



Children's Court Amendment (Accused Child Detainees) Rule 2004

under the

Children's Court Act 1987

Her Excellency the Governor, with the advice of the Executive Council, has made the following Rule under the *Children's Court Act 1987*.

BOB DEBUS, M.P.,
Attorney General

Explanatory note

The *Evidence (Audio and Audio Visual Links) Act 1998* facilitates the giving and receiving of evidence and the making of submissions, in proceedings in New South Wales courts, by audio and audio visual links from places other than the places at which the courts are sitting. It also makes provision with respect to appearances in such proceedings by persons by audio and audio visual links from such other places.

The *Evidence Legislation Amendment (Accused Child Detainees) Act 2003* amended the *Evidence (Audio and Audio Visual Links) Act 1998*:

- (a) to require an accused child who is in custody to appear physically before a court in certain preliminary and other criminal proceedings unless the court concerned directs that the child appear before the court by audio visual link, and
- (b) to enable rules of court to specify factors that the court concerned must take into account before giving such a direction.

The object of this Rule is to amend the *Children's Court Rule 2000* to specify those factors that must be taken into account by the Children's Court before giving such a direction.

This Rule is made under section 23 of the *Children's Court Act 1987* (the general rule-making power) and section 22 of the *Evidence (Audio and Audio Visual Links) Act 1998* (relating to regulations and rules).

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Clause 1 Children's Court Amendment (Accused Child Detainees) Rule 2004

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1 Name of Rule

This Rule is the *Children's Court Amendment (Accused Child Detainees) Rule 2004*.

2 Commencement

This Rule commences on 9 February 2004.

3 Amendment of Children's Court Rule 2000

The *Children's Court Rule 2000* is amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 3)

Clause 32A

Insert after clause 32:

32A Relevant factors for appearance by audio visual link: section 5BBA of Evidence (Audio and Audio Visual Links) Act 1998

- (1) The following are specified as factors that the Court is to take into account in determining whether it is in the interests of the administration of justice to make a direction under section 5BBA (1) of the *Evidence (Audio and Audio Visual Links) Act 1998* that an accused child detainee is to appear before the Court by audio visual link:
 - (a) the nature of the proceedings concerned,
 - (b) the right of the accused child detainee to be given the fullest opportunity to be heard and to participate in the proceedings,
 - (c) whether the accused child detainee would be significantly advantaged or disadvantaged if directed to appear by audio visual link,
 - (d) the availability of Children's Magistrates to hear the proceedings by audio visual link,
 - (e) the need for the accused child detainee's lawyer to obtain initial or detailed instructions from the accused child detainee,
 - (f) the need for the accused child detainee's lawyer to discuss a brief of evidence with the accused child detainee,
 - (g) the distance the accused child detainee would need to travel and the expense and inconvenience involved in appearing physically before the Court,
 - (h) the maturity of the accused child detainee,
 - (i) the accused child detainee's need for the support of a parent, carer or other support person during the proceedings,
 - (j) the wishes of the accused child detainee,

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Schedule 1 Amendment

- (k) the involvement of the accused child detainee in any educative or rehabilitative program at the detention centre at which the accused child detainee is in custody,
 - (l) any special needs of the accused child detainee, including the impact of any intellectual or physical disability or mental illness that the accused child detainee may have,
 - (m) whether the accused child detainee requires the assistance of an interpreter and the availability of an appropriate interpreter,
 - (n) the risk that the personal security of a particular person or persons (including the accused child detainee) may be endangered if the accused child detainee appears in the courtroom or place where the Court is sitting,
 - (o) the risk of the accused child detainee escaping, or attempting to escape, from custody when attending the courtroom or place where the Court is sitting,
 - (p) the behaviour of the accused child detainee when appearing before a court in the past,
 - (q) the conduct of the accused child detainee while in custody, including the accused child detainee's conduct during any period in the past during which the accused child detainee was being held in custody in a detention centre.
- (2) Expressions used in this clause that are defined in section 3 of the *Evidence (Audio and Audio Visual Links) Act 1998* have the meanings set out in that section.

BY AUTHORITY
