



New South Wales

# Evidence (Audio and Audio Visual Links) Amendment Bill 2003

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

Part 1B of the *Evidence (Audio and Audio Visual Links) Act 1998* (the **Principal Act**) (as amended by the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003*) requires an accused person who is in custody in a correctional centre, detention centre, police station or other place of detention (an **accused detainee**) to appear physically before a court in certain criminal proceedings brought against the accused detainee unless a court directs otherwise if satisfied that it is in the interests of justice that the accused detainee appear by audio visual link before the court.

The object of this Bill is to amend the Principal Act and the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003*:

- (a) to require a court to take into account certain factors in determining whether it is in the interests of the administration of justice to direct an accused detainee other than an accused child detainee to appear in certain criminal proceedings by audio visual link, and

- (b) to enable rules of court to be made to require a court to take into account such factors in determining whether it is in the interests of the administration of justice to direct an accused child detainee to appear in certain criminal proceedings by audio visual link, and
- (c) to make it clear that Part 1B of the Principal Act applies to an accused detainee required to appear in criminal proceedings brought against the accused detainee for an offence even if the offence concerned is not the offence for which the detainee is in custody, and
- (d) to alter references in Part 1B to the interests of justice so as to refer to interests of the administration of justice (consistently with usage elsewhere in the Principal Act), and
- (e) to make it clear that 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 the Principal Act.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act (with the exception of section 4 and Schedule 2) on the date of assent to the Act.

**Clause 3** is a formal provision that gives effect to the amendments to the Principal Act set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003* set out in Schedule 2.

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

**Schedule 1 [9]** amends section 5BB of the Principal Act to achieve the object described in paragraph (a) of the Overview of the Bill above.

**Schedule 1 [4], [5] and [7]** amend sections 5B, 5BA and 5BB, respectively, of the Principal Act to achieve the object described in paragraph (c) of the Overview of the Bill above.

**Schedule 1 [6] and [8]** amend sections 5BA and 5BB, respectively, of the Principal Act to achieve the object described in paragraph (d) of the Overview of the Bill above.

**Schedule 1 [1]** amends section 3A of the Principal Act to achieve the object described in paragraph (e) of the Overview of the Bill above.

**Schedule 1 [2] and [3]** amend section 5 of the Principal Act to provide for the proposed amendments to extend to any proceeding pending in a court after the commencement of section 5 (5) when it was originally enacted and at the commencement of proposed section 5 (5B).

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

**Schedule 2 [5]** amends Schedule 1 [9] to the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003* to insert section 5BBA (4A) into the Principal Act to achieve the object described in paragraph (b) of the Overview of the Bill above.

**Schedule 2 [3] and [4]** amend section 5BBA (1) and (4) as to be inserted in the Principal Act by Schedule 1 [9] to the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003* to achieve the objects described in paragraphs (c) and (d), respectively, of the Overview of the Bill above.

**Schedule 2 [1]** omits Schedule 1 [4] to the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003* as a consequence of the proposed amendment to section 5 (5) of the Principal Act made by Schedule 1 [2] to the proposed Act. That amendment will make the amendment made by Schedule 1 [4] superfluous.

**Schedule 2 [2]** amends section 5 (5A) as to be inserted in the Principal Act by Schedule 1 [5] to the *Evidence Legislation Amendment (Accused Child Detainees) Act 2003* to clarify the description of the proceedings to which the subsection relates.

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# Evidence (Audio and Audio Visual Links) Amendment Bill 2003

No. , 2003

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## A Bill for

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.

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**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 No \***

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



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**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”.

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<b>[5] Section 5BA Appearances of accused detainee by audio visual link in preliminary criminal proceedings</b>	1 2
Omit “concerning the offence for which the detainee is in custody” from section 5BA (1).	3 4
Insert instead “in relation to the detainee concerning an offence alleged to have been committed by the detainee”.	5 6
<b>[6] Section 5BA (4)</b>	7
Insert “the administration of” after “interests of”.	8
<b>[7] Section 5BB Appearances of accused detainee by audio visual link in relevant criminal proceedings</b>	9 10
Omit “concerning the offence for which the person is in custody” from section 5BB (1).	11 12
Insert instead “in relation to the detainee concerning an offence alleged to have been committed by the detainee”.	13 14
<b>[8] Section 5BB (4)</b>	15
Insert “the administration of” after “interests of”.	16
<b>[9] Section 5BB (5)</b>	17
Insert after section 5BB (4):	18
(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:	19 20 21 22 23
(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,	24 25 26 27
(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,	28 29 30
(c) the behaviour of the accused detainee when appearing before a court in the past,	31 32

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- (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.

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<b>Schedule 2 Amendment of Evidence Legislation Amendment (Accused Child Detainees) Act 2003</b>	1
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(Section 4)	4
<b>[1] Schedule 1 Amendment of Evidence (Audio and Audio Visual Links) Act 1998</b>	5
	6
Omit Schedule 1 [4].	7
<b>[2] Schedule 1 [5]</b>	8
Omit “before” from proposed section 5 (5A). Insert instead “at”.	9
<b>[3] Schedule 1 [9]</b>	10
Omit “concerning the offence for which the child is in custody” from proposed section 5BBA (1).	11
	12
Insert instead “in relation to the child concerning an offence alleged to have been committed by the child”.	13
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<b>[4] Schedule 1 [9]</b>	15
Insert “the administration of” after “interests of” in proposed section 5BBA (4).	16
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<b>[5] Schedule 1 [9]</b>	18
Insert after proposed section 5BBA (4):	19
(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).	20
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