

EVIDENCE AMENDMENT BILL 2015

EXPLANATORY MEMORANDUM

Overview of the Bill

In 1992 the *Evidence Act 1906 (WA)* was amended to include a suite of provisions to assist children and other vulnerable witnesses in giving evidence at trial.

The amendments implemented the recommendations of the Child Sexual Abuse Taskforce Report of 1987 and the Law Reform Commission of WA 1991 Report *Evidence of Children and Other Vulnerable Witnesses*.

Provisions relating to the visual recording of the investigative interview of children were amended in 2004 following the Report of the Video Recording of Children's Interview Taskforce formed to study similar schemes in other jurisdictions.

Together, the WA Police and then Department for Family and Children's Services commenced the Specialist Child Interview Unit where children could be interviewed by officers with specialist training. The interview was visually recorded and in some circumstances could be admitted into evidence as the child's evidence-in-chief in subsequent proceedings.

In 2008 this protection was expanded to include persons with a mental impairment.

However, in a recent case involving a child the court ruled that, in that instance, the visually recorded interview was inadmissible. This Bill will enable the admissibility as evidence-in-chief the visually recorded interview of all child witnesses and all persons with a mental impairment.

Clause Notes

Clause 1: Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Evidence Amendment Act 2015*.

Clause 2: Commencement

Clause 2 provides that sections 1 and 2 will commence in Royal Assent. Clauses 3 and 4 will commence on a day to be fixed by proclamation so that the changes may come into effect on a known date and thereby provide certainty for parties and the presiding judicial officer in any relevant proceedings.

Clause 3: The Act amended

Clause 3 provides that the amendments are to the *Evidence Act 1906 (WA)*.

Clause 4: Section 106HA amended

Section 106HA(1) of the *Evidence Act 1906* (WA) currently provides that, conditional upon certain standards being met, the visually recorded interview of child complainants of physical or sexual abuse offences and child witnesses thereto, is admissible as the evidence-in-chief of that witness in subsequent proceedings.

Clause 4 deletes the words restricting the class of children and so extends the protection to all children by providing that the visually recorded interview of any child witness is admissible as evidence-in-chief.

Section 106HA(1a) similarly provides that, provided certain conditions are met, the visually recorded interview of a person with a mental impairment who is a complainant in proceedings relating to alleged physical or sexual abuse is admissible in subsequent proceedings.

Clause 4 deletes the words which restrict the class to complainants with a mental impairment and so a person with a mental impairment whose evidence is that of a witness to an alleged offence may also have the interview admitted into evidence as evidence-in-chief.