



## Evidence Legislation Amendment (Accused Child Detainees) Bill.

### Second Reading

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, and Minister Assisting the Premier on Citizenship) [5.30 p.m.]:  
I move:

That this bill be now read a second time.

I seek leave to have the second reading speech incorporated into *Hansard*.

#### Leave granted.

The Evidence Legislation Amendment (Accused Child Detainees) Bill 2003 proposes amendments to the *Evidence (Audio and Audio Visual Links) Act 1998* to provide for the use of audio visual links by accused children in custody appearing before New South Wales Courts. The Bill also makes consequential amendments to the *Evidence (Children) Act 1997*.

Briefly, the amendments will create a presumption in favour of physical attendance at court for children in custody, in but provide for the Court to order that a child appear by way of an audio visual link in certain circumstances. In deciding to make such an order, the Court will be required to have regard to relevant factors set out in rules of court made under the Act.

The *Evidence (Audio and Audio Visual Links) Act 1998* facilitates the appropriate use of audio and audiovisual technology in our courts and allows 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.

The Act was amended in 2001 to clarify the type of evidence or submissions that can be given by audio visual link where an adult accused person is held in custody in New South Wales. Those amendments created a presumption in favour of using audio visual links for certain preliminary criminal proceedings and a presumption in favour of physical attendance at court for substantive criminal proceedings.

In recognition of the special nature of proceedings before the Children's Court, the presumptions established by the 2001 amendments did not apply where the accused person was a child. Amendments contained in the current Bill extend the application of the Act to Children's Court proceedings while at the same time recognising the special needs of children in obtaining legal advice and representation.

The amendments recognise the particular vulnerability of a child defendant and the fact that a child in custody should be treated differently to an adult in custody. The amendments seek to fulfil the *UN Convention on the Rights of the Child*, and are consistent with the general principles underpinning the exercise of the criminal jurisdiction in relation to children set out in the *Children (Criminal Proceedings) Act 1987*. In particular this includes the principle that children should have a right to participate in processes that lead to decisions that affect them and have the fullest opportunity practicable to be heard.

Nevertheless, while the proposed amendments to the Act will create a presumption in favour of physical attendance by accused children, the Court will retain the power to make an order requiring that a child appear by way of audio visual link in certain circumstances.

This discretion will ensure that, wherever appropriate, the interests of the child in physically appearing in court are able to be balanced with general considerations of cost and convenience, including the need to avoid unnecessary travel for brief appearances and disruption to the child's participation in programs at detention centres.

Video conferencing facilities are currently available in Children's Court proceedings at Bidura, Campbelltown, Lidcombe, Woy Woy, Dubbo, Lismore and Goulburn. Links from these courts are able to be made to juvenile justice facilities across the state including the sites of Acmena, Cobham, Frank Baxter, Orana, Reiby, Riverina and Yasmar. The Children's Court has made an express commitment to utilise these facilities wherever possible to ensure the benefits of reduced travel costs and use of court time are maximised.

It is anticipated that audio visual links will be used most frequently in proceedings involving bail reviews, parole matters, mentions to confirm a hearing date, adjournments for the prosecution to reply to defence representations and mentions to review youth justice conferencing outcome plans.

Rules made under the proposed legislation will identify relevant factors that the presiding judicial officer should

consider when deciding whether it is in the "*interests of justice*" for a child to appear by way of an audio visual link. In addition to taking into account the nature of the proceedings involved, other relevant factors may include:

- ? the need for the child to provide instructions to counsel or discuss a brief of evidence,
- ? the distance the child would need to travel and the expense and inconvenience involved in a physical appearance,
- ? the maturity of the child and their capacity to satisfactorily use an audio visual link; and
- ? the child's need for the support of parents, carers or other support persons during proceedings.

The content of the rules will be finalised following further consultation with relevant stakeholders and the input of the Children's Court Advisory Committee.

A number of different people and agencies have been consulted about the changes proposed by the bill. These include the Senior Children's Magistrate, the Legal Aid Commission, the Commission for Children and Young People, the Department of Juvenile Justice, the Law Society of NSW and the NSW Police. Where appropriate, their comments have been taken into account and each of those agencies has indicated its support for proceeding with the proposed amendments.

It is proposed that the amendments to the Act be trialled and evaluated after twelve-eighteen months, with data to be maintained in relation to the frequency with which audio visual links are used in Children's Court proceedings and the factors motivating the Court to make an order on each occasion.

The amendments contained in the Bill will resolve the continuing uncertainty about the application of the *Evidence (Audio and Audio Visual Links) Act 1998* to children and ensure savings to be made from the use of the available facilities are maximised wherever possible.

I commend the bill to the House.

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