

Queensland



**AUDIO VISUAL AND AUDIO
LINKS AMENDMENT ACT
1999**

Act No. 65 of 1999

Queensland



AUDIO VISUAL AND AUDIO LINKS AMENDMENT ACT 1999

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Queensland



Audio Visual and Audio Links Amendment Act 1999

Act No. 65 of 1999

An Act to amend the *Evidence Act 1977*, *Criminal Code*, *Juvenile Justice Act 1992* and *Penalties and Sentences Act 1992* in relation to the use of audio visual links or audio links in court proceedings

[Assented to 6 December 1999]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Audio Visual and Audio Links Amendment Act 1999*.

Commencement

2. This Act commences on a day to be fixed by proclamation.

PART 2—AMENDMENT OF EVIDENCE ACT 1977

Act amended in pt 2

3. This part amends the *Evidence Act 1977*.

Insertion of new pt 3A

4. After section 39—

insert—

‘PART 3A—AUDIO VISUAL LINKS AND AUDIO LINKS

‘Division 1—Preliminary

‘Purposes of pt 3A

‘39A. The purposes of this part are—

- (a) to provide for Queensland to participate in a substantially uniform interstate scheme for the taking or receiving of evidence, and the making or receiving of submissions, from or in participating States; and
- (b) to facilitate the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings, by audio visual link or audio link.

‘Application of pt 3A

‘39B.(1) This part applies to a proceeding whether commenced before or after the commencement of this part.

‘(2) This part does not limit any law of the State that makes provision for—

- (a) the use of audio visual links or audio links; or
- (b) the taking of evidence, or the making of submissions, in or outside the State for the purpose of a proceeding in the State.

‘(3) In particular, this part does not affect a prohibition under another Act on the making of an order about the use of an audio visual link or audio link without the consent of all parties to a proceeding.

‘(4) This part does not authorise a defendant in a criminal proceeding before a Queensland court to appear before, or give evidence or make a submission to the court by audio visual link or audio link unless expressly authorised by the Criminal Code, section 594(4), the *Juvenile Justice Act 1992*, section 118A or the *Penalties and Sentences Act 1992*, section 15A.

‘Definitions for pt 3A

‘39C. In this part—

“audio link” means facilities, including telephone, that enable reasonably contemporaneous and continuous audio communication between persons at different places.

“audio visual link” means facilities, including closed-circuit television, that enable reasonably contemporaneous and continuous audio and visual communication between persons at different places.

“before”, a court, includes in a court.

“court location” means the courtroom, or other place, where the court is sitting.

“participating State” means another State in which provisions of an Act of that State in terms that substantially correspond to divisions 2 and 3 are in force.

“Queensland court” means—

- (a) the Supreme Court, the District Court or a Magistrates Court; or
- (b) a coroner; or
- (c) another court established under an Act; or
- (d) another tribunal declared under a regulation to be a court for this part.

“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 divisions 2 and 3 to direct that evidence be taken or submissions be made by audio visual link or audio link from Queensland.

“external location”, for a court, means the location, external to the court location—

- (a) in or outside Queensland or Australia from which evidence or a submission is being, is to be, or has been taken or made by audio visual link or audio link under this part; or
- (b) for the application of this part under the Criminal Code, section 594—at which an accused person is being, is to be, or has

been arraigned; or

- (c) for the application of this part under the *Juvenile Justice Act 1992*, section 118A or the *Penalties and Sentences Act 1992*, section 15A—at which an offender or a child is being, is to be, or has been sentenced.

“**tribunal**” means a body or person that may take evidence on oath.

‘Division 2—Use of interstate audio visual links or audio links in proceedings before Queensland courts

‘Application of div 2

‘39D. This division applies to any proceeding, including a criminal proceeding, before a Queensland court.

‘State courts may take evidence and submissions from outside State

‘39E.(1) The court may, on the application of a party to a proceeding before the court, direct that evidence be taken or submissions be made by audio visual link or audio link from a participating State.

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

‘Legal practitioners entitled to practice

‘39F. A person who is entitled to practise as a legal practitioner in a participating State is entitled to practise as a barrister or solicitor or both in relation to the following—

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

‘Division 3—Use of interstate audio visual links or audio links in proceedings in participating States

‘Application of div 3

‘39G. 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 Queensland

‘39H. The court may, for a proceeding before it, take evidence or receive submissions, by audio visual link or audio link, from a person in Queensland.

‘Powers of recognised courts

‘39I.(1) The court may, for the proceeding, exercise in Queensland, in connection with taking evidence or receiving submissions by audio visual link or audio link, any of its powers other than 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 to the practice and procedure of the court in taking evidence or receiving submissions by audio visual link or audio link from a person in Queensland.

‘(3) For the purposes of the court exercising its powers in Queensland, the external location in Queensland is taken to be part of the court location.

‘Orders made by recognised court

‘39J. Without limiting section 39I, the court may, by order—

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private at the external location in Queensland; and
- (b) require a person to leave the external location in Queensland; and

- (c) prohibit or restrict the publication of evidence given in the proceeding or the name of a party to, or a witness in, the proceeding.

‘Enforcement of order

‘39K.(1) An order under section 39J must be complied with.

‘(2) Subject to rules of court made under the *Supreme Court of Queensland Act 1991*, the order may be enforced by the Supreme Court as if the order were an order of that 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 before recognised court

‘39L.(1) A judge or other person presiding at or otherwise taking part in a judicial capacity in the proceeding before the court has, in connection with evidence being taken or submissions being received by audio visual link or audio link from the external location in Queensland, the same privileges, protection and immunity as a Supreme Court judge.

‘(2) A person appearing as a legal practitioner in the proceeding before the court has, in connection with evidence being taken or submissions being received by audio visual link or audio link from the external location in Queensland, the same protection and immunity as a barrister appearing before the Supreme Court.

‘(3) A person at the external location in Queensland appearing as a witness in the proceeding before the court by audio visual link or audio link has the same protection and immunity as a witness in a proceeding before the Supreme Court.

‘Recognised court may administer oath in the State

‘39M.(1) The court may administer an oath or affirmation in accordance with its practice and procedure for the purpose of obtaining the testimony of a person in Queensland by audio visual link or audio link in the proceeding.

‘(2) Evidence given on the oath or affirmation is taken to be given in a Queensland judicial proceeding for the purposes of Queensland law.

‘Assistance to recognised court

‘39N. An officer of a Queensland court may, if asked by the recognised court, do any of the following things for the proceeding—

- (a) attend at the external location in Queensland;
- (b) take the action the recognised court directs to facilitate the proceeding;
- (c) administer an oath or affirmation.

‘Contempt of recognised court

‘39O. A person must not, in connection with evidence or a submission that is to be, is being, or has been given or made at the external location in Queensland in the proceeding before the court, do any of the following things—

- (a) assault, in Queensland—
 - (i) a witness in the proceeding; or
 - (ii) a person appearing in the proceeding as a legal practitioner; or
 - (iii) an officer of a Queensland court giving assistance under section 39N;
- (b) deliberately interrupt or obstruct the court;
- (c) create or continue, or join in creating or continuing, a disturbance at the external location in Queensland;
- (d) attempt to influence improperly anyone in connection with the proceeding;

- (e) deliberately and without lawful excuse, disobey an order or direction given by the court to regulate conduct happening while evidence is being given or a submission is being made by audio visual link or audio link;
- (f) do anything in connection with the proceeding that would be a contempt of court if the thing done were done in, or in relation to, a Queensland judicial proceeding.

Maximum penalty—imprisonment for 3 months.

‘Double jeopardy

‘39P.(1) This section applies to a person who does an act or makes an omission that is an offence both—

- (a) under this part; and
- (b) under a law of a participating State.

‘(2) The person must not be prosecuted or punished under this part for the offence if the person has been prosecuted or punished under the law of the participating State for the offence.

‘Division 4—General provisions about the use of audio visual links or audio links

‘Application of div 4

‘39Q.(1) This division applies to any proceeding, including a criminal proceeding, before a Queensland court.

‘(2) This division does not limit, and is not limited by, division 2 or 3.

‘Queensland courts may take evidence and submissions from external location

‘39R.(1) Subject to any rules of the court, the court may, on the application of a party to the proceeding before the court, direct that a person appear before, or give evidence or make a submission to, the court by audio visual link or audio link from a location inside or outside Queensland,

including a location outside Australia.

‘(2) The court may, at any time, vary or revoke a direction made under this section on its own initiative or on the application of a party to the proceeding.

‘Failure of the link

‘39S. If an audio visual link or audio link fails in the proceeding, the court may adjourn the proceeding, or make another appropriate order, as if a person present at the external location were at the court location.

‘Expenses

‘39T. The court may make the orders it considers just for payment of expenses incurred in connection with taking evidence or making submissions by audio visual link or audio link.

‘External location to be considered part of Queensland court location

‘39U.(1) An external location in the proceeding before the court is taken to be part of the court location in the proceeding for all purposes relating to a Queensland law for the administration of justice.

‘(2) In this section—

“a law for the administration of justice” includes a law about any of the following—

- (a) compulsory attendance at court;
- (b) punishment for failing to attend at court;
- (c) the presence of a person at court;
- (d) evidence, including compellability to give evidence;
- (e) perjury, contempt, procedure, privileges, protection or immunities.

“law” includes any written or unwritten law, and a rule, practice or procedure of the court.

‘Witness outside Queensland—when compellable

‘39V. If the external location from which a witness giving evidence by audio visual link or audio link in the proceeding is outside Queensland, the witness is compellable to give evidence only to the extent the witness—

- (a) would be compellable to give the evidence if present in Queensland; and
- (b) would be compellable to give the evidence in court proceedings under the law of the place from which the evidence is given.

‘Administration of oaths and affirmations

‘39W. An oath or affirmation may be sworn for giving testimony by audio visual link or audio link—

- (a) over the link in a way that is as near as practicable to the way the witness could be sworn at the court location; or
- (b) by a person at the external location in accordance with the court’s direction.

‘Testimony from outside Australia other than on oath

‘39X.(1) This section applies if the external location is in a country other than Australia and an oath is not allowed under the law of the country.

‘(2) The evidence may be given otherwise than on oath under a caution or admonition that would be accepted by a court in that country for the purpose of giving evidence in the court.

‘(3) The probative value of the evidence given under subsection (2) is not diminished merely because the evidence is not given on oath.

‘(4) A person giving the evidence under subsection (2) is liable to be convicted of perjury as if the evidence were given on oath.

‘Putting documents to a person at an external location

‘39Y.(1) If in the course of examination of a person by audio visual link or audio link it is necessary to put a document to the person, the court may permit the document to be put to the person—

- (a) if the document is at the court location—by sending a copy of it to the external location in any way and the copy then put to the person; or
- (b) if the document is at the external location—by putting it to the person and then sending it to the court location in any way.

‘(2) A document put to a person under subsection (1) is admissible as evidence without proof that the transmitted copy is a true copy of the relevant document.

‘Extension of rule-making power

‘39Z. If there is a power under another Act to make rules for the court, the power includes a power to make rules, not inconsistent with this part, that are necessary or convenient for carrying out or giving effect to this part.’.

PART 3—AMENDMENT OF CRIMINAL CODE

Act amended in pt 3

5. This part amends the Criminal Code.

Amendment of s 594 (Accused person to be called upon to plead to indictment)

6. Section 594—

insert—

‘(4) The court may allow anything that must or may be done in relation to the arraignment of the accused person to be done over an audio visual link or audio link, if the prosecutor and the accused person agree to the use of the link.

‘(5) For subsection (4), anything done, for the accused person’s arraignment, over an audio visual link or audio link between the person and the court sitting in open court is taken to be done in open court.

‘(6) The provisions of the *Evidence Act 1977* relating to the use of an audio visual link or audio link in criminal proceedings apply for, and are not limited by, subsection (4).’

PART 4—AMENDMENT OF JUVENILE JUSTICE ACT 1992

Act amended in pt 4

7. This part amends the *Juvenile Justice Act 1992*.

Insertion of new s 118A

8. After section 118—

insert—

‘Audio visual link or audio link may be used to sentence

‘**118A.(1)** The court may allow anything that must or may be done in relation to the sentencing of a child to be done over an audio visual link or audio link, if the prosecutor and the child agree to the use of the link.

‘(2) The provisions of the *Evidence Act 1977* relating to the use of an audio visual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).’

PART 5—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

Act amended in pt 5

9. This part amends the *Penalties and Sentences Act 1992*.

Insertion of new s 15A

10. Part 2, after section 15—

insert—

‘Audio visual link or audio link may be used to sentence

‘15A.(1) The court may allow anything that must or may be done in relation to the sentencing of an offender to be done over an audio visual link or audio link, if the prosecutor and the offender agree to the use of the link.

‘(2) For sections 10(1) and 13(3) or (4), anything done, for an offender’s sentencing, over an audio visual link or audio link between the offender and the court sitting in open court is taken to be done in open court.¹

‘(3) The provisions of the *Evidence Act 1977* relating to the use of an audio visual link or audio link in criminal proceedings apply for, and are not limited by, subsection (1).’.

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¹ Section 10 (Court’s reasons to be stated and recorded) and 13 (Guilty plea to be taken into account)