



Law and Justice (Cross Border and Other Amendments) Act 2009

No. 77, 2009

**An Act to amend various Acts relating to law and
justice, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 77, 2009

An Act to amend various Acts relating to law and justice, and for related purposes

[Assented to 7 September 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Law and Justice (Cross Border and Other Amendments) Act 2009*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to the cross border justice scheme

Service and Execution of Process Act 1992

1 Subsection 3(1)

Insert:

cross-border laws means the following:

- (a) the cross border laws of a participating jurisdiction, within the meaning of the *Cross-Border Justice Act 2008* of Western Australia;
- (b) the laws of a State, or provisions of a law of a State, that are prescribed by the regulations for the purposes of this paragraph.

2 After subsection 8(3)

Insert:

(3A) This Act:

- (a) does not affect the operation of the cross-border laws; and
- (b) does not apply to a person in relation to a particular matter if the cross-border laws would, apart from this Act, apply to the person in relation to the matter.

Schedule 2—Amendments relating to taking evidence by audio or audiovisual link

Service and Execution of Process Act 1992

1 Subsection 3(1)

Insert:

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

2 Subsection 3(1)

Insert:

audiovisual link means facilities that enable audio and visual communication between persons in different places.

3 Subsection 20(7)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

4 Paragraph 20(8)(b)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

5 Paragraph 28(b)

Repeal the paragraph, substitute:

(b) who is in prison but who need neither attend before the court or authority for the purpose of complying with the subpoena nor give oral evidence, by audio link or audiovisual link, to the court or authority.

6 Subsection 33(7)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

7 Paragraph 33(8)(b)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

8 Paragraph 38(b)

Repeal the paragraph, substitute:

(b) is required to:

- (i) attend before a court, authority or person for the purpose of complying with the subpoena; or
- (ii) give oral evidence, by audio link or audiovisual link, to a court, authority or person.

9 Subsection 43(7)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

10 Paragraph 43(8)(b)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

11 Subsection 44(9)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

12 Paragraph 44(10)(b)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

13 Subparagraph 56(b)(ii)

Repeal the subparagraph, substitute:

- (ii) who is in prison but who need neither attend before the tribunal for the purpose of complying with the subpoena nor give oral evidence, by audio link or audiovisual link, to the tribunal.

14 Subsection 61(7)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

15 Paragraph 61(8)(b)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

16 Paragraph 66(b)

Repeal the paragraph, substitute:

- (b) is addressed to a person (in this Subdivision called the *prisoner*) who is in prison in a State other than the place of issue and who is required to:
 - (i) attend before the tribunal for the purpose of complying with the subpoena; or
 - (ii) give oral evidence, by audio link or audiovisual link, to the tribunal.

17 Subsection 71(7)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

18 Paragraph 71(8)(b)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

19 Subsection 72(10)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

20 Paragraph 72(11)(b)

Omit “video link or telephone”, substitute “audio link or audiovisual link”.

21 Subparagraph 75(b)(ii)

Repeal the subparagraph, substitute:

- (ii) who is in prison but who need neither attend before the tribunal for the purpose of complying with the subpoena nor give oral evidence, by audio link or audiovisual link, to the tribunal.

22 Paragraph 78(b)

Repeal the paragraph, substitute:

- (b) is addressed to a person (in this Subdivision called the *prisoner*) who is in prison in a State other than the place of issue and who is required to:
 - (i) attend before the tribunal for the purpose of complying with the subpoena; or
 - (ii) give oral evidence, by audio link or audiovisual link, to the tribunal.

23 Subparagraphs 84(4)(a)(iii) and (6)(a)(ii) and (iii)

Omit “telephone”, substitute “audio link”.

24 Paragraph 129(a)

Repeal the paragraph, substitute:

- (a) if the person need not, for the purposes of complying with the subpoena, do either or both of the following:
 - (i) attend before the court, authority or tribunal that issued the subpoena;
 - (ii) give oral evidence, by audio link or audiovisual link, to the court, authority or tribunal;comply with the subpoena;

Schedule 3—Amendments relating to New Zealand

Evidence and Procedure (New Zealand) Act 1994

1 Subsection 3(1)

Insert:

excluded family proceeding means:

- (a) a proceeding in respect of an application made under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980; or
- (b) a proceeding relating to the status or property of a person who is not fully able to manage his or her own affairs.

Note: The text of the Convention referred to in paragraph (a) is set out in Australian Treaty Series 1987 No. 2 ([1987] ATS 2). In 2009, the text of a Convention in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

2 Subsection 3(1) (definition of *family proceeding*)

Repeal the definition.

3 Section 7

After “proceeding” (first occurring), insert “, other than a criminal proceeding or an excluded family proceeding,”.

4 Paragraph 7(b)

Omit “; other than a criminal proceeding or family proceeding”.

5 Paragraph 18(a)

Omit “a family”, substitute “an excluded family”.

6 Application

The amendments made by items 3, 4 and 5 apply in relation to a proceeding commenced on or after the commencement of this item.

7 Subsection 25(3)

Omit “the court”, substitute “or receiving submissions by video link or telephone, all its powers which it”.

*[Minister’s second reading speech made in—
House of Representatives on 19 March 2009
Senate on 15 June 2009]*

(46/09)
