LAWS OF MALAYSIA

Act A1731

EVIDENCE OF CHILD WITNESS (AMENDMENT) ACT 2024

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Act A1731

EVIDENCE OF CHILD WITNESS (AMENDMENT) ACT 2024

An Act to amend the Evidence of Child Witness Act 2007.

[ ]

ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Evidence of Child Witness (Amendment) Act 2024.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette*.

Amendment of long title

2. The Evidence of Child Witness Act 2007 [*Act 676*], which is referred to as the "principal Act" in this Act, is amended by substituting for the long title the following long title:

"An Act relating to evidence of child witnesses.".

Amendment of section 2

3. Section 2 of the principal Act is amended in the definition of "child witness" by deleting the words "an accused or".

New Parts Ia and Ib

4. The principal Act is amended by inserting after section 2 the following parts:

"Part Ia

COMPETENCY OF CHILD WITNESS, EVIDENCE OF CHILD WITNESS GIVEN UPON OATH OR OTHERWISE AND UNCORROBORATED EVIDENCE OF CHILD WITNESS

Competency of child witness

2a. (1) All child witnesses shall be presumed to be competent to give evidence in any proceedings.

(2) A child witness is not competent to give evidence in a proceedings if the Court finds, based on the inquiry conducted under section 2c, that the child witness is not able to understand the questions put to him or give rational answers to the questions put to him in that proceedings.

Evidence of child witness given upon oath or otherwise

2b. (1) A child witness shall give evidence upon oath in a proceedings if he has attained the age of twelve years and understands the nature of an oath.

(2) A child witness who has not attained the age of twelve years or does not understand the nature of an oath may give evidence not upon oath in a proceedings and the Court shall, before the child witness gives evidence, inform the child witness that he has the duty to speak the truth and require the child witness to promise to speak the truth.

(3) When a child witness is giving evidence in a proceedings and in the course of giving his evidence he attains the age of twelve years, he may continue giving his evidence provided that he takes oath and his failure to take oath upon attaining the age of twelve years shall not render his evidence as inadmissible.

(4) The evidence of a child witness given not upon oath under subsection (2) shall, if admitted by the Court, be treated in the same manner as if the evidence had been given upon oath.

Inquiry on competency of child witnesses and ability of child witnesses to understand nature of oath

2c. (1) Subject to subsection (2), where the competency of a child witness to give evidence or the ability of a child witness to understand the nature of the oath when giving evidence is called into question, the Court may conduct an inquiry on the competency of the child witness to give evidence or on the ability of the child witness to understand the nature of the oath when giving evidence.

(2) The inquiry under this section shall be conducted before a child witness commences the giving of his evidence and where the Court thinks necessary, at any time after the child witness has commenced the giving of his evidence but before the child witness concludes the giving of his evidence.

(3) The Court shall conduct the inquiry in the presence of the parties to the proceedings and may, where necessary, require evidence from any other witnesses to be given during the inquiry in order for the Court to arrive at its decision as to the competency of the child witness to give evidence or the ability of the child witness to understand the nature of the oath when giving evidence.

(4) For the purposes of this section—

(a) the questioning of the witnesses shall only be carried out by the Court; and

(b) where the witness to be called is a child, all measures provided under this Act shall be applicable to facilitate the giving of evidence by the child witness.

Uncorroborated evidence of child witness

2D. (1) Notwithstanding anything contrary in any other written law, an accused may be liable to be convicted or a child charged with any offence may be found guilty for an offence on the basis of the uncorroborated evidence of a child witness given upon oath or otherwise.

(2) Any rule providing that an accused cannot be convicted or a child charged with any offence cannot be found guilty for an offence on the basis of the uncorroborated evidence of a child witness given upon oath or otherwise shall cease to apply.

(3) Any rule requiring the Court to warn itself before convicting an accused or finding a child charged with any offence guilty for an offence on the basis of the evidence of a child witness given upon oath or otherwise merely because the evidence is given by a child shall also cease to apply.

Part Ib

CASE MANAGEMENT

Case management

2E. (1) When the Court commences a case management process under section 172B of the Criminal Procedure Code [*Act 593*] and a child witness is proposed to be called to give evidence in a proceedings, the Court may, during the case management, give directions regarding the manner of giving evidence by the child witness and the conduct of the examination of the child witness in the proceedings so as to enable the examination of the child witness to be carried out effectively and to promote a fair and expeditious trial.

(2) Notwithstanding subsection (1), where the case management is in respect of any offence under the Sexual Offences against Children Act 2017 [*Act 792*], or any offence specified in the Schedule to the Sexual Offences against Children Act 2017 where the victim is a child, and a child witness is proposed to be called to give evidence in the proceedings relating to the offence, the Court shall give the directions referred to in subsection (1).

(3) The directions referred to in subsection (1) may include—

(a) the manner of questioning the child witness and questions that may or may not be asked in relation to a particular issue and phrasing of questions to the child witness;

(b) the estimated duration of the examination of the child witness including rest breaks; and

(c) the use of any equipment or tools to help communicate a question to the child witness and to obtain an answer from the child witness.

(4) During the case management, the Court—

(a) shall accord all parties an opportunity to be heard; and

(b) may call for and receive expert evidence to assist the Court in forming an opinion relating to—

(i) the best means of communicating with the child witness; and

(ii) any measures that may be required to assist the child witness to give evidence.

(5) In giving the directions referred to in subsection (1), the Court may have regard to—

(a) the age of the child witness;

(b) any special needs of the child witness;

(c) the nature of the offence in question;

(d) the relationship between the child witness and the accused or the child charged with any offence;

(e) the wishes of the child witness; and

(f) the availability of any necessary equipment, tools or facilities to assist the child witness to give evidence.

(6) The provisions of this section shall be in addition to, and not in derogation of, the provisions of section 172B of the Criminal Procedure Code.".

Amendment of section 6

5. Section 6 of the principal Act is amended—

(a) by inserting after subsection (2) the following subsection:

"(2A) Notwithstanding subsection (2), a video recording may be admitted without being accompanied by the transcript of the original language used in the video recording and translation of the transcript if the Court is satisfied that the transcript of the original language is not feasible to be prepared."; and

(b) by deleting subsections (7) and (8).