

Passed by both Houses



New South Wales

Evidence Legislation Amendment (Accused Child Detainees) 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 Legislation Amendment (Accused Child Detainees) Bill 2003

Act No , 2003

An Act to amend the *Evidence (Audio and Audio Visual Links) Act 1998* with respect to the giving of evidence by accused child detainees and to make consequential amendments to the *Evidence (Children) Act 1997*; 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 Legislation Amendment (Accused Child Detainees) Act 2003*.

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 Consequential amendment of Evidence (Children) Act 1997 No 143

The *Evidence (Children) Act 1997* is amended as set out in Schedule 2.

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

(Section 3)

[1] Section 3 Interpretation

Omit the definition of *accused detainee* from section 3 (1). Insert instead:

accused child detainee means an accused detainee who is a child.

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

[2] Section 3 (1), definition of “detention centre”

Insert in alphabetical order:

detention centre has the same meaning it has in the *Children (Detention Centres) Act 1987*.

[3] Section 3 (1), definition of “participating State”

Omit “an law”. Insert instead “a law”.

[4] Section 5 Application of Act

Insert “(as in force immediately before the amendment of this subsection by the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003*)” after “Part 1B” in section 5 (5).

[5] Section 5 (5A)

Insert after section 5 (5):

(5A) Part 1B (as amended by the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003*) extends to any preliminary criminal proceeding or relevant criminal proceeding pending in a NSW court after the commencement of subsection (5) and before the commencement of this subsection.

[6] Section 5 (6)

Insert “(other than section 5BBA)” after “Part 1B”.

[7] Section 5BA Appearances of accused detainee (other than accused child detainee) by audio visual link in preliminary criminal proceedings

Insert “(other than an accused child detainee)” after “An accused detainee” in section 5BA (1).

[8] Section 5BB Appearances of accused detainee (other than accused child detainee) by audio visual link in relevant criminal proceedings

Insert “(other than an accused child detainee)” after “An accused detainee” in section 5BB (1).

[9] Section 5BBA

Insert after section 5BB:

5BBA Appearances of accused child detainee by audio visual link in preliminary criminal proceedings and relevant criminal proceedings

- (1) An accused child detainee who is required to appear (or be brought or be present) before a NSW court in any preliminary criminal proceedings, or in any relevant criminal proceedings, concerning the offence for which the child is in custody must, unless the court otherwise directs, appear physically before the court in those proceedings.
- (2) Subsection (1) does not apply if:
 - (a) the accused child detainee chooses to give evidence or make any submission by audio visual link from any place within New South Wales at which the accused child detainee is in custody other than the courtroom or place where the court is sitting, and
 - (b) all other parties to the proceeding consent to the accused child detainee appearing before the court by audio visual link from that place.
- (3) The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding.

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- (4) The court may make such a direction only if it is satisfied, after taking into account any factors that are relevant in the circumstances of the case and that are specified in rules of court, that it is in the interests of justice for the accused child detainee to appear before the court by audio visual link from the place within New South Wales at which the child is in custody other than the courtroom or place where the court is sitting.
- (5) A person who was a child when a direction was made to appear before a court by audio visual link as referred to in subsection (4) is entitled to continue to appear before the court by audio visual link in accordance with the direction even if the person becomes an adult before the conclusion of the proceeding concerned.

[10] Section 22 Regulations and rules of court

Insert after section 22 (4):

- (5) Without limiting subsections (1) and (3), provision may be made with respect to factors to be taken into account by a court in determining whether an accused child detainee should appear before the court by audio visual link.

Schedule 2 Consequential amendment of Evidence (Children) Act 1997

(Section 4)

[1] Section 11 Child entitled to give evidence in chief in form of recording

Insert after section 11 (2):

- (3) Section 5BBA of the *Evidence (Audio and Audio Visual Links) Act 1998* does not apply to evidence given as referred to in subsection (1).

[2] Section 19 Accused children may be allowed to give evidence by closed-circuit television

Insert after section 19 (3):

- (3A) A court may make an order under this section permitting a child to whom this section applies who is an accused child detainee within the meaning of the *Evidence (Audio and Audio Visual Links) Act 1998* to give evidence in a proceeding to which this Part applies by means of closed-circuit television facilities or any other similar technology prescribed for the purposes of this section despite section 5BBA of that Act.