

AUSTRALIAN MILITARY COURT PRACTICE NOTE 3

**USE OF VIDEO AND AUDIO LINKS FOR THE RECEPTION
OF EVIDENCE BY THE AUSTRALIAN MILITARY COURT**

1. Unless varied by a military judge in the interests of justice, the following practice and procedure is to be applied to the use of video and audio links by the Australian Military Court.

2. When determining in accordance with DFDA s 148A whether testimony may be given to the Australian Military Court ('the Court') by video link or audio link, or whether in accordance with DFDA s 148B a person should be directed or allowed to appear before the Court or to make a submission to the Court by way of video link or audio link, the Court is to have regard, amongst any other relevant considerations, to the following matters:

- a. whether the person is an accused or a witness;
- b. whether the trial is by a military judge alone or with a military jury;
- c. whether all parties consent to the video or audio link;
- d. whether the evidence or submission to be given or made is likely to be contested;
- e. any operational or training considerations or exigencies preventing the person from appearing before the Court in person;
- f. the relative financial cost to the Commonwealth of utilising video or audio links compared to the cost of bringing the person directly before the Court; and
- g. the availability of sustainable video or audio links of suitable quality in the location ('the remote location') of the person taking into account the likely duration and nature of the testimony, submission or appearance which the person is required to give or requires to make before the Court. Some relevant considerations might include the:
 - i. ability to transmit copies of documents from the Court to the remote location;
 - ii. availability of separate lines of private communication between the Court and the remote location; or
 - iii. ability of all those present in the Court to see or hear the person at the remote location.

3. Where, for any reason, a third party is present in the room from where the audio or video link is being made to the Court then that person should, at the start of the proceedings be introduced (by the prosecutor or defending officer as appropriate) and their purpose for being present explained to the Court. No person, other than those already introduced should enter the room whilst an audio or video link is in progress.

4. No third party in the remote location is to coach, interrupt, intervene or intimidate the party communicating with the Court from the remote location. If a third party at the remote location has need to communicate with the Court during the video or audio link they are to excuse themselves and interject only at an appropriate moment.

5. Proceedings by way of audio or video link are not to commence before the Military Judge is satisfied that the Court is able to communicate clearly with the person at the remote location, and that the person at the remote location is able in turn to communicate clearly with the Court. Proceedings by way of audio or video link are not to conclude before the military judge is satisfied that the person at the remote location clearly understands that they are about to conclude.

6. If there is a need for a person at a remote location to be sworn, this is to be in accordance with the provisions of the Evidence Act 1995 (Cth) Division 2 – Oaths and Affirmations.

7. No adverse implications are to be drawn from a person's appearance before the Court by way of video or audio link.

8. A person requesting that the Court exercise its power under DFDA s 148A or s 148B is to submit the request together with their reasons to the Registrar in writing no later than fourteen days before the matter is listed for hearing. The request is to detail the location of the person and whether audio or video link will be required. If the request is opposed by any party it will be determined by a pre-trial directions hearing before the relevant military judge.

9. The cost of an audio or video link will be borne by the Commonwealth.



I.D. WESTWOOD, AM
Brigadier
Chief Military Judge
Australian Military Court

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