

1999
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Courts and Tribunals (Audio Visual and
Audio Linking) Bill 1999**

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**Courts and Tribunals (Audio Visual and
Audio Linking) Bill 1999**

A BILL

FOR

**An Act to amend several Acts relating to the
procedures of courts and tribunals**

The Legislative Assembly for the Australian Capital Territory enacts as follows:

PART I—PRELIMINARY

1. Short title

5 This Act may be cited as the *Courts and Tribunals (Audio Visual and Audio Linking) Act 1999*.

2. Commencement

(1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

10 (2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

5 **PART II—AMENDMENT OF THE ADMINISTRATIVE
 APPEALS TRIBUNAL ACT**

3. Principal Act

In this Part, "Principal Act" means the *Administrative Appeals Tribunal Act 1989*.¹

10 **4. Participation by telephone etc.**

Section 34A of the Principal Act is amended by inserting "or give evidence" after "participate".

**PART III—AMENDMENT OF THE CHILDREN'S SERVICES
 ACT**

15 **5. Principal Act**

In this Part, "Principal Act" means the *Children's Services Act 1986*.²

6. Procedure of Childrens Court

20 Section 22 of the Principal Act is amended by inserting in paragraph (1) (a) " , other than section 72A," after "1930".

**PART IV—AMENDMENT OF THE COMMERCIAL
 ARBITRATION ACT**

7. Principal Act

25 In this Part, "Principal Act" means the *Commercial Arbitration Act 1986*.³

8. Insertion

After section 20 of the Principal Act the following section is inserted:

"20A. Appearance by audio visual or audio links

30 "(1) This section applies where, in relation to a proceeding or a part of a proceeding (in this section referred to as the 'relevant proceeding'), the arbitrator or umpire has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

"(2) Where this section applies a person who, in a relevant proceeding—

(a) is required or entitled to appear personally, whether as a party or as a witness; or

(b) is entitled to appear for another person;

5 may appear in that proceeding and participate or give evidence, as the case requires, in accordance with the direction.

“(3) A person who appears in a relevant proceeding in accordance with this section shall be taken to be before the arbitrator or umpire.

“(4) An arbitrator or umpire shall not give a direction referred to in subsection (1) if the arbitration agreement expresses the intention that such a
10 direction be not given.”.

PART V—AMENDMENT OF THE CORONERS ACT

9. Principal Act

In this Part, “Principal Act” means the *Coroners Act 1997*.⁴

10. Insertion

15 The Principal Act is amended by inserting after section 42 the following section in Division 1 of Part V:

“42A. Appearance by audio visual or audio links”

20 “(1) This section applies where, in relation to an inquest or inquiry, or a part of an inquest or inquiry (in this section referred to as the ‘relevant proceedings’), the Coroner has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

“(2) Where this section applies, a person who in the relevant proceedings—

25 (a) is required or entitled to appear personally, whether under section 42 or as a witness; or

(b) is entitled to appear for another person;

may appear in the relevant proceedings and participate or give evidence, as the case requires, in accordance with the direction.

30 “(3) A person who appears in relevant proceedings in accordance with this section shall be taken to be before the Coroner.”.

PART VI—AMENDMENT OF THE DISCRIMINATION ACT

11. Principal Act

In this Part, “Principal Act” means the *Discrimination Act 1991*.⁵

12. Insertion

After section 96 of the Principal Act the following section is inserted:

“96A. Appearance by audio visual or audio links

5 “(1) This section applies where, in relation to a hearing or a part of a hearing (in this section referred to as the ‘relevant hearing’), the Tribunal has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

“(2) Where this section applies a person who, in a relevant hearing—

10 (a) is required or entitled to appear personally, whether as a party or as a witness; or

(b) is entitled to appear for another person;

may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.

15 “(3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the Tribunal.”.

PART VII—AMENDMENT OF THE GUARDIANSHIP AND MANAGEMENT OF PROPERTY ACT

13. Principal Act

20 In this Part, “Principal Act” means the *Guardianship and Management of Property Act 1991*.⁶

14. Insertion

After section 36 of the Principal Act the following section is inserted:

“36A. Appearance by audio visual or audio links

25 “(1) This section applies where, in relation to an inquiry or a part of an inquiry (in this section referred to as the ‘relevant inquiry’), the Tribunal has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

“(2) Where this section applies a person who, in a relevant inquiry—

(a) is entitled to appear; or

30 (b) is entitled to appear for another person;

may appear in that inquiry and participate and, if so required, give evidence in accordance with the direction.

“(3) A person who appears in a relevant inquiry in accordance with this section shall be taken to be before the Tribunal.”.

**PART VIII—AMENDMENT OF THE JUDICIAL
COMMISSIONS ACT**

15. Principal Act

5 In this Part, “Principal Act” means the *Judicial Commissions Act 1994*.⁷

16. Insertion

After section 43 of the Principal Act the following section is inserted:

“43A. Appearance by audio visual or audio links

10 “(1) This section applies where, in relation to a hearing or a part of a hearing (in this section referred to as the ‘relevant hearing’), the Commission has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

“(2) Where this section applies a person who, in a relevant hearing—

15 (a) is required or entitled to appear personally, whether as a party or as a witness; or

(b) is entitled to appear for another person;

may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.

20 “(3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the Commission.”.

**PART IX—AMENDMENTS OF THE MAGISTRATES COURT
ACT**

17. Principal Act

In this Part, “Principal Act” means the *Magistrates Court Act 1930*.⁸

25 **18. Interpretation**

Section 5 of the Principal Act is amended by adding at the end the following subsection:

30 “(3) A reference in this Act to appearance in proceedings, whether by a party or any other person, shall be taken to include, where section 254B applies, appearance in accordance with that section.”.

19. Recording of proceedings

Section 54A of the Principal Act is amended—

(a) by omitting paragraphs (2) (a) and (b) and substituting the following paragraphs:

- 5 “(a) in proceedings concerning bail and where, in relation to proceedings or a part of proceedings, the Court has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971* that evidence be taken or a submission be made by audio visual link—by means of audio visual recording apparatus or sound recording apparatus;
- (b) in any other case—
- 10 (i) by means of sound recording apparatus; or
- (ii) if the Court so directs, by means of shorthand or any similar means.”; and
- (b) by omitting from subsection (5) “sound-recording” (wherever occurring) and substituting “recording”.

20. **Record of proceedings and transcript**

15 Section 60 of the Principal Act is amended—

- (a) by omitting from subsection (1) “sound-recording” and substituting “recording”;
- (b) by omitting from paragraph (2) (a) “sound-recording” and substituting “recording”;
- 20 (c) by omitting from paragraph (2) (b) “sound-recording” and substituting “recording”;
- (d) by omitting from subparagraphs (2) (b) (i) and (ii) “sound-recording” and substituting “recording”;
- (e) by omitting from subsection (2) “sound-recording” (last occurring) and substituting “recording”; and
- 25 (f) by adding at the end the following subsection:

“(5) In this section—

30 ‘recording apparatus’ means the recording apparatus, whether audio visual or sound, by means of which a record of depositions of witnesses has been made under subsection 54A (2).”.

21. **Insertion**

After section 72 of the Principal Act the following sections are inserted:

35 “72A. **Hearing of bail applications**

“(1) Unless the Court otherwise directs, where—

(a) a person who is in custody is required or entitled to appear, or is required to be brought, before the Court for the hearing of an application in relation to bail; and

5 (b) an audio visual link is available between the place where the Court is sitting and a place where the person is in custody;

the proceeding shall be conducted by the audio visual link.

“(2) The Court may at any time vary or revoke a direction made under subsection (1), either on its own motion or on the application of a party to the proceeding.

10 “(3) In this section—

‘audio visual link’ has the same meaning as in Part XIIAA of the *Evidence Act 1971*.

“72B. Defendant’s appearance in proceedings other than bail proceedings

15 For the purposes of sections 70 and 72, a person who is directed by warrant or order to bring a person before the Court shall ensure that, where section 254B applies, the person appears before the Court in accordance with that section.”.

22. Insertion

20 Before section 255 of the Principal Act the following section is inserted in Part XV:

“254B. Appearance by audio visual or audio links

25 “(1) This section applies where, in relation to a proceeding or a part of a proceeding (in this section referred to as the ‘relevant proceeding’), the Court has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

“(2) Where this section applies a person who, in a relevant proceeding—

(a) is required or entitled to appear personally, whether as a party or as a witness; or

30 (b) is entitled to appear for another person;

may appear in the relevant proceeding and participate or give evidence, as the case requires, in accordance with the direction.

“(3) A person who appears in a relevant proceeding in accordance with this section shall be taken to be before the Court.

35 “(4) In this section, a reference to a proceeding does not include a reference to a proceeding concerning bail.”.

23. Contempt in the face of the Court

Section 255 of the Principal Act is amended by inserting after subsection (2) the following subsection:

5 “(2A) For the purposes of this section, where a person appears in proceedings in accordance with section 254B, the acts of that person and of any other person who is visible or audible to the Court by means of audio visual or audio link (as the case requires) shall be taken to be in the face of the Court.”

24. Applications for transcripts

10 Section 255C of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “a sound-recording” and substituting “an audio visual or a sound recording”; and
- (b) by omitting from paragraph (7) (a) “a sound-recording” and substituting “an audio visual or a sound recording”.

15 **PART X—AMENDMENTS OF THE MAGISTRATES COURT (CIVIL JURISDICTION) ACT**

25. Principal Act

In this Part, “Principal Act” means the *Magistrates Court (Civil Jurisdiction) Act 1982*.⁹

20 **26. Procedure where both parties appear**

Section 184 of the Principal Act is amended by omitting “, either personally or by his or her representative,” and substituting “in accordance with section 482”.

27. Issue of summons

25 Section 187 of the Principal Act is amended by inserting after subsection (7) the following subsection:

30 “(7A) Where the court has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971* in relation to a person who is required to give evidence under a summons issued under this section, the person satisfies the requirements of the summons by appearing and giving evidence in accordance with the direction.”

28. Right of appearance

Section 482 of the Principal Act is amended by adding at the end the following subsection:

35 “(6) Where the court has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*, a person who, under this section, is

entitled to appear before the court or the Registrar on his or her own or another person's behalf, may appear, address the court or the Registrar (as the case requires) and examine and cross-examine witnesses in accordance with the direction.”.

5 **PART XI—AMENDMENTS OF THE MENTAL HEALTH
(TREATMENT AND CARE) ACT**

29. Principal Act

In this Part, “Principal Act” means the *Mental Health (Treatment and Care) Act 1994*.¹⁰

10 **30. Summons to appear in person**

Section 90 of the Principal Act is amended by inserting after paragraph (5) (c) the following paragraph:

15 “(ca) contain a statement to the effect that the party being summoned may apply to the Tribunal for a direction under subsection 85AQ (1) of the *Evidence Act 1971* enabling the party to appear by means of an audio visual link at a place where such a link is available;”.

31. Person summoned in custody

Section 91 of the Principal Act is amended by omitting “Tribunal as required.” and substituting the following:

20 “Tribunal—

- (a) where section 91A applies—in accordance with that section; or
- (b) in any other case—in person.”.

32. Insertion

After section 91 of the Principal Act the following section is inserted:

25 **“91A. Appearance by audio visual or audio links**

“(1) This section applies where, in relation to a proceeding or a part of a proceeding (in this section referred to as the ‘relevant proceeding’), the Tribunal has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

30 “(2) Where this section applies a person who, in a relevant proceeding—

- (a) is required or entitled to appear personally; or
- (b) is entitled to appear for another person;

may appear and participate in that proceeding in accordance with the direction.

“(3) A person who appears in a relevant proceeding in accordance with this section shall be taken to be before the Tribunal.”.

PART XII—AMENDMENT OF THE RESIDENTIAL TENANCIES ACT

5 **33. Principal Act**

In this Part, “Principal Act” means the *Residential Tenancies Act 1997*.¹¹

34. Insertion

After section 96 of the Principal Act the following section is inserted:

10 **“96A. Appearance by audio visual or audio links**

“(1) This section applies where, in relation to a hearing or a part of a hearing (in this section referred to as the ‘relevant hearing’), the Tribunal has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

15 “(2) Where this section applies a person who, in a relevant hearing—

- (a) is required or entitled to appear personally, whether as a party or as a witness; or
- (b) is entitled to appear for another person;

20 may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.

“(3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the Tribunal.”.

PART XIII—AMENDMENT OF THE ROYAL COMMISSIONS ACT

25 **35. Principal Act**

In this Part, “Principal Act” means the *Royal Commissions Act 1991*.¹²

36. Insertion

After section 34 of the Principal Act the following section is inserted:

30 **“34A. Appearance by audio visual or audio links**

“(1) This section applies where, in relation to a hearing or a part of a hearing (in this section referred to as the ‘relevant hearing’), a Commission has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

- “(2) Where this section applies a person who, in a relevant hearing—
- (a) is required or entitled to appear personally, whether as a party or as a witness; or
 - (b) is entitled to appear for another person;

5 may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.

“(3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the Commission.”.

PART XIV—AMENDMENT OF THE SUPREME COURT ACT

10 **37. Principal Act**

In this Part, “Principal Act” means the *Supreme Court Act 1933*.¹³

38. Insertion

After section 55 of the Principal Act the following section is inserted:

“55A. Hearing of bail applications

15 “(1) Unless the Court otherwise directs, where—

(a) a person who is in custody is required or entitled to appear, or is required to be brought, before the Court for the hearing of an application in relation to bail; and

20 (b) an audio visual link is available between the place where the Court is sitting and a place where the person is in custody;

the proceeding shall be conducted by the audio visual link.

“(2) The Court may at any time vary or revoke a direction made under subsection (1), either on its own motion or on the application of a party to the proceeding.

25 “(3) This section does not apply in relation to a person who has not attained the age of 18 years.

“(4) In this section—

‘audio visual link’ has the same meaning as in Part XIIIAA of the *Evidence Act 1971*.”.

30 **PART XV—AMENDMENTS OF THE TENANCY TRIBUNAL ACT**

39. Principal Act

In this Part, “Principal Act” means the *Tenancy Tribunal Act 1994*.¹⁴

40. Insertion

After section 27 of the Principal Act the following section is inserted:

“27A. Appearance by audio visual or audio links

5 “(1) This section applies where, in relation to a hearing or a part of a hearing (in this section referred to as the ‘relevant hearing’), the Registrar has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

“(2) Where this section applies a person who, in a relevant hearing—

- 10 (a) is required or entitled to appear personally, whether as a party or as a witness; or
(b) is entitled to appear for another person;

may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.

15 “(3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the Registrar.”.

41. Insertion

After section 43 of the Principal Act the following section is inserted:

“43A. Appearance by audio visual or audio links

20 “(1) This section applies where, in relation to a hearing or a part of a hearing (in this section referred to as the ‘relevant hearing’), the Tribunal has given a direction under subsection 85AE (1) or 85AQ (1) of the *Evidence Act 1971*.

“(2) Where this section applies a person who, in a relevant hearing—

- 25 (a) is required or entitled to appear personally, whether as a party or as a witness; or
(b) is entitled to appear for another person;

may appear in that hearing and participate or give evidence, as the case requires, in accordance with the direction.

30 “(3) A person who appears in a relevant hearing in accordance with this section shall be taken to be before the Tribunal.”.

NOTES

Principal Acts

1. *Administrative Appeals Tribunal Act 1989*. Reprinted as at 1 January 1997. See also Acts Nos. 41 and 96, 1997.
2. *Children's Services Act 1986*. Reprinted as at 24 June 1998. See also Acts Nos. 27, 54 and 67, 1998.
3. *Commercial Arbitration Act 1986*. Reprinted as at 31 January 1994.
4. *Coroners Act 1997*. Act No. 57, 1997. See also Acts No. 96, 1997; Nos. 54 and 67, 1998.
5. *Discrimination Act 1991*. Reprinted as at 31 January 1997. See also Acts Nos. 41 and 52, 1997; No. 54, 1998.
6. *Guardianship and Management of Property Act 1991*. Reprinted as at 1 June 1998. See also Act No. 54, 1998.
7. *Judicial Commissions Act 1994*. Act No. 9, 1994. See also Act No. 38, 1994; Nos. 41 and 96, 1997; Nos. 54 and 67, 1998.
8. *Magistrates Court Act 1930*. Reprinted as at 1 June 1998. See also Acts Nos. 25, 38, 54 and 67, 1998.
9. *Magistrates Court (Civil Jurisdiction) Act 1982*. Reprinted as at 1 June 1998. See also Act No. 54, 1998.
10. *Mental Health (Treatment and Care) Act 1994*. Reprinted as at 1 June 1998. See also Acts Nos. 54 and 70, 1998.
11. *Residential Tenancies Act 1997*. Act No. 84, 1997. See also Acts Nos. 96 and 122, 1997; No. 5, 1998.
12. *Royal Commissions Act 1991*. Reprinted as at 28 February 1995. See also Acts Nos. 41 and 96, 1997; Nos. 54 and 67, 1998.
13. *Supreme Court Act 1933*. Reprinted as at 30 November 1996. See also Acts Nos. 41, 58, 83 and 96, 1997; Nos. 6 and 72, 1998.
14. *Tenancy Tribunal Act 1994*. Reprinted as at 4 February 1998. See also Act No. 54, 1998.