

Evidence (Audio and Audio Visual Links) Act 1998 No 105

[1998-105]



New South Wales

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Evidence \(Audio and Audio Visual Links\) Amendment Act 2001 No 46](#)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Evidence (Audio and Audio Visual Links) Act 1998 No 105



New South Wales

An Act to facilitate the taking of evidence, and the making of submissions, by audio links and audio visual links.

Part 1 Preliminary

1 Name of Act

This Act is the *Evidence (Audio and Audio Visual Links) Act 1998*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Interpretation

(1) In this Act:

audio link means facilities (including telephone) that enable audio communication between persons at different places.

audio visual link means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places.

NSW court means:

- (a) a NSW court within the meaning of the *Evidence Act 1995*, or
- (b) a coroner, or
- (c) a tribunal prescribed by the regulations as a NSW court for the purposes of this Act.

Note—

In the *Evidence Act 1995* **NSW court** means:

(a) the Supreme Court, or

(b) any other court created by Parliament,

(including such a court exercising federal jurisdiction) and includes any person or body (other than a court) that, in exercising a function under the law of the State, is required to apply the laws of evidence.

participating State means another State in which provisions of a law in terms substantially corresponding to Parts 2 and 3 are in force.

recognised court means a court or tribunal of a participating State that is authorised by the provisions of a law of that State in terms substantially corresponding to Parts 2 and 3 to direct that evidence be taken or submissions made by audio link or audio visual link from New South Wales.

State includes Territory.

tribunal of a State means a person or body authorised by or under a law of the State to take evidence on oath or affirmation.

(2) A reference in this Act to making a submission to a court includes a reference to making an appearance before the court.

(3) A requirement by or under any other Act that a person appear before a court is taken to be satisfied if the person appears before the court by way of an audio link or audio visual link under this Act.

4 Notes

Notes included in this Act do not form part of this Act.

5 Application of Act

(1) This Act is not intended to exclude or limit the operation of any other law of the State or a participating State that makes provision for the taking of evidence or making of submissions:

(a) outside the State or participating State for the purposes of a proceeding in that State, or

(b) in the State or participating State for the purposes of a proceeding outside that State.

(1A) This Act is not intended to exclude or limit the operation of any other law of the State or another place that makes provision for the taking of evidence or making of submissions in the State for the purposes of a proceeding in the State.

Note—

See, for example, Part 7A of the [Supreme Court Act 1970](#).

- (2) Unless a contrary intention is shown, nothing in this Act limits or otherwise affects any discretion that a NSW court or a recognised court has with respect to the conduct of a proceeding.
- (3) This Act (other than Part 1A) extends to any proceeding pending in a NSW court or a recognised court on the commencement of this section.
- (4) Part 1A extends to any proceeding pending in a NSW court or court of a place outside New South Wales on the commencement of this subsection.

Part 1A Use of audio links or audio visual links with places in NSW, non-participating States and foreign countries in proceedings in NSW courts

5A Application of this Part

- (1) This Part applies to any proceeding (including a criminal proceeding) in or before a NSW court.
- (2) An application cannot be made, and the court may not give a direction, under this Part for the giving of evidence or making of a submission to the court by audio link or audio visual link from any place outside New South Wales that is a participating State.
- (3) An application cannot be made, and the court may not give a direction, under this Part for the giving of evidence or making of a submission to the court by audio link or audio visual link from any place in New Zealand.

Note—

Parts 4 and 5 of the [Evidence and Procedure \(New Zealand\) Act 1994](#) of the Commonwealth make provision for audio links and audio visual links with New Zealand.

5B Taking evidence and submissions from outside courtroom or place where court is sitting

- (1) Subject to any applicable rules of court, a NSW court may, on the application of a party to a proceeding before the court, direct that a person (whether or not a party to the proceeding) give evidence or make a submission to the court by audio link or audio visual link from any place within or outside New South Wales, including a place outside Australia, other than the courtroom or other place at which the court is sitting.
- (2) The court must not make such a direction if:
 - (a) the necessary facilities are unavailable or cannot reasonably be made available, or
 - (b) the court is satisfied that the evidence or submission can more conveniently be given or made in the courtroom or other place at which the court is sitting, or

- (c) the court is satisfied by a party opposing the making of the direction that the direction would be unfair to the party, or
 - (d) the court is satisfied that the person in respect of whom the direction is sought will not give evidence or make the submission.
- (3) In a proceeding in which a party opposes the making of a direction for the giving of evidence or making of a submission to the court by audio link or audio visual link from any place within New South Wales other than the courtroom or other place where the court is sitting, the court must not make the direction unless the party making the application satisfies the court that it is in the interests of the administration of justice for the court to do so.

5C Premises to be considered part of court

- (1) Any place within or outside New South Wales at which audio link or audio visual link facilities are being used for the purpose of a person giving evidence or making a submission in any proceeding under this Part is taken to be part of the NSW court that is sitting at a courtroom or other place for the purpose of conducting the proceeding.
- (2) Subsection (1) has effect, for example, for the purposes of the laws relating to evidence, procedure, contempt of court or perjury.
- (3) Subsection (1) also has the effect that any offence committed at the place where the person giving the evidence or making the submission is located is to be taken to have been committed at the courtroom or other place where the court is sitting for the purposes of the laws in force in New South Wales.

5D Administration of oaths and affirmations

- (1) Subject to subsection (2), an oath to be sworn or affirmation to be made by a person giving evidence by audio link or audio visual link under this Part may be administered either:
 - (a) by means of the audio link or audio visual link, as nearly as practicable in the same way as if the person were to give evidence in the courtroom or other place where the NSW court is sitting, or
 - (b) at the direction of, or on behalf of, the court at the place where the person is giving the evidence by a person authorised by the court.
- (2) A person giving evidence by audio link or audio visual link under this Part from a foreign country is not required to give the evidence on oath or affirmation if:
 - (a) the law in force in that country:
 - (i) does not permit the person to give evidence on oath or affirmation for the purposes of the proceeding, or

- (ii) would make it inconvenient for the person to give evidence on oath or affirmation for the purposes of the proceeding, and
- (b) the NSW court is satisfied that it is appropriate for the evidence to be given otherwise than on oath or affirmation.
- (3) If evidence is given otherwise than on oath or affirmation, the NSW court is to give the evidence such weight as it thinks fit in the circumstances.
- (4) Subsections (2) and (3) apply despite anything to the contrary in the [Evidence Act 1995](#) or any other law of this State.

Part 2 Use of interstate audio links or audio visual links with a participating State in proceedings in or before NSW courts

6 Application of Part

This Part applies to any proceeding (including a criminal proceeding) in or before a NSW court.

7 NSW courts may take evidence and submissions from outside State

- (1) A NSW court may, on the application of a party to a proceeding before the court, direct that evidence be taken, or submissions made, by audio link or audio visual link, from a participating State.
- (2) The court must not make such a direction if:
 - (a) the necessary facilities are unavailable or cannot reasonably be made available, or
 - (b) the court is satisfied that evidence or submissions can more conveniently be given or made in this State, or
 - (c) the court is satisfied by a party opposing the making of the direction that the direction would be unfair to the party.
- (3) The court may exercise in the participating State, in connection with taking evidence or receiving submissions by audio link or audio visual link, any of its powers that the court is permitted, under the law of the participating State, to exercise in the participating State.

8–10 (Renumbered as sections 20A–20C)

11 Counsel entitled to practise

- (1) A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a barrister, solicitor or both:

- (a) in relation to the examination in chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audio link or audio visual link in a proceeding before a NSW court, and
- (b) in relation to the making of submissions by audio link or audio visual link from the participating State in a proceeding before a NSW court.

(2) Nothing in this section limits Part 3B of the [Legal Profession Act 1987](#).

Part 3 Use of interstate audio links or audio visual links with NSW in proceedings in participating States

12 Application of Part

This Part applies to any proceeding (including a criminal proceeding) in or before a recognised court.

13 Recognised courts may take evidence or receive submissions from persons in New South Wales

A recognised court may, for the purposes of a proceeding before it, take evidence or receive submissions, by audio link or audio visual link, from a person in New South Wales.

14 Powers of recognised courts

- (1) The recognised court may, for the purposes of the proceeding, exercise in New South Wales, in connection with taking evidence or receiving submissions by audio link or audio visual link, any of its powers except its powers:
 - (a) to punish for contempt, and
 - (b) to enforce or execute its judgments or process.
- (2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by force of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving submissions by audio link or audio visual link from a person in New South Wales.
- (3) For the purposes of the recognised court exercising its powers, the place in New South Wales where evidence is given or submissions are made is taken to be part of the court.

15 Orders made by recognised court

Without limiting section 14, the recognised court may, by order:

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private, or
- (b) require a person to leave a place in New South Wales where the giving of evidence or

the making of submissions is taking place or is going to take place, or

- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

16 Enforcement of order

- (1) An order of a recognised court under section 14 or 15 must be complied with.
- (2) Subject to any applicable rule of court, the order may be enforced by the Supreme Court as if the order were an order of the Supreme Court.
- (3) Without limiting subsection (2), a person who contravenes the order:
 - (a) is taken to be in contempt of the Supreme Court, and
 - (b) is punishable accordingly,

unless the person establishes that the contravention should be excused.

17 Privileges, protection and immunity of participants in proceedings in courts of participating States

- (1) A judge or other person presiding at or otherwise taking part in the proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio link or audio visual link from a person in New South Wales, the same privileges, protection and immunity as a judge of the Supreme Court.
- (2) A person appearing as a legal practitioner in the proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio link or audio visual link from a person in New South Wales, the same protection and immunity as a legal practitioner has in appearing for a party in a proceeding before the Supreme Court.
- (3) A person appearing as a witness in a proceeding of a recognised court by audio link or audio visual link from New South Wales has the same protection as a witness in a proceeding in the Supreme Court.

18 Recognised court may administer oath in the State

- (1) A recognised court may, for the purpose of obtaining in the proceeding, by audio link or audio visual link, the testimony of a person in New South Wales, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.
- (2) Evidence given by a person on oath or affirmation so administered is, for the purposes of the law of New South Wales, testimony given on oath in a judicial proceeding.

Note—

Chapter 4 of Part 7 of the [Crimes Act 1900](#) contains offences relating to perjury and giving of false testimony in

judicial proceedings.

19 Assistance to recognised court

An officer of a NSW court may, at the request of a recognised court:

- (a) attend at the place in the State where evidence is to be or is being taken, or submissions are to be or are being made, in a proceeding of the recognised court, and
- (b) take such action as the recognised court directs to facilitate the proceeding, and
- (c) assist with the administering by the recognised court of an oath or affirmation.

20 Contempt of recognised courts

A person must not, while evidence is being given or a submission is being made in New South Wales, by audio link or audio visual link, in a proceeding in a recognised court:

- (a) assault in the State any of the following:
 - (i) a person appearing in the proceeding as a legal practitioner,
 - (ii) a witness in the proceeding,
 - (iii) an officer of a NSW court giving assistance under section 19, or
- (b) threaten, intimidate or wilfully insult any of the following:
 - (i) a judge or other person presiding at or otherwise taking part in the proceeding,
 - (ii) a Master, Registrar, Deputy Registrar or other officer of that court who is taking part in or assisting in the proceeding,
 - (iii) a person appearing in the proceeding as a legal practitioner,
 - (iv) a witness in the proceeding,
 - (v) a juror in the proceeding, or
- (c) wilfully interrupt or obstruct the proceeding, or
- (d) wilfully and without lawful excuse disobey an order or direction of the court.

Maximum penalty: Imprisonment for 3 months.

Part 4 Miscellaneous

20A Giving evidence or making submissions by audio visual link

Evidence must not be given, and a submission must not be made, by audio visual link under this Act unless the courtroom or other place where a NSW court is sitting, and the place where the evidence would be given or the submission would be made, are equipped

with audio visual link facilities that enable:

- (a) persons who are at the courtroom or other place to see and hear the person giving the evidence or making the submission, and
- (b) persons who are at the place where the evidence is given or the submission is made to see and hear persons at the courtroom or other place.

20B Giving evidence or making submissions by audio link

Evidence must not be given, and a submission must not be made, by audio link under this Act unless the courtroom or other place where a NSW court is sitting, and the place where the evidence would be given or the submission would be made, are equipped with audio link facilities that enable:

- (a) persons who are at the courtroom or other place to hear the person giving the evidence or making the submission, and
- (b) persons who are at the place where the evidence is given or the submission is made to hear persons at the courtroom or other place.

20C Expenses

If a NSW court directs evidence to be taken, or submissions to be made, by audio link or audio visual link from a person under this Act, the court may make such orders as it considers just for payment of expenses incurred in connection with taking the evidence or making the submissions or providing the audio link or audio visual link.

20D Failure of audio link or audio visual link

If an audio link or audio visual link being used in accordance with this Act for the purposes of a proceeding before a NSW court fails during the proceeding, the court may adjourn the proceeding or make such other orders as are appropriate in the circumstances as if a person present at the place at which the audio link or audio visual link facilities are located were in the presence of the court.

20E Putting documents to a remote person

If in the course of examination of a person by audio link or audio visual link it is necessary to put a document to the person, the NSW court may permit the document to be put to the person:

- (a) if the document is at the courtroom or other place where the court is sitting, by transmitting by any means a copy of it to the place where the person is giving evidence or making a submission and the copy so transmitted being then put to the person, or
- (b) if the document is at the place where the person is giving evidence or making a submission, by putting it to the person and then transmitting by any means a copy of

it to the courtroom or other place.

21 Proceedings for offences

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before a Local Court constituted by a Magistrate sitting alone.

22 Regulations and rules of court

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a maximum penalty not exceeding 5 penalty units.
- (3) Rules of court may (subject to the regulations) make provision for or with respect to the taking of evidence, or making of submissions, by audio link or audio visual link under this Act.
- (4) Without limiting subsections (1) and (3), provision may be made for or with respect to the circumstances in which taking of evidence, or making of submissions, by audio link or audio visual link under this Act may be terminated or interrupted.

23 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.