

1999

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

COURTS AND TRIBUNALS (AUDIO VISUAL AND AUDIO LINKING) BILL 1999

EXPLANATORY MEMORANDUM

CIRCULATED BY AUTHORITY OF

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COURTS AND TRIBUNALS (AUDIO VISUAL AND AUDIO LINKING) BILL 1999

Explanatory Memorandum

Outline

The Courts and Tribunals (Audio Visual and Audio Linking) Bill 1999 amends the *Administrative Appeals Tribunal Act 1989*, *Children's Services Act 1986*, *Commercial Arbitration Act 1986*, *Coroners Act 1997*, *Discrimination Act 1991*, *Guardianship and Management of Property Act 1991*, *Judicial Commissions Act 1994*, *Magistrates Court Act 1930*, *Magistrates Court (Civil Jurisdiction) Act 1982*, *Mental Health (Treatment and Care) Act 1994*, *Residential Tenancies Act 1997*, *Royal Commissions Act 1991*, *Supreme Court Act 1933* and the *Tenancy Tribunal Act 1994* to facilitate the use by the ACT courts and tribunals of audio visual and audio link technology.

The Bill complements the provisions of the Evidence (Amendment) Bill 1999.

Financial Implications

None.

PART I - PRELIMINARY

Notes on clauses

Formal Provisions

Clauses 1 and 2 are formal provisions setting out the short title the Bill and commencement arrangements.

PART II - AMENDMENT OF THE ADMINISTRATIVE APPEALS TRIBUNAL ACT

Principal Act

Clause 3 makes clear that the Act being amended by Part II of the Bill is the *Administrative Appeals Tribunal Act 1989*.

Participation by telephone etc.

Clause 4 amends section 34A of that Act which provides that a person presiding over a conference or conducting a mediation or the Tribunal hearing a proceeding may allow a person to participate by telephone, closed circuit television or other means of communication. The amendment makes it explicit that this provision extends to the giving of evidence.

PART III AMENDMENT OF THE CHILDREN'S SERVICES ACT

Principal Act

Clause 5 makes clear that the Act being amended by Part III of the Bill is the *Children's Services Act 1986*.

Procedure of Children's Court

Clause 6 amends section 22 of that Act which provides that, in general, the procedure in the Children's Court is governed by relevant provisions of the *Magistrates Court Act 1930* and the *Magistrates Court (Civil Jurisdiction) Act 1982* and rules and regulations made pursuant to those Acts. The amendment is made to ensure that proposed **new section 72A** of the *Magistrates Court Act 1930* does not apply to proceedings in the Children's Court. Proposed **new section 72A**, which is inserted by **clause 21** of the Bill, is to the effect that persons who are in custody who are required to appear before the Magistrates Court in relation to bail proceedings are to appear by audio visual link unless the Court otherwise orders.

PART IV - AMENDMENT OF THE COMMERCIAL ARBITRATION ACT

Principal Act

Clause 7 makes clear that the Act being amended by Part IV of the Bill is the *Commercial Arbitration Act 1986*.

Insertion

Clause 8 inserts proposed **new section 20A** after section 20 of the Act.

New section 20A applies where in relation to a proceeding or part of a proceeding (referred to as the 'relevant proceeding') the arbitrator or umpire has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed **new subsection 85AE(1) or 85AQ (1)** of the *Evidence Act 1971*.

New subsection 20A(2) provides that, where this section applies, a person, in relevant proceedings, who is required or entitled to appear personally either as a

party or as a witness, or entitled to appear for another person, may appear in the relevant proceedings and participate or give evidence in those proceedings in accordance with the direction of the arbitrator or umpire.

Where this occurs, the person will be taken to be before the arbitrator or umpire, by virtue of the operation of proposed **new subsection 20A(3)**.

New subsection 20A(4) precludes an arbitrator or umpire from giving a direction referred to in proposed **new subsection 20A(1)** where the arbitration agreement expresses an intention that such a direction not be given.

PART V - AMENDMENT OF THE CORONERS ACT

Principal Act

Clause 9 makes clear that the Act being amended by Part V of the Bill is the *Coroners Act 1997*.

Insertion

Clause 10 inserts proposed **new section 42A** after section 42 of the Act.

New subsection 42A(1) provides that the new section applies where in relation to an inquest or inquiry, or part of an inquest or inquiry, (referred to as the 'relevant proceedings') the Coroner has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed **new subsection 85AE(1) or 85AQ(1)** of the *Evidence Act 1971*.

New subsection 42A(2) provides that, where this section applies, a person, in relevant proceedings, who is required or entitled to appear personally or entitled to appear for another person, may appear in the relevant proceedings and participate

and give evidence in those proceedings in accordance with the direction of the Coroner.

Where this occurs, the person will be taken to be before the Coroner, by virtue of the operation of proposed *new subsection 42A(3)*.

PART VI - AMENDMENT OF THE DISCRIMINATION ACT

Principal Act

Clause 11 makes clear that the Act being amended by Part VI of the Bill is the *Discrimination Act 1991*.

Insertion

Clause 12 inserts proposed *new section 96A* after section 96 of the Act.

New subsection 96A(1) provides that the new section applies where in relation to a hearing or a part of a hearing (referred to as the 'relevant hearing') the Tribunal has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*.

New subsection 96A(2) provides that, where this section applies, a person, in relevant hearing, who is required or entitled to appear personally either as a party or as a witness or entitled to appear for another person, may appear in the relevant hearing and participate or give evidence in the hearing in accordance with the direction of the Tribunal.

Where this occurs, the person will be taken to be before the Tribunal, by virtue of the operation of proposed *new subsection 96A(3)*.

**PART VII - AMENDMENT OF THE
GUARDIANSHIP AND MANAGEMENT OF PROPERTY ACT**

Principal Act

Clause 13 makes clear that the Act being amended by Part VII of the Bill is the *Guardianship and Management of Property Act 1991*.

Insertion

Clause 14 inserts proposed *new section 36A* after section 36 of the Act.

New subsection 36A(1) provides that the new section applies where in relation to an inquiry or a part of an inquiry (referred to as the 'relevant inquiry') the Tribunal has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*.

New subsection 36A(2) provides that, where this section applies, a person, in relevant inquiry, who is entitled to appear or entitled to appear for another person, may appear in the relevant inquiry and participate or give evidence in the inquiry in accordance with the direction of the Tribunal.

Where this occurs, the person will be taken to be before the Tribunal, by virtue of the operation of proposed *new subsection 36A(3)*.

PART VIII - AMENDMENT OF THE JUDICIAL COMMISSIONS ACT

Principal Act

Clause 15 makes clear that the Act being amended by Part VIII of the Bill is the *Judicial Commissions Act 1994*.

Insertion

Clause 16 inserts proposed *new section 43A* after section 43 of the Act.

New subsection 43A(1) provides that the new section applies where in relation to a hearing or a part of a hearing (referred to as the 'relevant hearing') the Commission has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*.

New subsection 43A(2) provides that, where this section applies, a person, in a relevant inquiry, who is required or entitled to appear either as a party or as a witness or entitled to appear for another person, may appear in the relevant hearing and participate or give evidence in the hearing in accordance with the direction of the Commission.

Where this occurs, the person will be taken to be before the Commission, by virtue of the operation of proposed *new subsection 43A(3)*.

PART IX - AMENDMENTS OF THE MAGISTRATES COURT ACT

Principal Act

Clause 17 makes clear that the Act being amended by Part IX of the Bill is the *Magistrate Court Act 1930*.

Interpretation

Clause 18 amends section 5 of the Act which is an interpretation provision. Proposed ***new subsection 5(3)*** is intended to make clear that where the Act makes reference to 'appearance in proceedings' the reference shall include an appearance in accordance with the provisions of proposed ***new section 254B*** which is inserted by **clause 22**.

Recording of proceedings

Clause 19 amends section 54A of the Act which provides for certain oral statements, referred to as 'depositions' of witnesses, to be recorded by means of sound-recording apparatus. The amendment is to the effect that if a direction has been given for evidence to be received or a submission made by audio visual link, the record which is to be made shall be made by means of either audio visual or sound recording apparatus.

Record of proceedings and transcript

Clause 20 amends section 60 of the Act which provides that a record made by sound-recording apparatus for the purposes of section 54A of the Act is evidence of the depositions recorded and may be used as evidence as to the identity of the proceedings recorded.

The amendments to section 60 are consequential on the amendment to section 54A and will enable a record made by means of audio visual recording apparatus to be similarly recognised as evidence of depositions recorded and the identity of proceedings.

Insertion

Clause 21 inserts proposed **new sections 72A** and **72B** after section 72 of the Act.

New subsection 72A(1) relates to bail proceedings and is intended to ensure that, unless the Court otherwise directs, where a person who is in custody is required to appear or be brought before the Court and audio visual link facilities are available between the place where the Court is sitting and a place where the person is in custody, the bail hearing will be conducted by audio visual link.

New subsection 72A(2) enables the Magistrates Court to vary or revoke a direction made under proposed **new subsection 72A(1)**, at any time, whether by its own motion or on the application of a party to the proceeding.

New subsection 72A(3) provides that in proposed **new section 72A**, the words 'audio visual link' have the same meaning as in new Part XIIIAA of the *Evidence Act 1971* as amended by the *Evidence (Amendment) Act 1999*.

New subsection 72B is intended to ensure that where the Court has, for the purposes of section 70 or 72 of the Act, made an order or issued a warrant for the defendant to be brought before the Court and a direction is given under the relevant provisions of the *Evidence Act* for the defendant to appear by audio or audio visual link, the person to whom the order or warrant is directed must ensure that the defendant appears in accordance with the direction to appear by audio or audio visual link.

Clause 22 inserts proposed *new section 254B* in Part XV of the Act.

New subsection 254B(1) provides that the new section applies where in relation to a proceeding (referred to as the 'relevant proceeding') the Court has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*.

New subsection 254B(2) provides that, where this section applies, a person, in relevant proceedings, who is required or entitled to appear personally or entitled to appear for another person, may appear in the relevant proceeding and participate or give evidence in accordance with the direction of the Court.

Where this occurs, the person will be taken to be before the Court, by virtue of the operation of proposed *new subsection 254B(3)*.

New subsection 254B(4) ensures that a reference to a proceeding in *new section 254B* does not include a reference to a proceeding concerning bail.

Contempt in the face of the Court

Clause 23 amends section 255 of the Act which makes it an offence for a person to engage in certain types of behaviour, such as threatening, disturbing or insulting the Court.

New subsection 255(2A) is intended to ensure that where such behaviour is engaged in by a person visible or audible to a Court in circumstances where an audio link or audio visual link is being used pursuant to a direction under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*, the person is to be taken to have committed the behaviour in the face of the court.

Applications for transcripts

Clause 24 amends section 255C of the Act which enables persons to apply for a transcript or copy of a sound recordings of proceedings. The amendment will extend the provision to apply to audio visual recordings, as well as sound recordings.

PART X - AMENDMENTS OF MAGISTRATES COURT (CIVIL JURISDICTION) ACT

Principal Act

Clause 25 makes clear that the Act being amended by Part X of the Bill is the *Magistrates Court (Civil Jurisdiction) Act 1982*.

Procedure where both parties appear

Clause 26 amends section 184 of the Act which provides that where each of the parties to proceedings appears on a date and at the time and place fixed for the hearing of the proceedings, the court shall proceed to hear and determine the proceedings. The effect of the amendment is to remove the requirement that such an appearance be either "personally" or by way of a representative and to provide that the appearance may be made pursuant to proposed *new subsection 482(6)* of the Act, which is inserted by **clause 28**.

Issue of summons

Clause 27 amends section 187 of the Act, which relates to the procedure which applies for summoning witnesses, by inserting proposed *new subsection 187(7A)*.

New subsection 187(7A) provides that, where in relation to proceedings the Court has given direction under proposed *new subsection 85AE(1)* or *85AQ(1)* of the

Evidence Act 1971, that a person shall give evidence under a summons, the person shall be taken to have satisfied the requirements of the summons by appearing and giving evidence in those proceedings in accordance with the direction.

Right of appearance

Clause 28 amends section 482 of the Act, dealing with right of appearance, by inserting a proposed ***new subsection 482(6)***.

New subsection 482(6) provides, where in relation to proceedings the Court has given a direction under proposed ***new subsection 85AE(1) or 85AQ(1)*** of the *Evidence Act 1971* that a person shall appear by means of audio link or audio visual link, a person who is required or entitled to appear personally or entitled to appear for another person, may appear in those proceedings, address the Court or Registrar (as the case may be) and examine and cross-examine witnesses in those proceedings in accordance with the direction.

PART XI - AMENDMENT OF THE MENTAL HEALTH (TREATMENT AND CARE) ACT

Principal Act

Clause 29 makes clear that the Act being amended by Part XI of the Bill is the *Mental Health (Treatment and Care) Act 1994*.

Summons to appear in person

Clause 30 amends section 90 of the Act dealing with summonses to appear in person by inserting a ***new paragraph 90(5)(ca)*** after paragraph 90(5)(c) of the Act.

New paragraph 90(5)(ca) ensures that a summons issued under this section 90 of the Act shall contain a statement enabling a party summoned to appear to apply to

the Tribunal for a direction under proposed **new subsection 85AR** of the *Evidence Act 1971* to appear by means of an audio visual link at a place where such a link is available.

Person summoned in custody

Clause 31 amends section 91 of the Act dealing with persons who are in custody and summoned to appear before a Tribunal to enable such a person to appear and attend before that Tribunal, where proposed **new section 91A** applies, by audio visual link or in any other case, in person.

Insertion

Clause 32 inserts proposed **new section 91A** after section 91 of the Act.

New subsection 91A(1) provides that the section applies where in relation to a proceeding or part of a proceeding (referred to as the 'relevant proceeding') the Tribunal has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed **new subsection 85AE(1) or 85AQ(1)** of the *Evidence Act 1971*.

New subsection 91A(2) provides that, where this section applies, a person, in a relevant proceeding, who is required or entitled to appear personally or entitled to appear for another person, may appear in the relevant proceeding and participate in that proceeding in accordance with the direction of the Tribunal.

Where this occurs, the person will be taken to be before the Tribunal, by virtue of the operation of proposed **new subsection 91A(3)**.

PART XII - AMENDMENT OF THE RESIDENTIAL TENANCIES ACT

Principal Act

Clause 33 makes clear that the Act being amended by Part XII of the Bill is the *Residential Tenancies Act 1997*.

Insertion

Clause 34 inserts proposed *new section 96A* after section 96 of the Act.

New subsection 96A(1) provides that the new section applies where in relation to a hearing or part of a hearing (referred to as the 'relevant hearing') the Tribunal has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*.

New subsection 96A(2) provides that, where this section applies, a person, in a relevant hearing, who is required or entitled to appear personally or entitled to appear for another person, may appear in the hearing and participate in that hearing in accordance with the direction of the Tribunal.

Where this occurs, the person will be taken to be before the Tribunal, by virtue of the operation of proposed *new subsection 96A(3)*.

PART XIII - AMENDMENT OF THE ROYAL COMMISSIONS ACT

Principal Act

Clause 35 makes clear that the Act being amended by Part XIII of the Bill is the *Royal Commissions Act 1991*.

Insertion

Clause 36 inserts proposed *new section 34A* after section 34 of the Act.

New subsection 34A(1) provides that the new section applies where in relation to a hearing or a part of a hearing (referred to as the 'relevant hearing') the Commission has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*.

New subsection 34A(2) provides that, where this section applies, a person, in a relevant hearing, who is required or entitled to appear either as a party or as a witness or entitled to appear for another person, may appear in the relevant hearing and participate or give evidence in the hearing in accordance with the direction of the Commission.

Where this occurs, the person will be taken to be before the Commission, by virtue of the operation of proposed *new subsection 34A(3)*.

PART XIV - AMENDMENT OF THE SUPREME COURT ACT

Principal Act

Clause 37 makes clear that the Act being amended by Part XIV of the Bill is the *Supreme Court Act 1933*.

Insertion

Clause 38 inserts proposed *new section 55A* after section 55 of the Act.

New subsection 55A(1) relates to bail proceedings and is intended to ensure that, unless the Court otherwise directs, where a person who is in custody is required to appear or be brought before the Court in a proceeding concerning bail and audio visual link facilities are available between the place where the Court is sitting and the place where the person is in custody, the bail hearing will be conducted by audio visual link.

New subsection 55A(2) enables the Supreme Court to vary or revoke a direction made under proposed *new subsection 55A(1)*, at any time, whether by its own motion or on the application of a party to the proceeding.

New subsection 55A(3) provides that proposed *new section 55A* does not apply in relation to persons who are under the age of 18.

New subsection 55A(4) provides that in proposed *new section 55A*, the words 'audio visual link' have the same meaning as in new Part XI¹AA of the *Evidence Act 1971* as amended by the *Evidence (Amendment) Act 1999*.

PART XV - AMENDMENTS OF THE TENANCY TRIBUNAL ACT

Principal Act

Clause 39 makes clear that the Act being amended by Part XV of the Bill is the *Tenancy Tribunal Act 1994*.

Insertion

Clause 40 inserts proposed *new section 27A* after section 27 of the Act.

New subsection 27A(1) provides that the new section applies where in relation to a hearing or a part of a hearing (referred to as the 'relevant hearing') the Registrar has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed *new subsection 85AE(1) or 85AQ(1)* of the *Evidence Act 1971*.

New subsection 27A(2) provides that, where this section applies, a person, in a relevant hearing, who is required or entitled to appear either as a party or as a witness or entitled to appear for another person, may appear in the relevant hearing and participate or give evidence in the hearing in accordance with the direction of the Registrar.

Where this occurs, the person will be taken to be before the Registrar, by virtue of the operation of proposed *new subsection 27A(3)*.

Insertion

Clause 41 inserts proposed *new section 43A* after section 43 of the Act.

New subsection 43A(1) provides that the new section applies where in relation to a hearing or a part of a hearing (referred to as the 'relevant hearing') the Tribunal has given a direction enabling evidence to be received, a submission to be made or a person to appear by means of audio link or audio visual link under proposed ***new subsection 85AE(1) or 85AQ(1)*** of the *Evidence Act 1971*.

New subsection 43A(2) provides that, where this section applies, a person, in a relevant hearing, who is required or entitled to appear either as a party or as a witness or entitled to appear for another person, may appear in the relevant hearing and participate or give evidence in the hearing in accordance with the direction of the Tribunal.

Where this occurs, the person will be taken to be before the Tribunal, by virtue of the operation of proposed ***new subsection 43A(3)***.