



New South Wales

# Evidence (Audio and Audio Visual Links) Act 1998 No 105

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New South Wales

## **Evidence (Audio and Audio Visual Links) Act 1998 No 105**

Act No 105, 1998

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An Act to facilitate the taking of evidence, and the making of submissions, by audio links and audio visual links. [Assented to 5 November 1998]

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**The Legislature of New South Wales enacts:**

## **Part 1 Preliminary**

### **1 Name of Act**

This Act is the *Evidence (Audio and Audio Visual Links) Act 1998*.

### **2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

### **3 Definitions**

In this Act:

**audio link** means facilities (including telephone) that enable audio communication between persons at different places.

**audio visual link** means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

**NSW court** means:

- (a) a NSW court within the meaning of the *Evidence Act 1995*,  
or
- (b) a coroner. or
- (c) a tribunal prescribed by the regulations as a NSW court for the purposes of this Act.

**Note.** In the *Evidence Act 1995*, **NSW court** means:

- (a) the Supreme Court, or
- (b) any other court created by Parliament,  
(including such a court exercising federal jurisdiction) and includes any person or body (other than a court) that, in exercising a function under the law of the State, is required to apply the laws of evidence.

**participating State** means another State in which provisions of an law in terms substantially corresponding to Parts 2 and 3 are in force.

*recognised court* means a court or tribunal of a participating State that is authorised by the provisions of a law of that State in terms substantially corresponding to Parts 2 and 3 to direct that evidence be taken or submissions made by audio link or audio visual link from New South Wales.

*State* includes Territory.

*tribunal* of a State means a person or body authorised by or under a law of the State to take evidence on oath or affirmation.

#### **4 Notes**

Notes included in this Act do not form part of this Act.

#### **5 Application of Act**

- (1) This Act is not intended to exclude or limit the operation of any other law of the State or a participating State that makes provision for the taking of evidence or making of submissions:
  - (a) outside the State or participating State for the purposes of a proceeding in that State. or
  - (b) in the State or participating State for the purposes of a proceeding outside that State.
- (2) Unless a contrary intention is shown, nothing in this Act limits or otherwise affects any discretion that a NSW court or a recognised court has with respect to the conduct of a proceeding.
- (3) This Act extends to any proceeding pending in a NSW court or a recognised court on the commencement of this section.

## **Part 2 Use of interstate audio links or audio visual links in proceedings in or before NSW courts**

### **6 Application of Part**

This Part applies to any proceeding (including a criminal proceeding) in or before a NSW court.

### **7 NSW courts may take evidence and submissions from outside State**

- (1) A NSW court may, on the application of a party to a proceeding before the court, direct that evidence be taken, or submissions made, by audio link or audio visual link, from a participating State.
- (2) The court must not make such a direction if:
  - (a) the necessary facilities are unavailable or cannot reasonably be made available, or
  - (b) the court is satisfied that evidence or submissions can more conveniently be given or made in this State, or
  - (c) the court is satisfied by a party opposing the making of the direction that the direction would be unfair to the party.
- (3) The court may exercise in the participating State, in connection with taking evidence or receiving submissions by audio link or audio visual link, any of its powers that the court is permitted, under the law of the participating State, to exercise in the Participating State.

### **8 Giving evidence or making submissions by audio visual link**

Evidence must not be given, and a submission must not be made, by audio visual link under this Part unless the courtroom or other place where a NSW court is sitting, and the place where the evidence would be given or the submission would be made, are equipped with audio visual link facilities that enable:

- (a) persons who are at the courtroom or other place to see and hear the person giving the evidence or making the submission, and

- (b) persons who are at the place where the evidence is given or the submission is made to see and hear persons at the courtroom or other place.

### **9 Giving evidence or making submissions by audio link**

Evidence must not be given, and a submission must not be made, by audio link under this Part unless the courtroom or other place where a NSW court is sitting, and the place where the evidence would be given or the submission would be made, are equipped with audio link facilities that enable:

- (a) persons who are at the courtroom or other place to hear the person giving the evidence or making the submission, and
- (b) persons who are at the place where the evidence is given or the submission is made to hear persons at the courtroom or other place.

### **10 Expenses**

If a NSW court directs evidence to be taken, or submissions to be made, by audio link or audio visual link from a person in a participating State, the court may make such orders as it considers just for payment of expenses incurred in connection with taking the evidence or making the submissions or providing the audio link or audio visual link.

### **11 Counsel entitled to practise**

- (1) A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a barrister, solicitor or both:
  - (a) in relation to the examination in chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audio link or audio visual link in a proceeding before a NSW court, and
  - (b) in relation to the making of submissions by audio link or audio visual link from the participating State in a proceeding before a NSW court.
- (2) Nothing in this section limits Part 3B of the *Legal Profession Act 1987*.

### **Part 3 Use of interstate audio links or audio visual links in proceedings in participating States**

#### **12 Application of Part**

This Part applies to any proceeding (including a criminal proceeding) in or before a recognised court.

#### **13 Recognised courts may take evidence or receive submissions from persons in New South Wales**

A recognised court may, for the purposes of a proceeding before it, take evidence or receive submissions, by audio link or audio visual link, from a person in New South Wales.

#### **14 Powers of recognised courts**

- (1) The recognised court may, for the purposes of the proceeding, exercise in New South Wales, in connection with taking evidence or receiving submissions by audio link or audio visual link, any of its powers except its powers:
  - (a) to punish for contempt, and
  - (b) to enforce or execute its judgments or process.
- (2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by force of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving submissions by audio link or audio visual link from a person in New South Wales.
- (3) For the purposes of the recognised court exercising its powers, the place in New South Wales where evidence is given or submissions are made is taken to be part of the court.

#### **15 Orders made by recognised court**

Without limiting section 14, the recognised court may, by order:

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private, or



- (b) require a person to leave a place in New South Wales where the giving of evidence or the making of submissions is taking place or is going to take place, or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

#### **16 Enforcement of order**

- (1) An order of a recognised court under section 14 or 15 must be complied with.
- (2) Subject to any applicable rule of court, the order may be enforced by the Supreme Court as if the order were an order of the Supreme Court.
- (3) Without limiting subsection (2), a person who contravenes the order:
  - (a) is taken to be in contempt of the Supreme Court, and
  - (b) is punishable accordingly.

unless the person establishes that the contravention should be excused.

#### **17 Privileges, protection and immunity of participants in proceedings in courts of participating States**

- (1) A judge or other person presiding at or otherwise taking part in the proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio link or audio visual link from a person in New South Wales, the same privileges, protection and immunity as a judge of the Supreme court.
- (2) A person appearing as a legal practitioner in the proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio link or audio visual link from a person in New South Wales, the same protection and immunity as a legal practitioner has in appearing for a party in a proceeding before the Supreme Court.

- (3) A person appearing as a witness in a proceeding of a recognised court by audio link or audio visual link from New South Wales has the same protection as a witness in a proceeding in the Supreme Court.

### **18 Recognised court may administer oath in the State**

- (1) A recognised court may, for the purpose of obtaining in the proceeding, by audio link or audio visual link, the testimony of a person in New South Wales, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.
- (2) Evidence given by a person on oath or affirmation so administered is, for the purposes of the law of New South Wales, testimony given on oath in a judicial proceeding.

**Note.** Chapter 4 of Part 7 of the *Crimes Act 1900* contains offences relating to perjury and giving of false testimony in judicial proceedings.

### **19 Assistance to recognised court**

An officer of a NSW court may, at the request of a recognised court:

- (a) attend at the place in the State where evidence is to be or is being taken, or submissions are to be or are being made, in a proceeding of the recognised court, and
- (b) take such action as the recognised court directs to facilitate the proceeding, and
- (c) assist with the administering by the recognised court of an oath or affirmation.

### **20 Contempt of recognised courts**

A person must not, while evidence is being given or a submission is being made in New South Wales, by audio link or audio visual link, in a proceeding in a recognised court:

- (a) assault in the State any of the following:
- (i) a person appearing in the proceeding as a legal practitioner.
- (ii) a witness in the proceeding.
- (iii) an officer of a NSW court giving assistance under section 19, or

- (b) threaten, intimidate or wilfully insult any of the following:
  - (i) a judge or other person presiding at or otherwise taking part in the proceeding,
  - (ii) a Master, Registrar, Deputy Registrar or other officer of that court who is taking part in or assisting in the proceeding,
  - (iii) a person appearing in the proceeding as a legal practitioner,
  - (iv) a witness in the proceeding.
  - (v) a juror in the proceeding. or
- (c) wilfully interrupt or obstruct the proceeding. or
- (d) wilfully and without lawful excuse disobey an order or direction of the court.

Maximum penalty: Imprisonment for 3 months.

## **Part 4 Miscellaneous**

### **21 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

### **22 Regulations and rules of court**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.
- (3) Rules of court may (subject to the regulations) make provision for or with respect to the taking of evidence, or making of submissions, by audio link or audio visual link under this Act.
- (4) Without limiting subsections (1) and (3), provision may be made for or with respect to the circumstances in which taking of evidence, or making of submissions, by audio link or audio visual link under this Act may be terminated or interrupted.

### **23 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

[Minister's second reading speech made in—  
Legislative Council on 14 October 1998  
Legislative Assembly on 21 October 1998]