

EVIDENCE AMENDMENT BILL 2015

Introduction and First Reading

Bill introduced, on motion by **Hon Michael Mischin (Attorney General)**, and read a first time.

Second Reading

HON MICHAEL MISCHIN (North Metropolitan — Attorney General) [4.09 pm]: I move —

That the bill be now read a second time.

As members will be aware, the Evidence Act 1906 provides protections for children and other vulnerable witnesses required to give evidence during a trial. One of those protections is to allow the evidence-in-chief at trial to be adduced by way of the visual recording of an interview in which the witness discloses the allegations that, if established, constitute an offence.

The court process can be complex and daunting, especially for child victims of, or witnesses to, a crime who are required to give evidence; the same applies to persons who are vulnerable by reason of a mental impairment. The admission into evidence of the visually recorded interview of a child or mentally impaired witness significantly reduces the distress on witnesses associated with the court process. Further, because it is conveyed more contemporaneously with the events being recounted and in less daunting circumstances than a court, it is likely to be more reliable.

Interviews are conducted by the Western Australia Police and the Department for Child Protection and Family Support, which together developed our system to visually record the disclosure interview. Interviewers undergo specialist training and the interviews take place in non-threatening surroundings designed to reduce the child's distress. The child's evidence can therefore be of a higher quality and more complete than if adduced at trial many months later and in stressful circumstances. When the visually recorded interview can be admitted into evidence at trial as the child's evidence-in-chief, the witness is spared the anxiety of having to give viva voce evidence, which can be very difficult for a child. In recognition of the vulnerability of witnesses with a mental impairment, the Evidence Act 1906 was amended in 2008 similarly to provide for a visual recording of the evidence of persons with a mental impairment. The amendment was consequent upon a case that could not proceed because the mentally impaired complainant was so traumatised by the courtroom setting that he was unable to give evidence.

In conjunction with the Disability Services Commission, interviewers at the specialist interview unit receive appropriate training to interview persons with a mental impairment. However, a deficiency has been exposed regarding the video-recording regime under the Evidence Act applicable to vulnerable witnesses. In a recent District Court case concerning a charge of sexual assault perpetrated on a young woman, the prosecutor, with the consent of defence counsel, attempted to adduce the visually recorded interview of a child witness to the alleged assault as the child's evidence-in-chief. However, the court considered that the relevant provisions of the Evidence Act restricted the admissibility of the visually recorded interview of a child to circumstances in which the child is either the complainant or a child witness to the offence alleged to have been committed against that child complainant. As the case before the court concerned the child witnessing an offence alleged to have been committed against an adult, the visually recorded interview was inadmissible. The child's evidence had to be elicited viva voce. Similarly, the Evidence Act 1906 provisions relating to a witness with a mental impairment restrict admissibility of the visually recorded interview to when that person is the alleged victim. A visually recorded interview with a witness to the alleged offence who was also mentally impaired would not be admissible at trial.

There is no legislative restriction on the visual recording of interviews and they are routinely conducted to elicit the evidence of a child or person with a mental impairment. The only restriction is on the admissibility of that visually recorded interview into evidence at trial as the evidence-in-chief of that witness. There is no obvious reason for this restriction. One can understand the caution exercised in setting the scope of the operation of these provisions when they were first introduced over 20 years ago and when last amended a decade ago, but the use of video-recorded evidence in the case of vulnerable witnesses has now become commonplace. Confidence in their efficacy and role in the administration of justice has been confirmed through experience. I am sure members will agree that the restriction I have identified should now be removed. Accordingly, this bill will amend the Evidence Act 1906 to remove the current restriction on the admissibility of visually recorded interviews. Once enacted, the visually recorded interview of all child witnesses and all witnesses with a mental impairment will be admissible into evidence as the evidence-in-chief of that witness.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 2994.]

Debate adjourned, pursuant to standing orders.

Sitting suspended from 4.14 to 4.30 pm