

[STATE ARMS]

New South Wales

## **Evidence (Audio and Audio Visual Links) Bill 1998**

### **Explanatory note**

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

### Overview of Bill

The object of this Bill is to provide for New South Wales to participate in a substantially uniform interstate scheme for the taking or receiving of evidence, and the making or receiving of submissions, from or in other participating States.

### Outline of provisions

#### **Part 1 Preliminary**

**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** sets out definitions of terms and expressions used in the proposed Act.

**Clause 4** makes it clear that notes in the text of the proposed Act do not form part of the Act.

**Clause 5** makes it clear that the proposed Act will not exclude or limit the operation of certain other laws for the taking of evidence or making of submissions or affect any discretion of a NSW court or recognised court with respect to the conduct of a proceeding and provides for the proposed Act to extend to any proceeding pending in such a court on the commencement of the proposed section.

## **Part 2 Use of interstate audio links or audio visual links in proceedings in or before NSW courts**

**Clause 6** applies the proposed Part to any proceeding in or before a NSW court.

**Clause 7** enables a NSW court to direct that a person appear before or give evidence or make a submission to the court by audio link or audio visual link from a participating State. A participating State is defined by clause 3 to mean another State in which provisions of an Act of that State in terms substantially corresponding to proposed Parts 2 and 3 are in force. A court may not make a direction if the necessary facilities are unavailable or cannot reasonably be made available, if it is satisfied that the evidence or submission can more conveniently be given or made in this State or if the court is satisfied by a party opposing the making of the direction that the direction would be unfair to any party.

**Clause 8** provides that evidence may not be given or submissions made by audio visual link under the proposed Part unless the audio visual facilities used enable persons who are at the courtroom or other place to see and hear the person giving the evidence or making the submission and persons who are at the place where the evidence is given or submission is made to see and hear persons at the courtroom or other place.

**Clause 9** provides that evidence may not be given or submissions made by audio link under the proposed Part unless the audio link facilities used enable persons who are at the courtroom or other place to hear the person giving the evidence or making the submission and persons who are at the place where the evidence is given or submission is made to hear persons at the courtroom or other place.

**Clause 10** authorises the NSW court to make orders for the payment of expenses incurred in connection with taking of evidence or making of submissions under the proposed Part.

**Clause 11** confers on persons entitled to practise as a legal practitioner in a participating State an entitlement to practise as a barrister or solicitor or both for the purposes of examining persons giving evidence or making submissions by audio link or audio visual link under the proposed Part.

## **Part 3 Use of interstate audio links or audio visual links in proceedings in participating States**

**Clause 12** applies the proposed Part to proceedings before recognised courts. A recognised court is defined by clause 3 to mean 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 proposed Parts 2 and 3 to direct that evidence be taken or submissions be made by audio link or audio visual link from NSW.

**Clause 13** enables a recognised court to take evidence or receive submissions by audio link or audio visual link from persons in NSW.

**Clause 14** authorises the recognised court to exercise any of its powers, except its powers to punish for contempt or to enforce its judgments or process, in relation to receiving evidence or submissions by audio link or audio visual link under the proposed Part. Under the clause, the laws of the participating State that apply to a proceeding in that State also apply to the practice and procedure of the recognised court in taking evidence and receiving submissions from NSW.

**Clause 15** specifies some of the orders that may be made by a recognised court when taking evidence or receiving submissions by audio link or audio visual link under the proposed Part.

**Clause 16** imposes an obligation to comply with an order made by a recognised court under proposed section 14 or 15.

**Clause 17** confers the same protections on judges and legal practitioners and other participants in any proceeding in a recognised court in relation to the taking of evidence or receiving of submissions by audio link or audio visual link as participants have in such a proceeding before the Supreme Court.

**Clause 18** authorises a recognised court to administer oaths and affirmations to persons in NSW for the purpose of obtaining evidence by audio link or audio visual link under the proposed Part.

**Clause 19** authorises officers of a NSW court to be present, at the request of a recognised court, at the place where a witness is giving evidence by audio link or audio visual link in a proceeding in the court and to facilitate the proceeding as directed by the court.

**Clause 20** creates offences, each punishable by 3 months' imprisonment, relating to conduct while evidence is being given or a submission is being made in NSW by audio link or audio visual link in a proceeding in a recognised court. The offences concern assault, threats, intimidation or wilful insult of persons involved in the proceedings, wilful interruption or obstruction of the proceedings and disobedience of an order or direction of the court.

**Part 4 Miscellaneous**

**Clause 21** provides for proceedings for offences against the proposed Act and regulations.

**Clause 22** provides for the making of regulations and rules of court.

**Clause 23** provides for the review of the proposed Act.