



LEGISLATIVE ASSEMBLY OF THE NORTHERN TERRITORY

Social Policy Scrutiny Committee

**Inquiry into the Evidence and
Other Legislation Amendment
Bill 2019**

October 2019

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Chair's Preface

This report details the Committee's findings regarding its examination of the Evidence and Other Legislation Amendment Bill 2019. The primary purpose of this Bill is to expand the use of video conferencing in court and enhance the protections for vulnerable witnesses in sexual and domestic violence proceedings. In doing so, the Bill amends the *Bail Act 1982*, *Domestic and Family Violence Act 2007*, *Evidence Act 1939*, *Police Administration Act 1978*, *Sentencing Act 1995*, and *Sexual Offences (Evidence and Procedure) Act 1983*.

The Committee received three submissions to its inquiry, all of which supported the Bill and welcomed the introduction of additional protections for vulnerable people within the justice system. However, the Crime Victims Advisory Committee sought clarification regarding the implementation of proposed amendments to the *Domestic and Family Violence Act 2007*.

While it is acknowledged that challenges may arise in the implementation of the proposed model of cross-examination by unrepresented defendants, the Committee is satisfied with the Department's advice that "ultimately, the model represents a balance between protecting vulnerable witnesses from trauma and eliciting the best evidence possible, and ensuring procedural fairness for the defendant."¹

The Committee also notes that the Bill implements the *Guiding Principles to Improve Protection of Vulnerable Witnesses*, endorsed by the Council of Attorneys-General for use by all jurisdictions,² regarding the giving of evidence and has recommended that the Assembly pass the Bill.

On behalf of the Committee, I would like to thank all those that made submissions to the Committee's inquiry. I would also like to thank the departmental representatives for briefing the Committee on the Bill and their subsequent advice on the issues raised by submitters. Finally, I thank my fellow Committee members for their bipartisan support to the legislative review process.



Ms Ngaree Ah Kit MLA

Chair

¹ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.3

² Council of Attorneys-General Family Violence Working Group, *Guiding Principles to Improve Protection of Vulnerable Witnesses*, <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>, p.6

Committee Members

	Ms Ngaree Ah Kit MLA Member for Karama	
	Party:	Territory Labor
	Parliamentary Position:	Acting Deputy Speaker
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	Standing:	Standing Orders and Members' Interests, House
	Sessional:	Social Policy Scrutiny
	Chair:	Social Policy Scrutiny
	Mrs Robyn Lambley MLA Member for Araluen	
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	Parliamentary Position:	Acting Deputy Speaker
	Committee Membership	
	Standing:	Standing Orders and Members' Interests
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	Deputy Chair:	Social Policy Scrutiny
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	Committee Membership	
	Standing:	Privileges
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
	Mr Chansey Paech MLA Member for Namatjira	
	Party:	Territory Labor
	Parliamentary Position:	Deputy Speaker
	Committee Membership	
	Standing:	House, Privileges
	Sessional:	Social Policy Scrutiny
	Mrs Kate Worden MLA Member for Sanderson	
	Party:	Territory Labor
	Parliamentary Position:	Government Whip
	Committee Membership	
	Standing:	Public Accounts, Standing Orders and Members Interest
	Sessional:	Social Policy Scrutiny, Economic Policy Scrutiny
	Chair:	Public Accounts Committee

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Acknowledgements

The Committee acknowledges the individuals and organisations that provided written submissions or oral evidence at public hearings.

Terms of Reference

Sessional Order 13

Establishment of Scrutiny Committees

- (1) Standing Order 178 is suspended.
- (2) The Assembly appoints the following scrutiny committees:
 - (a) The Social Policy Scrutiny Committee
 - (b) The Economic Policy Scrutiny Committee
- (3) The Membership of the scrutiny committees will be three Government Members and one Opposition Member nominated to the Speaker in writing by the respective Whip and one non-party aligned Member to be appointed by motion.
- (4) The functions of the scrutiny committees shall be to inquire and report on:
 - (a) any matter within its subject area referred to it:
 - (i) by the Assembly;
 - (ii) by a Minister; or
 - (iii) on its own motion.
 - (b) any bill referred to it by the Assembly;
 - (c) in relation to any bill referred by the Assembly:
 - (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals, including whether the bill:
 - (A) makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review; and
 - (B) is consistent with principles of natural justice; and
 - (C) allows the delegation of administrative power only in appropriate cases and to appropriate persons; and
 - (D) does not reverse the onus of proof in criminal proceedings without adequate justification; and
 - (E) confers powers to enter premises, and search for or seize documents or other property, only with a warrant issued by a judge or other judicial officer; and
 - (F) provides appropriate protection against self-incrimination; and
 - (G) does not adversely affect rights and liberties, or impose obligations, retrospectively; and

- (H) does not confer immunity from proceeding or prosecution without adequate justification; and
 - (I) provides for the compulsory acquisition of property only with fair compensation; and
 - (J) has sufficient regard to Aboriginal tradition; and
 - (K) is unambiguous and drafted in a sufficiently clear and precise way.
- (iv) whether the bill has sufficient regard to the institution of Parliament, including whether the bill:
- (A) allows the delegation of legislative power only in appropriate cases and to appropriate persons; and
 - (B) sufficiently subjects the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly; and
 - (C) authorises the amendment of an Act only by another Act.
- (5) The Committee will elect a Government Member as Chair.
- (6) Each Committee will provide an annual report on its activities to the Assembly.

Adopted 24 August 2017

Recommendations

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Evidence and Other Legislation Amendment Bill 2019.

1 Introduction

Introduction of the Bill

- 1.1 The Evidence and Other Legislation Amendment Bill 2019 (the Bill) was introduced into the Legislative Assembly by the Acting Attorney-General and Minister for Justice the Hon Gerald McCarthy MLA, on 19 September 2019. The Assembly subsequently referred the Bill to the Social Policy Scrutiny Committee for inquiry and report by 26 November 2019.³

Conduct of the Inquiry

- 1.2 On 19 September 2019, the Committee called for submissions by 8 October 2019. The call for submissions was advertised via the Legislative Assembly website, Facebook, Twitter feed and email subscription service. In addition, the Committee directly contacted a number of individuals and organisations.
- 1.3 As noted in Appendix 2, the Committee received three submissions to its inquiry. The Committee held a public briefing with the Department of the Attorney-General and Justice on 23 September 2019.

Outcome of Committee's Consideration

- 1.4 Sessional order 13(4)(c) requires that the Committee after examining the Bill determine:
- (i) whether the Assembly should pass the bill;
 - (ii) whether the Assembly should amend the bill;
 - (iii) whether the bill has sufficient regard to the rights and liberties of individuals; and
 - (iv) whether the bill has sufficient regard to the institution of Parliament.
- 1.5 Following examination of the Bill, and consideration of the evidence received, the Committee is of the view that the Legislative Assembly should pass the Bill.

Recommendation 1

The Committee recommends that the Legislative Assembly pass the Evidence and Other Legislation Amendment Bill 2019.

Report Structure

- 1.6 Chapter 2 provides an overview of the policy objectives of the Bill and the purpose of the Bill as contained in the Explanatory Statement.
- 1.7 Chapter 3 considers the main issues raised in evidence received.

³ Daily Hansard, *Thursday 19 September 2019*, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754523>, pp.2-6

2 Overview of the Bill

Background to the Bill

- 2.1 In presenting the Bill, the Acting Attorney-General and Minister for Justice, the Hon Gerald McCarthy MLA, advised the Assembly that the Bill seeks to align legislation in the Northern Territory with the *Guiding Principles to Improve Protection of Vulnerable Witnesses*, endorsed by the Council of Attorneys-General in November 2018 for use by all jurisdictions.⁴
- 2.2 In particular, the Bill seeks to implement the guiding principles regarding the giving of evidence. These include prohibiting the direct cross-examination of victims by alleged perpetrators and providing for the use of special measures to safeguard vulnerable witnesses from distress and intimidation, such as the use of CCTV and the pre-recording of evidence.⁵

Purpose of the Bill

- 2.3 The primary purpose of the Evidence and Other Legislation Amendment Bill 2019 is to expand the use of video conferencing in court and enhance the protections for vulnerable witnesses in sexual and domestic violence proceedings.⁶
- 2.4 As highlighted in the Explanatory Statement, the key features of the Bill are to:
- allow a 'recorded statement' of complainants to be used in domestic violence order proceedings;
 - introduce a new model of cross-examination of vulnerable witnesses by unrepresented defendants and harmonise the existing provisions under the *Domestic and Family Violence Act 2007* and *Sexual Offences (Evidence and Procedure) Act 1983*;
 - create a statutory presumption that the evidence of vulnerable witnesses is to be given via video conferencing;
 - clarify the general power of courts to order the use of video conferencing and provide a list of factors to guide the use of that power; and
 - create a statutory presumption that evidence of vulnerable witnesses and experts and the corroborative evidence of a member of the police force is to be given via audio-visual link.⁷

⁴ Daily Hansard, *Thursday 19 September 2019*, <https://www.territorystories.nt.gov.au/jspui/handle/10070/754523>, p3; Council of Attorneys-General Family Violence Working Group, *Guiding Principles to Improve Protection of Vulnerable Witnesses*, <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>, p.6; Council of Attorneys-General, *Communique 23 November 2018*, <https://www.ag.gov.au/About/CommitteesandCouncils/Council-of-Attorneys-General/Pages/default.aspx>, p.3

⁵ Council of Attorneys-General Family Violence Working Group, *Guiding Principles to Improve Protection of Vulnerable Witnesses*, <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>, p.6

⁶ Explanatory Statement, *Evidence and Other Legislation Amendment Bill 2019 (Serial 102)*, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.1

⁷ Explanatory Statement, *Evidence and Other Legislation Amendment Bill 2019 (Serial 102)*, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.1

3 Examination of the Bill

Introduction

3.1 All of the submissions received supported the Bill and welcomed the introduction of additional protections for vulnerable people within the justice system. However, clarification was sought regarding the implementation of proposed amendments to the *Domestic and Family Violence Act 2007* (NT). The following discussion considers the matters raised by submitters and the subsequent advice provided by the Department of the Attorney-General and Justice (the Department).

Division 4A – Recorded Statements

3.2 The Bill inserts a new Division 4A into Chapter 4, Part 4.1 of the *Domestic and Family Violence Act 2007* to provide for a recorded statement of a complainant to be adduced as evidence-in-chief in a proceeding for a domestic violence order. Pursuant to proposed section 113B, the new provisions will apply if all of the following conditions are met:

- (a) a recorded statement is made in relation to an alleged domestic violence offence; and
- (b) the protected person in relation to an application for a domestic violence order is the complainant from whom the recorded statement was taken; and
- (c) the defendant against whom a domestic violence order is sought is the person against whom the domestic violence offence is alleged.

3.3 Modelled on section 81K of the *Evidence (Miscellaneous Provisions) Act 1991* (ACT), the Explanatory Statement notes that:

Once these conditions are met, Part 3A of the *Evidence Act 1939* will apply which includes the prerequisites for the use of a recorded statement, the procedures to follow before a recorded statement is used and the requirements for the recorded statement not to be edited without consent or to be published. This will ensure necessary safeguards are in place to protect the privacy of complainants and the defendant's rights to a fair trial under the current framework in Part 3A of the *Evidence Act 1939*.⁸

3.4 However, the Crime Victims Advisory Committee (CVAC) expressed concern that this section has been drafted too narrowly:

It does not allow use of the recorded statement in relation to an application for a DVO [Domestic Violence Order] where a child of the defendant or the person making the statement is the protected person. The CVAC recommends that consideration be given to an amendment to extend the provision to cover DVOs where a child of either the defendant or the person making the statement is the protected person.⁹

⁸ Explanatory Statement, *Evidence and Other Legislation Amendment Bill 2019 (Serial 102)*, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.3

⁹ Crime Victims Advisory Committee, Submission 3, p.2

3.5 In response, the Department advised the Committee that:

The purpose of clause 10 of the Evidence and Other Legislation Amendment Bill 2019 (the Bill) is to enable recorded statements taken from complainants under Part 3A of the *Evidence Act 1939* to be admitted in domestic violence order civil proceedings under the *Domestic and Family Violence Act 2007*. The Bill does not add any further, or change any rules or procedures relating to the taking and admissibility of recorded statements.

The pre-conditions to the use of recorded statements are set out in the new section 113B, and include that the statement must have been taken from the protected person as a complainant in domestic violence offence proceedings. The definition of complainant in new section 113A refers to section 21G of the *Evidence Act 1939*. That definition only includes adult complainants.

Part 3A of the *Evidence Act 1939* was inserted by the *Justice Legislation Amendment (Body-worn Video and Domestic Violence Evidence) Act 2017*. The Hon. Natasha Fyles MLA, Attorney-General and Minister for Justice, in her Second Reading Speech for the *Justice Legislation Amendment (Body-worn Video and Domestic Violence Evidence) Act 2017* stated:

‘New section 21G sets out the relevant definitions for the Part. Of note, the complainant must be an adult. As the complainant may be in an emotional and possibly (sic) injured state when the recorded statements are taken, it is appropriate that statements only be taken from adults.’

It is not intended that recorded statements be taken from children because of the requirement that statements must be made as soon as practicable after the events mentioned in the statement occurred. The contemporaneous nature of recorded statements under Part 3A of the *Evidence Act 1939* makes the application of that Part to children impractical. ... Where Police take a statement from a child, it is important that the child have an adult guardian or support person present. That will not always be possible in the immediate aftermath of a domestic violence incident.¹⁰

3.6 The Department further advised that the *Domestic and Family Violence Act 2007* includes a number of provisions specifically designed to protect child witnesses in domestic violence order civil proceedings:

In particular, section 107 provides that the evidence of a child must be given by written or recorded statement. A ‘recorded statement’ is defined in section 104 by reference to section 21A of the *Evidence Act 1939*, which means a recorded interview with the child by an authorised person. Section 109 also provides that a child who gives evidence by written or recorded statement need not appear at the hearing and cannot be cross-examined in relation to his or her evidence. Section 109 is also amended by the Bill to make it clear that it applies when the defendant is unrepresented.¹¹

Committee’s Comments

3.7 The Committee is satisfied with the Department’s advice and acknowledges the importance of ensuring that child witnesses in domestic violence order civil proceedings are protected.

¹⁰ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, pp.1-2

¹¹ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.2

Cross-examination of Vulnerable Witnesses

3.8 Proposed sections 114, 114A, and 114B introduce a new model of cross-examination of vulnerable witnesses, or any other witness who is in a domestic relationship with the defendant, by an unrepresented defendant. As highlighted in the Explanatory Statement, this new model incorporates the following features:

- general prohibition on cross-examination of a vulnerable witness if the defendant is unrepresented, unless the court grants leave to do so;
- restricted test for a court to grant leave to overcome the prohibition except if the witness is a child or has a cognitive or intellectual impairment;
- requirement for the court to explain to the unrepresented defendant the consequences of the prohibition;
- requirement for the court to provide the unrepresented defendant with an opportunity to obtain legal representation to conduct cross-examination;
- power for the court to order representation despite the defendant's refusal to do so, if it is in the interests of justice to make such an order;
- requirement for the court appointed representative to repeat questions only if the questions are not improper, subject to the court's powers to disallow questions;
- requirement for the court appointed representative to act in the best interests of the defendant in the absence of instructions;
- civil and criminal liability immunity for the appointed representatives in relation to acts done or omitted in good faith; and
- specific jury directions.¹²

3.9 While supporting the proposed model, CVAC raised a number of concerns regarding implementation of the general prohibition on the cross-examination of vulnerable witnesses by unrepresented defendants, and appointment of a legal practitioner by the Court to cross-examine the vulnerable witness for the defendant if it is in the interests of justice, even where the defendant refuses to appoint one.¹³

3.10 Apart from concerns regarding the capacity for the Court to source independent lawyers in regional and remote areas, CVAC noted that:

It is not clear how a legal practitioner will be identified and appointed. It is also not clear how this will be paid for. There is no indication in either the Explanatory Statement or the Second Reading Speech for the Amendment Bill as to how these matters will be addressed. The CVAC notes that the Commonwealth Family Law Amendments preventing a Domestic and Family Violence (DFV) party from directly examining a party who is the victim of DFV was accompanied by additional funding to the Legal Aid Commission to establish and fund a panel of practitioners for this purpose. The CVAC suggest that similar funding and arrangements should be made available in regards to the proposed NT reform.¹⁴

3.11 The Law Society NT also noted that:

It will be important for the government to ensure that adequate additional funding is provided to the Northern Territory Legal Aid Commission and NAAJA [North

¹² Explanatory Statement, *Evidence and Other Legislation Amendment Bill 2019 (Serial 102)*, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.4

¹³ Crime Victims Advisory Committee, Submission 3, p.2

¹⁴ Crime Victims Advisory Committee, Submission 3, p.3

Australian Aboriginal Justice Agency] to enable them to meet the additional call on resources for the funding of the appointed legal practitioner as a consequence of the passage of this Bill.¹⁵

3.12 The Department advised the Committee that:

The procedures for appointing legal practitioners to conduct cross-examination for unrepresented defendants will be developed with the new Chief Judge of the Local Court, Elizabeth Morris, and the Chief justice [the Hon. Michael Grant], and the relevant provisions of the Bill will not be commenced until those procedures are finalised. It may be necessary for the Local Court to develop Practice Directions and the Supreme Court to develop Rules to provide for these procedures. It should be noted that Supreme Court Rules, Local Court Rules and Practice Directions are developed by the Chief Justice and Chief Judge respectively.

Specifically, how a legal practitioner will be identified and appointed is the subject of ongoing discussion with the Chief Judge and Chief Justice. Options may include identifying a panel of barristers, or negotiating arrangements with Legal Aid agencies. These arrangements have not been settled pending the passage of the Bill.

There are no specific funding arrangements for this procedure. Payment of the court appointed lawyer will be funded by the Courts and Tribunals Division of the Department of the Attorney-General and Justice.¹⁶

3.13 In relation to potential challenges regarding the availability of independent lawyers in regional and remote areas, the Department further advised that:

The model for cross-examination by unrepresented defendants was developed in consultation with stakeholders with what was considered to be best practice in mind, noting the challenges that might arise in its implementation. Ultimately, the model represents a balance between protecting vulnerable witnesses from trauma and eliciting the best evidence possible, and ensuring procedural fairness for the defendant.

Although the Department considers this issue is unlikely to arise often outside of major centres, consideration was given to the potential challenges in identifying independent lawyers in remote or regional locations. These are issues that will need to be managed by the court.

It was considered that the model involving a court appointed lawyer conducting the cross-examination for an unrepresented defendant, if the court considers it is necessary in the interests of justice to do so, was still a better model than a non-lawyer conducting cross-examination and acting as a conduit for the unrepresented defendant.¹⁷

3.14 Noting that presiding judges are currently able to simply put questions to the witness from an unrepresented witness, the CVAC questioned whether this will still be an approach that is open to the court:

particularly in the Local Court which may not have inherent jurisdiction to require a practitioner to appear amicus. This should continue to be an option where appropriate.¹⁸

¹⁵ Law society NT, Submission 2, p.1

¹⁶ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.3

¹⁷ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.3

¹⁸ Crime Victims Advisory Committee, Submission 3, p.3

3.15 However, as the Department pointed out:

There is currently no process under the *Domestic and Family Violence Act 2007*, the *Evidence Act 1939*, or the *Sexual Offences (Evidence and Procedure) Act 1983*, through which a presiding judge is able to put questions to the witness from an unrepresented defendant. This position is not changed by the Bill.

A process to this effect did formerly exist in the *Domestic and Family Violence Act 2007*, but that was repealed by the *Justice Legislation Amendment (Vulnerable Witnesses) Act 2016*. The *Justice Legislation Amendment (Vulnerable Witnesses) Act 2016* amended section 114 of the *Domestic and Family Violence Act 2007* to mirror the amendments to section 5 of the *Sexual Offences (Evidence and Procedure) Act 1983* to relieve judges of the responsibility of relaying questions from self-represented defendants, if an order was made precluding the defendant from cross-examining the witness directly.

The Second Reading Speech for the *Justice Legislation Amendment (Vulnerable Witnesses) Act 2016* explains that the Northern Territory Department of Justice 2011 'Report on the Review of Vulnerable Witness Legislation' highlighted the 'inappropriateness of a judge asking questions, particularly when the complainant's credibility is an issue, and there is a suggestion that the judge could be seen by the jury to agree with questions posed to the complainant and this would be detrimental to the case.' The move away from judges asking questions in 2016 was also intended to remove the possibility that a complainant may be intimidated by a member of the judiciary asking questions.

The Second Reading Speech also referred to the Australian Law Reform and New South Wales Law Reform Commissions' 2010 Report No. 114 titled 'Family Violence – A National Legal Response' which stated that judges should not ask questions on behalf of unrepresented defendants because it 'places a judicial officer in a difficult position in determining the admissibility of the questions and may raise perceptions of bias.' For these reasons it is not recommended to allow for a process whereby judges may put questions on behalf of an unrepresented defendant.¹⁹

3.16 The CVAC also suggested that the proposed reform to empower the court to appoint a legal practitioner to cross-examine vulnerable witnesses may result in delays which would not be in the interests of the victim and should be addressed and clarified for court users:

The concern is that the proposed process could lead to further adjournments; i.e. an adjournment for the defendant to determine if they are getting their own lawyer, and if not, a second adjournment for the court to appoint a new one. ... Accordingly, CVAC suggests that an amendment could be considered to allow for the imposition of a time limit on the length of an adjournment for a defendant to consider obtaining a lawyer and/or also for a court to appoint one.²⁰

3.17 While noting that proposed section 114A(2)(d) provides that the Court may specify the date by which the defendant must notify the court of the name of the arranged legal practitioner, the Committee sought clarification from the Department as to whether any consideration had been given to the inclusion of a provision that would allow for the imposition of a time limit on the length of an adjournment for a court to appoint a legal practitioner.

¹⁹ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.4

²⁰ Crime Victims Advisory Committee, Submission 3, p.3

3.18 The Department subsequently advised that:

The Bill does not specify a timeframe in section 114A(3)(b) in which the court is to appoint a legal practitioner. In deciding whether the appointment was necessary in the interests of justice, any potential for delay would likely be one of the relevant considerations for a judge.

The Department of the Attorney-General and Justice appreciates that the procedure may give rise to two adjournments and consequent delays, but does not recommend imposing an express time limit within which the court must appoint a legal practitioner for an unrepresented defendant. The time required for such an appointment will likely vary based on the circumstances of each case, and it is considered preferable to allow the courts flexibility to manage each matter on a case by case basis, or through the development of Practice Directions as the court sees fit. Courts are alert to the impact of delays on proceedings, and more broadly on the administration of justice.²¹

3.19 The CVAC also expressed concern regarding the implementation of the proposed reforms in the more remote areas of the Northern Territory, in particular those communities where video conferencing facilities are not available to the court:

In these cases, it is not clear how the Court would appoint a legal practitioner and how they would be made available, including payment for travel. Delays are likely to also be exacerbated in remote communities due to the limited sitting days in these areas. Therefore, the CVAC suggests a provision that clarifies that, in determining whether an appointment of a legal practitioner is in the interests of justice, the court must also consider the impact of any delays in proceedings that may result from the decision to appoint a practitioner. Furthermore, in making their decision, the court must also consider the availability/access to videoconferencing facilities.²²

3.20 As noted previously, the Department advised that:

The arrangements and processes for appointing legal practitioners to conduct cross-examination for unrepresented defendants will be the subject of further work with the Chief Justice, the Chief Judge and legal profession prior to commencement of the relevant parts of the Bill. The Chief Judge may also decide to develop Practice Directions to deal with these matters and also issues relating to the appointment and appearance of legal practitioners in remote locations. ...

The phrase 'necessary in the interests of justice' was drafted broadly to enable a judge to take into account any matter it considers is relevant in the circumstances. In deciding whether the appointment is necessary in the interests of justice, any potential delay would likely be one of the relevant considerations for a judge.

It is unlikely that a legal practitioner would conduct substantial cross-examination on behalf of an unrepresented defendant via video-conferencing, but it is conceivable and a matter for the court to determine. Though the expansion of video-conference facilities is an ongoing project, the unavailability of video-conference facilities in some remote locations may pose a challenge.

The court's consideration of the 'interests of justice' would likely include consideration of the practicalities of the appointment, including whether facilities were available to facilitate the cross-examination by a legal practitioner, or whether other arrangements could be made such as moving the proceedings to another location and the impacts of such decisions. Additionally, these are matters which may be covered by a Practice Direction.

²¹ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.5

²² Crime Victims Advisory Committee, Submission 3, p.3

The Department does not consider it is necessary to include the impact of any delays in proceedings or the availability/access to video-conferencing facilities as additional considerations in determining whether the appointment of a legal practitioner is in the interests of justice, as it is unlikely to add substance to the existing provision.²³

Committee's Comments

- 3.21 While it is acknowledged that challenges may arise in the implementation of the proposed model of cross-examination by unrepresented defendants, the Committee is satisfied that “ultimately, the model represents a balance between protecting vulnerable witnesses from trauma and eliciting the best evidence possible, and ensuring procedural fairness for the defendant.”²⁴
- 3.22 Developed with best practice in mind, the Committee notes that the model was developed in consultation with the (now former) Chief Judge of the Local Court, Dr John Lowndes, and the Chief Justice of the Supreme Court, the Hon Michael Grant. In addition, the Committee understands that the Department also consulted the Law Society NT, the NT Legal Aid Commission, the North Australian Aboriginal Justice Agency and the Northern Territory Women Lawyers Association.²⁵
- 3.23 The Committee also notes that the proposed legislation implements the *Guiding Principles to Improve Protection of Vulnerable Witnesses*, endorsed by the Council of Attorneys-General for use by all jurisdictions, regarding the giving of evidence.²⁶

²³ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.6

²⁴ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.3

²⁵ Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>, p.2

²⁶ Council of Attorneys-General Family Violence Working Group, *Guiding Principles to Improve Protection of Vulnerable Witnesses*, <https://www.ag.gov.au/FamiliesAndMarriage/Families/FamilyViolence/Pages/default.aspx>, p.6

Appendix 1: Submissions Received and Public Briefing

Submissions Received

1. Knowmore
2. Law Society NT
3. Crime Victims Advisory Committee

Public Briefing – 23 September 2019

Department of the Attorney-General and Justice

- Jenni Daniel-Yee: Director Legal Policy
- Leonique Swart: Principal Policy Lawyer

Note

Copies of submissions and the transcript from the public briefing are available at:
<https://parliament.nt.gov.au/committees/spsc/102-2019>

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<https://www.territorystories.nt.gov.au/jspui/handle/10070/754523>

Department of the Attorney-General and Justice, *Responses to Written Questions*, 24 October 2019, <https://parliament.nt.gov.au/committees/spsc/102-2019>

Domestic and Family Violence Act 2007 (NT)

Evidence Act 1939 (NT)

Evidence (Miscellaneous Provisions) Act 1991 (ACT)

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