

I certify that this is a copy of the authorised version of this Act as at 18 March 2022, and that it incorporates all amendments, if any, made before and in force as at that date and any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 March 2022.

Robyn Webb
Chief Parliamentary Counsel
Dated 7 April 2022



TASMANIA

**EVIDENCE (AUDIO AND AUDIO VISUAL LINKS)
ACT 1999**

No. 9 of 1999

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**EVIDENCE (AUDIO AND AUDIO VISUAL LINKS)
ACT 1999**

No. 9 of 1999

**An Act to facilitate the taking of evidence, and the making
of submissions, by audio links and audio visual links**

[Royal Assent 30 April 1999]

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Evidence (Audio
and Audio Visual Links) Act 1999*.

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2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

3. Interpretation

In this Act –

audio link means facilities (including telephone) that enable audio communication between persons at different places;

audio visual link means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places;

participating State means another State in which provisions of a law in terms substantially corresponding to Parts 2 and 3 are in force;

recognised court means a court or tribunal of a participating State that is authorised by the provisions of a law of that State in terms substantially corresponding to Parts 2 and 3 to direct that evidence be taken or submissions made by audio link or audio visual link from Tasmania;

State includes Territory;

Tasmanian court means –

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- (a) the Supreme Court or the lower courts within the meaning of the *Magistrates Court Act 1987*; or
- (b) a tribunal prescribed by the regulations as a Tasmanian court for the purposes of this Act;

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.

4. Application of Act

- (1) This Act is not intended to exclude or limit the operation of any other law of the State or a participating State that makes provision for the taking of evidence or making of submissions –
 - (a) outside the State or participating State for the purposes of a proceeding in that State; or
 - (b) in the State or participating State for the purposes of a proceeding outside that State.
- (1A) This Act is not intended to exclude or limit the operation of any other law of the State that makes provision for the taking of evidence or making of submissions in the State for the purposes of a proceeding in the State.
- (2) Unless a contrary intention is shown, nothing in this Act limits or otherwise affects any discretion

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that a Tasmanian court or a recognised court has with respect to the conduct of a proceeding.

- (3) This Act extends to any proceeding pending in a Tasmanian court or a recognised court on the commencement of this section.
- (4) This Act, as amended by the *Justice and Related Legislation (Miscellaneous Amendments) Act 2012*, extends to any proceeding pending in a Tasmanian court on the commencement of this subsection.

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**PART 2 – USE OF AUDIO LINKS OR AUDIO VISUAL
LINKS IN PROCEEDINGS IN OR BEFORE
TASMANIAN COURTS**

5. Application of Part

This Part applies to any proceeding (including a criminal proceeding) in or before a Tasmanian court.

6. Tasmanian courts may take evidence and submissions by audio link or audio visual link

- (1) A Tasmanian court may, on the application of a party to a proceeding before the court or on its own motion, direct the use, for any purpose, of audio link or audio visual link, from a participating State, from any place outside Australia other than New Zealand, or from any place within Tasmania other than the courtroom or other place at which the court is sitting.
- (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 evidence or submissions can more conveniently be given or made in this State or in the courtroom or other place at which the court is sitting; or

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- (c) the court is satisfied by a party opposing the making of the direction that the direction would be unfair to the party.
- (3) Where evidence is given from a participating State, the court may exercise in the participating State, in connection with taking evidence or receiving submissions by audio link 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.

7. Giving evidence or making submissions by audio visual link

Evidence must not be given, and a submission must not be made, by audio visual link under this Part unless the courtroom or other place where a Tasmanian court is sitting, and the place where the evidence would be given or the submission would be made, are equipped with audio visual link facilities that enable –

- (a) persons who are at the courtroom or other place to see and hear the person giving the evidence or making the submission; and
- (b) persons who are at the place where the evidence is given or the submission is made to see and hear persons at the courtroom or other place.

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8. Giving evidence or making submissions by audio link

Evidence must not be given, and a submission must not be made, by audio link under this Part unless the courtroom or other place where a Tasmanian court is sitting, and the place where the evidence would be given or the submission would be made, are equipped with audio link facilities that enable –

- (a) persons who are at the courtroom or other place to hear the person giving the evidence or making the submission; and
- (b) persons who are at the place where the evidence is given or the submission is made to hear persons at the courtroom or other place.

9. Expenses

If a Tasmanian court directs evidence to be taken, or submissions to be made, by audio link or audio visual link from a person under this Part, the court may make such orders as it considers just for payment of expenses incurred in connection with taking the evidence or making the submissions or providing the audio link or audio visual link.

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10. Counsel entitled to practise

A person who is entitled to practise as an Australian legal practitioner in a participating State is entitled to practise as an Australian legal practitioner –

- (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 link or audio visual link in a proceeding before a Tasmanian court; and
- (b) in relation to the making of submissions by audio link or audio visual link from the participating State in a proceeding before a Tasmanian court.

10A. Failure of audio link or audio visual link

If an audio link or audio visual link being used in accordance with this Part for the purposes of a proceeding before a Tasmanian court fails during the proceeding, the court may adjourn the proceeding or make such other orders as are appropriate in the circumstances as if a person present at the place at which the audio link or audio visual link facilities are located were in the presence of the court.

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10B. Putting documents to a remote person

If in the course of examination of a person by audio link or audio visual link it is necessary to put a document to the person, the Tasmanian court may permit the document to be put to the person –

- (a) if the document is at the courtroom or other place where the court is sitting, by transmitting by any means a copy of it to the place where the person is giving evidence or making a submission and the copy so transmitted being then put to the person; or
- (b) if the document is at the place where the person is giving evidence or making a submission, by putting it to the person and then transmitting by any means a copy of it to the courtroom or other place.

10C. Premises to be considered part of court

- (1) Any place within Tasmania or outside Australia at which audio link or audio visual link facilities are being used for the purpose of a person giving evidence or making a submission in any proceeding is taken to be part of the Tasmanian court that is sitting at a courtroom or other place for the purpose of conducting the proceeding.

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- (2) Subsection (1) has effect, for example, for the purposes of the laws relating to evidence, procedure, contempt of court or perjury.
- (3) Subsection (1) also has the effect that any offence committed at the place where the person giving the evidence or making the submission is located is to be taken to have been committed at the courtroom or other place where the court is sitting for the purposes of the laws in force in Tasmania.

10D. Administration of oaths and affirmations

- (1) Subject to subsection (2), an oath to be sworn or affirmation to be made by a person giving evidence by audio link or audio visual link within Tasmania or outside Australia may be administered either –
 - (a) by means of the audio link or audio visual link, as nearly as practicable in the same way as if the person were to give evidence in the courtroom or other place where the Tasmanian court is sitting; or
 - (b) at the direction of, or on behalf of, the court at the place where the person is giving the evidence by a person authorised by the court.
- (2) A person giving evidence by audio link or audio visual link from a place outside Australia is not required to give the evidence on oath or affirmation if –

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- (a) the law in force in that country –
- (i) does not permit the person to give evidence on oath or affirmation for the purposes of the proceeding; or
 - (ii) would make it inconvenient for the person to give evidence on oath or affirmation for the purposes of the proceeding; and
- (b) the Tasmanian court is satisfied that it is appropriate for the evidence to be given otherwise than on oath or affirmation.
- (3) If evidence is given otherwise than on oath or affirmation, the Tasmanian court is to give the evidence such weight as it thinks fit in the circumstances.
- (4) Subsections (2) and (3) apply despite anything to the contrary in the *Evidence Act 2001* or any other law of this State.

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11. Application of Part

This Part applies to any proceeding (including a criminal proceeding) in or before a recognised court.

12. Recognised courts may take evidence or receive submissions from persons in Tasmania

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

13. Powers of recognised courts

- (1) The recognised court may, for the purposes of the proceeding, exercise in Tasmania, in connection with taking evidence or receiving submissions by audio link 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,

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to the practice and procedure of the recognised court in taking evidence or receiving submissions by audio link or audio visual link from a person in Tasmania.

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

14. Orders made by recognised court

Without limiting section 13, 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 Tasmania 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.

15. Enforcement of order

- (1) An order of a recognised court under section 13 or 14 must be complied with.

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- (2) Subject to any applicable rule 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.

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

- (1) A judge or other person presiding at or otherwise taking part in a proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio link or audio visual link from a person in Tasmania, the same privileges, protection and immunity as a judge of the Supreme Court.
- (2) A person appearing as an Australian legal practitioner in a proceeding of a recognised court has, in connection with evidence being taken or submissions being received by audio link or audio visual link from a person in Tasmania, the same protection and immunity as an Australian legal practitioner has in appearing for a party in a proceeding before the Supreme Court.

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- (3) A person appearing as a witness in a proceeding of a recognised court by audio link or audio visual link from Tasmania has the same protection as a witness in a proceeding in the Supreme Court.

17. Recognised court may administer oath in the State

- (1) A recognised court may, for the purpose of obtaining in the proceeding, by audio link or audio visual link, the testimony of a person in Tasmania, 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 Tasmania, testimony given on oath or affirmation in a judicial proceeding.

18. Assistance to recognised court

An officer of a Tasmanian 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 a proceeding of the recognised court; and
- (b) take such action as the recognised court directs to facilitate the proceeding; and

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- (c) assist with the administering by the recognised court of an oath or affirmation.

19. Contempt of recognised courts

A person must not, while evidence is being given or a submission is being made in Tasmania, by audio link or audio visual link, in a proceeding in a recognised court –

- (a) assault in the State any of the following:
 - (i) a person appearing in the proceeding as an Australian legal practitioner;
 - (ii) a witness in the proceeding;
 - (iii) an officer of a Tasmanian court giving assistance under section 18; or
- (b) threaten, intimidate or wilfully insult any of the following:
 - (i) a judge or other person presiding at or otherwise taking part in the proceeding;
 - (ii) an Associate Judge, Registrar, Deputy Registrar or other officer of that court who is taking part in or assisting in the proceeding;

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- (iii) a person appearing in the proceeding as an Australian legal practitioner;
 - (iv) a witness in the proceeding;
 - (v) a juror in the proceeding; or
 - (c) wilfully interrupt or obstruct the proceeding; or
 - (d) wilfully and without lawful excuse disobey an order or direction of the court.

Penalty: Fine not exceeding 10 penalty units or imprisonment for a term not exceeding 6 months.

20. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting subsection (1), provision may be made in the regulations for or with respect to the circumstances in which the taking of evidence, or making of submissions, by audio link or audio visual link under this Act may be terminated or interrupted.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

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- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 5 penalty units.

21. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Justice and Industrial Relations; and
- (b) the department responsible to the Minister for Justice and Industrial Relations in relation to the administration of this Act is the Department of Justice and Industrial Relations.

22. *The amendment effected by this section has been incorporated into the authorised version of the Magistrates Court Act 1987.*

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NOTES

The foregoing text of the *Evidence (Audio and Audio Visual Links) Act 1999* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 18 March 2022 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Evidence (Audio and Audio Visual Links) Act 1999</i>	No. 9 of 1999	30.4.1999
<i>Evidence (Audio and Audio Visual Links) Amendment Act 2001</i>	No. 58 of 2001	19.9.2001
<i>Supreme Court Amendment Act 2007</i>	No. 55 of 2007	1.3.2008
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2012</i>	No. 13 of 2012	30.5.2012
<i>Justice and Related Legislation (Miscellaneous Amendments) Act 2022</i>	No. 2 of 2022	18.3.2022

TABLE OF AMENDMENTS

Provision affected	How affected
Section 4	Amended by No. 58 of 2001, s. 4 and No. 13 of 2012, s. 27
Section 6	Amended by No. 58 of 2001, s. 6, No. 13 of 2012, s. 28 and No. 2 of 2022, Sched. 1
Section 9	Amended by No. 58 of 2001, s. 7
Section 10	Substituted by No. 66 of 2007, Sched. 1
Section 10A	Inserted by No. 58 of 2001, s. 8
Section 10B	Inserted by No. 58 of 2001, s. 8
Section 10C	Inserted by No. 13 of 2012, s. 29
Section 10D	Inserted by No. 13 of 2012, s. 29
Section 16	Amended by No. 66 of 2007, Sched. 1
Section 19	Amended by No. 55 of 2007, Sched. 1 and No. 66 of 2007,

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Provision affected	How affected
Sched. 1	
