

SOCIAL POLICY SCRUTINY COMMITTEE
RESPONSE BY THE DEPARTMENT OF THE ATTORNEY-GENERAL AND
JUSTICE
TO WRITTEN QUESTION FROM THE COMMITTEE
EVIDENCE AND OTHER LEGISLATION AMENDMENT BILL 2019

- a. **The Bill provides for a recorded statement of a complainant to be adduced as evidence-in-chief in a proceeding for a domestic violence order. In the absence of any specific provisions, can you clarify whether the complainant can elect to give evidence in person in court instead of, or in addition to, reliance on the recorded statement?**

AGD Response:

Clause 10 of the Evidence and other Legislation Amendment Bill 2019 (the Bill) will insert new section 113C into the *Domestic and Family Violence Act 2007*. New section 113C states that the procedures in Part 3A of the *Evidence Act 1939* relating to the taking and admissibility of recorded statements in domestic violence offence proceedings will apply to new Part 4.1 Division 4A of the *Domestic and Family Violence Act 2007* in domestic violence order civil proceedings.

One of the requirements for taking a pre-recorded statement in section 21J of the *Evidence Act 1939* is that the complainant consented to the taking of the pre-recorded statement. In addition, under section 21H of the *Evidence Act 1939* the Court has discretion to admit the pre-recorded statement as the complainant's evidence in chief, or part of the evidence in chief, under section 21H(1)(b).

Once a pre-recorded statement has been taken in accordance with section 21J, and it is otherwise admissible, in practice the only circumstances in which a complainant would give all of their evidence in chief in court instead of the pre-recorded statement, are:

- where the complainant rejects the statement in some way. In such a case, the complainant could be cross-examined on the statement as a prior inconsistent statement; or
- if the Court has exercised its discretion under section 21H(2) not to allow the pre-recorded statement to be admitted in evidence (if the Court considered it in the interests of justice to do so).

In practice, the complainant would need to give evidence to enable the pre-recorded statement of the complainant's evidence to be admitted into evidence. The complainant may also be asked further questions, in addition to the pre-recorded statement, as part of his or her evidence in chief, and may be cross-examined on the pre-recorded statement or on the evidence given in response to the further questions.

If the complainant gives evidence in court, the usual vulnerable witness protections in section 21A of the *Evidence Act 1939* (as amended by the Bill) will apply.