



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Act 2001 No 46

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New South Wales

Evidence (Audio and Audio Visual Links) Amendment Act 2001 No 46

Act No 46, 2001

An Act to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to make further provision with respect to the appearance of accused detainees by audio visual links in certain criminal proceedings; to make a consequential amendment to the *Supreme Court Act 1970*; and for other purposes. [Assented to 17 July 2001]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Evidence (Audio and Audio Visual Links) Amendment Act 2001*.

2 Commencement

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

3 Amendment of Evidence (Audio and Audio Visual Links) Act 1998 No 105

The *Evidence (Audio and Audio Visual Links) Act 1998* is amended as set out in Schedule 1.

4 Repeal of Part 7A of the Supreme Court Act 1970 No 52

The *Supreme Court Act 1970* is amended by omitting Part 7A (Use of video link facilities).

Schedule 1 Amendments

(Section 3)

[1] Section 3 Interpretation

Insert in alphabetical order in section 3 (1):

accused detainee means a person (other than a child) who is being held in custody in a correctional centre, police station or other place of detention and includes, in relation to a proceeding for a summary offence, a defendant.

preliminary criminal proceeding means any of the following criminal proceedings:

- (a) any proceeding relating to bail (other than a proceeding relating to bail referred to in paragraph (f) of the definition of ***relevant criminal proceeding***),
- (b) where a person has previously been remanded in custody, any subsequent proceeding with respect to the remand of the person in custody for the same offence,
- (c) any interlocutory proceeding held in connection with any criminal proceeding,
- (d) without limiting paragraph (c), any application for an adjournment,
- (e) any arraignment on a day other than the day appointed for the trial of a person.

relevant criminal proceeding means any of the following criminal proceedings:

- (a) any committal proceeding,
- (b) any inquiry into a person's unfitness to be tried for an offence,
- (c) any trial (including an arraignment on the day appointed for the trial) or hearing of charges,
- (d) any sentencing hearing (including a redetermination of sentence),
- (e) any hearing of an appeal arising out of a trial or hearing,

- (f) any proceeding relating to bail:
 - (i) brought before a Magistrate or justice in respect of the period between a person being charged with an offence and the person's first appearance before a court in relation to the offence, or
 - (ii) on a person's first appearance before a court in relation to an offence.

[2] Section 3 (2)

Insert "(other than Part 1B)" after "Act".

[3] Section 3 (3)

Omit the subsection.

[4] Section 3A

Insert after section 3:

3A Appearances and entitlements to be present before courts

- (1) A requirement by or under any other Act that a person appear (or be brought or be present) before a court is taken to be satisfied if the person appears before the court by way of an audio link or audio visual link under this Act.

Note. Part 1B of this Act contains provisions with respect to the appearance by audio visual link of accused detainees who are in custody in preliminary criminal proceedings and relevant criminal proceedings.

- (2) Any entitlement of a person under any other Act or law for a person to be present in proceedings before a court concerning bail is taken to be satisfied if audio visual links are used in relation to the person under this Act.

[5] Section 5 Application of Act

Omit "Part 7A of the *Supreme Court Act 1970*" from the note to section 5 (1A).

Insert instead "Part 4 of the *Evidence (Children) Act 1997*".

[6] Section 5 (3)

Omit "Part 1A". Insert instead "Part 1A or 1B".

[7] Section 5 (5) and (6)

Insert after section 5 (4):

- (5) Part 1B extends to any preliminary criminal proceeding or relevant criminal proceeding pending in a NSW court on the commencement of this subsection.
- (6) Section 27 of the *Children (Criminal Proceedings) Act 1987* does not apply Part 1B of this Act (to the extent that it relates to the functions of Local Courts, Magistrates or justices in criminal proceedings) to the Children's Court or any proceedings before the Children's Court.

[8] Section 5B Taking evidence and submissions from outside courtroom or place where court is sitting—proceedings generally

Omit "Subject to any applicable rules of court, a NSW court may, on the application of a party to a proceeding before the court" from section 5B (1).
Insert instead "Subject to any applicable rules of court and subsection (2A), a NSW court may, either on its own motion in, or on the application of a party to, a proceeding before the court".

[9] Section 5B (2) (c)

Omit "by a party opposing the making of the direction".

[10] Section 5B (2A)

Insert after section 5B (2):

- (2A) A court must not make such a direction in relation to the giving of evidence or making of a submission by audio visual link by any accused detainee in any preliminary criminal proceeding or relevant criminal proceeding concerning the offence in respect of which he or she is in custody. However, this subsection does not prevent the making of such a direction in relation to an accused detainee in any other proceeding to which this Part applies.

Note. Part 1B of this Act contains provisions with respect to the appearance of accused detainees who are in custody in preliminary criminal proceedings and relevant criminal proceedings.

[11] Part 1B

Insert after section 5B:

Part 1B Use of audio visual links within places in NSW for appearances of accused detainees in proceedings in NSW courts

5BA Appearances of accused detainee by audio visual link in preliminary criminal proceedings

- (1) An accused detainee who is required to appear (or be brought or be present) before a NSW court in any preliminary criminal proceedings concerning the offence for which the detainee is in custody:
 - (a) must, unless the court otherwise directs, appear before the court by audio visual link from any place within New South Wales at which the accused detainee is in custody other than the courtroom or place at which the court is sitting, and
 - (b) may give any evidence or make any submission to the court by that audio visual link.

Note. *accused detainee* and *preliminary criminal proceeding* are defined in section 3.

- (2) Subsection (1) does not apply unless the necessary audio visual links are available or can reasonably be made available.
- (3) The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding.
- (4) The court may make such a direction only if it is satisfied that it is in the interests of justice for the accused detainee to appear physically before the court.

5BB Appearances of accused detainee by audio visual link in relevant criminal proceedings

- (1) An accused detainee who is required to appear (or be brought or be present) before a NSW court in any relevant criminal proceedings must, unless the court otherwise directs, appear physically before the court in any relevant criminal proceedings concerning the offence for which the person is in custody.

Note. *accused detainee* and *relevant criminal proceeding* are defined in section 3.

- (2) Subsection (1) does not apply if the parties to the proceeding consent to the accused detainee appearing before the court by audio visual link from any place within New South Wales at which the accused detainee is in custody other than the courtroom or place where the court is sitting.
- (3) The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding.
- (4) The court may make such a direction only if it is satisfied that it is in the interests of justice for the accused detainee to appear before the court by audio visual link from a place within New South Wales at which the person is in custody other than the courtroom or place where the court is sitting.

5BC Facilities for private communication

Facilities are to be made available for private communication between an accused detainee appearing by audio visual link under this Part in a preliminary criminal proceeding or a relevant criminal proceeding and the person's representative in the proceeding if the person's representative is at the place where the court is sitting.

[12] Part 1C, heading

Insert before section 5C:

Part 1C Provisions applying to Parts 1A and 1B generally

[13] Section 5C Premises to be considered part of court

Omit “this Part” from section 5C (1). Insert instead “Part 1A or 1B”.

[14] Section 5D Administration of oaths and affirmations

Omit “this Part” wherever occurring. Insert instead “Part 1A or 1B”.

[15] Section 20F

Insert after section 20E:

20F Directions

A NSW court may at any time vary or revoke a direction given by it under this Act in a proceeding, either on its own motion or on application by a party to the proceeding.

[16] Section 22A

Insert after section 22:

22A Savings, transitional and other provisions

Schedule 1 has effect.

[17] Schedule 1

Insert after section 23:

Schedule 1 Savings, transitional and other provisions

(Section 22A)

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

the Evidence (Audio and Audio Visual Links) Amendment Act 2001

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
 - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

[Minister's second reading speech made in—
Legislative Assembly on 25 June 2001
Legislative Council on 4 July 2001]

BY AUTHORITY
