



**EVIDENCE (USE OF AUDIO AND AUDIO VISUAL LINKS)  
AMENDMENT ACT 1998**

**No. 9 of 1998**

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**ELIZABETHAE II REGINAE**

**A.D. 1998**

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**No. 9 of 1998**

**An Act to amend the Evidence Act 1929.**

*[Assented to 2 April 1998]*

The Parliament of South Australia enacts as follows:

**Short title**

1. (1) This Act may be cited as the *Evidence (Use of Audio and Audio Visual Links) Amendment Act 1998*.

(2) The *Evidence Act 1929* is referred to in this Act as "the principal Act".

**Commencement**

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

**Insertion of new Part**

3. The following Part is inserted after Part 6B of the principal Act:

**PART 6C  
USE OF AUDIO AND AUDIO VISUAL LINKS**

**DIVISION 1—PRELIMINARY**

**Interpretation**

**59IA.** In this Part—

"**audio link**" means a system of two-way communication linking different places so that a person speaking at any one of the places can be heard at the other;

*Example—*

An audio link may be established by facilities such as a two-way radio or telephone.

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"**audio visual link**" means a system of two-way communication linking different places so that a person speaking at any one of the places can be seen and heard at the other;

*Example—*

An audio visual link may be established by facilities such as a closed-circuit television.

"**participating State**" means another State in which statutory provisions substantially corresponding to this Part are in force;

"**recognised court**" means a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to this Part to direct that evidence be taken or submissions made by audio, or audio visual, link from South Australia;

"**South Australian court**" means—

- (a) the Supreme Court;
- (b) the District Court;
- (c) the Magistrates Court;
- (d) the coroner (within the meaning of the *Coroners Act 1975*);
- (e) a court or tribunal prescribed by regulation to be a South Australian court for the purposes of this Part;

"**State**" includes Territory;

"**tribunal**" of a State means a person or body authorised by or under a law of the State to take evidence on oath or affirmation.

**Transitional**

**59IB.** This Part extends to proceedings whether the proceedings were commenced, or the cause of action arose, before or after the commencement of this Part.

**Application of Part**

**59IC.** This Part is in addition to, and does not derogate from, other provisions of this Act or of any other law authorising the taking of evidence, or the conduct of proceedings, outside this State.

**DIVISION 2—USE OF INTERSTATE AUDIO OR AUDIO VISUAL LINK  
IN PROCEEDINGS BEFORE SOUTH AUSTRALIAN COURTS**

**Application of this Division**

**59ID.** This Division applies to any proceeding (including a criminal proceeding) before a South Australian court.

**State courts may take evidence and submissions from outside State**

**59IE.** (1) A South Australian court may, on the application of a party to a proceeding before the court, direct that evidence be taken or submissions made by audio, or audio visual, link from a participating State.

(2) The court must not make such a direction if—

- (a) the necessary facilities are unavailable or cannot reasonably be made available; or
- (b) the court is satisfied that the evidence or submission can be more conveniently given or made in this State; or
- (c) the court is satisfied by a party opposing the making of the direction that the direction would be unfair to the party.

(3) The court may exercise in the participating State in connection with taking evidence or receiving submissions by audio, or audio visual, link any of its powers that the court is permitted, under the law of the participating State, to exercise in the participating State.

#### **Expenses**

**59IF.** If a South Australian court directs evidence to be taken, or submissions to be made, by audio, or audio visual, link from a person in a participating State, the court may make such orders as it considers just for payment of expenses incurred in connection with—

- (a) taking the evidence or making the submissions; or
- (b) providing the audio, or audio visual, link.

#### **Counsel entitled to practise**

**59IG.** A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a barrister, solicitor or both—

- (a) in relation to the examination-in-chief, cross-examination or re-examination of a witness in the participating State whose evidence is being given by audio, or audio visual, link in a proceeding before a South Australian court; and
- (b) in relation to the making of submissions by audio, or audio visual, link from the participating State in a proceeding before a South Australian court.

### **DIVISION 3—USE OF INTERSTATE AUDIO OR AUDIO VISUAL LINK IN PROCEEDINGS IN PARTICIPATING STATES**

#### **Application of Division**

**59IH.** This Division applies to any proceeding (including a criminal proceeding) before a recognised court.

#### **Recognised courts may take evidence or receive submissions from persons in South Australia**

**59II.** A recognised court may, for the purposes of a proceeding before it, take evidence or receive submissions by audio, or audio visual, link from a person in South Australia.

**Powers of recognised courts**

**59IJ.** (1) The recognised court may, for the purposes of the proceeding, exercise in South Australia, in connection with taking evidence or receiving submissions by audio, or audio visual, link any of its powers, except its powers—

- (a) to punish for contempt; and
- (b) to enforce or execute its judgments or process.

(2) The laws of the participating State (including rules of court) that apply to the proceeding in that State also apply, by force of this subsection, to the practice and procedure of the recognised court in taking evidence or receiving submissions by audio, or audio visual, link from a person in South Australia.

(3) For the purposes of the recognised court exercising its powers, the place in South Australia where evidence is given or submissions are made is taken to be part of the court.

**Orders made by recognised court**

**59IK.** Without limiting section 59IJ, the recognised court may, by order—

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private; or
- (b) require a person to leave a place in South Australia where the giving of evidence or the making of submissions is taking place or is going to take place; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding.

**Enforcement of order**

**59IL.** (1) An order of a recognised court under this Division must be complied with.

(2) Subject to rules of court, the order may be enforced by the Supreme Court as if the order were an order of the Supreme Court.

(3) Without limiting subsection (2), a person who contravenes the order—

- (a) is taken to be in contempt of the Supreme Court; and
- (b) is punishable accordingly,

unless the person establishes that the contravention should be excused.

**Privileges, protection and immunity of participants in proceedings in courts of participating States**

**59IM.** (1) A judge or other person presiding at a proceeding before a recognised court has, in connection with evidence taken or submissions received by audio, or audio visual, link from a person in South Australia, the same privileges, protection and immunity as a judge of the Supreme Court.

(2) A person appearing as a legal practitioner in a proceeding before a recognised court has, in connection with evidence taken or submissions received by audio, or audio visual, link from a person in South Australia, the same protection and immunity as a legal practitioner has in appearing for a party in a proceeding before the Supreme Court.

(3) A person appearing as a witness in a proceeding before a recognised court by audio, or audio visual, link from South Australia has the same protection as a witness in a proceeding before the Supreme Court.

**Recognised court may administer oath in South Australia**

**59IN.** (1) A recognised court may, for the purpose of obtaining in the proceeding by audio, or audio visual, link the testimony of a person in South Australia, administer an oath or affirmation in accordance with the practice and procedure of the recognised court.

(2) Evidence given by a person on oath or affirmation so administered is, for the purposes of the law of South Australia, testimony given in a judicial proceeding.

**Assistance to recognised court**

**59IO.** An officer of a South Australian court may, at the request of a recognised court—

- (a) attend at the place in the State where evidence is to be or is being taken, or submissions are to be or are being made, in the proceeding; and
- (b) take such action as the recognised court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognised court of an oath or affirmation.

**Contempt of recognised courts**

**59IP.** (1) A person must not, in relation to proceedings in South Australia for the purpose of taking of evidence or the receiving of submissions by a recognised court by audio, or audio visual, link, engage in conduct that would, if the proceeding were before the Supreme Court, constitute—

- (a) an offence; or
- (b) a contempt of the Supreme Court.

(2) A person who contravenes subsection (1) is liable to—

- (a) if the conduct would have constituted an offence—the same penalty as if the offence had been committed in relation to proceedings before the Supreme Court; or
- (b) if the conduct would have constituted a contempt—imprisonment for 3 months.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

E. J. NEAL Governor