

## EXPLANATORY MEMORANDUM

### COURTS AND TRIBUNALS (ELECTRONIC PROCESSES FACILITATION) ACT 2013

#### OVERVIEW OF THE BILL

The legislation and procedures governing the operations of courts and tribunals are largely based on the traditional practices of creating and submitting paper documentation for lodgment, authentication, transmission and service. The purpose of this Bill is to provide courts and tribunals with broad, overarching powers to carry out these processes electronically where appropriate. The Bill specifies that regulations or rules of court will have to be established to detail how a new electronic process is to be put into practice. The Bill also states that, where a document is in electronic form or a process is performed electronically, it will be afforded the same legal status as anything in paper form or carried out using a paper based process.

Amendments to the various acts governing the operation of courts and tribunals were necessary to apply the powers contained in Part 2. The Bill also makes various amendments to the *Fines, Penalties and Infringement Notices Enforcement Act 1994* to centralise and better manage the payment and enforcement of fines imposed by the courts.

In 2011-2012 the Government allocated \$10 million to the Department of the Attorney General over a three year period to further develop and expand the courts and tribunals electronic case management system. The powers in this Bill are necessary to achieve the goals of electronic case management system, namely to:

- transition court operations towards a fully electronic filing system bringing significant efficiencies and improvements along the way. By the end of 2013 it is planned that prosecution notices and bail undertakings will become electronic. These will be the first court forms to become electronic and will save the magistrates and children's courts from handling over 170,000 paper documents each year;
- improve case management, both within courts and across the justice system, by electronically transmitting and receiving information and documents in a timely and efficient manner;
- transmit hearing outcomes electronically enabling consistent reporting and improved decision-making by justice agencies; and
- remove court registries from the fine management process and centralise those responsibilities to the Fines Enforcement Registry (FER). Under the planned expansion of the electronic case management system, fines imposed by the courts will be immediately transmitted to FER for management and enforcement. Options to pay fines by electronic means such as Direct Debit, Centrepay, and BPAY will also be introduced. These enhancements will result in improvements in fine management (particularly where offenders have multiple fines), customer service and revenue collection.

This Bill acknowledges the increasing importance and use of electronic communication within the community, and will engender confidence in the courts' ability to modernise and streamline its procedures for the benefit of all participants across the justice system.

## NOTES ON CLAUSES

### Part 1 - Preliminary

#### Clause 1. Short title

Clause 1 provides that the Bill, once enacted, will be known as the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*.

#### Clause 2. Commencement

This clause provides for the commencement of the Act.

Part 1 comes into operation on the day on which the Act receives Royal Assent. The rest of the Act will come into effect on a day fixed by proclamation with the ability to nominate different dates for the various provisions contained within the Act.

#### Clause 3. Crown Bound

This clause provides that the Act is binding on the State and on the Crown insofar as State law permits.

### Part 2 – Provisions facilitating electronic processes in court proceedings and certain other proceedings

#### Clause 4. Purpose of this Part

This clause states that the purpose of Part 2, namely to provide for the use of electronic technology in relation to court and tribunal proceedings and the records thereof.

This accords with the main objective of the Act – to facilitate courts and tribunals using electronic forms or processes wherever valid and viable. This is expected to deliver benefits and efficiencies across the justice system by simplifying, modernising and expediting the court process.

#### Clause 5. Terms Used

This clause contains definitions of the terms used in Part 2.

#### Clause 6. Application of this Part

Subclause (1) specifically lists the Acts to which Part 2 applies, so that the application of the provisions facilitating electronic processes in court and tribunal proceedings is limited to those Acts approved by Parliament. It was considered inappropriate to add Acts by subsidiary legislation.

Subclause (2) makes provision for Part 2 to also apply to other legislation as outlined in clauses 20(1) and 20(2).

## **Clause 7. Where writing required or authorised**

Subclauses (1) and (2) provide powers to the courts that, where a matter or thing is required or permitted to be in writing, it is valid to do so electronically in accordance with any regulations or rules of court.

*Where written forms or documents are presently used by the courts and where written orders and notations are made on court records, this clause will enable those forms or records to be electronic (as specified in regulations or rules of court). This will meet the aims of the courts and tribunals to transition towards keeping electronic files for all its matters.*

## **Clause 8. Lodging documents**

Subclauses (1) and (2) provide that if a document is required or permitted to be lodged with a court or tribunal in writing, it can be lodged electronically.

Subclauses (3) and (4) provide that if an original or certified document is required or permitted to be lodged with a court or tribunal, it can be lodged electronically.

All lodgments must be in accordance with any regulations or rules of court.

*The electronic lodgment of court documents will allow parties to transmit and lodge electronic documents from their offices saving time and resources.*

## **Clause 9. Keeping records**

Subclauses (1) and (2) provide that if a document or record is required or permitted to be kept or maintained in written form, or a record made in written form, it can be kept, maintained or made in electronic form.

*These provisions will enable the courts to keep the official records of the court in electronic form where practicable and appropriate. This will result in storage benefit, and enhanced access and retrieval efficiencies.*

## **Clause 10. Signatures, seals and certificates**

Subclauses (1) and (2) provide that if a document is required or permitted to be signed, certified or sealed by any person, it can also be signed, certified or sealed electronically by an electronic process authenticated in regulations or rules of court.

Subclause (3) provides that where legislation provides that a document is evidence or may be tendered in evidence, without proof of a signature, certificate or seal, that shall also equally apply to a document that is authenticated electronically.

Subclause (4) provides that where legislation provides that a signature on a document is presumed to be that of the person who issued it or where judicial notice is to be taken of a person's signature, then the same presumption or judicial notice applies to any document authenticated by electronic means.

Reference to judicial notice of signatures is added to cover provisions such as section 47 of the *Criminal Law (Mentally Impaired Accused) Act 1996*.

*'Authentication' carries its normal meaning of confirming something is authentic but in the context of using an electronic process to do so. For example, when lodging a document*

*electronically, an authentication process will be needed to replicate the requirements for signatures, the use of seals and the issuing of receipts. All such processes will be detailed in rules of court or regulations.*

*Authentications by electronic means will be essential for electronic lodgments and will promote the electronic transmission of documents to and from the Courts.*

**Clause 11. Endorsing, recording or attaching information or documents**

Subclauses (1) and (2) provide that if any type of information is required or permitted to be endorsed, recorded on or attached to a document, in the case of an electronic document it is sufficient to electronically incorporate or associate that information with the document in accordance with any regulations or rules of court.

*Often documents in the court process need to be endorsed, a record made upon them or things attached. By shifting to the use of electronic documents it will become necessary to electronically incorporate or associate such 'endorsements' and 'attachments'.*

**Clause 12. Giving or obtaining information, documents and records**

Subclauses (1) and (2) provide that if any information, document or record (or a copy thereof) is required or permitted to be given to or obtained by a person in written form, it may be done so in electronic form in accordance with any regulations or rules of court.

Subclause (3) provides an example of (1) – where a provision requires a person be sent a copy of a document, the rules of court may provide for that person to be able to access the document on a computer system.

*The electronic transmission of information or a document to others will increase efficiency given the speed with which that can be done. For example, under section 10(1)(c) of the Restraining Orders Act 1997, the police copy of a restraining order will be able to be sent electronically under this clause. It would also enable the police to access the computer system on which the order was stored and retrieve a copy.*

Subclause (4) does not allow any information, document or record (or copy thereof) to be given or obtained in electronic form where the relevant provision requires it to be personally served on or personally given to a person.

*An example of how subclause (4) would operate is section 10(4)(a) of the Restraining Orders Act 1997 which requires personal service of a police order, while other provisions merely require service. This subclause would exclude electronic service in that case.*

Subclause (5) clarifies that a court or tribunal retains its power to make orders to specify how any documents are to be given to any person.

**Clause 13. Original documents**

Where current laws require or permit the original of a document to be given to a person, subclauses (1) and (2) allow a copy produced from the electronic version of the document to be provided instead (in accordance with any regulations or rules of court).

Subclause (3) provides a general example of how subclause (1) could work.

*The use of an original document is no longer relevant in the electronic domain so a copy produced from the electronic version will have to be used.*

**Clause 14. Address for Service**

Subclauses (1) – (3) provide that a person may give an electronic address, such as an email address, for the service and receipt of court documentation (in accordance with any regulations or rules of court).

*This brings the procedure for the service of documents into alignment with modern practices but excludes the service of documents where “personal” service is required.*

**Clause 15. Approving forms and other documents**

Subclause (a) provides that, where a legislative provision specifies that a form or document must be approved, then that provision authorises the means of both completing the form or document in a hard copy format and the means of completing the same form or document electronically.

Subclause (b) provides that it is not necessary for the printed and electronic versions of the form or document to be identical in content and layout, as long as they produce the same effect upon completion.

*This gives approved on-line forms or documents the same status as approved hardcopy forms and negates any argument that the printed form and the electronic form must be identical. For example, an electronic form may have drop-down boxes from which material can be selected instead of manually writing information on to a form. Provided an electronic form is to the same effect as the printed version, then it satisfies all requirements and furthermore allows information to be transmitted and stored on the court’s electronic case management system. The court will prescribe the situations where this electronic format may be used.*

**Clause 16. Prescribing forms and other documents**

Subclause (a) provides that where a provision authorises that a form or document must be prescribed, then the provision authorises the prescribing of both the printed form or document and the means of completing it electronically

Subclause (b) provides that it is not necessary for the printed and electronic versions to be identical in content and layout, as long as they are to the same effect when completed.

*This gives prescribed on-line forms or documents the same status as prescribed hardcopy forms and negates any argument that the printed form and the electronic form must be identical. For example, an electronic form may have drop-down boxes from which material can be selected instead of manually writing information on to a form. Provided an electronic form is to the same effect as the printed version, then it satisfies all requirements and furthermore allows information to be transmitted and stored on the court’s electronic case management system. The court will prescribe the situations where this electronic format may be used.*

### **Clause 17. Production of records kept electronically**

Subclause (1) provides that this section applies where a person holding information in an electronic format is required to produce that information to another party (whether a court, tribunal or a person), or make it available to them.

Subclause (2) provides that where subclause 1 applies the person must produce a document that contains the information in a format that the other party can readily understand, and that will then satisfy the requirement.

*As the level of computer literacy varies markedly throughout the community, this simply ensures that where a document or information must be produced and that document or information is stored electronically, then it will have to be produced in a format that will be readily understood by the intended recipient.*

### **Clause 18. Status and effect of things done electronically or in electronic form**

Subclause (1) provides that where something is done electronically, it has the same effect as if it were done using a paper document.

Subclause (2) provides that where something is in electronic form, it has the same effect as if it were in paper form.

Subclause (3) provides that, without limiting (1) and (2) a document:

- authenticated under section 10(1) or (2) has the same effect as a document that has been duly signed, certified or sealed; and
- a copy of a document produced from an electronic version of the document in accordance with section 13(1) or 13(2) has the same effect as if it were an original document.

*This clause essentially confirms that anything done electronically or in electronic form has the same legal status as anything done manually or in paper form. An electronic authentication under section 10 has the same effect as a written signature, certification or a seal made on a paper document. Likewise, a copy of a document produced from the electronic version equates to having an original version of a document.*

### **Clause 19. Relationship with other laws relating to electronic processes**

Subclause (1) provides that Part 2 operates in addition to the provisions of the *Electronic Transactions Act 2011* and any other laws that allow for the use of electronic processes for the purposes of an Act to which this Part applies.

Subclause (2) provides that even if this Part does not apply to an Act, it does not mean that Act may not authorise or permit the use of electronic processes for its own purposes.

Subclause (3) provides that nothing in Part 2 limits the operation of the *Freedom of Information Act 1992*, section 76 of the *Interpretation Act 1984* and the *State Records Act 2000*.

*This clause clarifies that the operation of Part 2 in no way restricts or affects the operation of any other written laws that currently allow or have the potential to allow for the use of electronic processes, but is in addition to what is already available.*

**Clause 20. Power to make regulations and rules of court extended**

Subclause (1) provides that where any regulations or rules of court are able to be made for the purposes of an Act to which this Part applies, that also includes a general power to make regulation or rules of court for the purposes of this Part.

*This extends the regulation and rule making powers under any Act to which this Part applies to also make regulations and rules for the purpose of this Part.*

Subclause (2) provides that where an Act to which this Part applies provides rule and regulation making powers in relation to a different Act to which this Part does not apply, that power is also construed to make regulation or rules of court for the purposes of this Part.

*In some instances the ability exists to make regulations and rules of court to other legislation not impacted by this Part. This subclause extends the regulation and rule making powers on the electronic processes specified in this Part to that legislation.*

Subclause (3) provides that (1) includes the power to make regulations or rules of court regarding the use of electronic technology in particular circumstances, even though none are required regarding the use of written documents or records in similar circumstances.

*Subclause (3) provides for the making of rules specific to the use of electronic technology even though none presently exist for using a paper based process.*

Subclause (4) provides that the power conferred in (1) allowing for documents to be provided to a person in electronic form, also includes the power to determine when such an electronic document has been received by or brought to the attention of the person.

*Subclause (4) provides the power to make rules of court or regulations associated with the time of the receipt of electronic documentation.*

**Part 3 – Amendments to other Acts**

**DIVISION 1 — *Bail Act 1982* amended**

**Clause 21. Act amended**

This clause provides that the amendments in this Division relate to the *Bail Act 1982*.

**Clause 22. Section 3 amended**

In section 3(1) the definitions of *electronic address* and *electronic communication* are deleted as the definitions and provisions contained in the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* will now apply.

**Clause 23. Section 3A deleted**

This section (sending notices by electronic communication) is deleted to allow for a broader use of electronic mechanisms under the operation of Part 2.

**Clause 24. Section 4AB inserted**

This clause specifies that the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* will apply to the *Bail Act 1982*.

**Clause 25. Section 13B amended**

Where bail is dispensed with, written notice of the time and place of the next appearance may now, as one option, be provided to the accused by electronic means, where previously that option was to 'send' it by electronic communication. The use of the word 'provide' thus broadens the ability of the court to deliver bail notices by electronic processes in accordance with Part 2.

The presumption that a notice is received at the time it would normally be expected to be delivered is extended to electronic notices.

**Clause 26. Section 27 amended**

The section required bail or surety papers to be sent to the court where the accused is to next appear. Removing the word 'send' and replacing it with 'made available' means such papers can be transmitted electronically, but also, the papers will be available in the electronic case management system, for the relevant court to access and view, as soon as the details are entered.

**Clause 27. Section 32 amended**

Section 32 details the manner in which notice of a different time and place of appearance shall be sent to an accused. The notice can now be 'provided' to the accused by electronic means in accordance with the regulations thereby enabling the court to use the electronic technology options under Part 2. 'Provide' is also added to section 32(2) to reflect that notifications can be effected by electronic means.

**Clause 28. Section 37 amended**

Section 37 relates to the provision of information and forms to proposed sureties, and section 37(3) in particular relates to the provision of such information by electronic means. It is deleted as it will be superseded by the electronic provisions under Part 2.

**Clause 29. Section 43A amended**

This section deals with the provision of information and forms, and their return, to proposed sureties who are interstate and are entering into a surety undertaking by video link. The amendments allow for the process to be carried out by electronic means in accordance with Regulations made under the powers of Part 2.

Section 43A(10) relating to the sending of a surety undertaking by electronic means is deleted as it is superseded by the provisions contained in Part 2.

**Clause 30. Section 45 amended**

Section 45 details the manner in which notice of the extension of surety to a different time and place shall be sent to the surety. Section 45(1)(c) is updated with an insertion specifying that notices can be sent electronically in urgent matters or with the consent of the accused in accordance with the regulations.

**Clause 31. Section 67 amended**

Section 67 gives the Governor the power to make regulations with respect to this Act. In relation to any regulations made concerning the provision of information and material in electronic form, section 67(2)(ba) is inserted to add the power to determine when that information or document has been received or brought to the attention of the recipient.

**DIVISION 2 — *Children’s Court of Western Australia Act 1988* amended**

**Clause 32. Act amended**

This clause provides that the amendments in this Division are to the *Children’s Court of Western Australia Act 1988*.

**Clause 33. Section 5A inserted**

Section 5A specifies that Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* applies to the operations of this Act.

The provisions of Part 2 now apply to court processes in the Children’s Court, permitting the use of electronic means for those processes in accordance with any regulations or rules of court.

**DIVISION 3 — *Civil Judgments Enforcement Act 2004* amended**

**Clause 34. Act amended**

This clause provides that the amendments in this Division are to the *Civil Judgments Enforcement Act 2004*.

**Clause 35. Section 6A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to this Act.

The provisions of Part 2 now apply to court processes in the *Civil Judgments Enforcement Act 2004*, permitting the use of electronic means for those processes in accordance with any regulations or rules of court.

**DIVISION 4 — *Criminal and Found Property Disposal Act 2006* amended**

**Clause 36. Act amended**

This clause provides that the amendments in this Division are to the *Criminal and Found Property Disposal Act 2006*.

**Clause 37. Section 11 amended**

The amendment relates to an application for the release of seized property, and adds the requirement that the application and its service on the chief officer must be in accordance with the rules of court.

**Clause 38. Section 13 amended**

In relation to an application under section 11, the amendment adds the requirement that the service of the application be in accordance with the rules of court.

**Clause 39. Section 30 amended**

Where an agency is in possession of property and makes an application to the relevant court, the court may order the agency to serve a copy of its application on any interested party. That is amended to require service to be in accordance with the rules of court.

**DIVISION 5 — *Criminal Appeals Act 2004* amended**

**Clause 40. Act amended**

This clause provides that the amendments in this Division are to the *Criminal Appeals Act 2004*.

**Clause 41. Section 4A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*.

**DIVISION 6 — *Criminal Injuries Compensation Act 2003* amended**

**Clause 42. Act amended**

This clause provides that the amendments in this Division are to the *Criminal Injuries Compensation Act 2003*.

**Clause 43. Section 8A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*.

**DIVISION 7 — *Criminal Law (Mentally Impaired Accused) Act 1996* amended**

**Clause 44. Act amended**

This clause provides that the amendments in this Division are to the *Criminal Law (Mentally Impaired Accused) Act 1996*.

**Clause 45. Section 5AA inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*.

**DIVISION 8 — *Criminal Procedure Act 2004* amended**

**Clause 46. Act amended**

This clause provides that the amendments in this Division relate to the *Criminal Procedure Act 2004*.

**Clause 47. Section 3 amended**

This clause adds a new definition to the definition section of the Act: “authenticate”. The use of electronic forms and processes will require an authentication process that must be detailed in rules of court or regulations.

The definition of “charge” is amended to delete “written” to indicate that an allegation may be made in electronic form.

**Clause 48. Section 4A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013*.

**Clause 49. Section 34 amended**

Section 34(2) requires that where service of a summons or court hearing notice is not served before the date specified for attendance then a prescribed court officer may amend the summons. Currently that amendment must be initialled. The amendment removes the requirement for initialling as, under an electronic process, that requirement will be obsolete.

**Clause 50. Section 45 amended**

Section 45(6) is amended to add “or authenticates” to recognise that a certificate can also be knowingly or without reasonable diligence authenticated by electronic means.

**Clause 51. Section 139 amended**

When the court issues an order for the appearance of an accused held in custody, the amendment stipulates the order should now be made under s85 of the *Prisons Act 1981* as sections 21 and 22 of the *Prisons Act 1981* have previously been deleted.

**Clause 52. Section 172 amended**

This clause removes the reference to “articled clerk” in section 172(3)(b) to be consistent with the provisions of the *Legal Profession Act 2008*. The latter Act takes cognisance of the fact that articles are no longer the only form of practical legal training: the training requirement for admission to the Bar is now defined to include the completion of a course approved by the Legal Practice Board.

This anomaly was brought to the attention of the Attorney General who directed Parliamentary Counsel to draft an amendment to remedy this anomaly and for inclusion in a Bill containing amendments to the *Criminal Procedure Act 2004*.

**Clause 53. Section 173 replaced**

In relation to the penalty provisions associated with the unauthorised signing or lodgment of court documents, the amendment adds unauthorised authentications into the provisions to take electronic processes into account.

**Clause 54. Section 186 amended**

This adds to the regulations the Governor may make by including prescribing the requirements for the lodging of documents with a court either under this Act or another law.

**DIVISION 9 — *Dangerous Sexual Offenders Act 2006* amended**

**Clause 55. Act amended**

This clause provides that the amendments in this Division relate to the *Dangerous Sexual Offenders Act 2006*.

**Clause 56. Section 8A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Dangerous Sexual Offenders Act 2006*.

**DIVISION 10 — *District Court of Western Australia Act 1969* amended**

**Clause 57. Act amended**

This clause provides that the amendments in this Division relate to the *District Court of Western Australia Act 1969*.

**Clause 58. Section 5A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *District Court of Western Australia Act 1969*.

**DIVISION 11 — *Evidence Act 1906* amended**

**Clause 59. Act amended**

This clause provides that the amendments in this Division relate to the *Evidence Act 1906*.

**Clause 60. Section 5A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Evidence Act 1906*.

**Clause 61. Section 12 amended**

Sections 11 and 12 relate to the power of the court to compel answers to questions in court proceedings notwithstanding the answers may be self incriminating. Where the witness gives evidence to the satisfaction of the judge, the judge may give a certificate to that effect, and in circumstances to which section 11 applies those answers are inadmissible in future proceedings. In section 12 matters, the certificate may be pleaded in bar to prosecution. The exception in both cases is where the proceedings are in respect to a charge of perjury.

In relation to the certificate, section 11 refers to the judge giving such certificate; section 12 refers to the judge providing a certificate “in writing under his hand”. This language is somewhat outdated. The amendment to section 12 to delete the words “in writing under his hand” aligns section 12 with section 11.

**Clause 62. Section 51 amended**

Similarly, section 51 provides for a judge, the Sheriff or the Chief Executive Officer of the Department of Corrective Services to authorise a prisoner held in custody to be brought to the court to attend proceedings in relation to his matter. The section provides that that authorisation shall be in the form of an order made “under his hand”. This clause replaces that outdated expression with “signed by him or her”.

**Clause 63. Section 54 amended**

The amendment to this section is made so that, for consistency, all references in the Act to the “impression” of a seal are complemented by references to the “image” of a seal. Section 73Q already refers to the “image” of a seal in the context of reproductions of documents.

**Clause 64. Section 55 amended**

Similarly, section 55 which applies to judicial notice of seals on original documents is amended to include reference to “image” in addition to “impression.” This achieves consistency but also more aptly covers the situation where a court is viewing an original document in electronic form in which case the seal would be more properly described as an image.

**Clause 65. Section 56 amended**

This section refers to judicial notice of seals and signatures purporting to be attached or appended to judicial or official documents. This amendment ensures that the section covers documents in electronic form and aligns the section with section 55, as amended.

**Clause 66. Section 67 amended**

Section 67 provides for certain documents to be admissible in evidence where the document “...purports to be certified or sealed, or impressed with a stamp, or sealed and signed or signed alone, or impressed with a stamp and signed as directed by the Act pursuant to which the document is produced. This clause amends section 67 to include an image of a seal, stamp or signature to reflect what would be effected on an electronic document.

**Clause 67. Section 68 amended**

As with clauses 59 and 60 this clause amends section 68 to replace the expression “under the hand of” with “and signed by.”

**Clause 68. Section 73B amended**

Section 73B is amended to remove the reference to “pre-paid post” which is outdated and adds nothing to the section.

**Clause 69. Section 73BA inserted**

In the future most official records of courts will be in electronic form stored in the courts and tribunals case management system. This new section caters for authenticated copies of court records in electronic form to be admissible in evidence without proof.

**Clause 70. Sections 82 to 88 deleted**

Sections 82 to 88 deal with the admission into evidence of telegraph messages in civil proceedings. This form of communication is no longer used and therefore these sections are deleted.

**Clause 71. Section 109 amended**

Section 109 defines several terms used in sections 110 to 114. The definition of “examination” includes reference to a “letter of request”. Clause 71 deletes the reference to “letter of” so a request can be made in any format.

**Clause 72. Section 110 amended**

Consistent with the amendment to section 109, the term “letter of” is deleted from section 110.

**Clause 73. Section 133 inserted**

There is currently no general power in the *Evidence Act 1906* to make regulations or rules of court for the purposes of this Act.

Section 133 is inserted to enable subsidiary legislation to be enacted as required to apply the powers under Part 2 of the *Courts and Tribunals (Electronic Processes) Act 2013*.

**DIVISION 12 — *Fines Penalties and Infringement Notices Enforcement Act 1994* amended**

**Clause 74. Act amended**

This clause provides that the amendments in this Division relate to the *Fines Penalties and Infringement Notices Enforcement Act 1994*.

**Clause 75. Section 5A amended**

Section 5A provides for service of a document or notice by fax or email with the consent of the person to be served. Clause 75 amends the section by replacing the specified electronic modes with a general provision “electronic means in accordance with the regulations” to allow for the provision to accommodate future technology.

This clause removes the existing constraint for service by electronic means on a notice of final demand under section 14(2), a certificate or information under section 16 and a notice of withdrawal under section 22(2). However service by electronic means will not be able to be effected for a certificate for information under section 16 or for anything in the Act requiring personal service other than an order to attend for work and development under s 47 or 47A or a work and development order.

**Clause 76. Section 5B inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Fines Penalties and Infringement Notices Enforcement Act 1994*. Excluded from the provisions allowing for service by electronic means is any document as prescribed in section 5A(2).

**Clause 77. Section 10B inserted**

The insertion of this new section is one of the amendments required to give effect to a new process in respect to the management of fines.

Currently, when a court fine is imposed, all courts are required to manage the process for the first 28 days. Thereafter, if the fine is not paid nor a time-to-pay arrangement entered into the management of the fine is transferred to the Fines Enforcement Registry (FER).

There have been ongoing complaints by the public that the fines recovery system is confusing. For example, where an offender has multiple fines across several jurisdictions, any arrangement for time to pay must be entered into at the registry of the Court where the fine was imposed. It is not uncommon for an offender to have fines imposed in different locations with numerous time to pay arrangements with different payment amounts over different periods.

With the implementation of the new process, responsibility for the management of all fines is to be vested in FER from the outset. The fine payment period of 28 days and time-to-pay options will be retained. The only change proposed is that when a fine is imposed by a court the management of all subsequent processes that govern the recovery of the monies will reside with FER instead of the current two-step process. Thus, in the example given above, where an offender has multiple fines across jurisdictions, these will be managed centrally by FER and one arrangement established when a time-to-pay application is granted.

Under the provisions of the *Young Offenders Act 1994*, a young person is not liable to pay a fine imposed by the court until they have attained the age of 18 years. The enforcement of unpaid fines and forfeited bail undertakings comes within the provisions of the *Fines Penalties and Infringement Notices Enforcement Act 1994*. This process is the same that applies to adults.

Under the new process, in regards to young persons over the age of 18 at sentencing, the fine will automatically be referred to FER for management and enforcement. Where the person is under the age of 18 at sentencing, the fine will be managed by FER from the outset, and if the young person defaults, FER will refer the matter to the Children's Court for enforcement.

The new section 10B gives effect to the new process in respect to young persons under the age of 18 years when the sentence of a fine is imposed, a bail undertaking or recognisance forfeited: the matter will automatically come under the management of FER unless there is default in which case jurisdiction for enforcement procedures remains with the Children's Court of Western Australia.

**Clause 78. Section 27B amended**

Presently, no application for time to pay can be accepted subsequent to registration of the fine with FER. This amendment removes that restriction on an application for time to pay so that it will now be possible for a time to pay application subsequent to registration with FER.

**Clause 79. Section 28 amended**

The definition of time to pay order is amended to remove the reference to "court officer" to make it clear that, although the Registrar of FER may delegate power to a court officer, the management of the fine is vested with FER.

**Clause 80. Part 4 Division 2 Subdivision 1 heading amended**

Similarly, this amendment is to remove the reference to “court officers” and replace that term with “Registrar”.

**Clause 81. Section 32 replaced**

The present section 32 prescribes the pre-conditions that must be satisfied before a court officer may register a fine with the FER. Under the new process this section is obsolete because fines will be registered with the FER from the outset. Instead, it is replaced by a new section which prescribes the actions that may be taken by the Registrar of the FER to effectively manage the registration payment process.

Section 32(5) provides the transitional arrangements where fines managed by the courts will be transferred to the FER upon these amendments coming into operation. There will be an immediate transfer and all arrangements in respect to payment and the 28 day period of grace will be preserved.

**Clause 82. Section 33 amended**

Section 33 relates to the application and making of time to pay orders. The reference to “court officer” is replaced with “Registrar” as the FER will be responsible for this process.

The existing section 33(2) is deleted and replaced with a new section specifying that a time to pay order cannot be made until 28 days from when the fine was imposed.

**Clause 83. Section 34 amended**

Section 34 deals with applications to amend a time to pay order. References to “court officers” are replaced with “Registrar” as the FER will be assuming responsibility for this process.

**Clause 84. Section 35 amended**

Section 35 presently provides that a court officer may at any time request an offender who has obtained a time to pay order in respect to a fine to undergo a means test. That request cannot be made if the fine has been registered or paid. This amendment deletes the reference to “registered” as under the new process it will be registered immediately.

The heading to section 35 is amended to replace “court officer” with “Registrar”.

**Clause 85. Section 35A amended**

The amendment to section 35A is to replace the reference to “court officer” with “Registrar”.

**Clause 86. Sections 36 and 37 replaced**

These two sections presently 1) allow a court officer to cancel a time to pay order; and 2) specify that the decisions made by a court officer concerning the payment of fines is final. They are substituted with new sections whereby:

- the Registrar may cancel a time to pay order and take action as authorised under the Act.

- a decision of the Registrar pertaining to the payment of fines is final.

**Clause 87. Part 4 Division 2 Subdivision 2 heading amended**

The heading is amended to remove the reference to “court officers”.

**Clause 88. Section 41 amended**

Under sub section 41(2) a court officer is to notify the FER where payments have been made after a fine is registered. Subsection 41(6) specifies that, although the registration of a fine is cancelled, a court officer may re-register the fine if appropriate. Under the new fines management system these provisions have no application and are therefore deleted.

**Clause 89. Section 48A replaced**

Section 48A is replaced to give the Registrar the ability to cancel an order to attend for work and development and suspend a licence without having issued a Notice of Intention to Enforce in compliance with Section 42.

**Clause 90. Section 53A amended**

This Clause allows the Registrar to make a licence suspension order after a cancelled WDO. The amendment in this Act allows the Registrar to suspend a licence even if section 42 has not been complied with.

**Clause 91. Section 55B amended**

Under the existing system no application for time to pay can be accepted subsequent to registration of a fine with FER. This amendment removes the restriction so, under the new system, a time to pay application can be made subsequent to registration.

**Clause 92. Section 56B amended**

This clause is amending the ‘outstanding fines’ definition to exclude court fines on time-to-pay under Section 33 of the *Fines, Penalties and Infringement Notices Enforcement Act 1995*.

The section deals with the publication of outstanding registered fines, matters on an on time-to-pay and stay of execution arrangement are excluded from publication.

**Clause 93. Section 56 amended**

Section 56 relates to the management of payment, and enforcement of payment, of amounts owing other than fines. The *Young Offenders Act 1994* sections 64 and 65 contemplate the registration of forfeited recognisances under the *Fines Penalties and Infringement Notices Enforcement Act 1994*. Section 56 (b) originally provided for the enforcement of forfeited recognisances but reference to these was omitted in 2004 by the deletion of paragraph (b). This deficiency is remedied by this amendment.

**Clause 94. Section 59A inserted**

This new section makes clear that the automatic registration of fines processes apply immediately on the making of a forfeiture order or order to pay to which Part 5 of the *Fines Penalties and Infringement Notices Enforcement Act 1994* applies.

However, there is no automatic registration where the young person is under the age of 18 years and the *Young Offenders Act 1994* section 65(1) applies since in that case no question of enforcement of the amount payable arises until there has been a default in the payment of the amount or an instalment. Once a court is required under section 65(3) (a) to register a forfeited bail undertaking or recognisance, it is automatically registered as if it were a fine.

**Clause 95. Section 105 deleted**

Section 105 permits the facsimile of a warrant to be used for execution and is no longer required because it is subsumed by the wider general provisions in respect to electronic technology.

**DIVISION 13 — *Magistrates Court Act 2004* amended**

**Clause 96. Act amended**

This clause provides that the amendments in this Division relate to the *Magistrates Court Act 2004*.

**Clause 97. Section 4A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Magistrates Court Act 2004*.

**DIVISION 14 — *Prisoners (Interstate Transfer) Act 1983* amended**

**Clause 98. Act amended**

This clause provides that the amendments in this Division relate to the *Prisoners (Interstate Transfer) Act 1983*.

**Clause 99. Section 12 amended**

Sub-section 12(1) of the *Prisoners (Interstate Transfer) Act 1983* allows the Magistrates Court to issue a bring up order for a prisoner to appear before the court so a determination can be made as to whether an order of transfer to another State will be issued.

Deleting the words “in writing” from this section will remove the requirement for the bring up order to be in written form and allow the court to issue an order by electronic means in accordance with rules of court or regulations.

**Clause 100. Section 14 amended**

Section 14 of the *Prisoners (Interstate Transfer) Act 1983* allows the Supreme Court to review a decision of the Magistrates Court and for the prisoner to be present at the review.

Deleting the words “order in writing” from sub-section 14(1) will remove the requirement for the bring up order to be in written form and allow the court to issue an order by electronic means in accordance with rules of court or regulations.

**Clause 101. Section 30 amended**

“Warrant under his hand” is deleted from this section and replaced with “warrant” to remove the necessity that the warrant be in written form. Courts in the future may be issuing warrants in electronic form in accordance with rules of court or regulations.

**DIVISION 15 — Prisons Act 1981 amended**

**Clause 102. Act amended**

This clause provides that the amendments in this Division relate to the *Prisons Act 1981*.

**Clause 103. Section 85 amended**

Section 85 of the *Prisons Act 1981* presently allows judicial bodies to issue a bring up order so an accused person can appear before that body for a bail application, to answer a fresh offence or for any other purpose. Deleting the word written from this section will remove the requirement for orders to be in written form and allow a judicial body to issue an order by electronic means in accordance with rules of court or regulations.

**DIVISION 16 — Prohibited Behaviour Orders Act 2010 amended**

**Clause 104. Act amended**

This clause provides that the amendments in this Division relate to the *Prohibited Behaviour Orders Act 2010*.

**Clause 105. Section 5A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Prohibited Behaviour Orders Act 2010*.

**Clause 106. Section 33 amended**

Section 33 provides for the giving of documents under provisions where the Act does not require that the document be given personally. This clause extends the manner in which the document may be given to include an electronic format in accordance with the regulations.

**DIVISION 17 — Restraining Orders Act 1997 amended**

**Clause 107. Act amended**

This clause provides that the amendments in this Division relate to the *Restraining Orders Act 1997*.

**Clause 108. Section 3 amended**

This clause inserts a definition of “remote communication” in a form that allows for any new electronic means that may become available in the future.

**Clause 109. Section 8A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Restraining Orders Act 1997*.

**Clause 110. Section 19 amended**

This clause removes the various methods of communication currently specified in section 19 (b) by which a magistrate can hear a violence restraining order remotely or out of hours and replaces that with “remote communication” which is now defined in the proposed amendment to section 3.

**Clause 111. Section 21 amended**

Similarly to section 19, section 21 lists the methods of communication by which the hearing of a telephone application can be made. The amendment replaces that list by reference to “remote communication” which is defined in section 3 as amended.

**Clause 112. Section 28 amended**

Sub section 28(2) provides for the court to accept a faxed copy of an affidavit. This clause deletes that sub section as Clause 12 of Part 2 of the Act applies to this Act and prescribes for alternative ways of providing an original affidavit making this subsection unnecessary.

**Clause 113. Section 50D amended**

This clause replaces the expression “protection within the meaning of the *Child Welfare Act 1947*” with “protection” as the *Child Welfare Act 1947* has been repealed.

**Clause 114. Section 54 amended**

Section 54 relates to the service of a summons. This clause amends section 54 to provide for service by electronic means where there is consent for this mode of communication.

**Clause 115. Section 55 amended**

Section 55 relates to the service of restraining orders. Certain types of orders may be sent by post and all other orders must be served personally unless the Registrar approves oral service. This clause provides the option of service by electronic means (in accordance with the regulations) where the registrar is satisfied reasonable efforts have already been made to serve an order personally.

**Clause 116. Section 56 amended**

Section 56 prescribes the requirements for notification of a matter or hearing or the delivery of documents in restraining order proceedings. This amendment provides for electronic notification where there is consent and in accordance with regulations.

**Clause 117. Section 58 amended**

Section 58 relates to proof of service of a restraining order or summons. The amendment makes this section consistent with corresponding amendments and provides for proof of service where service was effected by electronic means.

**Clause 118. Section 61A amended**

Section 61A is a recent amendment which establishes a presumption of a custodial sentence where the accused is convicted of a third offence of a breach of a violence restraining order or a police order within a period of two years. In the event that the presiding judicial officer determines that in the circumstances of the case a custodial sentence is not appropriate then reasons for that decision must be given in writing. The amendment provides for the requirement for written reasons to be satisfied where the reasons are given orally and subsequently transcribed or recorded electronically and able to be transcribed. The amendment is consistent with other legislation in which there is a requirement for the Court to provide reasons in writing.

**Clause 119. Section 62D amended**

Section 62D provides for a police officer to obtain authority from a senior officer to enter premises without a warrant if there is reasonable cause to believe that an act of domestic violence is taking place or has taken place. The approval may be made in person or by remote communication. The definition of “remote communication” at sub section 62D (8) is deleted so that the definition inserted in section 3 applies.

**Clause 120. Section 67 amended**

Section 67 requires the presiding judicial officer to provide written reasons when an adjournment is granted at a hearing. As with the amendment to section 61A, this clause defines “written reasons” to include reasons given orally and subsequently transcribed or recorded electronically and able to be transcribed.

**Clause 121. Section 71 amended**

Section 71 relates where the police must execute a firearms order consequent upon the issue of a violence restraining order. The section currently provides for service of the firearms order by post. The amendment is to provide for service by electronic means.

**DIVISION 18 – Sentencing Act 1995 amended**

**Clause 122. Act amended**

This clause provides that the amendments to this Division relate to the *Sentencing Act 1995*.

**Clause 123. Section 4A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Sentencing Act 1995*.

**Clause 124. Section 14 amended**

Section 14 prescribes that, unless the court directs that it be served personally, a summons requiring an offender to appear for sentencing is to be served by pre-paid post. This clause provides for electronic service in accordance with the regulations.

**Clause 125.                    Section 33A amended**

Section 33A requires the court to provide written reasons where, despite a pre-sentence report advising the court that the offender is suitable for a pre-sentence order, the decision is taken not to make that order. This clause deletes the present definition of “written reasons” in the section to ensure consistency with other legislative provisions where written reasons are defined to include reasons given orally and subsequently transcribed or recorded electronically and able to be transcribed.

**Clause 126.                    Section 35 amended**

This clause amends section 35 to make it consistent with other legislation that requires written reasons. Subsection 35(2) is deleted as it is not replicated in other legislation requiring a court to give written reasons and is unnecessary. Subsection 35(4) is replaced with a new subsection to ensure consistency with other legislative provisions where written reasons are defined to include reasons given orally and subsequently transcribed or recorded electronically and able to be transcribed.

**Clause 127.                    Section 38 amended**

Section 38 provides for a review of a custodial sentence imposed by a court when constituted by a justice of the peace. The review is to be based on an examination of the court papers in the absence of the parties. It is not to involve a hearing. The court papers are defined to mean the original documents or copies or faxes of those papers. This amendment provides for regulations to prescribe “some other form of the documents” to allow for electronic form.

**Clause 128.                    Section 80 amended**

Section 80 prescribes how an offender must be dealt with when, during the suspension period of a suspended sentence period, that offender is convicted of another offence for which a custodial penalty is available. There is a statutory assumption that the court will impose a sentence that includes an order that the person serve the term of imprisonment that was. If the court does not make that order then it must give reasons for not doing so. This clause amends section 80 to align the requirements in respect to the giving of reasons to section 33A as amended.

**Clause 129.                    Section 84F amended**

Section 84F is one of the provisions prescribing how an offender must be dealt with when, during the suspension period of a conditional suspended imprisonment order, an offender is convicted of another offence for which a custodial penalty is available.

There is a statutory assumption that the court will impose a sentence that includes an order that the person serve the term of imprisonment that was suspended. If the court does not make that order then it must give reasons for not doing so. This clause amends section 84F to align the requirements in respect to the giving of reasons to section 33A as amended.

**Clause 130.                    Section 84K amended**

The amendment to section 84K is for the purpose of providing for the evidential status of a certificate issued by the court and aligning it in this respect with sections 78(5) and 84D(5).

**Clause 131. Section 120A amended**

Section 120A provides for the Sheriff to enforce a restitution order on receiving a request to do so and a copy of the order. Under the court and tribunal case management system a copy will no longer be required. The clause amends section 120A to remove the requirement for a copy of the order to be provided to the Sheriff and instead imposes a requirement that the Sheriff ensure that a restitution order is in force.

**DIVISION 19 — State Administrative Tribunal Act 2004 amended**

**Clause 132. Act amended**

This clause provides that the amendments in this Division relate to the *State Administrative Tribunal Act 2004*.

**Clause 133. Section 7A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *State Administrative Tribunal Act 2004*.

**DIVISION 20 — Supreme Court Act 1935 amended**

**Clause 134. Act amended**

This clause provides that the amendments in this Division relate to the *Supreme Court Act 1935*.

**Clause 135. Section 6A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Supreme Court Act 1935*.

**DIVISION 21 — Young Offenders Act 1994 amended**

**Clause 136. Act amended**

This clause provides that the amendments in this Division relate to the *Young Offenders Act 1994*.

**Clause 137. Section 6A inserted**

This clause provides for the application of the provisions of Part 2 of the *Courts and Tribunals (Electronic Processes Facilitation) Act 2013* to the *Young Offenders Act 1994*.

**Clause 138. Section 43 amended**

Section 43 prescribes the requirements for notices to attend court to be served on the young person and a copy of that notice served on the responsible adult. In the latter case the copy may be sent by post. The clause amends the section to provide for the copy to be provided to the responsible adult electronically in accordance with regulations.

**Clause 139.                    Section 45 amended**

Section 45 provides for the court to issue an order requiring a responsible adult to attend court. The order may be served personally or by post. This amendment provides for service electronically in accordance with the regulations.

**Clause 140.                    Section 64 amended**

Section 64 provides for the enforcement of payment of fines imposed by the court, forfeiture of bail undertakings and recognisances of young people who are over the age of 18 years when the liability is incurred. As a result of the changes to the *Fines Penalties and Infringement Notices Act 1994* this section requires amendment to provide for the automatic registration of the fines, forfeiture of bail undertakings and recognisances with the Fines Enforcement Registry. The Registrar has responsibility for the management of the payment of the monies owing and enforcement in the event that the young person defaults in payment.

**Clause 141.                    Section 65 amended**

Section 65 provides for the enforcement of payment of fines imposed by the court, forfeiture of bail undertakings and recognisances of young people who have not reached 18 years when the liability is incurred. This clause amends section 65 to provide for automatic registration with the Fines Enforcement Registry of fines, forfeiture of bail undertakings and recognisances. The Registrar has responsibility for the management of payment of the monies owing. However, if the young person has not reached the age of 18 years and defaults in payment then the matter must be referred back to the Court for enforcement.

**Clause 142.                    Section 120 amended**

Section 120 provides that a custodial sentence is available only where there is no other appropriate sentence and requires the court where a custodial sentence is imposed to record in writing the reasons why no other sentence was appropriate.

This clause expands the meaning of “written reasons” in the section to ensure consistency with other legislative provisions where written reasons are defined to include reasons given orally and subsequently transcribed or recorded electronically and able to be transcribed.