

House of Assembly

As passed all stages and awaiting assent.

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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*.

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.

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

- (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.
- (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).
- (3) While the link is in operation the person from whom evidence or submissions are taken, and anyone else present in the place from which that person gives evidence or makes submissions, is taken to be before the court.

Any law or rule of practice relevant to contempt of the court applies accordingly.

Any law or rule of practice requiring the personal appearance of a person before the court is taken to be satisfied while the link between the court and the person remains in operation.

- (4) If—
 - (a) a defendant is in custody prior to trial and is to be dealt with by a court to which the provisions of this subsection are extended by regulation; and
 - (b) facilities exist for dealing with the proceedings by audio visual link,

the court should, subject to subsection (5) and relevant rules of court, deal with the proceedings by audio visual link and without requiring the personal attendance of the defendant.

- (5) The personal attendance of a defendant who is in custody is, however, required if—
 - (a) the proceeding is—
 - (i) the defendant's first appearance before a court in connection with the charge or charges for which the defendant is in custody; or

- (ii) a preliminary examination of an indictable offence that involves the taking of oral evidence (but this subparagraph does not prevent the use of an audio visual link for parts of the proceeding that do not involve the taking of oral evidence or for incidental proceedings such as an adjournment or an application for bail or further remand in custody that do involve the taking of oral evidence); or
 - (iii) a proceeding for which the defendant's personal attendance is required by regulation,

(but in any of the above cases, the defendant may ask the court to be allowed to use an audio visual link and, if the court agrees, the defendant need not attend personally before the court); or
 - (b) the proceeding is an investigation into the defendant's fitness to stand trial; or
 - (c) the court is of the opinion that there are good reasons in the circumstances of the particular case for requiring the defendant's personal attendance and directs accordingly; or
 - (d) there are other matters to be dealt with on the same occasion for which the defendant's personal attendance is necessary or desirable.
- (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).
- (7) In proceedings relating to an offence (other than proceedings to which subsection (4) applies), the prosecuting authority must object to the use by the court of an audio visual link or an audio link if requested to do so by—
- (a) an alleged victim of the offence; or
 - (b) if an alleged victim of the offence—
 - (i) is a child—a parent or guardian of the alleged victim; or
 - (ii) is deceased or unable to represent himself or herself because of some physical or medical condition—a member of the alleged victim's immediate family.
- (8) In subsection (7)—
- immediate family*** of an alleged victim means—
- (a) a spouse (including a putative spouse); or
 - (b) a parent or guardian; or
 - (c) a grandparent; or
 - (d) an adult child; or

- (e) an adult grandchild; or
- (f) a brother or sister;

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—
 - (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.
- (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.