



Information for Legal Practitioners- Frequently asked questions

Legislation change - Justice Legislation (Evidence and other Acts) Amendment from 1 September 2016

From 12 September 2016, legislative changes provide for the default position that all accused will appear before the court by way of Audio Visual Link (AVL), pursuant to *Evidence (Miscellaneous Provisions) Act 1958* [s42JA(1)], unless an order is made under s42L(1) or if Accused is required to appear physically before the Court (see below).

Physical Attendance

1. *Certain Hearings* [s42JA(2)]

Accused must appear physically before court where a proceeding relates to:

- an inquiry into the accused's fitness to plead to the charge; or
- the hearing of the charge if the accused is pleading not guilty; or
- a committal hearing.

Unless an order is made under s42M(1)

2. *Following Arrest* [s42JA(3)]

Accused must appear physically before court if person is arrested and required to be brought before court to be dealt with according to law.

Unless the accused consents to appear by audio visual link.

Legislation

Section 42L – Direction for physical appearance of accused

- Court may direct that an accused be brought physically before it where they would otherwise be required to appear by audio visual link.
- Upon application or on own motion.
- Application to be made in accordance with the court rules.

Section 42M – Direction for audio visual appearance of accused

- Court may direct that an accused appear before it by audio visual link where they would otherwise be required to physically appear.
- Upon application or on own motion.
- If all parties do not consent, court can only grant application if exceptional circumstances exist.
- Victim may address or make a written submission to the court opposing making of direction.
- Application to be made in accordance with the court rules.

Video Conferencing Project - General Project Information

The Video Conference Project (VCP) involved the installation and trial of modern internet based video conference technology and processes between Magistrates' Courts, Corrections Victoria and the legal profession. The project consisted of two stages.

The first stage of the project involved the installation of modern Video Conferencing equipment at nominated courts and prisons and began operation on 20 April 2015.

Stage two of the project provides the opportunity for legal practitioners to securely dial into prisons to conference with their client from a range of devices such as a laptop, tablet and smart phone.

This provides the legal profession with greater opportunities to access their client's pre and post the hearing of cases at all Victorian prison locations.

The Stage two technology and processes was trialled between prisons and a selected group of legal practitioners from 19 October 2015 with a full roll out to all legal profession and prison locations in December 2015.

Prior to Court appearance

I want to book a conference with my client before the hearing, can this be organised?

Yes, this can be organised directly with the Prisons Video Conference Co-ordination Unit (VCCU). Metropolitan Remand Centre and Port Phillip Prison are making video or telephone conferences available for legal representatives between the hours of 8:30am – 7:30pm – Monday to Friday, enquiries should be made of other metropolitan and regional locations via VCCU, see the Jabber Guest section (page 4) for organising Video Conference Calls.

Jabber Guest technology allows legal representatives to Audio Visual Link (AVL) to their client from their mobile phone, tablet or desktop. The technology was initially trialled by a smaller group, and has been gradually rolled out to include all practitioners and prisons.

What hearing types are eligible for AVL?

The following hearing types may be appropriate to hear via AVL: application for adjournment, application for bail, mentions, plea hearings, committal mentions, contest mentions, special mentions, sentencing hearings, contravention hearings, delivering of reserved decisions and applications under the *Crimes Act 1958*.

How does an AVL get booked in?

AVL can be booked in two ways:

- a) The Magistrate can make an AVL direction at the remand hearing for the next hearing. If a physical appearance is sought at this time, notification to the presiding Magistrate in open court should be sought before the hearing is adjourned. Any direction for AVL will be included on the remand order, and no further action is required from the legal representative. The Sentence Calculation and Warrant Administration (SCWA) unit will convert the matter to AVL when the warrant is received by them from the Court. A legal representative can request the Magistrate make the direction at the remand hearing.
- b) If an AVL direction has not been made by the Magistrate on the original date, a legal representative will need to make application pursuant to s42M of the Evidence (Miscellaneous Provisions Act) on the prescribed form (Form 46) to the coordinator of the location where the matter is to be heard and serve copy on parties. The Form 46, should be filed with the court more than 14 days prior to the hearing date. The application is then determined by the court and the parties are notified. The Court will then formally request SCWA to convert the matter to an AVL. This process takes longer than the AVL direction on the remand warrant.

How is attendance arranged when an accused is in custody and further charged on summons?

Pursuant to Practice Direction 11 of 2016, legal practitioners/ informants are required to notify the Court of the custody status when an accused is being held on other matters.

It is the responsibility of legal practitioners/ informants to arrange for the issue of a Gaol Order to enable the appearance of the accused. A draft Gaol Order is required to be lodged by the relevant party in order to ensure this occurs.

If there is a request for the accused to appear in person, an application must be lodged under s42L. This application form must accompany the Gaol Order.

A Magistrate will determine whether the accused is to appear in person, or whether the matter is to be heard via AVL.

If a Magistrate **grants** application for accused to be physically present the Gaol Order is to be endorsed and signed and sent to SCWA.

If the application is **refused**, the Magistrate must still sign the Gaol Order, however it must be endorsed with the words "appearance via audio visual link".

All signed Gaol Orders, regardless of if the Magistrate has directed attendance in person or via AVL are to be faxed to SCWA by the Court.

The parties are to be notified of the outcome of the s42L application by the Court.

How can parties change an appearance from physically present to AVL (s42M) for an accused on remand?

An Application Form 46 is to be filed with the Court where the matter is listed **NO LATER THAN 14 DAYS** prior to the court date with a draft Gaol Order.

The application must be served on all parties to the proceeding.

The Magistrate will then make a determination which **must** be heard and determined in open court.

If the application is **GRANTED**, the Court will fax a certified extract of the application order to SCWA with the gaol order.

If the application is **REFUSED** then the accused will attend the Court physically.

How can parties change appearance by AVL to physically present (s42L) for an accused on remand?

An Application Form 45 is to be filed with the Court where the matter is listed **NO LATER THAN 3 DAYS** prior to the court date.

The application must be served on all parties to the proceeding.

The Magistrate will then make a determination which can be made in chambers, unless parties seek to have the matter heard in open court.

If the application is **REFUSED** the parties are to be notified of the outcome by the Court.

If the application is **GRANTED**, the Magistrate will issue a Gaol Order indicating that the accused is to appear in person.

The Court is to fax the Gaol Order directly to SCWA.

The parties are to be notified of the outcome by the Court.

Accused is on remand and a bail application is to be listed before the Court.

The legal practitioner is to obtain a suitable date, from the Court, to book the bail application. The date is only confirmed once the paperwork is filed.

Applications for bail **MUST** be accompanied by a draft Gaol Order to facilitate the accused's appearance either in person or via AVL.

If there is a request for the accused to appear in person, an application must be lodged under s42L. The application form **MUST** accompany the paperwork for the application for bail.

Magistrate is to determine whether the accused is to appear in person, or whether the application for bail is to be heard via AVL.

If Magistrate **grants** application for accused to be physically present the Gaol Order is to be endorsed and signed.

If the application is **refused**, the Magistrate must still sign the Gaol Order, however it must be endorsed with the words "appearance via audio visual link".

All signed Gaol Orders, regardless of if the Magistrate has directed attendance in person or via AVL are to be faxed to SCWA by the Court.

The parties are to be notified of the outcome of the s42L application by the Court.

What are the preferred timelines for requesting an AVL?

Ideally, AVL requests should be filed with the Court as soon as practicable. Prisoner transports do not occur every day, especially for regional prisons. They may transport all prisoners that are due to appear before the Court the next week on a particular day each week. Therefore, a late request may result in an unnecessary movement of the prisoner.

How many minutes can an AVL be booked in for?

A standard booking is for 15 minutes. However, links can be booked for 15, 30, 45 or even 60 minutes if required. Please make the duration of the case known to the coordinator if the time required is more than the standard 15 minutes prior to the hearing day.

Can I request a particular time for the AVL to be heard?

A preferred time, or session (i.e.: AM or PM listing) can be requested via the coordinator, and the Court and Prisons will endeavour to book links at preferred times. Early notice is recommended when requesting a preferred time. Please note that on occasions preferred times will not be able to be accommodated.

My client has co accused, can they still be linked?

Yes, matters where there are co accused will not prevent an AVL booking.

I no longer want an AVL for my client, how can I cancel?

If an AVL has been ordered by Magistrate but an in person appearance is now required. An application may be made pursuant to s42L of the Evidence (Miscellaneous Provisions) Act on the prescribed form (Form 46) to the court not less than 3 days prior to court hearing. The application will be determined by a Magistrate in chambers. If the request is granted, the applicant will be notified, and the issued Gaol Order will be forwarded to SCWA directly by the court. Requests should be made at least three working days before the hearing date if the accused is at a metropolitan prison, and at least seven working days if the accused is at a regional prison to ensure a move can be facilitated.

My client is in a Police custody, will they still be linked?

If a prisoner is in Police custody, they will be transported to Court by Victoria Police despite any AVL direction.

Will I be notified of the time of AVL?

If you are registered to use the Magistrates' Court's Electronic Filing Appearance System (EFAS) and you are attached to a case where an AVL has been organised, you will be notified of the hearing time of the AVL. No outstanding requests need be on the case for this notification to occur. A List is also published daily on the Magistrates Court website.

Publishing of AVL List on Magistrates' Court website

The Custody Co-ordination Registry (CCR) will prepare and publish on the Magistrates' Court website a daily list of matters scheduled for a prison AVL.

Listings in relation to Children's Court, Intervention Order Hearings and matters where there is a Court order restricting publication are not included in this list. In order to enquire on these matters you must contact the Court in which the case is listed directly.

If you have an enquiry regarding Audio Visual Link times contact MCV Custody Co-ordination Registry on 9032 0876 or email ccr@courts.vic.gov.au

During Court

I need to speak to their client before the scheduled hearing (on the day).

This can be arranged by sending an email request to vc.prisons@justice.vic.gov.au and can then follow up the request by calling VCCU on 9217 7664 who will facilitate the request where possible.

I need to stand the matter down and seek instructions, how can this be arranged?

If the case is stood down, and there remains sufficient time within your booking, you can request to the Magistrate to telephone the AVL room at the prison and speak to your client. Please be aware that all links have scheduled finish times and all efforts must be made to ensure the hearing of the case does not exceed the scheduled finish time, otherwise, the link may be stopped and rescheduled for a later time in the day.

You are then required to phone VCCU on 9217 7664 who will transfer the call to the unit in which your client is located.

The case has finished earlier than scheduled, can I talk to my client?

If the case is stood down or concludes early, and there remains sufficient time within the booking, the legal representative can make a request to the Magistrate to utilise the remainder of the allocated link time speak to their client. If sufficient time is available, the Magistrate can then advise Prison staff to have the accused remain in the room.

You are then required to phone VCCU on 9217 7664 who will transfer the call to the unit in which your client is located.

Please be aware that all links have scheduled finish times and all efforts must be made to ensure the call is ended before the scheduled finish time.

My client requires an assessment, can this be done over AVL?

Conducting assessments over AVL is part of the scope of the project, and a process has been developed for an assessment by MCV support services and Corrections to conduct assessments by AVL. If an assessment is required please ensure that the assessor is aware that your client will be appearing via AVL on the next occasion. The assessor can then book in the assessment by AVL prior to the court date or before the hearing on the day.

My AVL has gone over the scheduled time, what happens now?

If a link is going beyond its scheduled time, the bench clerk will make enquiries, direct to CCR or through their coordinator to CCR, to see if it can continue. This is dependent on:

- a) the court being able to accommodate the extension, and b) the prison is able to accommodate the extension.

- b) If the AVL needs to end, the CCR and VCCU will work together to reschedule the link at another time during the day.

There was an issue with the AVL connection for my client and the matter has been stood down, what happens now?

The CCR and VCCU will work together to identify any connection issues with the AVL system. Usually, the link issues can be fixed immediately and the case can begin close to the scheduled start time.

I have a scheduled link and I would like the case to be heard in my client's absence, can this occur?

If there is a scheduled link and the legal practitioner determines that the case can be heard in the prisoner's absence, the legal representative must make application to the Presiding Magistrate to have the case dealt with in the prisoner's absence and the AVL cancelled.

Post Court

Do I need to re book an AVL if my case has been adjourned part heard and it was already on an AVL?

If a case has been conducted via AVL and is adjourned for another hearing, a request for AVL will need to be made by the legal representative, unless a Magistrate has made an AVL direction on the remand order. The legal representative can request the Magistrate make the AVL direction at the time the remand order is being made.

Jabber Guest

Technology

From November 2015, the remaining legal practitioners and firms of the Law Institute of Victoria, Criminal Bar Association, Victoria Legal Aid and Victorian Aboriginal Legal Service were invited to participate in the Stage 2 trial, The technology has now been expanded and made available to all legal practitioners and will include matters listed in all Victorian jurisdictions.

The software Cisco Jabber Guest is simple to use and easy to install and will operate on most electronic communication devices. The Knowledge, Information and Technology Services (KITS) branch of the Department of Justice and Regulation (DJR) has upgraded the Corrections Video Conferencing service to work with the Jabber Guest software.

Availability of Conferences

Times for client conference bookings have been extended to most prisons from 8.30am to 6.30pm. Afternoon/evening client conference booking times have also been extended, however the booking times will vary between prisons. Please ensure that your preferred time and date are included in your booking request. Confirmation or alternative time and date suggestions will be provided if your preferred time and date are not available. Court matters take precedence over other conference bookings during court hours 9.30am – 4.00pm).

How do I make a booking ?

Jabber Guest bookings for video conference calls are arranged by contacting the Prisons Video Conferencing Coordination Unit via email at: vc.prisons@justice.vic.gov.au

The earlier you request a booking, the greater your chances of obtaining your preferred conference time. All efforts will be made to accommodate late requests, however there is no guarantee that Jabber Guest links will be available for requests received less than 24 hours prior to the hearing date. You will be notified via email if your request cannot be accommodated.

The following details need to be included in the email request:

Subject line: Jabber Guest booking request

Name of prisoner:

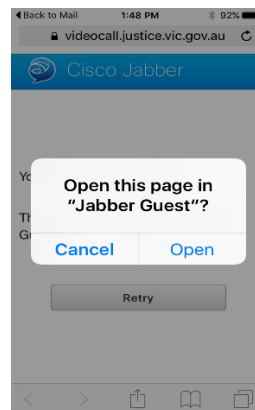
Date of birth:

CRN number:

Proposed time and date for conference call:

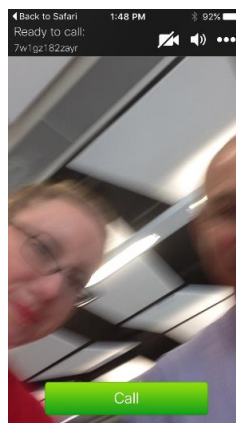
Required duration of conference call:

The prisons Video Conferencing Coordination Unit will email a Jabber Guest link to you, including confirmation of the time, date and duration of the call. Open the page in Jabber Guest.



Clicking the Jabber Guest link will direct you to a Jabber Guest installation process if the software is not already installed on your device.

The link will initiate the Video Conferencing call between yourself and your client. Just press "call".



Cost and data usage

When your phone or computer uses the internet it sends and receives things as data. This is 'data usage'. Email, digital video, music and photographs are all made of data and all can be sent and received over the internet (streaming).

Data is measured in kilobytes (KB), megabytes (MB) and gigabytes (GB). There are 1024 KB in 1 MB and 1024 MB in 1 GB.

Video Conferencing is similar to video streaming and will use a portion of your monthly data limit. During testing a Video Conference call was using approximately **10MB of data per minute**.

You should monitor your Video Conferencing usage to ensure that the data limits on your mobile/internet plans are sufficient. If you find you are exceeding your data usage limit, you should consider increasing the data limit on your plans. Approximate costs are listed below but will vary depending on your individual plan:

Mobile Phone - increasing your mobile internet plan by about 1GB (e.g. \$10 for an additional 1GB data pack) should provide you an extra 1h 40mins, which equates to a cost of about \$0.10 per minute of video conference. The exact cost to purchase extra data will be dependent on your provider.

Home / Office Wi-Fi internet – Home internet plans are much cheaper than mobile plans. For example, a broadband plan of \$70 for 300GB would equate to a cost of \$0.0023 per minute (or \$0.14 per hour) of Video Conference.

Help and support

If you are experiencing software installation issues, you will need to contact the IT support staff within your own organisation.

KITS manage the Video Conferencing solution for the Department of Justice and Regulation. KITS does not provide device support for external participants. Please see the trouble shooting guide and FAQ for information on common problems. Contact your local IT support if still experiencing ongoing issues.

Contacts

Prisons Video Conferencing Unit: vc.prisons@justice.vic.gov.au

Department of Justice KITS: telecomms@justice.vic.gov.au or (03) 8684 6888