

First print



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.



New South Wales

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New South Wales

Evidence (Audio and Audio Visual Links) Bill 1998

No. , 1998

A Bill for

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

Clause 1 Evidence (Audio and Audio Visual Links) Bill 1998

Part 1 Preliminary

The Legislature of New South Wales enacts:

Part 1 Preliminary

1 Name of Act

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

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2 Commencement

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

3 Definitions

In this Act:

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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.

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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.

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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.

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

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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.

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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.

4 Notes

Notes included in this Act do not form part of this Act. 10

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 15
 - (b) in the State or participating State for the purposes of a proceeding outside that 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. 20
- (3) This Act extends to any proceeding pending in a NSW court or a recognised court on the commencement of this section.

Part 2 Use of interstate audio links or audio visual links 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. 5

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. 10

(2) The court must not make such a direction if:

(a) the necessary facilities are unavailable or cannot reasonably be made available, or 15

(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. 20

8 Giving evidence or making submissions by audio visual link 25

Evidence must not be given, and a submission must not be made, by audio visual link under this Part 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: 30

(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.

9 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 Part 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: 5

- (a) persons who are at the courtroom or other place to hear the person giving the evidence or making the submission, and 10
- (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.

10 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 in a participating State, 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. 15 20

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: 25
 - (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. 30
- (2) Nothing in this section limits Part 3B of the *Legal Profession Act 1987*.

Clause 12 Evidence (Audio and Audio Visual Links) Bill 1998

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

Part 3 Use of interstate audio links or audio visual links 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. 5

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. 10

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: 15

- (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. 20

(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. 25

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 30

- (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. 5

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. 10
- (3) Without limiting subsection (2), a person who contravenes the order:
 - (a) is taken to be in contempt of the Supreme Court, and 15
 - (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 20

- (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. 25
- (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. 30

- (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 5

- (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. 10

- (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. 15

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 20
- (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. 25

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: 30
- (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 35

- (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. 5
 - (iii) a person appearing in the proceeding as a legal practitioner.
 - (iv) a witness in the proceeding.
 - (v) a juror in the proceeding, or 10
- (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

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.

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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. 10
- (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. 15
- (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

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- (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. 25

- (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.

