



New South Wales

Evidence Legislation Amendment (Accused Child Detainees) Bill 2003

Explanatory note

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

Overview of Bill

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 object of this Bill is to amend the Act:

- (a) to require an accused child who is in custody in a correctional centre, detention centre, police station or other place of detention to appear physically before a court in certain preliminary and other criminal proceedings concerning the offence for which the child is in custody unless the court directs otherwise if satisfied that it is in the interests of justice that the child appear by audio visual link before the court, and

- (b) to enable rules of court to specify factors that the court must take into account before giving such a direction.

The Bill also makes consequential amendments to the *Evidence (Children) Act 1997*.

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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision that gives effect to the amendments to the *Evidence (Audio and Audio Visual Links) Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Evidence (Children) Act 1997* set out in Schedule 2.

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

Schedule 1 [1] and [2] amend section 3 of the *Evidence (Audio and Audio Visual Links) Act 1998* (the *Principal Act*) to replace the existing definition of *accused detainee* with a new definition of *accused detainee* and to insert definitions of *accused child detainee* and *detention centre*.

Schedule 1 [9] and [10] insert sections 5BBA and 22 (5) into the Principal Act to achieve the object described in paragraphs (a) and (b), respectively, of the Overview of the Bill above.

Schedule 1 [5] inserts section 5 (5A) into 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) and before the commencement of the subsection.

Schedule 1 [4], [6], [7] and [8] make consequential amendments to sections 5, 5BA and 5BB of the Principal Act.

Schedule 1 [3] makes an amendment by way of statute law revision to correct a grammatical error.

Schedule 2 Consequential amendment of Evidence (Children) Act 1997

Section 5 (1A) of the *Evidence (Audio and Audio Visual Links) Act 1998* indicates that that Act is not intended to exclude or limit the operation of any other law of the State that makes provision for the taking of evidence or the making of submissions in the State for the purposes of proceedings in the State.

Schedule 2 amends sections 11 (Child entitled to give evidence in chief in form of recording) and 19 (Accused children may be allowed to give evidence by closed-circuit television) of the *Evidence (Children) Act 1997* to make it clear that those sections are not limited by proposed section 5BBA of the *Evidence (Audio and Audio Visual Links) Act 1998* as inserted by Schedule 1 [9].

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No. , 2003

A Bill for

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.

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	1 2 3
	Insert “(other than an accused child detainee)” after “An accused detainee” in section 5BA (1).	4 5
[8] Section 5BB	Appearances of accused detainee (other than accused child detainee) by audio visual link in relevant criminal proceedings	6 7 8
	Insert “(other than an accused child detainee)” after “An accused detainee” in section 5BB (1).	9 10
[9] Section 5BBA		11
	Insert after section 5BB:	12
5BBA	Appearances of accused child detainee by audio visual link in preliminary criminal proceedings and relevant criminal proceedings	13 14 15
(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.	16 17 18 19 20 21
(2)	Subsection (1) does not apply if:	22
(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	23 24 25 26 27
(b)	all other parties to the proceeding consent to the accused child detainee appearing before the court by audio visual link from that place.	28 29 30
(3)	The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding.	31 32 33

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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.