



Magistrates' Court  
Victoria

## Practice Direction

No. 10 of 2004

# VIDEO CONFERENCING GUIDELINES

The Chief Magistrate issues this Practice Note pursuant to Section 42Q of the Evidence Act 1958. This note repeals and replaces practice note 2 of 1998 and commences 1<sup>st</sup> October, 2004

### ***GUIDELINES FOR THE CONDUCT OF CRIMINAL COURT PROCEEDINGS BETWEEN COURTS AND CORRECTIONAL FACILITIES***

#### **General**

Video conference facilities provide Victorian courts with the capacity to take or receive evidence and submissions from witnesses or persons involved in court proceedings in circumstances where it would be expensive, inconvenient or otherwise not desirable for a person to attend a court in person.

Video conferencing facilities installed at correctional facilities can be used in matters including remands, pleas, uncontested bail applications, filing hearings, contest mentions, crimes (family violence) matters, committal mentions including hand up briefs, special mentions as well as matters where persons in custody are required to appear before a court as a witness.

#### **Legislation**

The Evidence (Audio Visual and Audio Linking) Act 1997 ("the Act") commenced on 22 December 1997 and governs the use of video conferencing facilities

The purpose of the Act is to facilitate appearance before, or the giving of evidence or making of submissions to courts by audio visual or audio

links (includes telephone, Telecourt and video conference). Where appropriate, references to the provisions of the Act are included in these guidelines.

The Act makes special provisions applicable to children under *the Children and Young Persons Act 1989* which are not included in these guidelines.

The Act broadly envisages two forms of application; Division 2 relates to persons other than accused (i.e. witnesses) appearing before a court by way of audio visual link and Division 3 deals with accused persons.

### **Context**

In these guidelines reference to the "*court point*" means the courtroom or other place where the court is sitting and the "*remote point*" is the place where the person appearing via the video link is located, for example, a prison.

### **Appearance of an accused in custody by video link**

Section 42K(1) of the Act creates a presumption that an accused person will appear via video link for bail and other pre-trial proceedings. The types of proceedings where accused persons may appear before a court by way of video link (unless the court otherwise directs) are:

- a. Bail applications (not including where a person is taken into custody and must appear before a bail justice or Magistrates' court within a reasonable time, unless the accused consents to appear by way of video link).
- b. Where a person has previously been remanded and is to be further remanded in custody.
- c. On a special mention or committal mention.
- d. On an application for adjournment of a hearing.

Where in relation to any of the above proceedings an accused in custody is to appear before a court by way of video link, the prison or alternatively Prison Central Records should notify the court at which the accused is scheduled to appear, (in accordance with the requirements of the coordinating registrar). The request should be transmitted (by facsimile) to the Criminal Coordinator/Contact Officer of the relevant court as soon as possible but should be lodged no later than 2pm on the day before the day on which it is proposed that the video link will take

place. The Court Coordinator will confirm the bookings listed, make a notation to that effect, and fax confirmation to Prison Central Records before 4.00 PM on the day before the listed video links are scheduled to occur.

**Scheduled listing times for video links to Melbourne Magistrates Court (MMC)**

<b>Prison</b>		<b>All video links for Melbourne Magistrates Court listed for</b>
Melbourne Prison (MAP)	Assessment	<b>10.00 am daily</b>
Port Phillip Prison		<b>11.00 am daily</b>
Barwon Prison		<b>11.30 am daily</b>
Fulham Correctional Centre		<b>12.00 pm daily</b>
Dame Phyllis Frost Centre		<b>2.00 pm daily</b>
Thomas Embling Health	Mental	<b>3.00 pm daily</b>
Committal mentions		<b>2.00pm Thursdays</b>

**NOTE:** Listing times as shown above may be subject to review dependant on the number of matters scheduled for video links

**Application to have a prisoner, whose status is governed by section 42K(1) brought before the court**

In any of matters, (a) - (d) above, at any time in the course of a proceeding, the court, on its own initiative or on application of a party to the proceeding may make a direction that the accused person be physically brought before the court. (S.42L). An application for a direction that a person be physically brought before the court in the above proceedings may be made by, or on behalf of, the accused or by the prosecution up to 2 days before the accused is due to appear, or a shorter period as fixed by the court or with leave of the court at any time during the proceedings. Applications must be served upon any other party to the proceeding.

Applications will be determined by the court based on the written application, which must include the grounds for the application, and any written submissions, without hearing from the applicant or any other party.

**Accused required to physically appear before the court**

**S.42K(2)** of the Act provides that an accused person is required to be physically brought before the court, unless the court otherwise directs in the following matters:

- (a) a committal proceeding
- (b) an inquiry as to his or her fitness to stand trial
- (c) the hearing of the charge
- (d) a sentence hearing

**Application to have a prisoner, whose status is governed by section 42K(2) appear by way of video link**

In any of the above proceedings, a court can, on application or on its own initiative, direct that an accused appear by audio visual link. Application for a direction that an accused appear by way of video link in these proceedings may be made by, or on behalf of the accused, or by the prosecution at any time during the proceedings

Applications may be lodged up to 2 days before the accused is due to appear before the court or such shorter period as is fixed by the court or with leave of the court at any time during the proceedings.

Applications must be served upon any other party to the proceedings

Applications for such a direction, unless made with the consent of all parties to the proceeding, can only be granted by the court if there are exceptional circumstances.

**Other proceedings S42K(4) (including section 464B applications)**

In any other proceeding (IE: other than those mentioned in S.42K(1)(2)(3)) The Court may direct, either of its own initiative or by application of a party to the proceedings, that an accused person appear by audio visual link. Application under S.42K(4) can be made by or on behalf of the accused person or by the prosecution up to 2 days before the accused is due to appear or such shorter time as is fixed by the court or with leave of the court at any time during the proceedings. (S.42N).

Applications must be served upon any other party to the proceedings

**Where an informant or the prosecution wishes to have a matter listed by a registrar pursuant to section 42K(4) they must first obtain the consent of the defendant/prisoner's legal representative or where the defendant is not represented the defendant personally. Where consent is not obtained the matter must go before a Magistrate.**

**Persons other than accused persons (whether a party to any proceeding or not)**

A court can direct on application or on the court's own initiative that **any person** may appear before, or give evidence or make a submission to a court by video link.

**Pre video conference arrangements**

Prior to the time for the scheduled video conference, the court will notify the nominated Prison Contact Officer at what time the inmate should be seated and ready in the room set aside for the video conference, (normally at least 15 minutes prior to the scheduled time for the video conference).

The nominated Prison Contact Officer is responsible for ensuring the video conference unit is operational and switched on prior to the scheduled time for the video conference.

**Third persons**

Where, for any reason, a third party (i.e. prison officer, technical assistant, interpreter at a remote end) is present in the room from where the video conference is being transmitted then that person should, at the start of the proceedings, be introduced (by prosecutor or counsel as appropriate) and their purpose in being present explained to the court. No person, other than those already introduced to the court, should enter the video conference room whilst a video conference hearing is in progress.

If a person, other than the inmate/witness, needs for any reason pertinent to the conduct of proceedings to interject (i.e. to report a technical problem affecting the conduct of the case, to report that some attempt has been made to interrupt, intervene or intimidate the witness, or to report any untoward behaviour on the part of any person in the room) the person should excuse him/herself and interject only at an appropriate moment.

Third persons must not coach, interrupt, intervene or intimidate the witness. Exhibits should be handed to the witness without comment.

### **Commencement of proceedings**

At the commencement of a video conference the judicial officer/clerk will check that the link has been established. The presiding judicial officer should confirm that the witness/person at the remote point can be seen and heard clearly and similarly, that the witness at the remote point can clearly see and hear the judicial officer.

Where the video link has been established (i.e. activated) it will not be necessary for persons appearing by way of video link to bow to the bench either on the opening or closing of the court.

Where a video conference is to occur immediately after the opening of a court or is the only proceeding before the court, then the video link should not be activated until after the court has been formally opened and the magistrate seated.

Similarly, where the court is to finish directly after a video link or proceedings are adjourned temporarily during a video link it will not be necessary for the person at the remote point to stand. Ideally, the video link should be disconnected before the court adjourns.

### **Administering the oath**

Section 42Y of the Act enables the oath to be administered from the court point by the video link or by an authorized person at the remote end.

A bible and a Koran should be available at each prison location in the room set aside for video conferences. An affirmation can be used as appropriate.

### **Connecting and disconnecting video links**

Unless specific circumstances exist the court will be responsible for calling prison sites and similarly will be responsible for disconnecting

calls at the conclusion of proceedings (i.e. the court will hang up). The court (bench clerk) will be responsible for ending the call and will indicate to the remote end that the call will be disconnected.

Where for any reason a video link is interrupted during the proceeding (for technical reasons) proceedings will be suspended and will not continue in the absence of the accused.

### **Confidential Communications**

The Act provides that both the court point and the remote point must be equipped with facilities that enable private communication to take place between the accused person and any legal practitioner and for documents to be transmitted between both sites by those persons. This includes during the hearing, during adjournments or shortly before or after the hearing.

Where persons appearing by way of a video link require confidential discussions with their legal counsel a dedicated telephone line/fax should be provided for this purpose.

Where the prison is the remote point and any person other than accused and his legal representative are present in the room that person should leave the room during confidential discussions unless the good order and security of the correctional facility is threatened.

### **Document Transfer**

Section 42U of the Act enables the transmission of documents between the court point and the remote point by any means without the need to prove that the copy transmitted is a true copy of the document.

Document cameras located at each court location will allow for the transmission of images of original exhibits/evidence to remote sites, thus obviating any concerns about the security of original documentation in the possession of the court. Copies of documents can otherwise be transmitted via facsimile as directed by the court.

### **Equipment**

S.42G sets out the technical requirements for a video link being that both the court and the remote point must be equipped with facilities that:

- (i) enable all appropriate persons at the court to see and hear the person appearing before the court or giving the evidence or making the submission; and
- (ii) enable all appropriate persons at the remote site to see and hear appropriate persons at the court.

### **Camera**

There are special security issues that need to be considered where an inmate is appearing before a court by way of video conference so as to ensure the inmate is able to give evidence without interference.

Courts will at all times have the ability to control the camera view at prison video conference sites. The Magistrate can have a view of the entire room and of all persons present at any time before, during or after the hearing. The Magistrate will also have a head and shoulders view of the witness.

Even if the video and audio unit is not activated at the remote end, witnesses should assume that they will be visible to the Court at all times while in the video conferencing room.

Witnesses will have a view of the person speaking at the time whether that be Magistrate, counsel etc. Even where for any reason the courtroom is not visible on the video screen (but equipment is operational) persons should assume always that they are, or may be, visible to the courtroom.

It is not necessary that witnesses look at the camera when addressing a person via video link. The cameras are positioned such that looking at the image on the screen will transmit as looking at the person being addressed at the far end.

### **Microphones**

Microphones used in video link hearings are highly sensitive. Persons appearing before a court by way of a video link should assume from the time the video link is activated to the time the link is disconnected that microphones are "live" and as such all remarks are audible to the court. The exception here is where, for any reason, the court or the remote site "mute" their microphones.



Persons should avoid shuffling papers or tapping objects near the microphone to ensure the clarity of the transmission.

Where for any reason it is necessary to mute the microphones at the remote end (i.e. where counsel need to speak confidentially with client) the court must be advised before the microphones are switched to mute. Where the microphone at the remote site is "muted" (i.e. no conversation is audible to the court from the remote site) the court will at all times be aware of that.

IAN L GRAY  
**Chief Magistrate**

16<sup>th</sup> September 2004