

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. It also makes provision with respect to appearances in such proceedings by persons by audio and audio visual links from such other places.

The object of this Bill is to amend the Act:

- (a) to require an accused child who is in custody in a correctional centre, detention centre, police station or other place of detention to appear physically before a court in certain preliminary and other criminal proceedings concerning the offence for which the child is in custody unless the court directs otherwise if satisfied that it is in the interests of justice that the child appear by audio visual link before the court, and
- (b) to enable rules of court to specify factors that the court must take into account before giving such a direction.

The Bill also makes consequential amendments to the *Evidence (Children) Act 1997*.

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 that gives effect to the amendments to the *Evidence (Audio and Audio Visual Links) Act 1998* set out in Schedule 1.

Clause 4 is a formal provision that gives effect to the amendments to the *Evidence (Children) Act 1997* set out in Schedule 2.

Schedule 1 Amendment of Evidence (Audio and Audio Visual Links) Act 1998

Schedule 1 [1] and [2] amend section 3 of the *Evidence (Audio and Audio Visual Links) Act 1998* (the **Principal Act**) to replace the existing definition of **accused detainee** with a new definition of **accused detainee** and to insert definitions of **accused child detainee** and **detention centre**.

Schedule 1 [9] and [10] insert sections 5BBA and 22 (5) into the Principal Act to achieve the object described in paragraphs (a) and (b), respectively, of the Overview of the Bill above.

Schedule 1 [5] inserts section 5 (5A) into the Principal Act to provide for the proposed amendments to extend to any proceeding pending in a court after the commencement of section 5 (5) and before the commencement of the subsection.

Schedule 1 [4], [6], [7] and [8] make consequential amendments to sections 5, 5BA and 5BB of the Principal Act.

Schedule 1 [3] makes an amendment by way of statute law revision to correct a grammatical error.

Schedule 2 Consequential amendment of Evidence (Children) Act 1997

Section 5 (1A) of the *Evidence (Audio and Audio Visual Links) Act 1998* indicates that that Act is not intended to exclude or limit the operation of any other law of the State that makes provision for the taking of evidence or the making of submissions in the State for the purposes of proceedings in the State.

Schedule 2 amends sections 11 (Child entitled to give evidence in chief in form of recording) and 19 (Accused children may be allowed to give evidence by closed-circuit television) of the *Evidence (Children) Act 1997* to make it clear

that those sections are not limited by proposed section 5BBA of the *Evidence (Audio and Audio Visual Links) Act 1998* as inserted by Schedule 1 [9].