



New South Wales

Evidence (Audio and Audio Visual Links) Amendment (Local Court Bail Division) Bill 2025

Explanatory note

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

Overview of Bill

The objects of this Bill are as follows—

- (a) to amend the *Evidence (Audio and Audio Visual Links) Act 1998* (***the Act***) to—
 - (i) provide for a presumption of the use of audio visual links in proceedings relating to bail, including first appearance bail matters, and
 - (ii) authorise a head of jurisdiction for a court to require an accused detainee to appear physically before the court unless the court directs otherwise in circumstances where a presumption in favour of the use of audio visual link exists, and
 - (iii) allow an accused detainee to appear before the court using an audio link, in particular circumstances, in proceedings relating to bail, and
 - (iv) clarify existing protections related to the use of audio links and audio visual links in court proceedings under the Act,
- (b) to consequentially repeal the *Evidence (Audio and Audio Visual Links) Regulation 2024*.

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.

Schedule 1 Amendment of Evidence (Audio and Audio Visual Links) Act 1998 No 105

Schedule 1[1] amends the definition of *physical appearance proceedings* to make it clear that provisions relating to a physical appearance proceeding under the Act will no longer apply to proceedings relating to bail, including first appearance bail matters. **Schedule 1[5]** makes a consequential amendment.

Schedule 1[2] makes it clear that the use of either an audio link or an audio visual link to enable a person to appear before the court will satisfy an entitlement under another Act or law that requires a person to appear before the court about bail.

Schedule 1[3] inserts the definition of *appear* for the Act, Part 1B. **Schedule 1[4]** makes a consequential amendment.

Schedule 1[6] provides that an audio link may be used to allow a person to appear before a court in a proceeding relating to bail. The audio link must only be used in circumstances where an audio visual link fails or is otherwise not available, and the parties consent to the use of audio link and the court is satisfied that the use of the audio link is in the interests of justice. The proposed amendment also makes it clear that obligations for police officers to bring an accused before a court as soon as practicable under the *Bail Act 2013*, sections 46 and 71 continue to apply in circumstances where an audio visual link fails or is otherwise unavailable.

Schedule 1[7] authorises a head of jurisdiction for a court, in proceedings related to bail, to direct that accused detainees are required to appear physically before the court, unless the court orders otherwise in the interests of the administration of justice.

Schedule 1[8] makes it clear that facilities are to be made available for private communication between an accused detainee appearing before a court using audio link or audio visual link and the accused detainee's representative, regardless of the location of the accused detainee's representative.

Schedule 1[9] makes it clear that, in circumstances where an audio visual link is used to allow a person to appear before the court, all persons involved in proceedings under the Act, including proceedings related to bail, must be able to see and hear each other regardless of the location of each person when giving evidence or making a submission. The proposed amendment also provides that, in circumstances where an audio link is used, all persons involved in proceedings under the Act must be able to hear each other regardless of the location of each person when giving evidence or making a submission.

Schedule 1[10] provides that, in circumstances where an audio link or audio visual link fails or is otherwise unavailable, the court may adjourn the particular proceeding or make another order that is appropriate in the circumstances. The order made by the court will apply as if the person was in the presence of the court at the time.

Schedule 2 Consequential repeal of regulation

Schedule 2 repeals the *Evidence (Audio and Audio Visual Links) Regulation 2024*, which is made redundant by Schedule 1[1]–[7].



New South Wales

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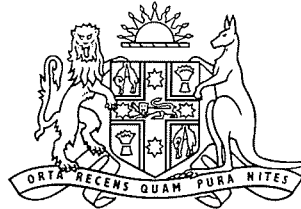
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This PUBLIC BILL, originated in the LEGISLATIVE COUNCIL and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council

Clerk of the Parliaments



New South Wales

Evidence (Audio and Audio Visual Links) Amendment (Local Court Bail Division) Bill 2025

No , 2025

A Bill for

An Act to amend the *Evidence (Audio and Audio Visual Links) Act 1998* to formalise the use of audio visual links in first appearance bail matters; and to facilitate the commencement of the Bail Division of the Local Court.

The LEGISLATIVE ASSEMBLY has this day agreed to this Bill with/without amendment.

Legislative Assembly

Clerk of the Legislative Assembly

Tabling copy

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 (Local Court Bail Division) Act 2025</i> .	3
	4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6

Schedule 1 Amendment of Evidence (Audio and Audio Visual Links) Act 1998 No 105

[1] Section 3 Interpretation

Omit section 3(1), definition of *physical appearance proceedings*. Insert instead—

physical appearance proceeding means the following—

- (a) a trial, including an arraignment on the day appointed for the trial,
- (b) a hearing of charges,
- (c) an inquiry into a person's fitness to be tried for an offence.

[2] Section 3A Appearances and entitlements to be present before courts

Omit section 3A(2). Insert instead—

- (2) An entitlement of a person under another Act or law for a person to be present in proceedings before a court relating to bail is taken to be satisfied if either of the following are used in relation to the person under this Act—

- (a) audio links,
- (b) audio visual links.

Note— See section 5BB(2A), which provides for the criteria that must be satisfied before a person may be present by audio link in proceedings before a court relating to bail.

[3] Section 5BAAB

Insert before section 5BA—

5BAAB Definition

In this part—

appear, before a NSW court, includes—

- (a) be brought before a NSW court, and
- (b) be present before a NSW court.

[4] Section 5BA(1) and 5BB(1)

Omit “(or be brought or be present)” wherever occurring.

[5] Section 5BA Accused detainee to appear physically in physical appearance proceedings

Omit section 5BA(2).

[6] Section 5BB Accused detainee to appear by audio visual link in criminal proceedings other than physical appearance proceedings

Insert after section 5BB(2)—

Note— The *Bail Act 2013*, section 46 requires a police officer to bring an accused person before a court as soon as practicable and section 71 requires a bail application to be dealt with as soon as reasonably practicable. If the audio visual link for any proceedings relating to bail under the *Bail Act 2013*, section 46 or 71 failed, or there were otherwise no audio visual link available for the proceeding, the obligation under section 46 or 71 to act as soon as practicable or reasonably practicable continues.

- (2A) For proceedings relating to bail, the accused detainee may appear before the court by audio link only if—

- (a) audio visual link fails or is otherwise not available, and

(b)	audio link is available, and	1
(c)	the parties to the proceedings consent to the use of audio link, and	2
(d)	the court is satisfied the accused detainee appearing before the court by audio link is in the interests of justice.	3
		4
[7]	Section 5BB(6) and (7)	5
	Insert after section 5BB(5)—	6
(6)	A head of jurisdiction for a court may, by practice note or other document that regulates the practice or procedure of the jurisdiction, direct that, despite subsection (1)—	7
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(a)	accused detainees required to appear before the court in proceedings relating to bail in particular locations are not required to appear by audio visual link, or	10
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		12
(b)	a particular class of accused detainees required to appear before the court in proceedings relating to bail are not required to appear by audio visual link, or	13
		14
		15
(c)	accused detainees required to appear before the court in proceedings relating to bail at particular times are not required to appear by audio visual link.	16
		17
		18
(7)	If subsection (1) does not apply to an accused detainee because of the operation of subsection (6)(a), (b) or (c), the accused detainee must appear physically before the court, unless the court directs otherwise in the interests of the administration of justice.	19
		20
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[8]	Section 5BC	23
	Omit the section. Insert instead—	24
5BC	Facilities for private communication	25
(1)	Facilities are to be made available for private communication between an accused detainee appearing by audio link or audio visual link under this part and the person's representative in the proceeding, regardless of whether the person's representative is—	26
		27
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		29
(a)	at the place at which the court is sitting, or	30
(b)	at another place and appearing by audio link or audio visual link.	31
(2)	For subsection (1), a reference to appearing by audio link or audio visual link includes making a submission to the court by audio link or audio visual link.	32
		33
[9]	Sections 20A and 20B	34
	Omit the sections. Insert instead—	35
20A	Giving evidence or making submissions by audio visual link	36
(1)	Evidence must not be given, and a submission must not be made, by audio visual link in proceedings under this Act, including proceedings relating to bail, unless each relevant place for the proceedings is equipped with audio visual link facilities that enable—	37
		38
		39
		40
(a)	persons who are at the courtroom to see and hear—	41
(i)	persons at the place at which the evidence is being given or the submission is made in the proceedings, and	42
		43

(ii)	persons at any place at which the parties to the proceedings are appearing, and	1
		2
(b)	persons who are at the place at which the evidence is given or the submission is made to see and hear—	3
		4
(i)	persons at the courtroom, and	5
(ii)	persons at any place at which parties to the proceedings are appearing, and	6
		7
(c)	persons who are at any place at which parties to the proceedings are appearing to see and hear—	8
		9
(i)	persons at the courtroom, and	10
(ii)	persons at a place at which the evidence is given or the submission is made.	11
		12
(2)	In this section—	13
	<i>courtroom</i> includes another place at which a NSW court is sitting.	14
	<i>relevant place</i> , in relation to proceedings, means the following—	15
(a)	the courtroom in which the NSW court before which the proceedings are being held is sitting,	16
		17
(b)	any place at which parties to the proceedings are appearing,	18
(c)	a place at which evidence would be given or a submission would be made in the proceedings.	19
		20
20B	Giving evidence or making submissions by audio link	21
(1)	Evidence must not be given, and a submission must not be made, by audio link in proceedings under this Act, including proceedings relating to bail, unless each relevant place for the proceedings is equipped with audio link facilities that enable—	22
		23
		24
		25
(a)	persons who are at the courtroom to hear—	26
(i)	persons at the place at which the evidence is being given or the submission is made in the proceedings, and	27
		28
(ii)	persons at any place at which the parties to the proceedings are appearing, and	29
		30
(b)	persons who are at the place at which the evidence is given or the submission is made to hear—	31
		32
(i)	persons at the courtroom, and	33
(ii)	persons at any place at which parties to the proceedings are appearing, and	34
		35
(c)	persons who are at any place at which parties to the proceedings are appearing to hear—	36
		37
(i)	persons at the courtroom, and	38
(ii)	persons at a place at which the evidence is given or the submission is made.	39
		40
(2)	In this section—	41
	<i>courtroom</i> includes another place at which a NSW court is sitting.	42
	<i>relevant place</i> , in relation to proceedings, means the following—	43
(a)	the courtroom in which the NSW court before which the proceedings are being held is sitting,	44
		45
(b)	any place at which parties to the proceedings are appearing,	46

	(c) a place at which evidence would be given or a submission would be made in the proceedings.	1 2
[10]	Section 20D	3
	Omit the section. Insert instead—	4
20D	Failure or other unavailability of audio link or audio visual link	5
	(1) This section applies if—	6
	(a) an audio link or audio visual link is being used or is required to be used under this Act for a proceeding before a NSW court, and	7 8
	(b) the audio link or audio visual link fails or is otherwise unavailable.	9
	(2) If the audio link or audio visual link fails or is otherwise unavailable during the proceeding, the court may do the following as if a person present in the place at which the audio link or audio visual link is located was in the presence of the court—	10 11 12 13
	(a) adjourn the proceeding,	14
	(b) make another order that is appropriate in the circumstances.	15

Schedule 2	Consequential repeal of regulation	1
	Repeal of regulation	2
	The <i>Evidence (Audio and Audio Visual Links) Regulation 2024</i> is repealed.	3