

Western Australia

LEGISLATIVE COUNCIL

**Acts Amendment (Video and Audio Links)
Bill 1998**

A Bill for

An Act to amend:

- *The Criminal Code;*
- **the Evidence Act 1906;**
- **the Justices Act 1902; and**
- **the Sentencing Act 1995.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This Act may be cited as the *Acts Amendment (Video and Audio Links) Act 1998*.

5 **2. Commencement**

This Act comes into operation on such day as is fixed by proclamation.

3. Power to use certain technology not affected

10 (1) Nothing in the amended provisions is to be taken as preventing the use by a court or other person acting judicially of a video link or audio link (as those terms are defined in section 121 of the *Evidence Act 1906*) in any case where the court or person thinks fit and where the use of the video link or audio link would not be contrary to law.

15 (2) In subsection (1) —
“**amended provisions**” means —

- (a) *The Criminal Code*;
 - (b) the *Evidence Act 1906*;
 - (c) the *Justices Act 1902*; and
 - 20 (d) the *Sentencing Act 1995*,
- as amended by this Act.

Part 2 — *The Criminal Code* amended

4. The Act amended

The amendments in this Part are to *The Criminal Code**.

[* Reprinted as at 21 April 1997 as the Schedule to the
Criminal Code Act 1913 appearing in Appendix B to the
Criminal Code Compilation Act 1913.

For subsequent amendments see 1997 Index to Legislation of
Western Australia, Table 1, p. 58 and Acts Nos. 15 and 29
of 1998.]

5. Section 635 amended

Section 635 is amended by inserting after the third paragraph the
following paragraph —

“

Nothing in this section prevents a court from taking
evidence from an accused person by video link or audio
link under section 121 of the *Evidence Act 1906*.

”.

6. Section 647 inserted

After section 646 the following section is inserted —

“

647. Video link may be used

(1) If —

(a) a person is committed for trial or sentence
before any court for an indictable offence;

(b) the person is in custody, whether in relation to
the offence or not; and

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(c) a video link or other device exists whereby, at the same time, the court in one place can see and hear the person in another place and vice versa,

5 the court may, instead of ordering that the person be brought personally before the court, order that the person be brought before the video link or other device.

10 (2) The court may make an order under subsection (1) on its own initiative or on the application of a party to the proceeding.

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Part 3 — Evidence Act 1906 amended

7. The Act amended

The amendments in this Part are to the *Evidence Act 1906**.

[* Reprinted as at 10 September 1996.

5 For subsequent amendments see 1997 Index to Legislation of
 Western Australia, Table 1, p. 79 and Act No. 15 of 1998.]

8. Section 106N amended

10 Section 106N(2)(a) and (b) is amended by deleting “closed
 circuit television” in both places where it occurs and inserting
 instead —

 “ video link as defined in section 120 ”.

9. Headings and sections 120 to 132 inserted

 After section 119 the following headings and sections are
 inserted —

15 “

Interpretation of sections 120 to 132

120. Interpretation

 (1) In this section and sections 121 to 132, unless the
 contrary intention appears —

20 “**audio link**” means facilities (including telephone) that
 enable, at the same time, a court at one place to
 hear a person giving evidence or making a
 submission at another place and vice versa;

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“Australia” includes the Territories of the Commonwealth (whether internal or external) for the government of which as a Territory provision is made by any Commonwealth Act;

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“participating jurisdiction” means —

(a) another State or a Territory in which provisions of an Act in terms substantially corresponding to this section and sections 121 to 132, are in force; or

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(b) any other jurisdiction outside the State prescribed to be a participating jurisdiction;

“recognized court” means a court or tribunal of a participating jurisdiction —

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(a) that is authorized by the provisions of an Act of that jurisdiction in terms substantially corresponding to this section and sections 121 to 132 to direct that evidence be taken or a submission be made by video link or audio link from this State; or

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(b) that is prescribed to be a recognized court;

“tribunal” of a State or Territory means a person or body authorized by or under a law of the State or Territory to take evidence on oath or affirmation;

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“video link” means facilities (including closed circuit television) that enable, at the same time, a court at one place to see and hear a person giving evidence or making a submission at another place and vice versa;

“WA court” means —

- (a) the Supreme Court; or
- (b) a court or tribunal established in this State under a written law.

- 5 (2) In this section and sections 121 to 132, a reference to a place outside the State shall be taken to refer to a place outside the State whether within or outside Australia.

Use of video links or audio links by WA courts

10 **121. WA court may take evidence or receive a submission by video link or audio link**

- 15 (1) Subject to this section, a WA court may, on its own initiative or on the application of a party to a proceeding in or before the court, direct that in that proceeding evidence be taken or a submission be received by video link or audio link from a person at a place, whether in or outside this State, that is outside the courtroom or other place where the court is sitting.
- 20 (2) The court shall not make such a direction unless the court is satisfied that —
- (a) the video link or audio link is available or can reasonably be made available; and
 - (b) the direction is in the interests of justice.
- 25 (3) For the purposes of taking evidence or receiving a submission by video link or audio link from a place in this State in accordance with such a direction, the place shall be taken to be part of the court.

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- 5 (4) For the purposes of taking evidence or receiving a submission by video link or audio link from a place in a participating jurisdiction, the court may exercise in that place any of its powers that the court is permitted, under the law of the jurisdiction, to exercise in that place.

122. Counsel entitled to practise

10 Despite section 76(1) of the *Legal Practitioner's Act 1893*, a person who is entitled to practise as a legal practitioner in a participating jurisdiction is entitled to practise as a barrister, solicitor or both —

- 15 (a) in relation to the examination, cross-examination or re-examination of a witness in the participating jurisdiction whose evidence is being given by video link or audio link before a WA court; and
- (b) in relation to the making of a submission by video link or audio link from the participating jurisdiction in a proceeding before a WA court.

20 *Use of video links or audio links in this State by recognized courts*

123. Recognized court may take evidence or receive a submission from a person in this State

25 A recognized court may, for the purposes of a proceeding in or before it, take evidence or receive a submission by video link or audio link from a person in this State.

124. Powers of a recognized court

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- (1) For the purposes of the proceeding the recognized court may exercise in this State any of its powers in relation to the taking of evidence or the receipt of a submission except its powers —
- (a) to punish for contempt; and
- (b) to enforce or execute its orders or process.
- 10
- (2) The laws of the participating jurisdiction (including rules of court) that apply to the proceeding in that jurisdiction also apply, by force of this subsection, to the practice and procedure of the recognized court in taking evidence or receiving a submission by video link or audio link from a person in this State.
- 15
- (3) For the purposes of the court exercising its powers under subsection (1), the place in this State where the evidence is given or the submission is made shall be taken to be part of the court.

125. Orders made by a recognized court

- 20
- Without limiting section 124, the recognized court may, by order —
- (a) direct that the proceeding, or a part of the proceeding, be conducted in private;
- (b) require a person to leave a place in this State where the giving of evidence or the making of a submission is taking place or is going to take place; or
- 25
- (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.

126. Enforcement of an order under section 125

- (1) An order under section 125 shall be complied with.
- (2) Subject to rules of court, the order may be enforced by the Supreme Court as if the order were an order of that court.

5

- (3) Without limiting subsection (2), a person who contravenes the order —
- (a) shall be taken to be in contempt of the Supreme Court; and
- (b) is punishable accordingly,

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unless the person establishes that the contravention should be excused.

127. Privileges, protection and immunity of participants in proceedings in a recognized court

- (1) A person acting judicially in a proceeding in or before a recognized court has, in connection with evidence being taken or a submission being received by video link or audio link from a person in this State, the same privileges, protection and immunity as a judge of the Supreme Court.
- (2) A person appearing as a legal practitioner in a proceeding in or before a recognized court has, in connection with evidence being taken or a submission being received by video link or audio link from a person in this State, the same protection and immunity as a barrister has in appearing for a party in a proceeding, in or before the Supreme Court.

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- (3) A person appearing as a witness in a proceeding in or before a recognized court by video link or audio link from this State has the same protection as a witness in a proceeding in or before the Supreme Court.

5 **128. Recognized court may administer an oath in the State**

- 10 (1) A recognized court may, for the purpose of obtaining in the proceeding by video link or audio link the testimony of a person in this State, administer an oath or affirmation in accordance with the practice and procedure of the recognized court.
- (2) Evidence given by a person on oath or affirmation so administered is, for the purposes of *The Criminal Code*, testimony given in a judicial proceeding.

15 **129. Assistance to a recognized court**

An officer of a WA court may, at the request of a recognized court —

- 20 (a) attend at the place in the State where evidence is to be or is being given, or submissions are to be or are being made, in the proceeding;
- (b) take such action as the recognized court directs to facilitate the proceeding; and
- (c) assist with the administering by the recognized court of an oath or affirmation.

130. Contempt of a recognized court

- (1) A person shall not, while evidence is being given or a submission is being made in this State by video link or audio link, in the proceeding in a recognized court —
- 5 (a) threaten, intimidate or wilfully insult any of the following:
- (i) a person acting judicially in the proceeding;
- 10 (ii) a Master, Registrar, Deputy Registrar or other officer of that court who is taking part in or assisting in the proceeding;
- (iii) a person appearing in the proceeding as a legal practitioner;
- (iv) a witness in the proceeding; or
- 15 (v) a juror in the proceeding;
- (b) wilfully interrupt or obstruct the proceeding; or
- (c) wilfully and without lawful excuse disobey an order or direction of the court.
- (2) A person who contravenes subsection (1) is taken to
- 20 commit a contempt of the Supreme Court and is punishable accordingly by that court.

General provisions relating to the use of video links or audio links

131. Regulations for fees and expenses relating to the use of a video link or an audio link

5 The Governor may make regulations with respect to fixing and requiring the payment of fees and expenses relating to the taking of evidence or receiving of a submission by video link or audio link.

132. Operation of other laws

10 Sections 120 to 132 are 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 a submission —

- 15 (a) in the State for the purpose of a proceeding in the State;
- (b) outside the State for the purpose of a proceeding in the State; and
- (c) in the State for the purpose of a proceeding outside the State.

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Part 4 — *Justices Act 1902* amended

10. The Act amended

The amendments in this Part are to the *Justices Act 1902**.

[* *Reprinted as at 4 June 1997.*

5 *For subsequent amendments see 1997 Index to Legislation of
 Western Australia, Table 1, p. 122 and Act No. 29 of 1998.]*

11. Section 86A amended

(1) Section 86A (1) is amended by deleting “is may,” and inserting
instead —

10 “ is shall, unless an order is made under subsection (2), ”.

(2) Section 86A(2) is amended by inserting after “The justices
may” —

“

15 , on their own initiative or on the application of a party
 to the proceeding,

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Part 5 — Sentencing Act 1995

12. The Act amended

The amendments in this Part are to the *Sentencing Act 1995**.

[* Act No. 76 of 1995.

5 *For subsequent amendments see 1997 Index to Legislation of
Western Australia, Table 1, pp. 211-12 and Acts Nos. 23 and
29 of 1998.]*

13. Section 14 amended

10 Section 14(1) is amended by deleting the full stop and inserting
instead —

“

or appears before the court by video link under
section 14A.

”.

15 **14. Section 14A inserted**

After section 14 the following section is inserted —

“

14A. Court may sentence by video link

20 (1) A court sentencing an offender may, on its own
initiative or on an application by the prosecutor or the
offender, direct that the offender appear before it by
video link from a place in this State.

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- (2) The court shall not make a direction under subsection (1) unless it is satisfied that —
- (a) the video link is available or can reasonably be made available; and
 - (b) the direction is in the interests of justice.

(3) The place where an offender attends for sentencing by video link is taken to be part of the court for the purposes of the sentencing.

(4) In this section —

“video link” means facilities (including closed circuit television) that enable, at the same time, a court at one place to see and hear a person at another place and vice versa.

”.

15 **15. Section 34 amended**

Section 34 is amended by inserting after “present in court” —

“

or appearing before the court by video link under section 14A

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