



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2001

Explanatory note

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

Overview of Bill

The *Evidence (Audio and Audio Visual Links) Act 1998* facilitates the giving and receiving of evidence, and the making of submissions, in proceedings in New South Wales courts, by audio and audio visual links from places other than the places at which the courts are sitting and makes provision with respect to appearances in such proceedings by persons by audio and audio visual links from such places.

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

- (a) to require an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear by audio visual link in certain preliminary criminal proceedings concerning the offence for which the

person is in custody before a court (unless the court directs otherwise if satisfied that it is in the interests of justice that the person appear physically before the court) (Schedule 1 [11]—proposed section 5BA), and

- (b) to require an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear physically before the court in certain other criminal proceedings concerning the offence for which the person is in custody before a court (unless the court directs otherwise if satisfied that it is in the interests of justice that the person appear by audio visual link before the court) (Schedule 1 [11]—proposed section 5BB), and
- (c) to enable a NSW court to direct that a person give evidence or make a submission to a court by audio or audio visual link from a place other than the courtroom or other place where the court is sitting under Part 1A of the Act on its own motion (at present a court may do so only on application of a party to the proceeding) (Schedule 1 [8] and [9]).

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.

Clause 4 repeals Part 7A (sections 110A–110G) of the *Supreme Court Act 1970*. Part 7A relates to the use of video link facilities in relation to proceedings before the Supreme Court relating to bail and will be superseded by proposed Part 1B (to be inserted in the Principal Act by Schedule 1 [11]).

Schedule 1 Amendments

Schedule 1 [1] amends section 3 of the Principal Act to insert definitions of *accused detainee*, *preliminary criminal proceeding* and *relevant criminal proceeding* for the purposes of proposed Part 1B. An *accused detainee* is defined as a person (other than a child) who is being held in custody in a correctional centre, police station or other place of detention and to include, in relation to a proceeding for a summary offence, a defendant.

Schedule 1 [2] makes a consequential amendment to section 3 (2) of the Principal Act (which currently expands provisions of the Act relating to the making of submissions to include the making of appearances) to exclude proposed Part 1B.

Schedule 1 [4] inserts proposed section 3A. Section 3A (1) expands existing section 3 (3) (which ensures 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) to include a requirement to be brought or be present before a court (as referred to, for example, in section 41 of the *Justices Act 1902* and section 5 of the *Supreme Court (Summary Jurisdiction) Act 1967*). Section 3A (2) ensures that an entitlement to be present in proceedings under any other Act or law is satisfied if audio visual links are used. The subsection is based on section 110E of the *Supreme Court Act 1970*. **Schedule 1 [3]** makes a consequential amendment to omit section 3 (3).

Schedule 1 [5] amends a note as a consequence of the proposed repeal of Part 7A of the *Supreme Court Act 1970* by clause 4 and includes a reference to another law.

Schedule 1 [6] amends section 5 (3) of the Principal Act to make it clear that proposed Part 1B 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 [7] inserts proposed section 5 (5) and (6). Section 5 (5) extends the application of proposed Part 1B to proceedings pending at the commencement of the proposed subsection. Section 5 (6) makes it clear that proposed Part 1B will not, by operation of the *Children (Criminal Proceedings) Act 1987*, apply to proceedings in the Children's Court. The provision is consistent with the application of proposed Part 1B only to proceedings in relation to offences alleged to have been committed by adult accused detainees.

Schedule 1 [8] amends section 5B of the Principal Act to enable 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 where the court is sitting under Part 1A of the Act on its own motion (at present a court may do so only on application of a party to the proceeding). **Schedule 1 [9]** makes a consequential amendment.

Schedule 1 [10] makes it clear that a court cannot direct that evidence be given or a submission be made by audio visual link by an accused detainee in any preliminary criminal proceeding or relevant criminal proceeding because proposed Part 1B will deal with evidence given or submissions made by accused detainees in such proceedings. Part 1A will, however, continue to apply to directions for evidence to be given or submissions made by accused detainees by audio link and to accused detainees in proceedings other than preliminary criminal proceedings and relevant criminal proceedings.

Schedule 1 [11] inserts proposed Part 1B (sections 5BA–5BC).

Proposed section 5BA requires an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear by audio visual link in preliminary criminal proceedings (unless a court directs otherwise if satisfied that it is in the interests of justice that the person appear physically before the court). The proceedings concerned include proceedings relating to bail (other than any proceeding relating to bail brought before a Magistrate or justice in respect of the period between an accused detainee being charged with an offence and the person's first appearance before a court in relation to the offence) and certain interlocutory proceedings in criminal proceedings. The section will only apply if the necessary audio visual links are available or can reasonably be made available.

Proposed section 5BB requires an accused adult person who is in custody in a correctional centre, police station or other place of detention to appear physically before the court in relevant criminal proceedings (unless a court directs otherwise if satisfied that it is in the interests of justice that the person appear by audio visual link before the court). The proceedings concerned include committal proceedings, inquiries into unfitness to be tried, sentencing hearings, trials and any proceeding relating to bail brought before a Magistrate or justice in respect of the period between an accused detainee being charged with an offence and the person's first appearance before a court in relation to the offence or on an accused detainee's first such appearance. The section will not apply if the parties to the proceedings consent to the accused detainee appearing by audio visual link.

Proposed section 5BC ensures that an accused detainee appearing by audio visual link under the proposed Part has the opportunity to have private communications with his or her representative. The proposed section is based on section 110C of the *Supreme Court Act 1970*.

Schedule 1 [13] and **[14]** amend sections 5C (Premises to be considered part of court) and 5D (Administration of oaths and affirmations) of the Principal Act so that the sections will apply for the purposes of proposed Part 1B as well as Part 1A. **Schedule 1 [12]** makes the sections a new Part of the Act.

Schedule 1 [15] makes it explicit that a NSW court can revoke or vary any direction given by it under the Principal Act.

Schedule 1 [16] and **[17]** provide for the making of savings and transitional regulations.



New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2001

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New South Wales

Evidence (Audio and Audio Visual Links) Amendment Bill 2001

No. , 2001

A Bill for

An Act to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to make further provision with respect to the appearance of accused detainees by audio visual links in certain criminal proceedings; to make a consequential amendment to the *Supreme Court Act 1970*; 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 2001</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
4 Repeal of Part 7A of the Supreme Court Act 1970 No 52	12
The <i>Supreme Court Act 1970</i> is amended by omitting Part 7A (Use of video link facilities).	13 14

Schedule 1 Amendments

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(Section 3)

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[1] Section 3 Interpretation

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Insert in alphabetical order in section 3 (1):

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accused detainee means a person (other than a child) who is being held in custody in a correctional centre, police station or other place of detention and includes, in relation to a proceeding for a summary offence, a defendant.

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preliminary criminal proceeding means any of the following criminal proceedings:

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(a) any proceeding relating to bail (other than a proceeding relating to bail referred to in paragraph (f) of the definition of *relevant criminal proceeding*),

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(b) where a person has previously been remanded in custody, any subsequent proceeding with respect to the remand of the person in custody for the same offence,

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(c) any interlocutory proceeding held in connection with any criminal proceeding,

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(d) without limiting paragraph (c), any application for an adjournment,

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(e) any arraignment on a day other than the day appointed for the trial of a person.

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relevant criminal proceeding means any of the following criminal proceedings:

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(a) any committal proceeding,

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(b) any inquiry into a person's unfitness to be tried for an offence,

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(c) any trial (including an arraignment on the day appointed for the trial) or hearing of charges,

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(d) any sentencing hearing (including a redetermination of sentence),

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(e) any hearing of an appeal arising out of a trial or hearing,

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(f)	any proceeding relating to bail:	1
(i)	brought before a Magistrate or justice in respect of the period between a person being charged with an offence and the person's first appearance before a court in relation to the offence, or	2 3 4 5
(ii)	on a person's first appearance before a court in relation to an offence.	6 7
[2]	Section 3 (2)	8
	Insert "(other than Part 1B)" after "Act".	9
[3]	Section 3 (3)	10
	Omit the subsection.	11
[4]	Section 3A	12
	Insert after section 3:	13
	3A Appearances and entitlements to be present before courts	14
	(1) A requirement by or under any other Act that a person appear (or be brought or be present) 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.	15 16 17 18
	Note. Part 1B of this Act contains provisions with respect to the appearance by audio visual link of accused detainees who are in custody in preliminary criminal proceedings and relevant criminal proceedings.	19 20 21
	(2) Any entitlement of a person under any other Act or law for a person to be present in proceedings before a court concerning bail is taken to be satisfied if audio visual links are used in relation to the person under this Act.	22 23 24 25
[5]	Section 5 Application of Act	26
	Omit "Part 7A of the <i>Supreme Court Act 1970</i> " from the note to section 5 (1A).	27 28
	Insert instead "Part 4 of the <i>Evidence (Children) Act 1997</i> ".	29
[6]	Section 5 (3)	30
	Omit "Part 1A". Insert instead "Part 1A or 1B".	31

[7] Section 5 (5) and (6)	1
Insert after section 5 (4):	2
(5) Part 1B extends to any preliminary criminal proceeding or relevant criminal proceeding pending in a NSW court on the commencement of this subsection.	3 4 5
(6) Section 27 of the <i>Children (Criminal Proceedings) Act 1987</i> does not apply Part 1B of this Act (to the extent that it relates to the functions of Local Courts, Magistrates or justices in criminal proceedings) to the Children’s Court or any proceedings before the Children’s Court.	6 7 8 9 10
[8] Section 5B Taking evidence and submissions from outside courtroom or place where court is sitting—proceedings generally	11 12
Omit “Subject to any applicable rules of court, a NSW court may, on the application of a party to a proceeding before the court” from section 5B (1).	13 14
Insert instead “Subject to any applicable rules of court and subsection (2A), a NSW court may, either on its own motion in, or on the application of a party to, a proceeding before the court”.	15 16 17
[9] Section 5B (2) (c)	18
Omit “by a party opposing the making of the direction”.	19
[10] Section 5B (2A)	20
Insert after section 5B (2):	21
(2A) A court must not make such a direction in relation to the giving of evidence or making of a submission by audio visual link by any accused detainee in any preliminary criminal proceeding or relevant criminal proceeding concerning the offence in respect of which he or she is in custody. However, this subsection does not prevent the making of such a direction in relation to an accused detainee in any other proceeding to which this Part applies.	22 23 24 25 26 27 28 29
Note. Part 1B of this Act contains provisions with respect to the appearance of accused detainees who are in custody in preliminary criminal proceedings and relevant criminal proceedings.	30 31 32

[11] Part 1B	1
Insert after section 5B:	2
Part 1B Use of audio visual links within places in NSW for appearances of accused detainees in proceedings in NSW courts	3 4 5
5BA Appearances of accused detainee by audio visual link in preliminary criminal proceedings	6 7
(1) An accused detainee who is required to appear (or be brought or be present) before a NSW court in any preliminary criminal proceedings concerning the offence for which the detainee is in custody:	8 9 10 11
(a) must, unless the court otherwise directs, appear before the court by audio visual link from any place within New South Wales at which the accused detainee is in custody other than the courtroom or place at which the court is sitting, and	12 13 14 15 16
(b) may give any evidence or make any submission to the court by that audio visual link.	17 18
Note. <i>accused detainee</i> and <i>preliminary criminal proceeding</i> are defined in section 3.	19 20
(2) Subsection (1) does not apply unless the necessary audio visual links are available or can reasonably be made available.	21 22
(3) The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding.	23 24 25
(4) The court may make such a direction only if it is satisfied that it is in the interests of justice for the accused detainee to appear physically before the court.	26 27 28

5BB	Appearances of accused detainee by audio visual link in relevant criminal proceedings	1
		2
(1)	An accused detainee who is required to appear (or be brought or be present) before a NSW court in any relevant criminal proceedings must, unless the court otherwise directs, appear physically before the court in any relevant criminal proceedings concerning the offence for which the person is in custody.	3
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	Note. <i>accused detainee</i> and <i>relevant criminal proceeding</i> are defined in section 3.	8
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(2)	Subsection (1) does not apply if the parties to the proceeding consent to the accused detainee appearing before the court by audio visual link from any place within New South Wales at which the accused detainee is in custody other than the courtroom or place where the court is sitting.	10
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(3)	The court may make a direction under subsection (1) on its own motion or on the application of any party to the proceeding.	15
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(4)	The court may make such a direction only if it is satisfied that it is in the interests of justice for the accused detainee to appear before the court by audio visual link from a place within New South Wales at which the person is in custody other than the courtroom or place where the court is sitting.	18
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5BC	Facilities for private communication	23
	Facilities are to be made available for private communication between an accused detainee appearing by audio visual link under this Part in a preliminary criminal proceeding or a relevant criminal proceeding and the person's representative in the proceeding if the person's representative is at the place where the court is sitting.	24
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[12] Part 1C, heading	1
Insert before section 5C:	2
Part 1C Provisions applying to Parts 1A and 1B generally	3
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[13] Section 5C Premises to be considered part of court	5
Omit “this Part” from section 5C (1). Insert instead “Part 1A or 1B”.	6
[14] Section 5D Administration of oaths and affirmations	7
Omit “this Part” wherever occurring. Insert instead “Part 1A or 1B”.	8
[15] Section 20F	9
Insert after section 20E:	10
20F Directions	11
A NSW court may at any time vary or revoke a direction given	12
by it under this Act in a proceeding, either on its own motion	13
or on application by a party to the proceeding.	14
[16] Section 22A	15
Insert after section 22:	16
22A Savings, transitional and other provisions	17
Schedule 1 has effect.	18

[17] Schedule 1	1
Insert after section 23:	2
Schedule 1 Savings, transitional and other provisions	3
	4
	(Section 22A) 5
1 Regulations	6
(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:	7
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the <i>Evidence (Audio and Audio Visual Links) Amendment Act 2001</i>	10
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(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.	12
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(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:	15
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(a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or	18
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(b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.	21
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