

Evidence (Audio and Audio Visual Links) Amendment Bill 2000

Explanatory note

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

Overview of Bill

The objects of this Bill are to amend the *Evidence (Audio and Audio Visual Links) Act 1998*:

- (a) to make further provision to facilitate the giving and receiving of evidence, and the making of submissions, in proceedings in New South Wales courts and before certain tribunals, by audio and audio visual links from places (within or outside New South Wales) other than the places at which the courts and tribunals are sitting, and
- (b) to make provision with respect to appearances in such proceedings by persons (whether or not parties to the proceedings) by audio and audio visual links from such places. The Act currently provides 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 by audio and audio visual links.

The amendments will provide a way of taking or receiving evidence or making or receiving submissions:

- (a) by or from places in other States that are not participants in the scheme, and
- (b) from or in places within New South Wales other than the place at which a court or tribunal is sitting, and
- (c) from places outside Australia.

The amendments will also provide for a court or tribunal to direct that a person (whether or not a party to proceedings before it) appear before it by audio or audio visual link for the purposes of the proceedings.

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 on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Evidence (Audio and Audio Visual Links) Act 1998* set out in Schedule 1.

Schedule 1 Amendments

Schedule 1 [1] amends section 3 of the Act to expand provisions of the Act relating to the making of submissions to include the making of appearances (proposed section 3 (2)) and to ensure that a requirement under any other Act for a person to appear before a court is satisfied if the person appears by audio or audio visual link under the Act (proposed section 3 (3)).

Schedule 1 [2] amends section 5 of the Act to make it clear that proposed Part 1A will not exclude or limit the operation of other laws respecting the taking of evidence or making of submissions by audio or audio visual link in the State.

Schedule 1 [4] inserts proposed section 5 (4) to extend the application of proposed Part 1A to proceedings pending at the commencement of the proposed subsection.

Schedule 1 [5] inserts proposed Part 1A (proposed sections 5A–5D) into the Act.

Proposed section 5A (1) applies the proposed Part to any proceeding in or before a NSW court.

Proposed section 5A (2) and (3) describes the relationship of the proposed Part to Parts 2 and 3

of the Act and to evidence taken or submissions made by audio or audio visual link from New Zealand.

Proposed section 5B enables a NSW court to direct that a person give evidence or make a submission to the court by audio or audio visual link from a place other than the courtroom or other place at which the court is sitting.

Proposed section 5C provides for the place at which audio or audio visual link facilities are used for the giving of evidence or making of a submission in proceedings to be treated as part of the courtroom or other place at which the proceedings are conducted.

Proposed section 5D provides for the making of oaths and affirmations by audio or audio visual link under the proposed Part. It also enables evidence given from a foreign country to be given without oath or affirmation if the law in force in that country does not permit the person to give evidence on oath or affirmation or where that law makes it inconvenient to do so.

Schedule 1 [7]–[9] renumber existing sections 8–10 of the Act as sections 20A–20C so that the sections as renumbered will apply for the purposes of proposed Part 1A as well as for existing Part 2. The provisions as renumbered provide as follows:

Proposed section 20A provides that evidence must not be given or a submission be made by audio visual link 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.

Proposed section 20B provides that evidence must not be given or a submission be made by audio link 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.

Proposed section 20C authorises a NSW court to make orders for the payment of expenses incurred in connection with the taking of evidence or making of appearances or submissions.

Schedule 1 [14] inserts proposed sections 20D and 20E into Part 4 of the Act.

Proposed section 20D provides for the adjournment of proceedings where an audio or audio visual link fails during the proceedings.

Proposed section 20E provides for the putting of documents to persons giving evidence or making submissions by audio or audio visual link.

Schedule 1 [3], [6], [10], [11], [12] and [13] make consequential amendments.