

Consultation Results Report

Consultation regarding application in the lower courts of recorded statement protections for Vulnerable Witnesses: section 21B of the *Evidence Act*

March 2014

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Contents

1.	Introduction	3
2.	Summary of the issue	3
3.	Background.....	3
	3.1 Definition of ‘vulnerable witness’	4
	3.2 Evidence Act.....	4
	3.3 Domestic and Family Violence Act.....	6
	3.4 Justices Act (Committal proceedings).....	6
	3.5 What is the legislative gap in coverage?.....	6
	3.6 What is the quantity of cases potentially affected by the gap in coverage?	7
4.	Consultation.....	8
5.	Support for the application of section 21B to the lower courts	9
	5.1 Additional protection	9
	5.2 Victim and defendant contact.....	9
	5.3 Increase in successful prosecutions due to witness protections	9
	5.4 Overall intention of legislation	10
	5.5 Parity between courts.....	11
6.	Opposition to the expansion of Section 21B	11
	6.1 Logistical implications	11
	6.2 Cost implications	13
	6.3 Further erosion of defendant’s rights	14
	6.4 Delay.....	15
	6.5 Intention of section 21B.....	15
7.	Comparison to other Australian jurisdictions.....	16
	7.1 Interstate dealings with vulnerable persons and application	16
	7.1.1 New South Wales.....	16
	7.1.2 Victoria	16
	7.1.3 Queensland.....	17
	7.1.4 Western Australia	17
	7.1.5 Australian Capital Territory	17
	7.1.6 South Australia.....	17
	7.1.7 Tasmania	17
8.	Proposed further amendment	18
	8.1 Section 21A(1) <i>Evidence Act</i>	18
	8.2 Section 21E(6) <i>Evidence Act</i>	18
9.	Conclusion	19

1. Introduction

In April 2007, the Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse delivered its report entitled 'Ampe Akelyernemane Meke Mekarle' (Little Children are Sacred). In response to recommendation 30 of the report, the former Northern Territory Government reviewed court procedures for vulnerable witnesses and released the 'Closing the Gap of Indigenous Disadvantage – A Generational Plan of Action' Report. In June 2011, the former Department of Justice produced the Review of Vulnerable Witness Legislation Report setting out the findings and recommendations of the review¹.

Recommendation 7 of the Review of Vulnerable Witness Legislation Report recommended that the then Department of Justice undertake further consultation and consider the possibility of extending the application of the recorded statement protections, provided under section 21B of the *Evidence Act*, to the Court of Summary Jurisdiction and the Youth Justice Court.

The purpose of this report is to outline the consultation process and feedback received and to make recommendations in relation to the progression of recommendation 7.

2. Summary of the issue

The *Evidence Act* currently provides various ways for the giving of evidence in criminal proceedings in all courts. These include giving evidence by way of closed circuit television or behind partitions or in the company of a support person. In the Supreme Court, for 'serious violence offences' and 'sexual offences', the protections are extended to include a recorded statement being tendered as the witnesses' evidence in chief and a special sitting of the court for the witnesses' cross-examination, with this evidence being recorded and then replayed during the trial.

The issues to be considered are:

- whether the legislation should be amended so that when 'serious violence offences' and 'sexual offences' proceed to hearing in the lower court, a witness's evidence in chief can be admitted by way of their police interview and a special sitting may be held for any cross-examination; and
- whether it is practical for the lower courts (and the rest of the justice system) to conduct matters using these options.

3. Background

Vulnerable witness legislation is intended to minimise any harm that could be caused to a witness when giving evidence, whilst balancing the interests of justice with the witness being able to give quality evidence.

In the Northern Territory, vulnerable witness protections are contained in the *Evidence Act*, the *Justices Act*, the *Sexual Offences (Evidence and Procedure) Act* and the *Domestic and Family Violence Act*.

¹ http://www.nt.gov.au/justice/documents/depart/review_of_vulnerable_witness_legislation.pdf

3.1 Definition of 'vulnerable witness'

Section 21A(1) of the *Evidence Act* defines a 'vulnerable witness' as a witness who:

- (a) is a child; or
- (b) suffers from an intellectual disability; or
- (c) is the alleged victim of a sexual offence to which proceedings relate; or
- (d) is, in the opinion of the court, under a special disability because of the circumstances of the case or the circumstances of the witness.

Section 104 of the *Domestic and Family Violence Act* classifies a 'vulnerable witness' as:

- (a) an adult who is the protected person named in a Domestic Violence Order; or
- (b) an adult witness who suffers from an intellectual disability; or
- (c) an adult witness who, in the Court's opinion, is under a special disability.

3.2 Evidence Act

Section 21A(2) of the *Evidence Act* provides that a vulnerable witness is entitled to give evidence at a place outside the court room via closed circuit television or have a screen, partition or one-way glass placed to obscure their view of the defendant. In addition, the vulnerable witness can be accompanied by a support person during the proceedings. When a vulnerable witness is giving evidence under this section, the court will also be closed to the public. However, if the court is satisfied that it is not in the interests of justice or due to the urgency of the proceeding, an order may be made that the provisions of section 21A(2) are not followed.

Section 21B of the *Evidence Act* provides for the evidence of vulnerable witnesses in cases of sexual or serious violence offences as follows:

- (1) This section applies to proceedings for the trial of a sexual offence [as defined in section 4] or a serious violence offence [as defined in section 21A].
- (2) If a vulnerable witness is to give evidence in proceedings to which this section applies, the court may exercise one or both of the following powers:
 - (a) the court may admit a recorded statement in evidence as the witness's evidence in chief or as part of the witness's evidence in chief;
 - (b) the court may:
 - (i) hold a special sitting for the purpose of conducting the examination, or part of the examination, of the witness; and
 - (ii) have an audiovisual recording made of the examination of the witness at the special sitting and admit the recording in evidence; and

- (iii) re-play the recording to the jury as the witness's evidence or as part of the witness's evidence (as the case requires).
- (3) If the prosecutor asks the court to admit a recorded statement in evidence or to hold a special sitting under subsection (2), the court must accede to the request unless there is good reason for not doing so.
- (4) Before the court admits a recorded statement, or the recording of an examination conducted at a special sitting, in evidence under this section, the court may have it edited to remove irrelevant or otherwise inadmissible material.
- (5) A vulnerable witness may (but need not) be present in the courtroom when a recorded statement of evidence of the witness, or an audiovisual recording of the examination (or part of the examination) of the witness, is re-played to the jury.
- (6) The vulnerable witness's demeanour, and words spoken or sounds made by the vulnerable witness, during the re-play of a recorded statement of evidence or an audiovisual recording of the examination (or part of the examination) of the witness, are not to be observed or overheard in the courtroom unless the vulnerable witness elects to be present in the courtroom for that part of the proceedings.

Section 21B is understood to operate to provide additional protections for vulnerable witnesses in a Supreme Court trial for a sexual or serious violence offence. Section 21B(2) allows the court to admit a recorded statement into evidence as the witness's evidence-in-chief, and this will ordinarily be a recording of their initial statement to Police. In addition, any cross-examination may be pre-recorded prior to the trial and then replayed to the jury, thereby reducing the stress for the witness as they do not have to give evidence in the presence of the jury.

Section 21E of the *Evidence Act* also permits the recording of a witness's evidence in any court proceedings and does not restrict the procedure to sexual or serious violence offences. This provision allows for the witness's evidence to be replayed at a future hearing or re-trial and avoids the witness giving evidence a second time.

In addition to the vulnerable witness protections provided for in sections 21A and 21B of the *Evidence Act*, the particular vulnerability of child witnesses has been recognised and provided for under section 21D. The section provides that, when a child witness is giving evidence, the court must take measures to limit the distress or trauma suffered by the child, the child must be treated with dignity, respect and compassion, the child must not be intimidated and proceedings should be resolved as quickly as possible.

Although the provisions of sections 21A and 21E of the *Evidence Act* apply to vulnerable witnesses giving evidence in all courts, the additional protections afforded under section 21B of the *Evidence Act* have been understood to only apply to Supreme Court trials. It is also understood that they have only been applied in that Court (for further discussion see part 5.4 below).

3.3 Domestic and Family Violence Act

Additionally, there are witness protections under the *Domestic and Family Violence Act* that apply solely to the Court of Summary Jurisdiction, as this is the jurisdiction in which domestic violence proceedings are heard. The relevant provisions in the *Domestic and Family Violence Act* differ from those of the *Evidence Act* and provide that:

- the court must be closed when a vulnerable witness or child is giving evidence (section 106);
- the evidence of a child must be provided by written or recorded statement (sections 107(1) and 108);
- a child may be accompanied by a support person whilst providing a statement (section 107(2));
- a child cannot be cross-examined (section 109);
- a vulnerable witness may give evidence at a place outside the court room via CCTV (section 110(1)) or a vulnerable witness may have a screen, partition or one-way glass placed to obscure their view of the defendant (section 110(2)); and
- a vulnerable witness may be accompanied by a support person whilst giving evidence (section 111).

Similar to the *Evidence Act*, these protections do not have to be followed if the court is satisfied it is not in the interests of justice to do so, or because the urgency of the proceeding requires dispensation of the protections (section 112).

3.4 Justices Act (Committal proceedings)

Section 105L of the *Justices Act* provides that a child witness in a sexual assault or serious violence offence or the complainant in a sexual offence is not required to attend the committal hearing and cannot be examined in-chief or cross-examined. As these witnesses are precluded from giving evidence at the committal hearing, the protections of sections 21A to 21E of the *Evidence Act* are not needed (in committal proceedings).

3.5 What is the legislative gap?

Taking into account the protections afforded to vulnerable witnesses in domestic violence proceedings and the restriction on giving evidence at committal proceedings, any expansion of section 21B to the Court of Summary Jurisdiction and Youth Justice Court would only apply to sexual or serious violence offences that are being heard and finalised in the Court of Summary Jurisdiction.

Section 21A of the *Evidence Act* outlines the provisions of the Criminal Code which are deemed 'serious violence offences' while section 4 of the *Evidence Act* provides for the definition of "sexual offence" by reference to the definition contained in section 3 of the *Sexual Offences (Evidence and Procedure) Act*. Although all of the offences that come under these two definitions are indictable, sections 120 and 121A of the *Justices Act* allow for various indictable offences to be heard summarily, unless the court determines the matter should be tried in the Supreme Court (section 122A). Sections 120 and

121A of the *Justices Act* provide for a number of offences, fitting the definition of sexual or serious violence offence, which could be heard summarily and therefore subject to an expanded application of section 21B. Attachment A contains a list of all sexual or serious violence offences that could be heard summarily, unless the Court considers they should be tried in the Supreme Court.

3.6 What is the quantity of cases potentially affected by the gap in coverage?

The National Criminal Courts Statistics produced by the Australian Bureau of Statistics provides data on matters heard in the Court of Summary Jurisdiction and Supreme Court. In accordance with the categorisation of offences in the National Criminal Courts Statistics, offences that could be defined as serious violence or sexual offences would fit into the following categories:

- acts intended to cause injury;
- sexual assault and related offences;
- abduction, harassment and other offences against the person;
- robbery, extortion and related offences;
- unlawful entry with intent.

The National Criminal Courts Statistics for the year 2011-2012 show that a total of 543 matters proceeded to hearing in the Court of Summary Jurisdiction, with 255 matters fitting into the above categories (refer Attachment B)². This means that, utilising the Australian Bureau of Statistics data as a rough guideline, any expansion of section 21B to the lower courts could potentially apply to 47% of all hearings in the Court of Summary Jurisdiction.

For the same period (2011-2012), 33 matters, fitting the above categories, proceeded to hearing in the Supreme Court (refer Attachment C)³. The National Criminal Courts Statistics suggest that this represents 57% of all hearings in the Supreme Court⁴.

Unfortunately the Department of the Attorney-General and Justice has been unable to obtain data which is more specific than that provided by the Australian Bureau of Statistics. As a result, the number of hearings involving vulnerable witnesses and an application of section 21B in the Court of Summary Jurisdiction is likely to be much lower than the figure of 255 because:

- the Australian Bureau of Statistics does not provide a breakdown of each of the specific offences that are included in each category, and there may be offences which do not correspond to the definitions of serious violence and sexual offence;

² Australian Bureau of Statistics – Criminal Courts in Australia, National Criminal Courts Statistics, 2011-2012: Table 11 – Defendants Finalised, Magistrates’ Courts – Northern Territory, Principal Offence by method of finalisation: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02011-12?OpenDocument>

³ Australian Bureau of Statistics – Criminal Courts in Australia, National Criminal Courts Statistics, 2011-2012: Table 5 – Defendants Finalised, Higher Courts – Northern Territory, Principal Offence by method of finalisation: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02011-12?OpenDocument>

⁴ Australian Bureau of Statistics – Criminal Courts in Australia, National Criminal Courts Statistics, 2011-2012: Table 5 – Defendants Finalised, Higher Courts – Northern Territory, Principal Offence by method of finalisation: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02011-12?OpenDocument>

- even if an offence fits the definition of serious violence or sexual offence, it does not necessarily mean that it will involve a vulnerable witness. For example, offences involving possession or publication of child abuse material fit the definition of sexual offence, however, the victim (being the child depicted in the material) is very rarely required to give evidence; and
- it is more likely that serious violence or sexual offences involving vulnerable witnesses needing to give evidence will proceed to trial in the Supreme Court than the Court of Summary Jurisdiction.

4. Consultation

The Department of the Attorney-General and Justice sought submissions regarding the possible expansion of section 21B of the *Evidence Act* to the Court of Summary Jurisdiction and Youth Justice Court. Letters were sent to the following identified stakeholders in March 2013:

- Chief Justice, the Honourable Trevor Riley;
- former Chief Magistrate, Mrs Hilary Hannam;
- Children's Commissioner, Dr Howard Bath;
- Director of Public Prosecutions;
- Witness Assistance Service;
- Northern Territory Police, Fire and Emergency Service;
- Northern Territory Legal Aid Commission;
- Darwin Community Legal Service;
- Northern Territory Bar Association;
- Law Society Northern Territory;
- Criminal Lawyers Association of the Northern Territory;
- Central Australian Aboriginal Legal Aid Service;
- Top End Women's Legal Service;
- North Australian Aboriginal Justice Agency;
- Northern Territory Women's Lawyers Association;
- Katherine Women's Information and Legal Services;
- North Australian Aboriginal Family Violence Legal Service;
- Central Australian Women's Legal Service;
- Department of Correctional Services;
- Domestic Violence Legal Services (Alice Springs and Darwin); and
- Sexual Assault Network Darwin (C/- Ruby Gaea Darwin Centre Against Rape).

Follow-up letters were also sent to a number of agencies that had not responded in June 2013.

Submissions were received from ten organisations and government departments⁵.

The current Chief Magistrate, Dr John Lowndes, was provided with a copy of the draft Report and has indicated his support for the submission provided by former Chief Magistrate, Mrs Hilary Hannam.

5. Support for the application of section 21B to the lower courts

5.1 Additional protection

Participants who supported the application of section 21B to the lower courts highlighted that it would further prevent harm and trauma to victims of crime through the provision of additional protections while giving evidence⁶.

5.2 Victim and defendant contact

The Department of Correctional Services noted that pre-recorded statements would be particularly beneficial in remote courts due to a reduced likelihood of the victim and defendant coming into contact.

The Department of the Attorney-General and Justice is aware of issues regarding the layout of some courts and the lack of suitable waiting areas to prevent witnesses coming into contact with defendants prior to court. In addressing this issue, the Review of Vulnerable Witness Legislation Report noted the need for suitable waiting areas so that witnesses do not come into contact with defendants⁷. Recommendation 3 of the Review of Vulnerable Witness Legislation Report specifically addressed concerns with the victim and defendant coming into contact at the Alice Springs Magistrates Court, and as a result, the issue was brought to the attention of the former Chief Magistrate.

5.3 Increase in successful prosecutions due to witness protections

The former Chief Magistrate suggested that the absence of section 21B protections in the lower courts could account for the majority of serious assault matters not proceeding in bush courts. It was noted that many matters are often withdrawn or dismissed because victims do not turn up at court on the date of hearing, despite the best endeavours of the witness assistance service.

The Criminal Justice Research and Statistics Unit of the Department of the Attorney-General and Justice has advised that figures regarding the number of matters that are discontinued are available, however, these figures do not specify why each of the matters was discontinued. For example, in the Court of Summary Jurisdiction for the year 2011-2012, within the categories at part 3.6 above, 493 matters were

⁵ Children's Commissioner, Northern Territory Police, Fire and Emergency Service, Northern Territory Legal Aid Commission, Northern Territory Bar Association, Criminal Lawyers Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency, Department of Correctional Services, Chief Magistrate, Director of Public Prosecutions

⁶ Children's Commissioner, Northern Territory Police, Fire and Emergency Service, Department of Correctional Services, Chief Magistrate, Director of Public Prosecutions

⁷ Paragraph 5.2.4; pages 14-15: Department of Justice: (2011): Report - Review of Vulnerable Witness Legislation

withdrawn by the prosecution and 196 matters resulted in an acquittal⁸ (in this analysis an acquittal includes matters that were dismissed by the Magistrate). However, without a further breakdown, it is not possible to determine with any certainty which of these matters were withdrawn by the prosecution or dismissed by the Magistrate because the complainant or a witness failed to attend court.

As discussed above, section 21A of the *Evidence Act* provides protection for victims in the lower courts and allows for evidence to be given in a way that the complainant cannot see or hear the defendant (i.e. through closed circuit television or the use of a partition). Children are additionally protected in Domestic Violence Order proceedings with the admission of their evidence by way of recording or written statement, thereby alleviating any requirement to attend court.

5.4 Overall intention of legislation

The Children's Commissioner and Director of Public Prosecutions outlined that section 21B of the *Evidence Act* should be expanded to the lower courts because the overriding intention of the legislation, to protect vulnerable witnesses and reduce the trauma of giving evidence, should prevail.

In the second reading speech for the Evidence Reform (Children and Sexual Offences) Bill 2004, the former Attorney-General, Dr Toyne, stated that the purpose of the Bill was "to reduce trauma experienced by child witnesses and other vulnerable witnesses such as adults with intellectual disability in criminal proceedings for sexual offences, and improve the quality of evidence from those witnesses in criminal proceedings". However, he further stated that there needed to be a "recognition of the need to balance the legitimate rights of accused persons with the protection of victims of crime, particularly child victims". There is no statement in the second reading speech or explanatory memorandum for the Bill that restricts the application of section 21B to the Supreme Court, rather, it is the wording of section 21B, specifically the use of the word 'trial' and the use of the word 'jury' that has led legal practitioners (and presumably magistrates) to the view that it does not operate in the lower courts, thus restricting its operation to the Supreme Court. References in the section to replaying the recordings to the jury indicate that it is probably correct that section 21B can only be applied to cases involving jury trials.

Even if section 21B has been incorrectly applied, it seems likely that practices will not change unless the legislation is amended to deal with the reasons why section 21B has been applied in this way.

However, it does not appear that any expansion of section 21B to the lower courts would be contrary to the intention elicited in the second reading speech.

⁸ Australian Bureau of Statistics – Criminal Courts in Australia, National Criminal Courts Statistics, 2011-2012: Table 11 – Defendants Finalised, Magistrates' Courts – Northern Territory, Principal Offence by method of finalisation: <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4513.02011-12?OpenDocument>

5.5 Parity between courts

A number of stakeholders highlighted the inconsistency between the application of section 21B to the Supreme Court, to the exclusion of the Court of Summary Jurisdiction and Youth Justice Court⁹. It was submitted that, in the interest of parity, all protections provided in the Supreme Court should be extended to proceedings in the lower courts. This reflects the simple proposition that, if a particular matter is before a court, the method of providing evidence should not be affected (leaving aside that some courts may lack the technical facilities as, for example, if the Supreme Court were to sit outside of Darwin or Alice Springs).

6. Opposition to the application of section 21B to the lower courts

The majority of stakeholders were opposed to the application of section 21B to the lower courts, for varied reasons¹⁰.

6.1 Logistical implications

Given the operation of regional Courts of Summary Jurisdiction and community courts (or 'bush courts') in remote communities, many stakeholders outlined the enormous undertaking that would be required to implement any expansion of section 21B¹¹. Concern was raised regarding the current workload of Courts of Summary Jurisdiction in addition to the inadequate court facilities in bush courts¹². It was suggested that the already stretched capacity of the Court of Summary Jurisdiction would be further exacerbated by any expansion of section 21B¹³.

It was also noted that Police Officers in remote communities would need significant training in relation to taking formal recorded statements from witnesses, with particular emphasis on the cultural sensitivities of Aboriginal witnesses¹⁴. Officers would also need to engage interpreters (as English is, at a minimum, the second language in many remote communities) and take lengthy recorded statements¹⁵. It was submitted that police resources are overextended in many communities and the community might be better served with the officers 'on the streets' rather than in police stations attending to the recording of witnesses' interviews.¹⁶

⁹ Chief Magistrate, Director of Public Prosecutions, Children's Commissioner

¹⁰ Northern Territory Legal Aid Commission, Northern Territory Bar Association, Criminal Lawyers Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency

¹¹ Northern Territory Legal Aid, Northern Territory Bar Association, Criminal Lawyers Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency, Department of Correctional Services, Chief Magistrate

¹² Chief Magistrate, Northern Territory Legal Aid Commission, Northern Territory Bar Association, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency, Department of Correctional Services

¹³ Chief Magistrate, Department of Correctional Services, North Australian Aboriginal Justice Agency, Central Australian Aboriginal Legal Aid Service

¹⁴ Northern Territory Legal Aid Commission, Northern Territory Bar Association, Criminal Lawyers Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Service,

¹⁵ Northern Territory Legal Aid Commission, Northern Territory Bar Association, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Service,

¹⁶ Northern Territory Legal Aid Commission

Many stakeholders also highlighted current difficulties with the operation of the provisions in the Supreme Court¹⁷. Stakeholders noted that current arrangements for the recording of witness statements are inadequately resourced and often poorly managed. Participants advised that, although some 'teething problems' had been addressed, there were still continual issues with the day-to-day application of section 21B. The North Australian Aboriginal Justice Agency noted they were aware of trials being aborted due to technological issues with the pre-recording of evidence. On this basis, it was suggested that there was little hope in establishing functional, reliable facilities in the Court of Summary Jurisdiction and remote communities, if the Supreme Court could not resolve its issues. It was suggested that there be further review of the current application of section 21B prior to considering expansion to the lower courts¹⁸.

The Department of the Attorney-General and Justice is conscious of the limited access to vulnerable witness facilities at bush courts, with most bush courts using screens to prevent vulnerable witnesses from being able to see the alleged offender. It is understood that Tennant Creek is the only court, outside Darwin, Alice Springs and Katherine, where CCTV facilities are available.

The Department of the Attorney-General and Justice consulted with the Director of Courts Administration in relation to difficulties with the operation of section 21B provisions in the Supreme Court. It was confirmed that there are regular unexplained problems with the relevant equipment. One issue that was noted was the taking of evidence via video and then later realising it had not recorded. This was highlighted by the courts as being extremely unsatisfactory as it led to the witness having to give evidence a second time, which is precisely what the legislation aims to prevent. It was noted that equipment problems do not happen often but often enough to be a real problem which, at present, is yet to be overcome. Court administration believes the installation of back-up systems would be a solution and the Courts are continuing to work to address these problems.

Northern Territory Police were also consulted regarding training and internal guidelines for the recording of witness statements. The Department of the Attorney-General and Justice was advised that training of officers, generally, is based on written statements and those officers who are trained to interview vulnerable witnesses undertake significant specialist training both internally and externally through Deakin University. Northern Territory Police advised that it is not common practice to record every witness interview and, following an assessment of each particular witness, the investigating officer will make a decision whether or not to record the interview. Currently, every witness statement is recorded for child victims of sexual abuse or physical assault, however, the recording of adult witness statements is discretionary. It is not common practice to record interviews with victims of assault. Northern Territory Police noted that formally recording the statement of all assault victims would be impractical, especially in remote communities, and, due to the large volume of assaults, would need to remain discretionary.

¹⁷ North Australian Aboriginal Justice Agency, Central Australian Aboriginal Legal Aid Service, Northern Territory Bar Association, Northern Territory Legal Aid Commission

¹⁸ Department of Correctional Services, North Australian Aboriginal Justice Agency, Central Australian Aboriginal Legal Aid Service, Northern Territory Legal Aid Commission

6.2 Cost implications

A number of submissions raised concern regarding the additional cost that any expansion of section 21B would have on the community, specifically in relation to the use of public funds and resources¹⁹. Funding concerns were noted not just in relation to the courts but prosecution, defence (particularly government funded legal assistance providers), police (see part 6.1 above) and witness assistance services. For example, a breakdown of funding for a lawyer in a matter that involves a pre-recorded hearing under section 21B would include two preparation and court fees – one for the pre-recording of evidence (which must be undertaken within three months) and one for the hearing itself, in addition to perusal of the recordings (both police interview and cross-examination) and a pre-trial hearing on the admissibility of portions of the recording/s. This can be compared to a hearing without the pre-recording of a witness's evidence which would involve one preparation fee and one court fee. On this basis, stakeholders indicated that the additional cost was unjustifiable and an inappropriate use of public funds²⁰. It should, however, be noted that the Director of Public Prosecutions expressed a view in opposition, being that any inconvenience and cost implications should not override the need to protect vulnerable witnesses.

It is reasonable to assume that government funded legal assistance providers would seek additional funding to cover the additional preparation and court time required by practitioners if section 21B of the *Evidence Act* was extended to the lower courts. Any request for additional funding by the Northern Territory Legal Aid Commission would be duly assessed by the Northern Territory Government before any decision to grant extra funding was made. As the North Australian Aboriginal Justice Agency is federally funded, any additional funding request would need to be made to the Commonwealth Government.

Prior to committing to any expansion it was suggested that an evaluation of the potential cost to all parties be undertaken, by reference to current costs of the implementation of section 21B²¹. An analysis regarding the frequency with which serious violence offences and sexual offences are heard and finalised in the Court of Summary Jurisdiction and Youth Justice Court was also proposed²².

Any extension of section 21B to the Court of Summary Jurisdiction would require significant investment, both in funding and human resourcing. Courts' officers have confirmed that each court would need to be specifically fitted out to accommodate pre-recordings, with an additional five facilities at Darwin and two at Alice Springs. A preliminary estimate is that the initial set-up would cost in the vicinity of \$1.5 million. This figure does not purport to be a cost analysis of the entire system and excludes government funded legal assistance providers, prosecution, witness assistance service and policing costs. Further, ongoing administration, maintenance and staffing costs are not included in this figure. On the other hand, it may not be necessary for all of the courts to be upgraded at the one time. The Courts have also indicated that

¹⁹ Northern Territory Legal Aid Commission, Northern Territory Bar Association, Criminal Lawyers Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service, Chief Magistrate

²⁰ Northern Territory Legal Aid Commission, Northern Territory Bar Association, Criminal Lawyers Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service

²¹ Department of Correctional Services, North Australian Aboriginal Justice Agency, Central Australian Aboriginal Legal Aid Service, Northern Territory Legal Aid Commission

²² Department of Correctional Services

pre-recordings would be unable to occur at bush courts due to the lack of facilities. Accordingly, these proceedings would need to be moved to the closest Court of Summary Jurisdiction.

6.3 Further erosion of defendant's rights

A number of parties submitted that the expansion of section 21B of the *Evidence Act* would be a further erosion of a defendant's rights, given the current statutory scheme has already "tilted" the balance against the accused²³.

Stakeholders highlighted one of the main principles of our criminal justice system – that the defendant has a right to a fair trial and, consequently, the ability to test the statements of the complainant and witnesses. A number of participants indicated that they hold grave concerns about the admission of any evidence without adequate cross-examination²⁴. Specific to section 21B of the *Evidence Act*, this could allow for a recording of the complainant's interview with police to be admitted into evidence without sufficient cross-examination. Although defence counsel would be provided with the opportunity to cross-examine the complainant at the pre-recording, if the complainant was unresponsive at the pre-record then testing through cross-examination would be diminished and the police interview would remain in evidence 'untested'. As a result, it was submitted that the defendant's right to a fair trial in the Court of Summary Jurisdiction would be fundamentally compromised. The biggest concern was noted to be the need to balance the protection and support of victims with judicial fairness for the accused²⁵.

When addressing this concern, stakeholders also noted the 'regular experience of courts' being that lies are told and mistakes are made by complainants and other prosecution witnesses. Therefore, they submitted that it is not in the interests of justice to 'tilt' the balance against the accused and prevent a defendant from adequately testing the complainants' evidence through thorough cross-examination.

The Director of Public Prosecutions, however, noted the defendant's right to a fair trial would not be compromised in the Court of Summary Jurisdiction as any erosion of rights would be counter-balanced by the reduction in risk of a jury's sympathies being elicited by the complainant, as the matter would be solely heard by an experienced, impartial Magistrate.

In terms of 'tilting' the balance, there is no rational reason for distinguishing between the higher and lower courts. Section 21B protections have the same benefits and differences regardless of the court in which they might operate.

²³ Criminal Lawyers Association of the Northern Territory, North Australian Aboriginal Justice Agency

²⁴ Criminal Lawyers Association of the Northern Territory, North Australian Aboriginal Justice Agency

²⁵ Criminal Lawyers Association of the Northern Territory, North Australian Aboriginal Justice Agency, Chief Magistrate, Department of Correctional Services

6.4 Delay

Stakeholders submitted that the pre-recording of witness' evidence and the resultant legal arguments regarding editing (to remove irrelevant and prejudicial material) and inadmissibility would add significant delay to summary hearings²⁶. In addition, it was noted that adjournments are generally required to review the evidence and recordings. Given the purpose of the Court of Summary Jurisdiction is to ensure fundamental principles of justice are pursued with matters being dealt with in an efficient and timely way, the additional processes, delay and court time required for the pre-recording of witness evidence would unnecessarily clog the system²⁷. Further, defendants on remand for summary charges would spend additional time in custody, perhaps beyond the time they would receive once sentenced²⁸. In this regard, it was highlighted that the Northern Territory has the highest rate of imprisonment in Australia (889 per 100,000 adult population)²⁹ including both sentenced and 'un-sentenced' prisoners.

Delay in proceedings was also raised as an issue for witnesses as drawn out proceedings would lead to impaired recollection, increased trauma and a lack of closure for complainants, thereby defeating the intention of the legislation – to minimise harm and protect witnesses³⁰.

The Department of the Attorney-General and Justice has been advised by the Courts that delay in proceedings as a result of the pre-recording of evidence is inevitable. As a result, current proceedings involving section 21B in the Supreme Court will take longer to proceed to trial than those that are not subject to the section.

6.5 Intention of section 21B

It was submitted that the legislative intent was for section 21B of the *Evidence Act* to be directed at the more serious allegations, particularly by children against adults, which are seldom dealt with in the summary jurisdiction. On this basis, it was noted that the expansion of section 21B is unnecessary³¹. This argument seems to be somewhat circular.

In the second reading speech for the Evidence Reform (Children and Sexual Offences) Bill 2004, the former Minister for Justice and Attorney-General, Dr Toyne, stated that the purpose of the Bill was "to reduce trauma experienced by child witnesses and other vulnerable witnesses such as adults with intellectual disability in criminal proceedings for sexual offences, and improve the quality of evidence from those witnesses in criminal proceedings". Section 21B(1) makes it plain that the section only operates for more serious matters (refer to part 5.4 above for further discussion regarding the interpretation of section 21B).

²⁶ Northern Territory Legal Aid Commission, Northern Territory Bar Association, Criminal Lawyers Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency, Department of Correctional Services, Chief Magistrate

²⁷ Northern Territory Legal Aid Commission, Central Australian Aboriginal Legal Aid Service, Chief Justice

²⁸ Criminal Law Association of the Northern Territory, Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency

²⁹ Australian Bureau of Statistics – Corrective Services Australia, March Quarter 2013, <http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4512.0Main%20Features2March%20Quarter%202013?opendocument&tabname=Summary&prodno=4512.0&issue=March%20Quarter%202013&num=&view=>

³⁰ Central Australian Aboriginal Legal Aid Service

³¹ Northern Territory Legal Aid Commission, Criminal Lawyers Association of the Northern Territory,

7. Comparison to other Australian jurisdictions

A number of stakeholders noted that the present vulnerable witness provisions in the Northern Territory were already far more extensive than any other Australian jurisdiction. Further, the definition of 'vulnerable witness' was already much broader, meaning that any expansion of section 21B to the Court of Summary Jurisdiction would pertain to a large number of witnesses. It was suggested that the reason other states or territories had not extended their legislation was because the potential application would be vast. As a result, stakeholders indicated that further extension and protection was unnecessary and inappropriate given the current definition of 'vulnerable witness'³².

The categorisation and definition of 'vulnerable witness' differs between each of the Australian jurisdictions. The variation between the states and territories regarding the categorisation of vulnerable witnesses greatly affects the scope of the application of witness protection provisions, as the highest level of protections (such as those contained within section 21B of the *Evidence Act* (NT)) are only available to a defined class of witness. As a result, although most of the states and territories provide witness protections for sexual assault complainants, the admission of a police-interview as evidence-in-chief is only available to children or those with cognitive impairments. A jurisdictional comparison table is at Attachment D.

The protections provided in each of the jurisdictions, excluding Victoria, are applicable in all courts, including during Committal proceedings. The Victorian *Criminal Procedure Act 2009*, similar to the Northern Territory legislation, applies only to trials on indictment for sexual offences.

Most of the provisions in each of the states and territories are subject to judicial discretion. As a result, the majority of jurisdictions require an application by the Prosecution and then it is up to the Court whether or not they apply some or all of the protections.

7.1 Interstate dealings with vulnerable persons and application

7.1.1 New South Wales

The *Criminal Procedure Act 1986* (NSW) provides for a child or cognitively impaired person to be classified as a 'vulnerable person'. Separate protections are also provided for complainants in sexual assault matters.

7.1.2 Victoria

Under the *Evidence Act 2008* (VIC) a vulnerable witness is a child, a cognitively impaired person or a person the court considers to be vulnerable having regard to the particular conditions or characteristics of the witness (i.e. age, language maturity, mental or physical disability, context of a question, nature of proceeding, relationship with defendant).

In addition to the provisions under the *Evidence Act 2008* (VIC), the *Criminal Procedure Act 2009* (VIC) provides various protections for a 'protected witness', being a witness in a sexual offence or family violence proceedings.

³² Central Australian Aboriginal Legal Aid Service, North Australian Aboriginal Justice Agency, Northern Territory Legal Aid Commission

7.1.3 Queensland

Queensland legislation provides for two classes of witness each with differing protections. An 'affected child' is classified as a witness in a proceeding for a sexual or violent offence where there is a 'prescribed relationship' between the child and the defendant. A 'special witness' is a child, person with a cognitive impairment or a witness likely to suffer severe emotional trauma or be so intimidated as to be disadvantaged whilst giving evidence.

7.1.4 Western Australia

The *Evidence Act 1906 (WA)* defines a 'special witness' as a child, a person with a cognitive impairment, a complainant to a 'serious sexual offence' or a witness likely to suffer severe emotional trauma or be so intimidated as to be disadvantaged whilst giving evidence.

7.1.5 Australian Capital Territory

The vulnerable witness provisions of the *Evidence (Miscellaneous Provisions) Act 1991 (ACT)* provide that a complainant in a sexual or violent offence can give evidence behind a screen or via CCTV. Additionally, the police interview of a child or person with cognitive impairment is admissible as their evidence-in-chief with a pre-record being conducted for cross-examination. If a complainant in a sexual offence is deemed likely to suffer severe emotional trauma or likely to be intimidated or distressed, their evidence may also be pre-recorded.

7.1.6 South Australia

The South Australian *Evidence Act 1929* defines a 'vulnerable witness' as a child, a person who suffers from a mental disability, a complainant in a sexual or serious offence, a witness who has been subjected to threats of violence or retribution or any other case where the court deems the witness to be specially disadvantaged. Additional protections are also provided for a child witness in a sexual assault matter.

7.1.7 Tasmania

Similarly to Queensland, Tasmania provides for both 'special witnesses' and 'affected child' witnesses. The *Evidence (Children and Special Witnesses) Act 2001 (Tas)* defines a 'special witness' as a person unable to give evidence satisfactorily because of their intellectual, mental or physical disability or a person who is likely to suffer severe emotional trauma or be so intimidated or distressed as to be unable to give evidence or give evidence satisfactorily. An 'affected child' is defined as a victim of a sexual offence or a witness in family violence proceedings.

Although other jurisdictions (excluding Victoria) do not have the same restriction on the court or type of proceeding in which the recorded statement protections apply, in all other jurisdictions, the equivalent section 21B vulnerable witness provisions apply to a more limited category of people, namely children and people with a mental or cognitive impairment. Accordingly, any further expansion of vulnerable witness provisions in the Northern Territory would be beyond that available in other jurisdictions.

8. Proposed further amendments

In addition to commenting on recommendation 7 of the Review of Vulnerable Witness Legislation Report, the Office of the Director of Public Prosecutions noted concern with two further areas of the vulnerable witness provisions in the *Evidence Act*.

8.1 Section 21A(1) Evidence Act

During the consultation process, the Office of the Director of Public Prosecutions suggested that the definition of vulnerable witness in section 21A(1) of the *Evidence Act* should be amended to provide for inclusion of witnesses similar to the equivalent Victorian legislation.

Section 41(4) of the *Evidence Act 2008* (Vic) defines a vulnerable witness as a child, person with a cognitive impairment or intellectual disability and a witness the court considers to be vulnerable having regard to:

- (a) any relevant condition or characteristic of the witness of which the court is, or is made aware, including age, education, ethnic and cultural background, gender, language background and skills, level of maturity and understanding and personality; and
- (b) any mental or physical disability of which the court is, or is made, aware and to which the witness is, or appears to be, subject; and
- (c) the context in which the question is put, including –
 - the nature of the proceeding; and
 - in a criminal proceeding – the nature of the offence to which the proceeding relates; and
 - the relationship (if any) between the witness and any other party to the proceeding.

Recommendation 6 of the Review of Vulnerable Witness Legislation Report proposes an amendment to the definition of vulnerable witness in both the *Evidence Act* and *Domestic and Family Violence Act* in terms consistent with that of section 41(4) of the *Evidence Act 2008* (Vic). This amendment is currently being progressed by the Department. As this concern is already being addressed through legislative amendment, no further action is required.

8.2 Section 21E(6) Evidence Act

The Office of the Director of Public Prosecutions also proposed amendment to section 21E(6) of the *Evidence Act* to include a clearer threshold for a court granting leave to recall a vulnerable witness for further cross-examination. It was noted that the current provision had been interpreted so broadly by the judiciary as to allow a witness to be recalled when a defendant had changed counsel and new counsel wanted to try a new angle. This was submitted to be in direct opposition to the intention of the legislation.

Section 21E(6) of the *Evidence Act* provides that 'if a Court admits an audiovisual record in evidence under this section, the Court may relieve the witness wholly or in part from an obligation to give evidence in the later proceedings'. While this provision does not entirely overcome the need for the vulnerable witness to give evidence in later proceedings, it should mean that the witness only needs to provide evidence in relation to new matters or new issues that may arise. Although this does not avoid the distress associated with having to give evidence again, it is intended to reduce this trauma as much as possible.

Section 21E(6) effectively requires parties to make submissions in relation to whether a vulnerable witness should be required to give further evidence. The matter is then left to judicial discretion regarding the recalling of a vulnerable witness. Accordingly, defence counsel is not provided with an automatic right to recall a witness and must make application, which is decided on merits and in accordance with precedent. Similar provisions also exist in other Australian jurisdictions.

The purpose of this report is to address submissions on the possible expansion of section 21B of the *Evidence Act* to the lower courts. Accordingly, it is beyond the scope of this report to address any proposed amendment regarding the recalling of vulnerable witnesses for cross-examination. Further, given the potential implications for defendants, extensive consultation with stakeholders, including defence, would be required prior to proceeding with any amendment.

9. Conclusion

Vulnerable witness provisions in the *Evidence Act* are designed to protect victims by reducing the trauma of giving evidence. All *Evidence Act* provisions regarding the protection of vulnerable witnesses, excluding section 21B, apply in the Supreme Court, Court of Summary Jurisdiction and Youth Justice Court.

The protections afforded to vulnerable witnesses in the Court of Summary Jurisdiction and Youth Justice Court under the *Evidence Act* are extensive, even though section 21B does not apply. Taking into account the application of section 21E (permitting the recording of a witness's evidence in any court proceedings), practically, the only protection that is not provided to vulnerable witnesses in the Court of Summary Jurisdiction or Youth Justice Court is the ability for their police interview to be admitted as evidence in chief.

Given the level of protection currently provided in the *Evidence Act*, the *Domestic and Family Violence Act* and the *Justices Act*, it would seem that vulnerable witnesses are already being safeguarded to a relatively high level. Further, with the implementation of the other recommendations of the Review of Vulnerable Witness Legislation Report, additional protective provisions will be inserted to:

- clarify that a vulnerable witness does not need to be present when their recorded statement is being played during a trial;
- provide that 'all efforts should be made to ensure that matters that could delay or interrupt a child's evidence are determined pre-trial';

- clarify the circumstances in which it is appropriate for a Court to determine that a person is under a special disability, and, therefore, within the scope of the definition of ‘vulnerable witness’;
- ensure that recorded statements are taken by an appropriately qualified person, including a police officer;
- relieve judges of the responsibility of relaying questions from self-represented defendants to complainants during sexual offence trials and give the court the power to appoint a person to put questions on behalf of unrepresented defendants; and
- expand the definition of ‘vulnerable witness’ to include an adult who is the protected person named in a Domestic Violence Order Application.

Despite this, the argument for parity between the Supreme Court and the lower courts is compelling and the Department of the Attorney-General and Justice agrees that, given the intention of the legislation, the protections of section 21B of the *Evidence Act* should apply to vulnerable witnesses in serious violence and sexual offences no matter in which court the matter is heard.

However, there are a number of issues with the application of section 21B to the lower courts:

- any expansion to the lower courts would involve significant funding and resource implications;
- summary hearings for matters involving vulnerable witnesses would take significantly longer to progress and finalise, thereby burdening the courts, adding to a defendant’s remand time and prolonging the court process for the victim; and
- replaying a witness’ police interview or pre-recording of evidence would not be able to occur in bush courts.

In summary, the Department of the Attorney-General and Justice recommends that the provisions of section 21B be amended so that its application is not restricted to Supreme Court trials.

However, given the relevant resource implications, it is proposed that the expanded operation of section 21B to the lower courts be discretionary to allow for the presiding judicial officer to take into account (among other considerations):

- (a) the technological resources of a particular court; and
- (b) the availability of a recorded police-interview.

Accordingly, if resources in a particular court did not allow for the pre-recording of a witness’s evidence, then it would not be possible to comply with the provision and the witness would have to give evidence by another means (i.e. via CCTV or behind a partition). Similarly, if the police do not record a witness’s initial interview, then it would not be able to be admitted as the witness’s evidence-in-chief.

ATTACHMENT A

Criminal Code offences, fitting the definition of sexual or serious violence, that can be heard summarily under section 120 and 120A of the Justices Act

Section 125B	Possession of child abuse material
Section 125C	Publishing indecent articles
Section 128	Sexual intercourse or gross indecency involving a child over 16 years, under special care
Section 130	Sexual intercourse or gross indecency by a provider of services to mentally ill or handicapped person
Section 131	Attempts to procure a child under 16 years
Section 131A	Sexual relationship with a child
Section 132	Indecent dealing with a child under 16 years (but over 10 years of age)
Section 133	Gross indecency in public
Section 166	Threats to kill
Section 174C	Recklessly endangering life
Section 174D	Recklessly endangering serious harm
Section 174E	Negligently causing serious harm
Section 174F	Driving a motor vehicle causing death or serious harm
Section 174FA	Hit and run
Section 183	Failure to supply necessities
Section 184	Endangering life of a child by exposure
Section 186	Harm
Section 188(2)	Aggravated Assault
Section 188A	Assaults on workers
Section 189A	Assaults on police
Section 189	Unlawful stalking
Section 194	Kidnapping for ransom
Section 195	Kidnapping
Section 196	Deprivation of liberty
Section 201	Abduction, enticement or detention of a child under 16 years for immoral purpose
Section 202	Abduction of child under 16 years
Section 202D	Deceptive recruiting for sexual services



Australian Bureau of Statistics

45130DO012_201112 Criminal Courts, Australia, 2011–12

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Table 11 DEFENDANTS FINALISED, Magistrates' Courts – Northern Territory, Principal offence by method of finalisation

	PROVEN GUILTY				Total proven guilty	Total adjudicated	Withdrawn by prosecution	Total
	Acquitted	Guilty finding	Guilty plea	Guilty ex-parte				
	NUMBER							
Homicide and related offences	6	0	0	0	0	6	3	12
Acts intended to cause injury	172	56	1,544	4	1,692	1,864	392	2,369
Sexual assault and related offences	7	3	11	0	14	21	25	91
Dangerous or negligent acts endangering persons	19	0	370	12	395	414	349	773
Abduction, harassment and other offences against the person	11	0	29	0	29	40	16	56
Robbery, extortion and related offences	0	0	3	0	3	3	13	34
Unlawful entry with intent	6	0	214	0	223	229	47	304
Theft and related offences	14	0	265	12	294	308	85	393
Fraud, deception and related offences	6	3	75	3	84	90	86	179
Illicit drug offences	24	3	394	8	423	447	84	560
Prohibited and regulated weapons and explosives offences	29	3	247	8	273	302	80	385
Property damage and environmental pollution	20	0	194	0	202	222	61	287
Public order offences	32	6	353	64	432	464	117	581
Traffic and vehicle regulatory offences	38	25	3,571	259	3,966	4,004	989	4,993
Offences against justice	45	4	792	34	863	908	237	1,145
Miscellaneous offences	7	4	61	12	80	87	102	189
Total finalised	436	107	8,123	416	8,973	9,409	2,686	12,351
	PROPORTION (%)							
Homicide and related offences	50.0	0.0	0.0	0.0	0.0	50.0	25.0	100.0
Acts intended to cause injury	7.3	2.4	65.2	0.2	71.4	78.7	16.5	100.0
Sexual assault and related offences	7.7	3.3	12.1	0.0	15.4	23.1	27.5	100.0
Dangerous or negligent acts endangering persons	2.5	0.0	47.9	1.6	51.1	53.6	45.1	100.0
Abduction, harassment and other offences against the person	19.6	0.0	51.8	0.0	51.8	71.4	28.6	100.0
Robbery, extortion and related offences	0.0	0.0	8.8	0.0	8.8	8.8	38.2	100.0
Unlawful entry with intent	2.0	0.0	70.4	0.0	73.4	75.3	15.5	100.0
Theft and related offences	3.6	0.0	67.4	3.1	74.8	78.4	21.6	100.0
Fraud, deception and related offences	3.4	1.7	41.9	1.7	46.9	50.3	48.0	100.0
Illicit drug offences	4.3	0.5	70.4	1.4	75.5	79.8	15.0	100.0
Prohibited and regulated weapons and explosives offences	7.5	0.8	64.2	2.1	70.9	78.4	20.8	100.0
Property damage and environmental pollution	7.0	0.0	67.6	0.0	70.4	77.4	21.3	100.0
Public order offences	5.5	1.0	60.8	11.0	74.4	79.9	20.1	100.0
Traffic and vehicle regulatory offences	0.8	0.5	71.5	5.2	79.4	80.2	19.8	100.0
Offences against justice	3.9	0.3	69.2	3.0	75.4	79.3	20.7	100.0
Miscellaneous offences	3.7	2.1	32.3	6.3	42.3	46.0	54.0	100.0
Total finalised	3.5	0.9	65.8	3.4	72.6	76.2	21.7	100.0



Australian Bureau of Statistics

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Table 5 DEFENDANTS FINALISED, Higher Courts – Northern Territory, Principal offence by method of finalisation

	PROVEN GUILTY			Total proven guilty	Total adjudicated	Withdrawn by prosecution	Total
	Acquitted	Guilty finding	Guilty plea				
	NUMBER						
Homicide and related offences	0	5	14	19	19	0	19
Acts intended to cause injury	4	9	145	154	158	11	169
Sexual assault and related offences	9	4	47	51	60	17	77
Dangerous or negligent acts endangering persons	3	3	20	23	26	0	26
Abduction, harassment and other offences against the person	0	0	0	0	0	0	0
Robbery, extortion and related offences	0	4	37	41	41	0	41
Unlawful entry with intent	3	0	36	36	39	0	39
Theft and related offences	0	0	4	4	4	0	4
Fraud, deception and related offences	0	0	3	3	3	0	3
Illicit drug offences	0	4	73	80	80	4	84
Prohibited and regulated weapons and explosives offences	0	0	0	0	0	3	3
Property damage and environmental pollution	0	0	7	7	7	0	7
Public order offences	0	0	0	0	0	0	0
Traffic and vehicle regulatory offences	0	0	0	0	0	0	0
Offences against justice	6	4	0	4	10	3	13
Miscellaneous offences	0	0	0	0	0	0	0
Total finalised	25	33	386	422	447	38	485
	PROPORTION (%)						
Homicide and related offences	0.0	26.3	73.7	100.0	100.0	0.0	100.0
Acts intended to cause injury	2.4	5.3	85.8	91.1	93.5	6.5	100.0
Sexual assault and related offences	1.7	5.2	61.0	66.2	77.9	22.1	100.0
Dangerous or negligent acts endangering persons	1.5	11.5	76.9	88.5	100.0	0.0	100.0
Abduction, harassment and other offences against the person	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Robbery, extortion and related offences	0.0	9.8	90.2	100.0	100.0	0.0	100.0
Unlawful entry with intent	7.7	0.0	92.3	92.3	100.0	0.0	100.0
Theft and related offences	0.0	0.0	100.0	100.0	100.0	0.0	100.0
Fraud, deception and related offences	0.0	0.0	100.0	100.0	100.0	0.0	100.0
Illicit drug offences	0.0	4.8	86.9	95.2	95.2	4.8	100.0
Prohibited and regulated weapons and explosives offences	0.0	0.0	0.0	0.0	0.0	100.0	100.0
Property damage and environmental pollution	0.0	0.0	100.0	100.0	100.0	0.0	100.0
Public order offences	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Traffic and vehicle regulatory offences	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Offences against justice	6.2	30.8	0.0	30.8	76.9	23.1	100.0
Miscellaneous offences	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total finalised	5.2	6.8	79.6	87.0	92.2	7.8	100.0

ATTACHMENT D

Comparison of vulnerable witness protections in Australian jurisdictions

Jurisdiction	Witness	Protection
New South Wales	Vulnerable person	Can give evidence via CCTV Police interview admitted as evidence in chief Support person may be present
	Complainant in sexual assault	Can give evidence via CCTV Support person may be present
Queensland	Affected child	Can give evidence via CCTV Police interview admitted as evidence in chief Cross-examination may be pre-recorded Support person may be present Court to be closed during evidence
	Special witness	Can give evidence via CCTV Evidence may be pre-recorded Support person may be present Court to be closed during evidence
Western Australia	Child witness Suffers cognitive impairment	Can give evidence via CCTV Police interview admitted as evidence in chief Cross-examination may be pre-recorded Support person may be present
	Special witness	Can give evidence via CCTV Evidence may be pre-recorded Support person may be present
South Australia	Vulnerable witness	Can give evidence via CCTV Evidence may be pre-recorded Support person may be present
	Child witness in sexual assault	Can give evidence via CCTV Evidence may be pre-recorded Support person may be present Court to be closed during evidence
Tasmania	Affected child	Can give evidence via CCTV Police interview admitted as evidence in chief Support person may be present
	Special witness	Can give evidence via CCTV Support person may be present Court may be closed during evidence.

**Consultation Results Report: Consultation regarding Recommendation 7 of the Review of
Vulnerable Witness Legislation Report**

ATTACHMENT D

Australian Territory	Capital	Child witness Suffers cognitive impairment	Police interview admitted as evidence in chief Can give evidence via CCTV. Cross-examination may be pre-recorded Support person may be present
		Complainant in trial for sexual or serious violent offence	Can give evidence via CCTV Evidence to be pre-recorded Support person may be present Court to be closed during evidence.
Victoria		Protected witness	Can give evidence via CCTV Evidence may be pre-recorded Support person may be present
		Child witnesses Suffers cognitive impairment	Police interview admitted as evidence in chief Can give evidence via CCTV Cross-examination may be pre-recorded
Northern Territory		Vulnerable witness	Can give evidence via CCTV Support person may be present Court to be closed during evidence Evidence may be recorded
		Complainant in sexual or serious violent offence	Police interview admitted as evidence in chief Cross-examination may be pre-recorded