

# A BILL

## *i n t i t u l e d*

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 2023.

(2) This Act comes into operation on a date to be appointed by the Minister by notification in the *Gazette* and the Minister may appoint different dates for the coming into operation of different provisions of this Act.

### **Amendment of section 2**

**2.** The Evidence of Child Witness Act 2007 [Act 676], which is referred to as the “principal Act” in this Act, is amended in section 2—

(a) by inserting after the definition of “police officer” the following definition:

“special hearing” means a special hearing conducted by the Court, in which evidence of examination-in-chief, cross-examination and re-examination of a child witness are pre-recorded;’; and

- (b) in the definition of “child witness”, by substituting for the words “sixteen years” the words “eighteen years”.

### **Amendment of section 3**

3. Subsection 3(1) of the principal Act is amended—
- (a) in paragraph (b), by deleting the word “or” at the end of the paragraph;
  - (b) in paragraph (c), by substituting for the full stop at the end of the paragraph the words “; or”; and
  - (c) by inserting after paragraph (c) the following paragraph:  
“(d) by way of special hearing.”.

### **New sections 6A and 6B**

4. The principal Act is amended by inserting after section 6 the following sections:

#### **“Special hearing**

**6A.** (1) Where the Court directs that evidence of a child witness be given by way of a special hearing, the Court may determine the time and place where the special hearing shall be conducted and the persons who may be present during the special hearing.

(2) During the special hearing, a child witness shall be first examined-in-chief by the party to the proceedings who calls him, then, if the adverse party so desires, cross-examined then, if the party calling the child witness so desires, re-examined.

(3) Where the evidence of a child witness has been given by way of a special hearing, the child witness shall not be recalled for further examination-in-chief, cross-examination or re-examination in the proceedings of the case unless the Court is satisfied that—

- (a) the examination is sought by a party to the proceedings as a result of that party having become aware, since the time when the evidence was recorded, of a matter which that party could not with reasonable diligence have ascertained by then; or

- (b) it is in the interest of justice to permit further examination of the child witness if his evidence appears to the Court essential to the just decision of the case.

(4) A child witness during a special hearing may give evidence by means of having a screen between him and the accused or child charged with any offence or by means of a live link or combination of both.

(5) For the purposes of this section, the Court may, where necessary, give any direction on any other matters relating to a special hearing as the Court considers appropriate.

### **Improper questions**

**6B.** (1) The Court shall prohibit any improper question to the child witness which appears to the Court to be—

- (a) misleading or confusing;
- (b) insulting, intimidating, humiliating, harassing, annoying, offensive, oppressive or needlessly repetitive;
- (c) belittling in its manner or tone or otherwise inappropriate;  
or
- (d) of no basis other than a stereotype based on the child witness' sex, race, culture or ethnicity, age or disability.

(2) For the purposes of subsection (1), the Court may have regard to the age, maturity, vulnerability or disability of the child witness as well as cultural background or religious beliefs of the child witness.”.

### **Amendment of section 7**

**5.** Section 7 of the principal Act is amended by substituting for the words “sixteen years” the words “eighteen years”.

**Amendment of section 13****6. Section 13 of the principal Act is amended—**

- (a) in the shoulder note, by substituting for the words “**sixteen years**” the words “**eighteen years**”; and
- (b) by substituting for the words “sixteen years” the words “eighteen years”.

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**EXPLANATORY STATEMENT**

This Bill seeks to amend the Evidence of Child Witness Act 2007 (“Act 676”). The purpose of the proposed Act is to enhance the protection of a child witness by increasing the age of a child witness from sixteen years to eighteen years, by introducing provisions relating to special hearing for a child witness to give evidence and by prohibiting improper questions to a child witness.

2. *Clause 1* contains the short title and provision on the commencement of the proposed Act.

3. *Clause 2* seeks to amend section 2 of Act 676 to introduce a new definition of “special hearing” and to amend the definition of “child witness” to increase the age of the child witness from sixteen years to eighteen years.

4. *Clause 3* seeks to amend section 3 of Act 676 to specify special hearing as one of the manner for a child witness to give evidence under Act 676.

5. *Clause 4* seeks to introduce new sections 6A and 6B into Act 676. The proposed new section 6A provides for a special hearing in which evidence of examination-in-chief, cross-examination and re-examination of a child witness are pre-recorded. This will enable the best available evidence to be obtained from a child witness. Meanwhile, the proposed new section 6B provides for prohibition of improper questions to be posed to a child witness.

6. *Clauses 5* and *6* seek to amend sections 7 and 13 of Act 676 respectively consequential to the proposed increase of the age of a child witness.

**FINANCIAL IMPLICATIONS**

This Bill will involve the Government in extra financial expenditure the amount of which cannot at present be ascertained.

[PN(U2)3324]