

Passed by both Houses



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2003

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I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney, , 2003*



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2003

Act No , 2003

An Act to amend the Evidence (Audio and Audio Visual Links) Act 1998 and the Evidence Legislation Amendment (Accused Child Detainees) Act 2003 to make further provision with respect to the giving of evidence by accused detainees; and for other purposes.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

Chairman of Committees of the Legislative Assembly.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Evidence (Audio and Audio Visual Links) Amendment Act 2003*.

2 Commencement

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Section 4 and Schedule 2 commence, or are taken to have commenced, on the date of assent to the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003*.

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 Amendment of Evidence Legislation Amendment (Accused Child Detainees) Act 2003

The *Evidence Legislation Amendment (Accused Child Detainees) Act 2003* is amended as set out in Schedule 2.

Schedule 1 Amendment of Evidence (Audio and Audio Visual Links) Act 1998

(Section 3)

[1] Section 3A Appearances and entitlements to be present before courts

Insert after section 3A (2):

- (3) Any entitlement of a person under section 14 of the *Criminal Appeal Act 1912* to be present in proceedings on the hearing of an appeal is taken to be satisfied if audio visual links are used in relation to the person under this Act.

[2] Section 5 Application of Act

Insert “(as originally enacted)” after “Part 1B” in section 5 (5).

[3] Section 5 (5B)

Insert before section 5 (6):

- (5B) Part 1B (as amended by the *Evidence (Audio and Audio Visual Links) Amendment Act 2003*) extends to any preliminary criminal proceeding or relevant criminal proceeding pending in a NSW court after the commencement of subsection (5) and at the commencement of this subsection.

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

Omit “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” from section 5B (2A).

Insert instead “A court must not make direction under this Part 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 in relation to the detainee concerning an offence alleged to have been committed by the detainee”.

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

Omit “concerning the offence for which the detainee is in custody” from section 5BA (1).

Insert instead “in relation to the detainee concerning an offence alleged to have been committed by the detainee”.

[6] Section 5BA (4)

Insert “the administration of” after “interests of”.

[7] Section 5BB Appearances of accused detainee by audio visual link in relevant criminal proceedings

Omit “concerning the offence for which the person is in custody” from section 5BB (1).

Insert instead “in relation to the detainee concerning an offence alleged to have been committed by the detainee”.

[8] Section 5BB (4)

Insert “the administration of” after “interests of”.

[9] Section 5BB (5)

Insert after section 5BB (4):

- (5) Without limiting the factors that the court may take into account in determining whether it is in the interests of the administration of justice to make a direction under subsection (1), the court must take into account such of the following factors as are relevant in the circumstances of the case:
 - (a) the risk that the personal security of a particular person or persons (including the accused detainee) may be endangered if the accused detainee appears in the courtroom or place where the court is sitting,
 - (b) the risk of the accused detainee escaping, or attempting to escape, from custody when attending the courtroom or place where the court is sitting,
 - (c) the behaviour of the accused detainee when appearing before a court in the past,

- (d) the conduct of the accused detainee while in custody, including the accused detainee's conduct during any period in the past during which the accused detainee was being held in custody in a correctional centre or detention centre.

**Schedule 2 Amendment of Evidence Legislation
Amendment (Accused Child Detainees)
Act 2003**

(Section 4)

[1] Schedule 1 Amendment of Evidence (Audio and Audio Visual Links) Act 1998

Omit Schedule 1 [4].

[2] Schedule 1 [5]

Omit “before” from proposed section 5 (5A). Insert instead “at”.

[3] Schedule 1 [9]

Omit “concerning the offence for which the child is in custody” from proposed section 5BBA (1).

Insert instead “in relation to the child concerning an offence alleged to have been committed by the child”.

[4] Schedule 1 [9]

Insert “the administration of” after “interests of” in proposed section 5BBA (4).

[5] Schedule 1 [9]

Insert after proposed section 5BBA (4):

- (4A) Without limiting rules of court that may be made with respect to factors to be taken into account under subsection (4), rules of court may require a court to take into account in relation to an accused child detainee any factor of a kind referred to in section 5BB (5) (a)–(d).