

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

[1998-105]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

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

### Notes—

- **See also**  
[COVID-19 Legislation Amendment \(Stronger Communities and Health\) Bill 2021](#)

### 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—

**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.

**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.

**designated government agency** means the following—

- (a) the Department of Corrective Services,
- (b) the Department of Juvenile Justice,
- (c) any other government agency prescribed by the regulations.

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

**government agency** means any person, department or body exercising executive or administrative functions on behalf of the Government.

**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, or
- (d) a Children’s Registrar exercising any function of the Children’s Court conferred or imposed on the Registrar by or under the *Children’s Court Act 1987*.

**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.

**physical appearance proceedings** means the following—

- (a) any trial (including an arraignment on the day appointed for the trial) or hearing of charges,
- (b) any inquiry into a person’s fitness to be tried for an offence,
- (c) any proceeding relating to bail—
  - (i) brought before a Magistrate or justice in respect of the period between the person being charged with the offence and the person’s first appearance before a court in relation to the offence, or
  - (ii) on a person’s first appearance before a court in relation to the offence.

**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.

**Note—**

The *Interpretation Act 1987* contains definitions and other provisions that affect the interpretation and application of this Act.

(2) A reference in this Act (other than Part 1B) to making a submission to a court includes a reference to making an appearance before the court.

(3) (Repealed)

**3A Appearances and entitlements to be present before courts**

(1) A requirement by or under any other Act that a person appear (or be brought or be present) 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.

**Note—**

Part 1B of this Act contains provisions with respect to the appearance by audio visual link of accused detainees who are in custody in criminal proceedings.

(2) Any entitlement of a person under any other Act or law for a person to be present in proceedings before a court concerning bail is taken to be satisfied if audio visual links are used in relation to the person under this Act.

(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.

**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.

- (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 or 1B) 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.
- (4A) Part 1A (as amended by the *Evidence (Audio and Audio Visual Links) Amendment Act 2007*) extends to any proceedings pending in a NSW court after the commencement of subsection (4) and on the commencement of this subsection.
- (5) Part 1B (as originally enacted) extends to any preliminary criminal proceeding or relevant criminal proceeding pending in a NSW court on the commencement of this subsection.
- (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 at the commencement of this subsection.
- (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.
- (5C) Part 1B (as amended by the *Evidence (Audio and Audio Visual Links) Amendment Act 2007*) extends to any criminal proceedings pending in a NSW court after the commencement of subsection (5) and at the commencement of this subsection.
- (6) (Repealed)

## **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—**

Part 6 of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth makes 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—proceedings generally**

- (1) Subject to any applicable rules of court, subsection (2A) and section 5BAA, a NSW court may, either on its own motion in, or 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 that the direction would be unfair to any party to the proceeding, 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.
- (2A) A court must not make a 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 criminal proceeding in relation to the detainee concerning an offence alleged to have been committed by the detainee. However, this subsection does not prevent the making of such a direction in relation to an accused detainee in any other proceeding to which this Part applies.

**Note—**

Part 1B of this Act contains provisions with respect to the appearance of accused detainees who are in custody in criminal proceedings.

- (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.

**5BAA Taking evidence of government agency witnesses from outside courtroom or place where court is sitting—proceedings generally**

- (1) Subject to any applicable rules of court, a government agency witness must, unless the court otherwise directs, give evidence to the court by audio link or audio visual link from any place within New South Wales.
- (2) Subsection (1) does not apply unless the necessary audio links or audio visual links are available or can reasonably be made available.
- (3) The court may make a direction under subsection (1) on its own motion or on the application of a party to the proceedings.
- (4) The court may make such a direction only if it is satisfied—
  - (a) that the evidence to be given is likely to be contentious, and
  - (b) that it is in the interests of the administration of justice for the government agency witness to give evidence by appearing physically before the court.
- (5) In this section—

**expert**, in relation to any issue, means a person who has such knowledge or experience of, or in connection with, that issue, or issues of the character of that issue, that his or her opinion on that issue would be admissible in evidence.

**expert's report** means a written statement by an expert (whether or not an expert witness in the proceedings concerned) that sets out the expert's opinion and the facts, and assumptions of fact, on which the opinion is based and includes a hospital report.

**government agency witness** means the following—

- (a) a member of staff of the Government Service or the NSW Health Service, or a person employed in or engaged by any government agency, who has provided an expert's report for use in evidence in proceedings or proposed proceedings or who is called as an expert to give opinion evidence in proceedings,
- (b) a member of the NSW Police Force called to give evidence in proceedings to corroborate evidence in chief given by another member of the NSW Police Force for the prosecution,
- (c) any other witness of a class prescribed by the regulations.

**hospital report** means a written statement concerning a patient, made by or on behalf of a hospital, that the party serving the statement intends to adduce in evidence in chief at the trial.

## **Part 1B Use of audio visual links within places in NSW for appearances of accused detainees in proceedings in NSW courts**

### **5BA Accused detainee to appear physically in physical appearance proceedings**

- (1) An accused detainee who is charged with an offence and is required to appear (or be brought or be present) before a NSW court in physical appearance proceedings concerning the offence must, unless the court otherwise directs, appear physically before the court.

**Note—**

***accused detainee*** and ***physical appearance proceedings*** are defined in section 3.

- (2) Subsection (1) does not apply to any bail proceedings that—
- (a) occur during a weekend, or
  - (b) occur on a public holiday, or
  - (c) occur during each period commencing on 24 December and ending on the first Friday following 31 December, or
  - (c1) occur during any other vacation or holiday period of the court that is specified in the rules of court, or
  - (d) occur on each of the days on which the Local Court Annual Conference is held in any year, or
  - (e) relate to an accused detainee who is being held in custody at a place prescribed by the regulations.
- (3) Subsection (1) does not apply if the parties to the proceeding consent to the accused detainee appearing before the court by audio visual link from any place within New South Wales at which the accused detainee is in custody other than the courtroom or place where the court is sitting.
- (4) The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding or of any person on behalf of a designated government agency.
- (5) The court may make such a direction only if it is satisfied that it is in the interests of the administration of justice for the accused detainee to appear before the court by audio visual link from a place within New South Wales at which the person is in custody other than the courtroom or place where the court is sitting.
- (6) 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—

- (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,
  - (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,
  - (c) the behaviour of the accused detainee when appearing before a court in the past,
  - (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,
  - (e) the potential for disruption of the accused detainee's participation in a rehabilitation or education program if the accused detainee were to be transported to, and appear in, the courtroom or place where the court is sitting,
  - (f) safety and welfare considerations in transporting the accused detainee to the courtroom or place where the court is sitting,
  - (g) the efficient use of available judicial and administrative resources,
  - (h) any other relevant matter raised by a party to the proceeding or other applicant for the making of the direction.
- (7) If the accused detainee is a child, the court must also take into account such additional factors to those specified in subsection (6) as are relevant in the circumstances of the case and that are specified in rules of court.
- (8) A person who was a child when a direction was made under this section to appear before a court by audio visual link 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.

**5BB Accused detainee to appear by audio visual link in criminal proceedings other than physical appearance proceedings**

- (1) An accused detainee who is charged with an offence and is required to appear (or be brought or be present) before a NSW court in criminal proceedings concerning the offence (other than physical appearance proceedings) must, unless the court otherwise directs, appear before the court by audio visual link.

**Note—**

***accused detainee*** and ***physical appearance proceedings*** are defined in section 3.

- (2) Subsection (1) does not apply unless the necessary audio visual links are available or can reasonably be made available.

- (3) The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding or of any person on behalf of a designated government agency.
- (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 together with any factors that are specified in rules of court, that it is in the interests of the administration of justice for the accused detainee to appear physically before the court.
- (5) A person who was a child when a direction was made under this section to appear physically before a court is entitled to continue to appear before the court in accordance with the direction even if the person becomes an adult before the conclusion of the proceeding concerned.

#### **5BBA (Repealed)**

#### **5BC Facilities for private communication**

Facilities are to be made available for private communication between an accused detainee appearing by audio visual link under this Part in a criminal proceeding and the person's representative in the proceeding if the person's representative is at the place where the court is sitting.

### **Part 1C Provisions applying to Parts 1A and 1B generally**

#### **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 Part 1A or 1B 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 Part 1A or 1B 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 Part 1A or 1B 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) (Repealed)

## **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.

### **20F Directions**

A NSW court may at any time vary or revoke a direction given by it under this Act in a proceeding, either on its own motion or on application by a party to the proceeding.

### **21 Proceedings for offences**

Proceedings for an offence against this Act or the regulations are to be dealt with summarily before the Local Court.

### **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.
- (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.

## **22A Savings, transitional and other provisions**

Schedule 1 has effect.

## **22B Bail appearances—special provision relating to APEC meeting 2007**

(1) Sections 5BB and 5BBA do not apply to any bail proceedings in respect of an offence alleged to have been committed in metropolitan Sydney during the period commencing at the beginning of 20 August 2007 and ending at the end of 28 September 2007.

(2) In this section—

**metropolitan Sydney** has the same meaning as it has in the *APEC Meeting (Police Powers) Act 2007*, as in force on the date of commencement of this section.

## **22C COVID-19 pandemic—special provisions**

(1) This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act or any rules of court.

Note. The Act continues to apply to appearances not referred to in this section and in proceedings prescribed by the regulations. Part 1A continues to apply to the appearance of witnesses to which subsection (4) does not apply and Part 1B continues to apply to the appearance of accused detainees to which subsection (3) does not apply.

(2) The appearance of an accused person in any proceedings relating to bail is to take place by way of audio visual link unless the court otherwise directs.

(2A) The appearance of an accused person (other than an accused detainee) in any proceedings other than physical appearance proceedings may take place by way of audio visual link if the court directs or the parties to the proceedings consent.

(3) The appearance of an accused person in any physical appearance proceedings (other than proceedings relating to bail or proceedings prescribed by the regulations) may take place by way of audio visual link if the court directs.

(3A) The appearance of an accused person (other than an accused detainee) in any physical appearance proceedings prescribed by the regulations under subsection (3) is not to take place by way of audio visual link unless the court directs or the parties to the proceedings consent.

(4) The appearance in any proceedings (other than proceedings prescribed by the regulations) of a witness or legal practitioner representing a party may take place by way of audio visual link if the court directs.

(5) A direction under subsection (2A), (3), (3A) or (4) may be made on the court's own motion or following the application of a party but only after the parties have had an opportunity to be heard on the matter.

- (6) The court is to make a direction under this section only if it is in the interests of justice, having regard to the following—
- (a) the public health risk posed by the COVID-19 pandemic,
  - (b) the efficient use of available judicial and administrative resources,
  - (c) any relevant matter raised by a party to the proceedings,
  - (d) any other matter that the court considers relevant.
- (7) If an audio visual link is used the court must be satisfied that a party is able to have private communication with the legal representative of the party and has had a reasonable opportunity to do so.
- (7A) To avoid doubt, the appearance of an accused person in any proceedings under this section may take place by way of audio visual link from a place within or outside New South Wales, including a place outside Australia, if the court directs or the parties to the proceedings consent.
- (8) Nothing in this section requires or permits the use of an audio visual link if the necessary audio visual facilities are unavailable or cannot reasonably be made available.
- (9) In this section—
- prescribed period** means the period—
- (a) starting on the commencement of this section, and
  - (b) ending on—
    - (i) the day that is 6 months after the commencement, or
    - (ii) the later day, not more than 12 months after the commencement, prescribed by the regulations.
- witness** excludes—
- (a) a government agency witness, and
  - (b) an accused person giving evidence in proceedings concerning an offence alleged to have been committed by the accused person.

## 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.

## **Schedule 1 Savings, transitional and other provisions**

(Section 22A)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts—
  - the *Evidence (Audio and Audio Visual Links) Amendment Act 2001*
  - the *Evidence (Audio and Audio Visual Links) Amendment Act 2007*
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### **2 Evidence of government agency witnesses**

Section 5BAA, as amended by the *Courts and Crimes Legislation Amendment Act 2009*, does not apply to proceedings commenced before the commencement of that amendment.