

Your Ref: 11003/J2028

19 February 2010

Her Hon Judge Antoinette Kennedy  
Chief Judge of the District Court  
of Western Australia  
Level 11  
500 Hay Street  
PERTH WA 6000

Dear Chief Judge

**Draft Practice Direction Gen 1 of 2010 – Taking Evidence by Video-Link**

I refer to your letter dated 13 January 2010 inviting comments on the draft Practice Direction setting out strict requirements regarding the giving of evidence by video-link and audio-link.

The Law Society supports the issue of a Practice Direction. However, it is the Society's view that applicants, especially those working in remote locations, would not always be able to comply with the strict requirements of the draft Practice Direction. For this reason it is submitted that the words "as far as is practicable" should follow the word "must" throughout the Practice Direction. It is also suggested that a new paragraph be added requiring mobile phones to be turned off in the room used for the broadcast.

The Society's concerns regarding compliance with various paragraphs of the draft Practice Direction are set out below:

**PD2. Booking sheet**

2.1 *The party who intends to call the witness ("Applicant") must, not less than 14 days before the date of the hearing in which the evidence is to be taken, send a Videoconferencing Booking Request in the form published by the Court from time to time (and available on its website) to the District Court Listings-Coordinator.*

### **Comment**

There should be some scope for an application to be made inside the specified period of 14 days, supported by an affidavit or as approved by the Court. The word "must" is commanding and does not allow for any latitude.

### **PD3. Obligations on the Applicant**

3.1 *Where the site at which the witness will appear is within Western Australia, the Applicant must use reasonable endeavours to ensure that the video-link facility is one set out in the Court's List of Preferred Video-Link facilities, as published from time to time by the Court (and available on its website).*

### **Comment**

Despite best endeavours to use published locations it is not always possible when working in remote locations, especially in the Kimberley, because of isolation, weather (floods etc);

### **3.2 The Applicant must ensure that:**

- (a) *The room from which the video or audio-link is to be broadcast is able to be closed off such that only the witness and any other person as permitted by the court are in the room.*
- (c) *Where a video-link is used, the witness is dressed appropriately for court, as if the witness was giving evidence in person in the court room.*

### **Comment**

- (a) Despite best endeavours it might not always be possible to close off the room. TAFE facilities are sometimes used as 'backup' (eg. in Onslow) and these rooms cannot be closed off.
- (c) It should not be up to the applicant to make any assurance about clothing. The character of the applicant should not be altered. Witnesses should dress according to their own standards. It can prove difficult for counsel to effectively contact witnesses before they arrive at court and to comment on how witnesses should be dressed.

The Society thanks you for the opportunity to comment.

Yours sincerely



Hylton Quail  
President