

***ACTS AMENDMENT (VIDEO AND AUDIO LINKS) BILL 1998***

***Explanatory Notes***

**Part 1 - Preliminary**

**Clause 1            Short title.**

Title of the Act.

**Clause 2            Commencement**

The Act will come into operation upon proclamation by the Governor in Executive Council to facilitate the prescription of fees for the use of video and audio links.

**Clause 3            Power to use certain technology not affected**

Subsection (1) is to make it clear to judicial officers and the legal profession that nothing in this Act will prevent a court from using video or audio links for any such matter that courts deems appropriate unless there is a specific legal impediment to do so.

Subsection (2) specifies that "amended provisions" are the particular amendments to the Acts that are to be amended by this Bill.

## **Part 2 – The Criminal Code amended**

### **Clause 4            The Act amended**

This clause cites the Act that will be amended by Part 2 of this Act.

### **Clause 5            Section 635 amended**

Section 635 of the Criminal Code specifies that accused persons are to be present in court during the trial unless they misbehave to a degree whereby the judicial officer can order their removal. The amendment to section 635 will enable the court to order dangerous criminals to remain in the prison for their trial and to give their evidence and watch proceedings via a video link.

### **Clause 6            Section 647 inserted**

Subsection 647 (1) is similar to the provisions of section 86A of the *Justices Act 1902* and enables the superior courts to make orders for persons to appear before the court by video link to conduct bail applications and pleas.

Subsection 647 (2) provides superior courts with the discretion to decide whether a video link can be used and enables parties to the proceedings to make applications on the issue.

## **Part 3 – Evidence Act 1906 amended**

### **Clause 7            The Act amended**

This clause cites the Act that will be amended by Part 3 of this Act.

### **Clause 8            Section 106N amended**

Section 106N (2) of the *Evidence Act 1906* enables children to give evidence by video from a room outside the court. The particular phrase “closed circuit television” is to be replaced with the term “video link as defined in section 120” so that there is consistent terminology in all legislation to describe the procedure of giving evidence to the court by a video link.

### **Clause 9            Headings and sections to be inserted**

#### **120                Interpretation (sections 120 to 132)**

Section 120 provides the interpretations that apply to various terms used in sections 120 to 132.

- Audio links will be able to be conducted by telephone or any other audio facility.
- Australia comprises all territories as provided in Commonwealth legislation
- A participating jurisdiction is defined under section (a) as another Australian state or territory which has very similar legislation to sections 120 to 132 of this Act. Therefore, any other State or territory with such legislation will automatically be able to conduct video and audio links with Western Australia as provided for in this legislation. Alternatively, under section (b) of that definition, other jurisdictions can be prescribed to be a participating jurisdiction. Therefore, any other state or country which does not have substantially similar provisions to this legislation but is considered to be suitable to deal with in that they have a compatible legal system, can be prescribed with the power to conduct video or audio links with persons in Western Australia.
- A recognised court is essentially a specific court or tribunal within a participating jurisdiction. Under section (b) of this definition Western Australia has the capacity to prescribe a specific court within any other state, territory or country if it is considered that particular court has compatible procedures and it is not envisaged that there would be difficulties enforcing our orders or vice versa.
- The definition of tribunal will allow video and audio links to be conducted from or to any court or tribunal which takes evidence from persons on oath.
- The video link definition will ensure that both sites participating in the video link can adequately see and hear each other simultaneously.

- When the term “WA court” is used throughout this legislation it refers to the particular courts and tribunals specified by this definition.
- Subsection 120(2) clarifies that video and audio links can be established with recognised courts in participating jurisdictions whether in Australia or some other country.

### **Use of video links or audio links by WA courts**

Sections 121 and 122 apply to the procedures whereby WA courts and tribunals receive submissions and evidence by video or audio link from persons intrastate, interstate or overseas.

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

Subsection 121(1) empowers WA courts to order that evidence be taken or submissions made by audio or video link to any remote location in the world. For example, links will be able to be established to:

- Local hospitals to receive evidence from doctors;
- TAFE colleges in the country areas of WA to receive evidence from police officers; or
- To similar venues in other states and countries.

The court has the power to make such decisions upon its own initiative or after one of the parties has made an application.

Subsections 121(2)(a) and (b) specify that orders can only be made if facilities are available and that the interests of justice are observed. This particular clause will protect the rights of all parties to the proceeding. For instance, if the defence feels that a certain witness should be present in the courtroom they can oppose the application to hear the evidence by video link on the grounds that it would prejudice their client’s case. The court, upon hearing the arguments of both sides, will then make an appropriate order.

Subsection 121(3) prescribes that the remote location in this State, whether it be another courtroom in a country region or a doctors surgery, is deemed to be part of the court whilst the link is in progress. The purpose of this provision is to enable the court to exercise its powers at the remote location.

Subsection 121(4) applies to places in other states and countries recognised as participating jurisdictions. Since WA law does not apply to such places this provision allows WA courts to exercise all such powers as the participating jurisdiction allows. This provision forms part of the reciprocal arrangements to be effected in all of the States.

#### **122 Counsel entitled to practise**

Section 76(1) of the Legal Practitioner’s Act 1893 prevents lawyers not certificated in Western Australia from practising law in this State. However this particular clause will now allow lawyers in other states and participating jurisdictions to practise in a legal capacity when evidence is being given

or a submission made by video or audio link to a WA court.

### **Use of video links or audio links in this State by recognised courts**

Sections 123 to 130 apply to the procedures whereby participating jurisdictions and recognised courts interstate or overseas receive submissions and evidence by video or audio link from persons in Western Australia.

#### **123            Recognised court may take evidence or receive submission from a person in this State**

This clause empowers only recognised courts to take evidence from persons in this State. Other courts not recognised that do so will have no powers to enforce their laws and rules in WA.

#### **124            Powers of a recognised court**

Under subsection (1) recognised courts can exercise all powers except for punishing by contempt or enforcing or executing its orders or process which will be, by the forces of this legislation, be enforced by the WA Supreme Court (refer to sections 126 to 130).

Subsection (2) prescribes that the laws and court procedures of recognised courts in other states or countries apply when persons in this State give evidence to that particular court.

Subsection (3) is similar to what is prescribed in section 121(3) except that the reverse applies.

#### **125            Orders made by a recognised court**

Under subsection (a) additional powers are assigned to enable recognised courts to order that proceedings be heard in camera if a matter is particularly sensitive or confidential.

Under subsection (b) recognised courts are given the authority to direct a particular person to leave the place where evidence is being given in this State. This power is provided in case a particular person should not be in the room or if they are interfering with the evidence or submission in some way.

Under subsection (c) recognised courts will be able to make suppression orders so that the media or other persons in this State cannot report on or publish a particular part of the evidence or a persons name in the proceeding. This power may be required for confidentiality purposes or to protect the identity and welfare of certain participants should it be warranted.

#### **126            Enforcement of an order under section 125**

The three subsections within this section basically specify that orders under section 125 are enforceable by the Supreme Court, persons disobeying orders will be dealt with as though they had committed contempt of the WA Supreme Court and are therefore punishable under its powers.

Subsection (3) provides a defence where a person is given the opportunity to prove that their behaviour was excusable.

## **Privileges, protection and immunity of participants in proceedings in a recognised court**

The same safeguards are applied to judicial officers, lawyers and witnesses in the recognised courts as if they are participating in proceedings before the WA Supreme Court.

### **128 Recognised court may administer an oath in the State**

Under subsection(1) the recognised court can administer its own oaths and affirmations so that WA witnesses are under compulsion to tell the truth in proceedings before a recognised court.

Subsection (2) essentially prescribes that the testimony given to recognised courts outside of WA is recognised as being testimony in a judicial proceeding under the WA *Criminal Code* so that perjury charges can be laid.

### **129 Assistance to a recognised court**

The three subsections in this section will enable recognised courts to get assistance from WA court officials if it is needed when certain persons are giving evidence. For example court officials may be required to provide a bible, help with the oath, ensure the evidence is properly given in accordance with the practice of the recognised court etc.

### **130 Contempt of a recognised court**

This section specifies the basis of contempt when persons in this State are giving evidence by video and audio links to recognised courts. If contempt occurs it is taken as being a contempt of the WA Supreme court and therefore enforceable under its powers.

## **General provisions relating to the use of video links and audio links**

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

With respect to the use of video links in particular, there are associated costs for telecommunication lines, booking fees for venues at the remote location, and the hiring of facilities at the remote location. The court is not always the beneficiary of the video link and therefore, a user pays system will be established. Under this new scheme the prosecution or the defence will no longer have to pay the cost of flying and accommodating remote witnesses to give evidence as they can now do so by video link. However, they will be required to pay all fees associated with receiving their witnesses' evidence by video link.

### **132 Operation of other laws**

This provision essentially specifies that the amendments to the *Evidence Act* will not override any other WA law relating to the taking of submissions intrastate, interstate and overseas by WA courts or by any other court outside the State taking evidence from a WA witness.

## **PART 4 – JUSTICES ACT 1902 amended**

### **Clause 10      The Act amended**

This clause cites the Act that will be amended by Part 4 of this Act.

### **Clause 11      Section 86A amended**

Under the existing provisions of 86A(1) video links **may** be used if the defendant has already made a personal appearance before the court, is in custody, the facilities are available and an order has not been made under subsection (2). “May” is to be replaced with “**shall**” to make it automatic for prisoners on remand to appear before the court by video.

Subsection 2 presently allows judicial officers to make orders for personal appearances if they consider it is in the interests of justice to do so. This section is to be amended to be consistent with the amendments in other provisions of this Bill whereby judicial officers can make orders with regard to the use of video links on their own initiative or upon application by a party to the proceeding.

In essence the aim of this Part of the Bill is to significantly increase the numbers of prisoners appearing before the court by video.

## **Part 5 – Sentencing Act 1995**

### **Clause 12      The Act amended**

This clause cites the Act that will be amended by Part 5 of this Act.

### **Clause 13      Section 14 amended**

Section 14(1) specifies that the court is not to sentence a person unless they are present in court. The amendment to this section will subsequently enable offenders to be sentenced by video link.

### **Clause 14      Section 14A inserted**

Subsection (1) essentially provides the court with the authority to sentence offenders by video link in this State. Orders can be made at the courts' discretion or upon application by the prosecution or the defence. It should be noted that powers to sentence offenders outside WA were deliberately excluded due to the associated difficulties of enforcing sentences in another State.

Subsection (2) prescribes that no court can direct an offender to be sentenced by video unless video facilities are available and the interests of justice are taken into consideration. In practical application, if the court considers that particular offenders are too dangerous to come out of the prison environment, an order can be made that, in the community interest, such offenders are better being sentenced by video. Alternatively, persons residing in remote locations within WA summonsed to appear in court on a relatively minor offence, will be able to plead guilty by video without incurring the expense and inconvenience of making a personal appearance.

Subsection (3) deems the place where the offender is being sentenced by video link to be part of the court to give effect to the terms of the sentence.

Subsection (4) is a replication of the definition of video link as prescribed in other sections of this Bill.

**Clause 15      Section 34 amended**

This particular section currently requires judicial officers to clearly explain the effects of the sentence handed down to the offender in the courtroom. The amendment will require the same explanations to be given when a sentence is given via video link.