



LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

STANDING COMMITTEE ON JUSTICE AND COMMUNITY SAFETY
Mr Peter Cain MLA (Chair), Dr Marisa Paterson (Deputy Chair),
Mr Andrew Braddock MLA

Submission Cover Sheet

Inquiry into the Justice and Community Safety Bill 2022

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Standing Committee on Justice and Community Safety
Legislative Assembly for the ACT
GPO Box 1020
Canberra ACT 2601

By email: LACommitteeJCS@parliament.act.gov.au

Dear Committee,

RE: Inquiry into amendments to *Evidence (Miscellaneous Provisions) Act 1991*

Thank you for the opportunity to contribute to the inquiry regarding amendments allowing for audio-visual recording of evidence given in ACT courts.

Legal Aid ACT ('the Commission') provides services to the ACT community's most vulnerable and disadvantaged individuals as they navigate the court system. In many cases, these clients are called upon to give evidence, or answer evidence, over audiovisual link or in the court room. The proposed amendments are directed towards reducing instances where witnesses are recalled to repeat their (potentially traumatising) evidence in a hearing for a related proceeding.

Currently, where a witness gives evidence through an audiovisual link, that evidence must be 'recorded as an audiovisual recording'.¹ Where a Court makes an order for a witness in relevant proceedings to give evidence in a court room, rather than through audiovisual link, this amendment will require that the evidence also be recorded.²

Creation of such recording in the courtroom requires the consent of the witness, though may still occur without consent by way of a Court order under the new section 69(2A). The Court will be required to consider the wishes of a witness before making such an order.³

¹ *Evidence (Miscellaneous Provisions) Act 1991* ('the Act') s 69(2).

² *Evidence (Miscellaneous Provisions) Act 1991* s 69(2); *Justice and Community Safety Legislation Amendment Bill 2022 (No 2)* cl 11.

³ *Ibid.*

We commend the focus in the proposed amendments upon self-determination of witnesses. The requirement to consider the consent of the witness is consistent with section 68(3) of the Act.

Use of recording in related proceedings

The effect of amendment to section 69(3) is that an audiovisual recording of a witness's evidence given in a courtroom under a section 68(2) order is admissible as that witness's evidence in related proceedings. This amendment promotes consistency with the current admissibility of recorded evidence originally given by audiovisual link.⁴

Through this change, witnesses will be less often required to return to a courtroom and give evidence on matters to which they have already testified. The benefit to witnesses is especially important given it is likely to reduce instances where provision of evidence may require specific, prolonged recall of heavily traumatic events.

We note that the current Act allows the Court to order that a witness to attend a hearing in related proceedings and give further evidence, but that such orders will only be made, amongst other circumstances, where an applicant has become aware of something they did not know at the time of the recording, and where 'it is in the interests of justice.'⁵

The proposed amendments strike a balance between preventing undue burdens upon witnesses in related proceedings, and allowance for submission of further evidence where appropriate.

Jury warning about inferences from giving evidence by audiovisual recording

Currently, the Act requires the judge to warn the jury that no inference should be drawn against a witness in a relevant proceeding from the fact of their evidence being given by audiovisual link.⁶ A similar warning applies to inferences against an accused person from the fact that a child's evidence is given by audiovisual link.⁷

The Commission submits that a similar warning against inference from the fact that a witness's evidence is given by playback of an audiovisual *recording* be included in the proposed legislative amendment. This warning would be a precautionary safeguard against prejudice in line with the existing warnings contained in the Act.

⁴ *Evidence (Miscellaneous Provisions) Act 1991* s 69(3)

⁵ *Ibid* s 69(6)

⁶ *Ibid* s 72

⁷ *Ibid* s 13

Conclusion

The Commission:

- (1) supports the proposed amendments to the *Evidence Act*, noting the consistency that it provides to admissibility of existing evidence in related proceedings, and commending the focus upon self-determination of witnesses; and
- (2) recommends inclusion in the proposed amendment of a warning against inferences a jury may draw from the use of recorded evidence in related proceedings, whether that evidence was initially given through audiovisual link or in a courtroom.

Should you have any questions in relation to the above submissions, please do not hesitate to

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Yours sincerely

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