

No 14 of 2002.

Evidence (Amendment) Act 2002.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

No of 2002.

Evidence (Amendment) Act 2002.

ARRANGEMENT OF SECTION.

New Division III.3.

Division 3. - Special measures for vulnerable and intimidated witnesses.

- "37A. Interpretation.
- "37B. Special measures order.
- "37C. Video Taped evidence.
- "37D. Giving evidence at pre-trial hearing.
- "37E. Accused not to cross-examine complainant personally.
- "37F. Pre-trial hearings to consider what orders should be made.
- "37G. Reputation evidence.
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- "37I. Disclosure of witness' address and telephone number."



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2002.

AN ACT

entitled

Evidence (Amendment) Act 2002,

Being an Act to amend the *Evidence Act* (Chapter 48) and for related purposes;

MADE by the National Parliament to come into operation by a notice in the National Gazette, by the Head of State, acting with, and in accordance with the advice of the Minister.

NEW DIVISION III.3.

Part III of the Principal Act is amended by inserting after Division 2 the following new Division:-

Division 3. - Special Measures for vulnerable and intimidated witnesses.

“37A. INTERPRETATION.

For the purposes of this Division –

“child” means a person under the age of 18 years;

“complainant” means a person against whom an offence is alleged to have been committed;

“crime of violence” means any offence against *Division V.1 (Assault and Violence to the Person)*, *Division V.3 (Homicide)*, *Division V.4 (Offences Endangering Life or Health)* and *Division V.5 (Assaults)* of the *Criminal Code*;

“sexual offence” means any offence against *Division IV.2 (Offences Against Sexual Immorality)*, and *Division IV.2A (Sexual Offences Against Children)*, *Division IV.2B (Commercial Sexual Exploitation of Children)* and *Division V.7 (Sexual Offences and Abduction)* of the *Criminal Code*.”.

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“37B. SPECIAL MEASURES ORDER.

(1) An order under Subsection (2) shall be made where a witness in a criminal proceeding is –

- (a) under the age of 18 years at the time of the hearing; or
- (b) the complainant in a proceeding relating to a sexual offence; or
- (c) the complainant in a proceeding relating to a crime of violence.

“(2) If, in the opinion of the Court, the quality of a witnesses evidence would likely to be diminished by reason of fear of distress in connection with testifying in the proceedings, the Court shall, subject to Subsection (3) and (4), order that one or more of the following special measures be used for the giving of evidence by that witness:-

- (a) the use of a screen or other arrangement to prevent the witness from seeing the accused;
- (b) the presence of a support person of the witness’ choosing seated with the witness when he or she is giving evidence;
- (c) dispensing with the wearing of wigs and robes while the witness is giving evidence;
- (d) planned seating arrangements for people who have an interest in the proceedings, including the level at which they are seated and the people in the witness’ line of vision;
- (e) the adjournment of the proceedings or any part of the proceedings to other premises;
- (f) the exclusion from the court, while the witness is giving evidence, of all or any persons without an interest in the proceedings;
- (g) the examination of the witness through an intermediary, who shall communicate and explain -
 - (i) to the witness, the questions put to the witness, in a language appropriate to the witness’ age and development; and
 - (ii) to the court, the answers given by the witness in reply;
- (h) permitting the evidence to be given from a place other than the courtroom by means of closed-circuit television or other facilities that enable communication between that place and the courtroom.

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“(3) In determining what special measures are appropriate, the Court shall consider –

- (a) the availability of any necessary equipment or facilities; and
- (b) the age of the witness; and
- (c) the opinion of the witness; and
- (d) which of the special measures would be likely to maximize as far as practicable the quality of the witness’ evidence.

“(4) A judge need not make an order under Subsection (1) where he determines that to do so is contrary to the interests of justice.

“(5) In determining whether the use of special measures is contrary to the interests of justice, the judge shall consider –

- (a) the nature and alleged circumstances of the offence to which the proceedings relate; and
- (b) the right of the accused to a fair trial; and
- (c) whether the quality of the evidence given by the witness is likely to be diminished by reasons of fear or distress on the part of the witness in connection with testifying in the proceedings; and
- (d) any behaviour towards the witness on the part of the accused, or members of the family or associates of the accused; and
- (e) whether the use of special measures would cause unnecessary delay in the proceedings.

“(6) The use of special measures does not in any way affect the weight to be given to any evidence in a criminal proceeding.

“37C. VIDEO-TAPED EVIDENCE.

(1) Where a witness is under 18 years or a complainant in a proceeding relate to a sexual offence, the Court may make an order permitting a video-recording of an interview of the witness to be admitted as the evidence in chief of the witness, provided that, at the proceedings the witness -

- (a) identifies himself or herself and attests to the truthfulness of the contents of the recording; and
- (b) is available for cross-examination and re-examination.

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“(2) An order shall not be made under Subsection (1) if the court is of the opinion, having regard to all the circumstances of the case, that it is not in the interests of justice that the evidence be so admitted.

“(3) In considering whether a recording should be admitted under this section the court must consider whether any prejudice to the accused which might result from the evidence being so admitted is outweighed by the desirability of admitting the recorded interview.

“37D. GIVING EVIDENCE AT PRE-TRIAL HEARING.

(1) Where a witness is under the age of 18 years, the Court may make an order that the child’s evidence be taken at a pre-trial hearing.

“(2) A judge who hears an application under Subsection (1) may make such order as the judge thinks fit which is to include –

- (a) directions, with or without conditions as to the persons who may be present at the pre-trial hearing; or
- (b) directions, with or without conditions as to the persons or classes of persons, who are authorized to have possession of the video-taped recording of the evidence; or
- (c) directions with or without conditions, as to the giving up of possession and as to the playing, copying or erasure of the recording.

“(3) An order under Subsection (1) may be varied or revoked by -

- (a) the judge who made the order; or
- (b) a judge who has jurisdiction co-extensive with the judge under Paragraph (a).

“(4) At a pre-trial hearing ordered under Subsection (1) -

- (a) no person other than a person authorized by the judge under Subsection (1) is to be present at the hearing; and
- (b) subject to the control of the presiding judge, the witness is to give his evidence and be examined and cross-examined; and
- (c) except as provided by this section, the usual rules of evidence apply; and

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- (d) the proceedings are to be recorded on video-tape; and
- (e) the accused is to be in a room separate from the room in which the hearing is held but is to be capable of observing the proceedings by means of a closed circuit television system.

“(5) The child’s evidence at the trial is to be given by the presentation to the Court of the recording made under Subsection (4), and the child need not be present at the trial.

“(6) A presentation to a Court of video-taped evidence under this section is admissible as if the evidence were given orally in the proceedings in accordance with the usual rules and practice of that Court.

“37E. ACCUSED NOT TO CROSS-EXAMINE COMPLAINANT PERSONALLY.

(1) Where a witness is under the age of 18 years or a complainant in a proceeding relate to a sexual offence, the accused shall not personally examine or cross-examine the witness.

“(2) Where it appears to the court that this section applies, it may -

- (a) invite the accused to arrange for a legal representative to act for him for the purpose of cross-examining the witness; and
- (b) require the accused to notify the court, by the end of such period as it may specify, whether a legal representative is to act for him for that purpose.

“(3) If by the end of the period specified in Subsection (2) -

- (a) the accused has notified the court that no legal representative is to act for him for the purpose of cross-examining the witness; or
- (b) no notification has been received by the court and it appears to the court that no legal representative is to so act,

the court shall -

- (c) order that any question to the witness be stated to the judge, and the judge shall repeat the question accurately to the witness; or

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- (d) appoint an intermediary and order that any question to the witness be stated by putting the question to the intermediary, and the intermediary shall repeat the question accurately to the witness.

“37F. PRE-TRIAL HEARINGS TO CONSIDER WHAT ORDERS SHOULD BE MADE.

- (1) In any proceeding in which -
 - (a) the giving of evidence by a person; or
 - (b) a matter affecting a person as a witness,is likely to require the making of an order or the giving of directions under Section 37B, 37C, 37D or 37E, the party who is to call that person as a witness is to apply for a pre-trial hearing for the purpose of having all such matters dealt with before the trial.

“(2) In Subsection (1), “pre-trial hearing” in relation to a Court means a hearing provided for by rules of that Court for the purposes of this section.

“37G. REPUTATION EVIDENCE.

In a proceeding with respect to a sexual offence, evidence of the sexual reputation of the complainant whether general or specific, is not admissible.

“37H. EVIDENCE OF COMPLAINANT’S SEXUAL CONDUCT.

- (1) In a proceeding in respect of any sexual offence –
 - (a) the complainant shall not be cross-examined as to his sexual activities; and
 - (b) no evidence shall be admitted as to the sexual activities of the complainant, except with the leave of the court.

“(2) The court shall not grant leave under this section unless the judge determines, in accordance with the procedures set out in Subsection (5), that the evidence –

- (a) is of a specific instance of sexual activity; or
- (b) is relevant to an issue at trial; or
- (c) has significant probative value that is not substantially outweighed by the danger of prejudice to the proper administration of justice.

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“(3) In determining whether evidence is admissible under Subsection (2), the judge shall take into account -

- (a) the interests of justice, including the right of the accused to make full answer and defence; and
- (b) society’s interest in encouraging the reporting of sexual offences; and
- (c) whether there is a reasonable prospect that the evidence will assist in arriving at a just determination in the case; and
- (d) the need to remove from the fact-finding process any discriminatory belief or bias; and
- (e) the potential prejudice to the complainant’s personal dignity and right of privacy; and
- (f) any other factor that the judge considers relevant.

“(4) Evidence that the complainant has engaged in sexual activity, whether with the accused or any other person, is not admissible to support an inference that, by reason of the sexual nature of that activity, the complainant -

- (a) is more likely to have consented to the sexual activity that forms the subject matter of the charge; or
- (b) is less worthy of belief.

“(5) An application for leave under this section -

- (a) must be made in writing and set out -
 - (i) detailed particulars of the evidence that the accused seeks to adduce; and
 - (ii) the relevance of that evidence to an issue at trial; and
- (b) must be heard in the absence of members of the public.

“(6) The complainant cannot be compelled to give evidence in an application for leave under this section.

“(7) If the court grants leave under this section, the judge must state in writing the reasons for doing so.

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“37I. DISCLOSURE OF WITNESS’ ADDRESS AND TELEPHONE NUMBER.

(1) A witness in criminal proceedings is not required to disclose his address, telephone number or place of employment unless -

- (a) the address, telephone number or place of employment is a materially relevant part of the evidence; or
- (b) the court makes an order requiring the disclosure.

“(2) The court may make such an order only if it is satisfied that disclosure is not likely to present a risk to the welfare or safety of any person, or that the interests of justice outweigh any such risk.

“(3) An address or telephone number that is not required to be disclosed and that is contained in a written statement may be deleted from the statement, or rendered illegible, before the statement is produced in court or given to the accused person.”.

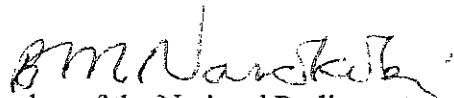
I hereby certify that the above is a fair print of the *Evidence (Amendment) Act 2002* which has been made by the National Parliament.



Clerk of the National Parliament.

10 MAY 2002

I hereby certify that the *Evidence (Amendment) Act 2002* was made by the National Parliament on 28 March 2002.



Speaker of the National Parliament.

10 MAY 2002