



New South Wales

District Court Amendment (Audio and Audio Visual Links) Rule 2004

under the

District Court Act 1973

The District Court Rule Committee made the following rule of court under the *District Court Act 1973* on 15 June 2004.

A Grew

Secretary of the Rule Committee

Explanatory note

The object of this Rule is to amend Part 53 of the *District Court Rules 1973* to specify 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.

2004 No 475

Clause 1 District Court Amendment (Audio and Audio Visual Links) Rule 2004

District Court Amendment (Audio and Audio Visual Links) Rule 2004

under the

District Court Act 1973

1 Name of Rule

This Rule is the *District Court Amendment (Audio and Audio Visual Links) Rule 2004*.

2 Amendment of District Court Rules 1973

The *District Court Rules 1973* are amended as set out in Schedule 1.

Schedule 1 Amendment

(Clause 2)

Part 53, rule 16

Insert after rule 15:

16 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 Judges of the Court 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 rule 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
