

Insert at the end of the Schedule:

## **29 Proceedings involving children's evidence**

An amendment made to this Act by the *Crimes Amendment (Children's Evidence) Act 1996* does not extend to proceedings that commenced before the date of commencement of that amendment.

[Minister's second reading speech made in—  
Legislative Assembly on 13 June 1996  
Legislative Council on 11 September 1996]