



EVIDENCE (AUDIO AND AUDIO VISUAL LINKS) AMENDMENT (LOCAL COURT BAIL
DIVISION) BILL 2025

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

Currently, the *Evidence (Audio and Audio Visual Links) Act 1998 (AVL Act)* requires accused detainees to appear physically in 'physical appearance proceedings', which includes first appearance bail matters, unless the court directs otherwise, the parties consent, or an exception applies (s 5BA).

In practice, the current application of exceptions mean that accused detainees are already appearing via audio-visual link (AVL) in a significant portion of first appearance bail matters. For example, centralised AVL bail courts are already used on weekends, public holidays and during magistrate conferences. Locations exempted from the presumption under the Regulation also make up a large number of the State's first appearance bail matters (in particular, accused held at Surry Hills Police Station and Amber Laurel Correctional Centre). Recent reforms preventing registrars from making bail decisions has also meant an increased use of AVL on weekdays in places where a magistrate is not available at the location where the accused would appear in person.

In July 2024, the Chief Magistrate of the Local Court announced plans to further formalise the use of AVL in first appearance bail matters by establishing a Bail Division of the Local Court. The Bail Division will involve bail matters, including first appearance bail matters, being heard from a central hub at the Downing Centre, with the magistrate being physically present at the Downing Centre, while accused detainees, prosecutors and defence practitioners appear via AVL from across the State. However, an accused person will still be able to appear in person where AVL cannot or should not be used.

The Children's Court is also developing a separate model, which will centralise children's bail matters ordinarily heard by Local Court magistrates in certain regional areas on weekdays to Parramatta Children's Court to be heard by a specialist Children's magistrate.

Amendments to the AVL Act are therefore required to reflect the intended future use of AVL as the default arrangement in bail matters, while allowing sufficient flexibility to accommodate transitional and local arrangements, where physical appearances are necessary or preferable. Amendments are also needed to facilitate the use of audio link in bail proceedings in certain circumstances, and to clarify and strengthen existing safeguards around the use of AVL and audio link.

Objectives: What is the policy's objective couched in terms of the public interest?

The Bill supports the establishment of the new Local Court Bail Division and modernises the AVL Act in relation to bail proceedings.

There are several benefits anticipated to flow from the establishment of a Bail Division, including that it may relieve workload pressure on regional and small metropolitan courts, enable magistrates to develop special expertise in bail matters, and improve quality and consistency of bail hearings. The centralisation will also further support the reform to remove registrars from bail decisions to ensure that bail decisions are made by magistrates.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The Chief Magistrate has decided to establish the Bail Division of the Local Court, and for AVL to be the default arrangement for all bail proceedings. Amendment to the AVL Act is the only mechanism by which changes to the legislative presumption in favour of physical appearance in first appearance bail matters can be reversed.

The other option would be not to reverse the presumption. This would not prevent the establishment of the Bail Division, but it would be unnecessarily resource intensive and lead to potential inefficiencies, as it would require a court to make an order that an accused detainee appear by AVL in each matter where an existing exception does not apply, or for matters to proceed via consent.

Analysis: What were the pros/cons and benefits/costs of each option considered?

The benefit of the legislative amendments is that they will reflect the intended operations of the Local Court going forward, while enshrining important criminal law protections and allowing for flexibility in transitional arrangements. Specifically, the Bill reflects that AVL is intended to be the default arrangement for first appearances in the Bail Division. However, the Bill includes pathways to manage proceedings if AVL is not available or appropriate. This includes a power for a Head of Jurisdiction to issue a practice note excluding certain locations or classes of matter. In individual cases, an accused detainee can also make an application for a direction that they appear physically before the court, if it is in the interests of the administration of justice.

If the presumption was not reversed, the legislation would not reflect the intended operational practices of the Court. Courts would be obliged to make a direction for accused detainees to appear via AVL, which would be unnecessarily resource intensive.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bail Division of the Local Court is scheduled to be rolled out in stages commencing from 7 July 2025.

The Department of Communities and Justice (DCJ) is supporting the implementation of the Bail Division, in close consultation with the Chief Magistrate's Office and other members of the Bail Division Advisory Board.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

DCJ has been supporting the operational implementation of the Bail Division, working closely with a Bail Division Advisory Board which includes representatives from the Chief Magistrate's Office, the Children's Court, Corrective Services NSW, the NSW Police Force, Legal Aid NSW, Justice Health, Aboriginal Legal Service NSW/ACT, the NSW Bar Association and the Law Society of NSW.

Targeted consultation on the legislative amendments was undertaken with members of the Bail Division Advisory Board, Heads of Jurisdiction and the Office of the Director of Public Prosecutions.