



Family Court of Western Australia

Electronic Communication Information Kit

1. Why use electronic communication?

The costs and inconvenience of long distance travel for parties, lawyers and witnesses involved in proceedings before the Court can be great. In some situations, it is cheaper and more convenient to arrange for a video or telephone link. The Family Court of Western Australia has a video system, linking with a network of courts, government agencies and private video link suppliers across Australia. Overseas video links can also be arranged. However, there may be some situations when a telephone link, which is easier to arrange and much cheaper, is adequate for the Court's purposes.

2. Who pays the costs of the electronic communication?

In relation to video links, the person benefiting from the savings gained by using a video link will pay the costs incurred at both ends of the video link in most cases. This is known as a "user pays" system. However, there may be circumstances where the Court orders the costs of the video link to be borne equally by the parties. There are no costs payable to the Court for telephone links, except for overseas telephone links, which will incur the costs the Telstra charge for the call.

3. How do I apply for electronic communication?

When seeking the Court's permission to make submissions, give evidence or appear by "electronic communication" at hearings and conferences, the Family Law Rules 2004 require written application as follows:

- In the case of a trial (defended hearing) - in accordance with Rules 16.05 and 16.06 (see attachment) which requires the filing of a Form 2 "Application in a Case" at least 28 days prior to the trial, or such other time as the judicial officer determines; and
- In the case of all other hearings and conferences – in accordance with the following Rules (see attachment):-
Divorce – Rule 3.08, Form 2 hearing – Rule 5.06, Conference – Rule 12.12, Appeals – Rule 22.31;
by way of filing the form "Request to attend by electronic means" which must be received by the court at least 7 days before the date fixed for the conference or hearing.

If the application is in accordance with Form 2, the application must be accompanied by an affidavit, setting out the information referred to in the Rule 16.08 (see attachment). If the application is in the form of the "Request to attend by electronic means", supporting information similar to that contained in Rule 16.08 should be included. You also need to complete and return the booking form supplied with this brochure.

Summary of what documents you need to lodge at the Court:-

For a Trial (Defended Hearing):

- Form 2 application seeking leave of the Court for a video link
- Affidavit setting out details in support (Rules 16.05 and 16.06)
- "Electronic Communication Booking Form – External" (*attached*)

For all other hearings and conferences:

- Written request by way of the form "Request to attend by electronic means"
- "Electronic Communication Booking Form – External" (*attached*)

Before lodging your application for a video link, you should telephone the Court Technology Officer on 08 9224 8349 to find out if the video link facilities of the Court are available on the desired date.

When lodged, your application will be checked by a Customer Service Officer and then sent with your booking form to the Court Technology Officer for processing. The application will then be presented to the Judicial Officer. If your application for video link has been made by way of Form 2, the Judicial Officer may direct that your application be listed for hearing in court. The Court Technology Officer will advise you in writing of the hearing date and/or outcome and fees payable.

4. What are my responsibilities as the person applying for electronic communication?

As the person applying for the electronic communication, you are responsible for:-

- Lodging the documentation referred to in section 3 above.
- Arranging the booking of the video or telephone link with the Court, and with the other end if a video link.
- Unless otherwise ordered by the Court, paying for the costs incurred at both ends of a video link.

The Court Technology Officer can advise you of the State Government video link facilities available. You can consult the Yellow Pages and the Internet to find other private and government facilities.

5. How much will it cost?

Video Links - The costs of a video link at courts throughout Western Australia is made up of three components; a booking fee, the line charges (if any), and an administration fee. The details of these components are:

- **Booking fee** – this fee is \$108.00 for links within Western Australia and \$160.50 for interstate/overseas. This fee includes set-up time and the testing of the system and ISDN or IPVC link line before the video link hearing or conference.
- **Line charges** – most video links today use IP video linking across the internet so do not incur any line charges. However, if the equipment at the far end of the link is not an IP enabled system, Telstra line charges may apply. The Court Technology Officer will advise you if line charges will apply to your video link.
- **Administration fee** – charged at \$84.50 per hour or part thereof. This fee includes the cost of the person responsible for controlling the video link system, swearing in and/or identifying the witness, etc.

The booking and administration fees are set out in Schedule 1 of the “Evidence (Video and Audio Links Fees and Expenses) Regulations 1999”

Telephone Links - There are no costs payable to the Court for telephone links, except for overseas telephone links, which will incur the costs the Telstra charge for the call. You will be advised if there are any such costs.

Unless otherwise ordered, the person applying for the video link is also responsible for organising and paying the fees and charges at the other end of the video link. Please liaise with the supplier of the other end of the video link about their booking procedures, fees and charges.

6. When do I pay the costs?

Payment of the video link booking fee to the Family Court of Western Australia must be made in advance. Once the Court has advised you that the video link has been approved, the booking fee must be paid at least 48 hours prior to the hearing or conference. Payment of an overseas telephone must be paid upon receipt of the invoice.

Payment of the administration fee and Telstra charges (if any) must be made within 7 days of receiving advice of the amount those fees and charges.

PLEASE NOTE – FOR VIDEO LINKS:

- **The booking fee component of a video link is not refundable.**
- **Failure to make advance payment of the booking fee may result in cancellation of the booking.**
- **Please advise the Court immediately of any intended cancellation.**

7. Contact details

If you need further information about booking the video link facilities of the Family Court of Western Australia, please contact:-

Court Technology Officer, Family Court of Western Australia

Telephone: (08) 9224 8349

Facsimile: (08) 9224 8360

Email: transcripts.familycourt@justice.wa.gov.au

Manager, Court Technology, Family Court of Western Australia

Telephone: (08) 9224 8233

Facsimile: (08) 9224 8360

Email: transcripts.familycourt@justice.wa.gov.au

ATTENDANCE BY ELECTRONIC COMMUNICATION

RELEVANT FAMILY LAW RULES

FAMILY LAW RULES 2004

2003 No. 375

RULE 3.08 Attendance at hearing

- (1) A party may apply under rule 5.06 to attend the hearing of an Application for Divorce (Form 3) by electronic communication.
- (2) Subject to Part 3.4:
 - (a) if the applicant fails to attend the hearing in person or by a lawyer, the application may be dismissed; and
 - (b) if the respondent fails to attend the hearing in person or by a lawyer, the applicant may proceed with the hearing as if the application were undefended.

FAMILY LAW RULES 2004

2003 No. 375

RULE 5.06 Attendance by electronic communication

- (1) A party may request permission to do any of the following things by electronic communication at a hearing:
 - (a) attend;
 - (b) make a submission;
 - (c) give evidence;
 - (d) adduce evidence from a witness.

- (2) Before making a request, the party must ask any other party whether the other party agrees, or objects, to the use of electronic communication for the purpose proposed by the party.

- (3) A request must:
 - (a) be in writing;
 - (b) be made at least 7 days before the date fixed for the hearing;
 - (c) set out the information required under subrule 16.08(3);
 - (d) set out details of the notice in relation to the request that has been given to any other party;
 - (e) state whether any other party agrees or objects to the request; and
 - (f) state the expense to be incurred by using the electronic communication.

- (4) A request may be considered in chambers, on the documents.

- (5) The court may take the following matters into account when considering a request:
 - (a) the distance between the party's residence and the place where the court is to sit;
 - (b) any difficulty the party has in attending because of illness or disability;
 - (c) the expense associated with attending;
 - (d) the expense to be incurred, or the savings to be made, by using the electronic communication;
 - (e) any concerns about security, including family violence and intimidation;
 - (f) whether any other party objects to the request.

- (6) If the court grants the request, the court may:
 - (a) order a party to pay the expense of using the electronic communication; or
 - (b) apportion the expense between the parties.

- (7) If a request is granted, the party who made the request must immediately give written notice to the other parties.

FAMILY LAW RULES 2004

2003 No. 375

RULE 12.12 Attendance by electronic communication

Rules 5.06 and 5.07 apply in relation to the use of electronic communication to attend a court event (other than a trial) as if the court event were a hearing.

Note: Rule 16.05 sets out the requirements in relation to attending a trial by electronic communication.

FAMILY LAW RULES 2004

2003 No. 375

RULE 16.05 Attendance, submissions and evidence by electronic communication

Note

The issue of whether a party wishes to attend, make a submission, give evidence or adduce evidence from a witness at any court event that is Judge managed by electronic communication will be discussed at the appropriate court event, and any application in that respect will be referred to a Judge without formal application or affidavit material. In other cases, an application should be made under rule 16.05.

- (1) A party may apply for permission to do any of the following things by electronic communication at any court event that is Judge managed:
 - (a) attend;
 - (b) make a submission;
 - (c) give evidence;
 - (d) adduce evidence from a witness.

Note: For the procedure for making an application in a case, see Chapter 5.

- (2) The application must be:
 - (a) filed at least 28 days before the event; and
 - (b) listed before the Judge.

Note: The court may shorten or extend the time for compliance with a rule (see rule 1.14).

- (3) The affidavit filed with the application must set out the facts relied on in support of the application, including the following:
 - (a) what the applicant seeks permission to do by electronic communication;
 - (b) the kind of electronic communication to be used;
 - (c) if the party proposes to give evidence, make a submission or adduce evidence from a witness by electronic communication—the place from which the party proposes to give or adduce the evidence, or make the submission;
 - (d) the facilities at the place mentioned in paragraph (c) that will enable all eligible persons present in that place to see or hear each eligible person in the place where the court is sitting;

- (e) if the applicant seeks to adduce evidence from a witness by electronic communication:
 - (i) whether an affidavit by the witness has been filed;
 - (ii) whether the applicant seeks permission for the witness to give oral evidence;
 - (iii) the relevance of the evidence to the issues;
 - (iv) whether the witness is an expert witness;
 - (v) the name, address and occupation of any person who is to be present when the evidence is given;
 - (vi) if the applicant proposes to refer the witness to a document, whether:
 - (A) the document has been filed; and
 - (B) the witness will have a copy of the document; and
 - (vii) whether an interpreter is required and, if so, what arrangements are to be made;
- (f) the expense of using the electronic communication, including any expense to the court, and the applicant's proposals for paying those expenses;
- (g) whether the other parties object to the use of electronic communication for the purpose specified in the application and, if so, the reason for the objection;
- (h) if the application relates to evidence to be adduced from a witness in a foreign country—the matters required to be addressed under rule 16.06;
- (i) if the application relates to making a submission, giving evidence or adducing evidence from New Zealand—the facilities that enable evidence to be given or a submission to be made, as required by Part 4 of the *Evidence and Procedure (New Zealand) Act 1994*.

*Note: Part 4 of the Evidence and Procedure (New Zealand) Act 1994 (the **EP Act**) applies to proceedings in a federal court, or a court specified in regulations made under the EP Act, in which a direction is made for the use of video link or telephone to take evidence or make a submission from New Zealand.*

Subsection 25(2) of the EP Act sets out the matters of which a court must be satisfied before it may make a direction under subsection 25(1) of that Act. The EP Act also provides that evidence is not to be given, or a submission made, from New Zealand unless the place where the court is sitting and the place where the evidence is to be given or a submission made are equipped with facilities enabling the persons at each place to see and hear each other in the case of video link (see section 26), or to hear each other in the case of a telephone conference (see section 27).

- (4) The application may be decided in chambers on the documents filed.
- (5) The court may order:
 - (a) a party to pay the expenses of the attendance by electronic communication; or
 - (b) that the expenses are to be apportioned between the parties.
- (6) For paragraph (3)(h):
foreign country has the meaning given by subrule 16.06(2).

FAMILY LAW RULES 2004

2003 No. 375

RULE 16.06 Foreign evidence by electronic communication

- (1) In addition to the requirements of rule 16.05, a party who proposes to adduce evidence by electronic communication from a witness in a foreign country must satisfy the court:
- (b) that the party has made appropriate inquiries to determine the attitude of the foreign country's government to the taking of evidence by electronic communication; and
 - (c) whether permission is needed from the foreign country's government to adduce evidence from a witness in that country by electronic communication; and
 - (d) if permission is needed, whether permission has been granted or refused; and
 - (e) if permission has been refused, the reason for refusal; and
 - (f) whether there are any special requirements for the adducing of evidence, including:
 - (i) the administration of an oath; and
 - (ii) the form of the oath.

Note: Chapter 5 sets out the procedure for making an application for interim, procedural, ancillary or other incidental orders.

- (2) In this rule:

foreign country means a country other than Canada, New Zealand, the United Kingdom or the United States of America.

Note 1: A party seeking to adduce evidence from a witness in Canada, New Zealand, the United Kingdom or the United States of America does not have to comply with subrule (1) because these countries do not object to the taking of evidence by electronic communication.

Note 2: The court, instead of granting permission for a party to adduce evidence by electronic communication from a witness in a foreign country, may direct the Registry Manager to send a letter of request to the judicial authorities in the foreign country, requesting the court to take evidence from the witness in accordance with the law of the foreign country. For the requirements for a letter of request to the judicial authorities of a foreign country, see rule 15.73.

FAMILY LAW RULES 2004

2003 No. 375

RULE 22.31 Attendance by electronic communication

- (1) A party may request permission from the court to attend the hearing of an appeal or an application for leave to appeal or an application in relation to an appeal or a procedural hearing by electronic communication.
- (2) The request must:
 - (a) be in writing;
 - (b) for an application in relation to an appeal or a procedural hearing—be made at least 14 days before the date fixed for the hearing of the application or the procedural hearing;
 - (c) for an application for leave to appeal or an appeal—be made at least 14 days before the date fixed for the sitting of the Full Court during which application for leave to appeal or the appeal will be heard;
 - (d) address all of the matters mentioned in subrule 16.05(3), if applicable; and
 - (e) set out the notice given of the request to any other party and whether there is any objection to the request.
- (3) The request may be determined, in chambers, in the absence of the parties by:
 - (a) for an appeal or application to be heard by the Full Court—a Judge of the Appeal Division;
 - (b) for an appeal or application to be heard by a single Judge—the Judge hearing the appeal or application; or
 - (c) for a procedural hearing—the Registrar or Judge who is to conduct the procedural hearing.
- (4) The court may take the following matters into account when considering the request:
 - (a) the party's distance from the place where the event is to be held;
 - (b) any physical difficulty the party has in attending because of illness, disability or concerns about security.
- (5) The court may order a party to pay the expenses of attending by electronic communication, apportion the expenses between the parties, or make no order about the expenses.
- (6) This rule does not apply if the court of its own motion decides to hear an appeal, or an application for leave to an appeal or procedural hearing, by electronic communication.

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