

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.