

[Act 2001 No 46]



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2001

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 and makes provision with respect to appearances in such proceedings by persons by audio and audio visual links from such places.

The objects of this Bill are to amend the *Evidence (Audio and Audio Visual Links) Act 1998*:

- (a) to require an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear by audio visual link in certain preliminary criminal proceedings concerning the offence for which the
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person is in custody before a court (unless the court directs otherwise if satisfied that it is in the interests of justice that the person appear physically before the court) (Schedule 1 [11]—proposed section 5BA), and

- (b) to require an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear physically before the court in certain other criminal proceedings concerning the offence for which the person is in custody before a court (unless the court directs otherwise if satisfied that it is in the interests of justice that the person appear by audio visual link before the court) (Schedule 1 [11]—proposed section 5BB), and
- (c) to enable a NSW court to direct that a person give evidence or make a submission to a court by audio or audio visual link from a place other than the courtroom or other place where the court is sitting under Part 1A of the Act on its own motion (at present a court may do so only on application of a party to the proceeding) (Schedule 1 [8] and [9]).

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 giving effect to the amendments to the *Evidence (Audio and Audio Visual Links) Act 1998* set out in Schedule 1.

Clause 4 repeals Part 7A (sections 110A–110G) of the *Supreme Court Act 1970*. Part 7A relates to the use of video link facilities in relation to proceedings before the Supreme Court relating to bail and will be superseded by proposed Part 1B (to be inserted in the Principal Act by Schedule 1 [11]).

Schedule 1 Amendments

Schedule 1 [1] amends section 3 of the Principal Act to insert definitions of *accused detainee*, *preliminary criminal proceeding* and *relevant criminal proceeding* for the purposes of proposed Part 1B. An *accused detainee* is defined as a person (other than a child) who is being held in custody in a correctional centre, police station or other place of detention and to include, in relation to a proceeding for a summary offence, a defendant.

Schedule 1 [2] makes a consequential amendment to section 3 (2) of the Principal Act (which currently expands provisions of the Act relating to the making of submissions to include the making of appearances) to exclude proposed Part 1B.

Schedule 1 [4] inserts proposed section 3A. Section 3A (1) expands existing section 3 (3) (which ensures that a requirement under any other Act for a person to appear before a court is satisfied if the person appears by audio or audio visual link) to include a requirement to be brought or be present before a court (as referred to, for example, in section 41 of the *Justices Act 1902* and section 5 of the *Supreme Court (Summary Jurisdiction) Act 1967*). Section 3A (2) ensures that an entitlement to be present in proceedings under any other Act or law is satisfied if audio visual links are used. The subsection is based on section 110E of the *Supreme Court Act 1970*. **Schedule 1 [3]** makes a consequential amendment to omit section 3 (3).

Schedule 1 [5] amends a note as a consequence of the proposed repeal of Part 7A of the *Supreme Court Act 1970* by clause 4 and includes a reference to another law.

Schedule 1 [6] amends section 5 (3) of the Principal Act to make it clear that proposed Part 1B will not exclude or limit the operation of other laws respecting the taking of evidence or making of submissions by audio or audio visual link in the State.

Schedule 1 [7] inserts proposed section 5 (5) and (6). Section 5 (5) extends the application of proposed Part 1B to proceedings pending at the commencement of the proposed subsection. Section 5 (6) makes it clear that proposed Part 1B will not, by operation of the *Children (Criminal Proceedings) Act 1987*, apply to proceedings in the Children's Court. The provision is consistent with the application of proposed Part 1B only to proceedings in relation to offences alleged to have been committed by adult accused detainees.

Schedule 1 [8] amends section 5B of the Principal Act to enable a NSW court to direct that a person give evidence or make a submission to the court by audio or audio visual link from a place other than the courtroom or other place where the court is sitting under Part 1A of the Act on its own motion (at present a court may do so only on application of a party to the proceeding). **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [10] makes it clear that a court cannot direct that evidence be given or a submission be made by audio visual link by an accused detainee in any preliminary criminal proceeding or relevant criminal proceeding because proposed Part 1B will deal with evidence given or submissions made by accused detainees in such proceedings. Part 1A will, however, continue to apply to directions for evidence to be given or submissions made by accused detainees by audio link and to accused detainees in proceedings other than preliminary criminal proceedings and relevant criminal proceedings.

Schedule 1 [11] inserts proposed Part 1B (sections 5BA–5BC).

Proposed section 5BA requires an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear by audio visual link in preliminary criminal proceedings (unless a court directs otherwise if satisfied that it is in the interests of justice that the person appear physically before the court). The proceedings concerned include proceedings relating to bail (other than any proceeding relating to bail brought before a Magistrate or justice in respect of the period between an accused detainee being charged with an offence and the person's first appearance before a court in relation to the offence) and certain interlocutory proceedings in criminal proceedings. The section will only apply if the necessary audio visual links are available or can reasonably be made available.

Proposed section 5BB requires an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear physically before the court in relevant criminal proceedings (unless a court directs otherwise if satisfied that it is in the interests of justice that the person appear by audio visual link before the court). The proceedings concerned include committal proceedings, inquiries into unfitness to be tried, sentencing hearings, trials and any proceeding relating to bail brought before a Magistrate or justice in respect of the period between an accused detainee being charged with an offence and the person's first appearance before a court in relation to the offence or on an accused detainee's first such appearance. The section will not apply if the parties to the proceedings consent to the accused detainee appearing by audio visual link.

Proposed section 5BC ensures that an accused detainee appearing by audio visual link under the proposed Part has the opportunity to have private communications with his or her representative. The proposed section is based on section 110C of the *Supreme Court Act 1970*.

Schedule 1 [13] and **[14]** amend sections 5C (Premises to be considered part of court) and 5D (Administration of oaths and affirmations) of the Principal Act so that the sections will apply for the purposes of proposed Part 1B as well as Part 1A. **Schedule 1 [12]** makes the sections a new Part of the Act.

Schedule 1 [15] makes it explicit that a NSW court can revoke or vary any direction given by it under the Principal Act.

Schedule 1 [16] and **[17]** provide for the making of savings and transitional regulations.