



New South Wales

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.



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2000

Contents

	Page
1 Name of Act	2
2 Commencement	2
3 Amendment of Evidence (Audio and Audio Visual Links) Act 1998 No 105	2
Schedule 1 Amendments	3



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2000

No. , 2000

A Bill for

An Act to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to make further provision to facilitate the taking of evidence, and the making of submissions, by audio links and audio visual links; and for other purposes.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Evidence (Audio and Audio Visual Links) Amendment Act 2000</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Evidence (Audio and Audio Visual Links) Act 1998 No 105	8 9
The <i>Evidence (Audio and Audio Visual Links) Act 1998</i> is amended as set out in Schedule 1.	10 11

Schedule 1 Amendments

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(Section 3)

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[1] Section 3 Interpretation

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Insert at the end of the section:

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- (2) A reference in this Act to making a submission to a court includes a reference to making an appearance before the court.
- (3) A requirement by or under any other Act that a person appear before a court is taken to be satisfied if the person appears before the court by way of an audio link or audio visual link under this Act.

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[2] Section 5 Application of Act

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Insert after section 5 (1):

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- (1A) This Act is not intended to exclude or limit the operation of any other law of the State or another place that makes provision for the taking of evidence or making of submissions in the State for the purposes of a proceeding in the State.

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Note. See, for example, Part 7A of the *Supreme Court Act 1970*.

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[3] Section 5 (3)

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Insert “(other than Part 1A)” after “Act”.

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[4] Section 5 (4)

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Insert after section 5 (3):

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- (4) Part 1A extends to any proceeding pending in a NSW court or court of a place outside New South Wales on the commencement of this subsection.

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[5] Part 1A	1
Insert after Part 1:	2
 Part 1A Use of audio links or audio visual links with places in NSW, non-participating States and foreign countries in proceedings in NSW courts	3 4 5 6
 5A Application of this Part	7
(1) This Part applies to any proceeding (including a criminal proceeding) in or before a NSW court.	8 9
(2) An application cannot be made, and the court may not give a direction, under this Part for the giving of evidence or making of a submission to the court by audio link or audio visual link from any place outside New South Wales that is a participating State.	10 11 12 13 14
(3) An application cannot be made, and the court may not give a direction, under this Part for the giving of evidence or making of a submission to the court by audio link or audio visual link from any place in New Zealand.	15 16 17 18
Note. Parts 4 and 5 of the <i>Evidence and Procedure (New Zealand) Act 1994</i> of the Commonwealth make provision for audio links and audio visual links with New Zealand.	19 20 21
 5B Taking evidence and submissions from outside courtroom or place where court is sitting	22 23
(1) Subject to any applicable rules of court, a NSW court may, on the application of a party to a proceeding before the court, direct that a person (whether or not a party to the proceeding) give evidence or make a submission to the court by audio link or audio visual link from any place within or outside New South Wales, including a place outside Australia, other than the courtroom or other place at which the court is sitting.	24 25 26 27 28 29 30
(2) The court must not make such a direction if:	31
(a) the necessary facilities are unavailable or cannot reasonably be made available, or	32 33

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| <p>(b) the court is satisfied that the evidence or submission can more conveniently be given or made in the courtroom or other place at which the court is sitting, or</p> <p>(c) the court is satisfied by a party opposing the making of the direction that the direction would be unfair to the party, or</p> <p>(d) the court is satisfied that the person in respect of whom the direction is sought will not give evidence or make the submission.</p> <p>5C Premises to be considered part of court</p> <p>(1) Any place within or outside New South Wales at which audio link or audio visual link facilities are being used for the purpose of a person giving evidence or making a submission in any proceeding under this Part is taken to be part of the NSW court that is sitting at a courtroom or other place for the purpose of conducting the proceeding.</p> <p>(2) Subsection (1) has effect, for example, for the purposes of the laws relating to evidence, procedure, contempt of court or perjury.</p> <p>(3) Subsection (1) also has the effect that any offence committed at the place where the person giving the evidence or making the submission is located is to be taken to have been committed at the courtroom or other place where the court is sitting for the purposes of the laws in force in New South Wales.</p> <p>5D Administration of oaths and affirmations</p> <p>(1) Subject to subsection (2), an oath to be sworn or affirmation to be made by a person giving evidence by audio link or audio visual link under this Part may be administered either:</p> <p style="padding-left: 20px;">(a) by means of the audio link or audio visual link, as nearly as practicable in the same way as if the person were to give evidence in the courtroom or other place where the NSW court is sitting, or</p> <p style="padding-left: 20px;">(b) at the direction of, or on behalf of, the court at the place where the person is giving the evidence by a person authorised by the court.</p> | <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p> <p>29</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> |
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(2)	A person giving evidence by audio link or audio visual link under this Part from a foreign country is not required to give the evidence on oath or affirmation if:	1
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(a)	the law in force in that country:	4
(i)	does not permit the person to give evidence on oath or affirmation for the purposes of the proceeding, or	5
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(ii)	would make it inconvenient for the person to give evidence on oath or affirmation for the purposes of the proceeding, and	8
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(b)	the NSW court is satisfied that it is appropriate for the evidence to be given otherwise than on oath or affirmation.	11
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(3)	If evidence is given otherwise than on oath or affirmation, the NSW court is to give the evidence such weight as it thinks fit in the circumstances.	14
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(4)	Subsections (2) and (3) apply despite anything to the contrary in the <i>Evidence Act 1995</i> or any other law of this State.	17
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[6]	Part 2, heading	19
	Insert “with a participating State” after “visual links”.	20
[7]	Section 8 Giving evidence or making submissions by audio visual link	21
	Renumber the section as section 20A and insert it in appropriate order in Part 4.	22
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[8]	Section 9 Giving evidence or making submissions by audio link	24
	Renumber the section as section 20B and insert it in appropriate order in Part 4.	25
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[9]	Section 10 Expenses	27
	Renumber the section as section 20C and insert it in appropriate order in Part 4.	28
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[10]	Part 3, heading	30
	Insert “with NSW” after “visual links”.	31

[11] Section 20A (as renumbered by item [7])	1
Omit "Part". Insert instead "Act".	2
[12] Section 20B (as renumbered by item [8])	3
Omit "Part". Insert instead "Act".	4
[13] Section 20C (as renumbered by item [9])	5
Omit "in a participating State". Insert instead "under this Act".	6
[14] Sections 20D and 20E	7
Insert after section 20C (as renumbered by item [9]):	8
20D Failure of audio link or audio visual link	9
If an audio link or audio visual link being used in accordance with this Act for the purposes of a proceeding before a NSW court fails during the proceeding, the court may adjourn the proceeding or make such other orders as are appropriate in the circumstances as if a person present at the place at which the audio link or audio visual link facilities are located were in the presence of the court.	10 11 12 13 14 15 16
20E Putting documents to a remote person	17
If in the course of examination of a person by audio link or audio visual link it is necessary to put a document to the person, the NSW court may permit the document to be put to the person:	18 19 20 21
(a) if the document is at the courtroom or other place where the court is sitting, by transmitting by any means a copy of it to the place where the person is giving evidence or making a submission and the copy so transmitted being then put to the person, or	22 23 24 25 26
(b) if the document is at the place where the person is giving evidence or making a submission, by putting it to the person and then transmitting by any means a copy of it to the courtroom or other place.	27 28 29 30