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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Law and Justice (Cross Border and
Other Amendments) Bill 2009**

No. , 2009

(Attorney-General)

**A Bill for an Act to amend various Acts relating to
law and justice, and for related purposes**

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1 **A Bill for an Act to amend various Acts relating to**
2 **law and justice, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

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

10 **3 Schedule(s)**

11 Each Act that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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2 **Schedule 1—Amendments relating to the**
3 **cross border justice scheme**
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5 *Service and Execution of Process Act 1992*

6 **1 Subsection 3(1)**

7 Insert:

8 *cross-border laws* means the following:

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

15 **2 After subsection 8(3)**

16 Insert:

17 (3A) This Act:

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

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2 **Schedule 2—Amendments relating to taking**
3 **evidence by audio or audiovisual link**
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5 *Service and Execution of Process Act 1992*

6 **1 Subsection 3(1)**

7 Insert:

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

10 **2 Subsection 3(1)**

11 Insert:

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

14 **3 Subsection 20(7)**

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

17 **4 Paragraph 20(8)(b)**

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

20 **5 Paragraph 28(b)**

21 Repeal the paragraph, substitute:

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

26 **6 Subsection 33(7)**

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

29 **7 Paragraph 33(8)(b)**

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

3 **8 Paragraph 38(b)**

4 Repeal the paragraph, substitute:

5 (b) is required to:

6 (i) attend before a court, authority or person for the purpose
7 of complying with the subpoena; or

8 (ii) give oral evidence, by audio link or audiovisual link, to
9 a court, authority or person.

10 **9 Subsection 43(7)**

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

13 **10 Paragraph 43(8)(b)**

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

16 **11 Subsection 44(9)**

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

19 **12 Paragraph 44(10)(b)**

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

22 **13 Subparagraph 56(b)(ii)**

23 Repeal the subparagraph, substitute:

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

28 **14 Subsection 61(7)**

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

31 **15 Paragraph 61(8)(b)**

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

3 **16 Paragraph 66(b)**

4 Repeal the paragraph, substitute:

5 (b) is addressed to a person (in this Subdivision called the
6 *prisoner*) who is in prison in a State other than the place of
7 issue and who is required to:

8 (i) attend before the tribunal for the purpose of complying
9 with the subpoena; or

10 (ii) give oral evidence, by audio link or audiovisual link, to
11 the tribunal.

12 **17 Subsection 71(7)**

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

15 **18 Paragraph 71(8)(b)**

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

18 **19 Subsection 72(10)**

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

21 **20 Paragraph 72(11)(b)**

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

24 **21 Subparagraph 75(b)(ii)**

25 Repeal the subparagraph, substitute:

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

30 **22 Paragraph 78(b)**

31 Repeal the paragraph, substitute:

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- (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;

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2 **Schedule 3—Amendments relating to New**
3 **Zealand**
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5 *Evidence and Procedure (New Zealand) Act 1994*

6 **1 Subsection 3(1)**

7 Insert:

8 *excluded family proceeding* means:

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

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

19 **2 Subsection 3(1) (definition of *family proceeding*)**

20 Repeal the definition.

21 **3 Section 7**

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

24 **4 Paragraph 7(b)**

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

26 **5 Paragraph 18(a)**

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

28 **6 Application**

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

31 **7 Subsection 25(3)**

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