

Legislative Council—No 38A

As reported with an amendment, report adopted, Standing Orders suspended and passed remaining stages, 28 September 2006

South Australia

**Evidence (Use of Audio and Audio Visual Links)
Amendment Bill 2006**

A BILL FOR

An Act to amend the *Evidence Act 1929*.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Evidence (Use of Audio and Audio Visual Links) Amendment Act 2006*.

5 2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 Part 2—Amendment of *Evidence Act 1929*

4—Insertion of Part 6C Division 4

Part 6C—after Division 3 insert:

Division 4—Use of audio visual link or audio link generally

59IQ—Appearance etc by audio visual link or audio link

- 15 (1) A court may, subject to this Division and any relevant rules of court, receive evidence or submissions from a person who is in the State but not physically present in the courtroom by means of an audio visual link or an audio link.
- 20 (2) The court may administer an oath or affirmation by means of the link for the purpose of taking evidence (and may adapt its normal practice in that regard to the extent necessary in the circumstances).

(d) there are other matters to be dealt with on the same occasion for which the defendant's personal attendance is necessary or desirable.

5 (6) The court should give the parties a reasonable opportunity to object to the use of an audio visual link or an audio link under this Division (but may, if it is convenient to do so, use the link for the purpose of hearing the objection).

10 (7) If the victim of an offence or an alleged offence, or a member of the victim's immediate family, advises the relevant prosecuting authority that he or she objects to the use by the court of an audio visual link or an audio link in a proceeding in respect of the offence, the prosecuting authority must object to the use of the link.

(8) For the purposes of subsection (7)—

15 *child*—a reference to a child is not limited to biological and adopted children but extends to a person in relation to whom another (who is not a biological parent) stands in the position, and undertakes the responsibilities, of a parent;

immediate family of a person means any 1 or more of the following:

- 20 (a) a spouse (including a putative spouse);
(b) a parent or guardian;
(c) a grandparent;
(d) a child (including an adult child);
(e) a grandchild (including an adult grandchild);
(f) a brother or sister;

25 *victim*, in relation to an offence, means—

- (a) a person who suffers physical or mental injury, damage or loss as a result of the commission of the offence;
(b) a person who suffers psychological injury as a result of being directly involved in the circumstances of the offence or in operations in the immediate aftermath of the offence to deal with its consequences.

59IR—Communication between lawyer and client

(1) This section applies where—

- 35 (a) a person who is to give evidence or make submissions (or on whose behalf submissions are to be made) is represented by a lawyer; and
(b) the lawyer and the client are physically separated—the lawyer being in the courtroom and the client in the remote location.

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- (2) Evidence or submissions are not to be taken by audio visual link or by audio link if facilities do not exist to enable private oral communication between the lawyer and the client.
- (3) The court must, at the lawyer's request, make appropriate arrangements for the private communication of a document between the lawyer and the client.
- (4) Any communication between lawyer and client is absolutely privileged.