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EVIDENCE ACT 1958 - SECT 42C

Definitions

42C. Definitions

In this Part-

"accused person" includes a person taken into custody for an offence and the defendant in a summary hearing or committal proceeding;

"appropriate persons" means persons that the [court](#) considers to be appropriate in the particular case;

"audio link" means facilities (including telephone) that enable audio communication between persons at different places;

"audio visual link" means facilities (including closed-circuit television) that enable audio and visual communication between persons at different places;

"child" means-

- (a) in the case of a person who-
 - (i) has been taken into custody for an offence and is required to be brought before the [Children's Court](#); or
 - (ii) is a party to a proceeding in the [Children's Court](#); or
 - (iii) is the subject of an application made to, or order made by, the [Children's Court](#)- a person who is a [child](#) within the meaning of the [Children and Young Persons Act 1989](#); and
- (b) a person in respect of whom a sentencing order within the meaning of the [Children and Young Persons Act 1989](#) is in force who is required to appear before the [Children's Court](#) under the terms of that order or in respect of a breach of that order or on an application for the

variation or revocation of that order; and

- (c) a person who is the subject of an appeal to the Supreme [Court](#) or the County [Court](#) made under the [Children and Young Persons Act 1989](#); and
- (d) in any other case-a person who is under the age of 17 years;

"court point" means the [courtroom](#) or other place where the [court](#) is sitting;

"practice directions" means [practice directions](#), [statements](#) or notes issued under section 42Q;

"remote point" means the place where-

- (a) the person appearing before the [court](#) or giving the evidence or making the submission; or
- (b) where Division 3 applies, the [accused person](#)- is located;

"victim", in relation to an offence, means a person who, or body that, has suffered injury, loss or damage as a direct result of the offence.

Division 2-Persons other than Accused

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EVIDENCE ACT 1958 - SECT 42D

Application of Division

42D. Application of Division

This Division applies to the appearance before a [court](#) of, or the giving of evidence or making of a submission to a [court](#) by, any person in a [legal proceeding](#), whether a party to the proceeding or not, other than the [accused person](#) in a proceeding to which Division 3 applies.

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EVIDENCE ACT 1958 - SECT 42E

Appearance, etc. by audio visual link or audio link

42E. Appearance, etc. by [audio visual link](#) or [audio link](#)

(1) Subject to section 42F and to any rules of [court](#), a [court](#) may, on its own initiative or on the application of a party to the [legal proceeding](#), direct that a person may appear before, or give evidence or make a submission to, the [court](#) by [audio visual link](#) or [audio link](#) from any place within or outside Victoria, or outside Australia, that is outside the [courtroom](#) or other place where the [court](#) is sitting.

(2) A [court](#) must not make a direction under sub-section (1) unless it is satisfied that the technical requirements specified in section 42G are met, or can reasonably be met, in the case of the particular link.

(3) The [court](#) may, at any time in the course of a proceeding, vary or revoke a direction under sub-section (1) either on its own initiative or on the application of a party to the proceeding.

(4) Without limiting sub-section (3), circumstances in which a [court](#) may vary or revoke a direction under sub-section (1) include the failure of the link to which the direction relates.

(5) Each party to a proceeding may address the [court](#) in respect of the making, variation or revocation of a direction under sub-section (1).

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EVIDENCE ACT 1958 - SECT 42F

Special provisions applicable to certain proceedings involving children

42F. Special provisions applicable to certain proceedings involving [children](#)

(1) This section only applies with respect to a person who is a [child](#) and then only where-

- (a) the proceeding is an application to the Family Division of the [Children's Court](#) under the [Children and Young Persons Act 1989](#) and the [child](#) is the subject of the application; or
- (b) the proceeding is an appeal under [section 116](#) or [117](#) of the [Children and Young Persons Act 1989](#) and the [child](#) was the subject of the application made to, or order made by, the [Children's Court](#).

(2) Unless the [court](#) otherwise directs under section 42E(1), a [child](#) who is required to appear, or be brought, before a [court](#) is required to appear, or be brought, physically before the [court](#).

(3) A [court](#) must not make a direction under section 42E(1) unless it is satisfied that the making of the direction is-

- (a) in the best interests of the [child](#); and
- (b) consistent with the interests of justice.

(4) In determining whether the making of a direction under section 42E(1) is in the best interests of a [child](#), the [court](#)-

- (a) may have regard to the appropriateness of the direction in terms of the security and protection of the [child](#); and
- (b) may consider whether physical appearance before the [court](#) would cause the [child](#) to suffer emotional distress to an unacceptable level; and
- (c) must consider any wishes expressed by the [child](#).

(5) In determining whether the making of a direction under section 42E(1) relating to a [child](#) is consistent with the interests of justice, the [court](#) must take into consideration the effect of the direction on the [child's](#) ability-

- (a) to comprehend the proceeding; and
- (b) to communicate with his or her legal representative and give instructions, or express wishes, to that representative.

(6) A [court](#) must not make a direction under section 42E(1) relating to a [child](#)

unless it is satisfied that the technical requirements specified in section 42R(3) are met in the case of the particular link and, for this purpose, section 42R(3) has effect as if the [child](#) were an [accused person](#).

(7) A [court](#) must not make a direction under section 42E(1) that a [child](#) appear before, or give evidence or make a submission to, the [court](#) by [audio link](#).

(8) Section 42E has effect in relation to a [child](#) as if the [child](#) were a party to the proceeding.

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EVIDENCE ACT 1958 - SECT 42G

Technical requirements

42G. Technical requirements

(1) The technical requirements for an [audio visual link](#) are as follows:

- (a) both the [court point](#) and the [remote point](#) are equipped with facilities that-
 - (i) enable all [appropriate persons](#) at the [court point](#) to see and hear the person appearing before the [court](#) or giving the evidence or making the submission; and
 - (ii) enable all [appropriate persons](#) at the [remote point](#) to see and hear [appropriate persons](#) at the [court point](#); and
- (b) any requirements prescribed by rules of [court](#) for or with respect to-
 - (i) the form of [audio visual link](#);
 - (ii) the equipment, or class of equipment, used to establish the link;
 - (iii) the layout of cameras;
 - (iv) the standard, or speed, of transmission;
 - (v) the quality of communication;
 - (vi) any other matter relating to the link;
- (c) any requirements imposed by the presiding judge or magistrate.

(2) The technical requirements for an [audio link](#) are as follows:

- (a) both the [court point](#) and the [remote point](#) are equipped with facilities that-
 - (i) enable all [appropriate persons](#) at the [court point](#) to hear the person appearing before the [court](#) or giving the evidence or making the submission; and
 - (ii) enable all [appropriate persons](#) at the [remote point](#) to hear [appropriate persons](#) at the [court point](#); and
- (b) any requirements prescribed by rules of [court](#) for or with respect to-
 - (i) the form of [audio link](#);

- (ii) the equipment, or class of equipment, used to establish the link;
- (iii) the standard, or speed, of transmission;
- (iv) the quality of communication;
- (v) any other matter relating to the link; and

(c) any requirements imposed by the presiding judge or magistrate.

(3) Requirements imposed by the presiding judge or magistrate under sub-section (1)(c) or (2)(c) must not be inconsistent with any provision made by this Part or any rules of [court](#).

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EVIDENCE ACT 1958 - SECT 42H

Costs

42H. Costs

(1) The Governor in Council may make regulations for or with respect to prescribing amounts payable to a [court](#) in respect of the costs of, and incidental to, the provision of an audio visual or [audio link](#) and ancillary equipment for the purposes of this Division.

(2) In the exercise of its discretion as to costs, a [court](#) has full power to determine by whom and to what extent the amounts referred to in sub-section (1) are to be paid.

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EVIDENCE ACT 1958 - SECT 42I

Certain other laws not affected

42I. Certain other laws not affected

(1) Nothing in this Division limits the application of section 37B, 37C or 37D to a proceeding.

(2) Nothing in section 37B, 37C or 37D limits the application of this Division to a proceeding.

Division 3-Appearence by [Accused Persons](#)

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EVIDENCE ACT 1958 - SECT 42J

Application of Division

42J. Application of Division

This Division applies to the appearance before a [court](#) of an [accused person](#) in a criminal proceeding including a proceeding associated with, or ancillary to, or in consequence of, the prosecution for the offenceⁱⁱ.

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EVIDENCE ACT 1958 - SECT 42K

Appearance of adult accused person before court

42K. Appearance of adult [accused person](#) before [court](#)

(1) Unless the [court](#) otherwise directs, an [accused person](#), other than a [child](#), being held in custody who is required to appear, or be brought, before a [court](#)-

- (a) in a proceeding with respect to bail not including a proceeding referred to in sub-section (3); or
- (b) having previously been remanded in custody, in a subsequent proceeding with respect to his or her remand in custody; or
- (c) on a special mention hearing or committal mention hearing held in connection with a committal proceeding; or
- (d) on an application for the adjournment of a proceeding; or
- (e) for his or her arraignment on a day other than a day on which the trial is to take place-

is not required to appear, or be brought, physically before the [court](#) but may appear before it by [audio visual link](#).

(2) Unless the [court](#) otherwise directs, an [accused person](#), other than a [child](#), being held in custody who is required to appear, or be brought, before a [court](#)-

- (a) on a committal proceeding; or
- (b) on an inquiry into his or her fitness to stand trial; or
- (c) on the trial (apart from the arraignment of the [accused person](#)) or hearing of the charge; or
- (d) on a sentencing hearing; or
- (e) on an appeal arising out of that trial or hearing-

is required to appear, or be brought, physically before the [court](#).

(3) An [accused person](#), other than a [child](#), who has been taken into custody and who is required to be brought before a bail justice or the Magistrates' [Court](#) within a reasonable time of being taken into custody to be dealt with according to law is, if being brought before the Magistrates' [Court](#), required to be brought physically before the [court](#) unless he or she consents to appear before the [court](#) by [audio visual link](#).

(4) In any proceeding to which this Division applies (other than one referred to in sub-section (1), (2) or (3)), a [court](#) may, on its own initiative or on the application of a party to the proceeding, direct that an [accused person](#), other than a [child](#), appear before it by [audio visual link](#) if it is satisfied that appearance by [audio visual link](#) is consistent with the interests of justice.

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EVIDENCE ACT 1958 - SECT 42L

Making of direction for physical appearance in section 42K(1) proceedings

42L. Making of direction for physical appearance in section 42K(1) proceedings

(1) A [court](#) may direct that an [accused person](#) appear, or be brought, physically before it in a proceeding in which, by virtue of section 42K(1), physical appearance would not otherwise be required if it is satisfied, on an application made in accordance with this section, that-

- (a) physical appearance is required in the interests of justice; or
- (b) it is not reasonably practicable for the [accused person](#) to appear before the [court](#) by [audio visual link](#).

(2) An application for a direction referred to in sub-section (1) may be made by or on behalf of the [accused person](#) or the prosecution at any time up to 3 days before the day on which the [accused person](#) is due to appear or any shorter period before that day that is fixed by the [court](#) because of the existence of a good and sufficient reason.

(3) An application is made by filing with the [court](#) a notice in the form (if any) prescribed by rules of [court](#) and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of [court](#).

(4) An application is to be determined by the [court](#) on the basis of the written application and any written submissions on the application filed with the [court](#) by any other party without giving the applicant or any other party an opportunity to be heard.

(5) With leave of the [court](#), an application for a direction referred to in sub-section (1) may be made by or on behalf of the [accused person](#) or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a party for such a direction has previously been refused by the [court](#).

(6) Sub-sections (3) and (4) do not apply to an application made in accordance with sub-section (5).

(7) A [court](#) may also make a direction referred to in sub-section (1) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an application made in accordance with this section has previously been refused by it.

(8) The exercise of the power conferred on a [court](#) to make a direction referred to in sub-section (1) is subject to any [practice directions](#).

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EVIDENCE ACT 1958 - SECT 42M

Making of direction for audio visual appearance in section 42K(2) proceedings

42M. Making of direction for audio visual appearance in section 42K(2) proceedings

(1) A [court](#) may direct that an [accused person](#) appear before it by [audio visual link](#) in a proceeding in which, by virtue of section 42K(2), physical appearance would otherwise be required if it is satisfied, on an application made in accordance with this section, that-

- (a) appearance by [audio visual link](#) is consistent with the interests of justice; and
- (b) is reasonably practicable in the circumstances.

(2) Unless an application for the making of a direction referred to in sub-section (1) is made with the consent of all parties to the proceeding, the [court](#) may only grant such an application if satisfied that exceptional circumstances exist.

(3) An application for a direction referred to in sub-section (1) may be made by or on behalf of the [accused person](#) or the prosecution at any time up to 14 days before the day on which the [accused person](#) is due to appear or any shorter period before that day that is fixed by the [court](#) because of the existence of a good and sufficient reason.

(4) An application is made by filing with the [court](#) a notice in the form (if any) prescribed by rules of [court](#) and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of [court](#).

(5) With leave of the [court](#), an application for a direction referred to in sub-section (1) may be made by or on behalf of the [accused person](#) or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a party for such a direction has previously been refused by the [court](#).

(6) Sub-section (4) does not apply to an application made in accordance with sub-section (5).

(7) A [court](#) may also make a direction referred to in sub-section (1) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an application made in accordance with this section has previously been refused by it, if the [court](#) is satisfied that exceptional circumstances exist.

(8) Any [victim](#) of the offence which the [accused person](#) is alleged to have committed may address, or make a written submission to, the [court](#) in opposition to the making of a direction referred to in sub-section (1).

(9) The exercise of the power conferred on a [court](#) to make a direction referred to in sub-section (1) is subject to any [practice directions](#).

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EVIDENCE ACT 1958 - SECT 42N

Application for making of direction under section 42K(4)

42N. Application for making of direction under section 42K(4)

(1) An application for a direction referred to in section 42K(4) may be made by or on behalf of the [accused person](#) or the prosecution at any time up to 14 days before the day on which the [accused person](#) is due to appear or any shorter period before that day that is fixed by the [court](#) because of the existence of a good and sufficient reason.

(2) An application is made by filing with the [court](#) a notice in the form (if any) prescribed by rules of [court](#) and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of [court](#).

(3) With leave of the [court](#), an application for a direction referred to in section 42K(4) may be made by or on behalf of the [accused person](#) or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a party for such a direction has previously been refused by the [court](#).

(4) Sub-section (2) does not apply to an application made in accordance with sub-section (3).

(5) A [court](#) may also make a direction referred to in section 42K(4) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an application made in accordance with this section has previously been refused by it.

(6) The exercise of the power conferred on a [court](#) to make a direction referred to in section 42K(4) is subject to any [practice directions](#).

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EVIDENCE ACT 1958 - SECT 42O

Appearance before court of an accused person who is a child

42O. Appearance before [court](#) of an [accused person](#) who is a [child](#)

Unless the [court](#) otherwise directs, an [accused person](#) who is-

- (a) a [child](#); and
- (b) being held in custody; and
- (c) required to appear, or be brought, before a [court](#) in a proceeding to which this Division applies-

is required to appear, or be brought, physically before the [court](#).

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EVIDENCE ACT 1958 - SECT 42P

Making of direction for audio visual appearance by child

42P. Making of direction for audio visual appearance by [child](#)

(1) A [court](#) may direct that a [child](#) referred to in section 420 appear before it by [audio visual link](#) if it is satisfied, on an application made in accordance with this section, that appearance by [audio visual link](#) is-

- (a) consistent with the interests of justice; and
- (b) reasonably practicable in the circumstances.

(2) Unless an application for the making of a direction referred to in sub-section (1) is made with the consent of all parties to the proceeding, the [court](#) may only grant such an application if satisfied that exceptional circumstances exist.

(3) An application for a direction referred to in sub-section (1) may be made by or on behalf of the [child](#) or the prosecution at any time up to 14 days before the day on which the [child](#) is due to appear or any shorter period before that day that is fixed by the [court](#) because of the existence of a good and sufficient reason.

(4) An application is made by filing with the [court](#) a notice in the form (if any) prescribed by rules of [court](#) and stating the grounds on which it is made and serving a copy on any other party in accordance with any rules of [court](#).

(5) With leave of the [court](#), an application for a direction referred to in sub-section (1) may be made by or on behalf of the [child](#) or the prosecution at any time in the course of the proceeding to which the direction being sought relates, irrespective of whether an application by a party for such a direction has previously been refused by the [court](#).

(6) Sub-section (4) does not apply to an application made in accordance with sub-section (5).

(7) A [court](#) may also make a direction referred to in sub-section (1) on its own initiative at any time in the course of the proceeding to which the direction relates, irrespective of whether an application made in accordance with this section has previously been refused by it, if the [court](#) is satisfied that exceptional circumstances exist.

(8) In determining whether the making of a direction referred to in sub-section (1) is consistent with the interests of justice, the [court](#) must take into consideration the effect of the direction on the [child](#)'s ability-

- (a) to comprehend the proceeding; and

- (b) to communicate with his or her legal representative and give instructions, or express wishes, to that representative.

(9) Any [victim](#) of the offence which the [child](#) is alleged to have committed may address, or make a written submission to, the [court](#) in opposition to the making of a direction referred to in sub-section (1)-

- (a) on the trial (apart from the arraignment of the [child](#)) or hearing of the charge; or
- (b) on a sentencing hearing.

(10) The exercise of the power conferred on a [court](#) to make a direction referred to in sub-section (1) is subject to any [practice directions](#).

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EVIDENCE ACT 1958 - SECT 42Q

Practice directions

42Q. [Practice directions](#)

(1) The [senior judicial officer](#) of a [court](#) may from time to time issue [practice directions](#), [statements](#) or notes relating to the exercise by the [court](#) of its discretion in relation to an application made in accordance with section 42L, 42M, 42N or 42P.

(2) In this section, "senior judicial officer"-

- (a) in relation to the Supreme [Court](#), means the Chief Justice;
- (b) in relation to the County [Court](#), means the Chief Judge;
- (c) in relation to the Magistrates' [Court](#) or the [Children's Court](#), means the Chief Magistrate.

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EVIDENCE ACT 1958 - SECT 42R

Requirements for audio visual appearance by accused

42R. Requirements for audio visual appearance by accused

(1) An [accused person](#) appearing before a [court](#) by [audio visual link](#) must do so from a place at which the technical requirements specified-

- (a) in section 42G(1), as modified by sub-section (2) of this section; and
- (b) in sub-section (3)-

are met.

(2) Section 42G(1)(a)(i) applies as if the reference to the person appearing before the [court](#) or giving the evidence or making the submission included a reference to the [accused person](#) entering a plea to a charge or stating an intention to reserve their plea.

(3) Both the [court point](#) and the [remote point](#) must be equipped with facilities that, in accordance with any rules of [court](#), enable private communication to take place (at any time during the hearing or any adjournment of the hearing or at any time on the day of a hearing shortly before or after the hearing) between the [accused person](#) and any legal practitioner at the [court point](#) representing him or her in the proceeding and [documents](#) to be transmitted between both points by those persons.

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EVIDENCE ACT 1958 - SECT 42S

Protection of communication between accused and legal representative

42S. Protection of communication between accused and legal representative

Without limiting any other protection applying to it, a communication by [audio link](#) or [audio visual link](#), or a [document](#) transmitted, between an [accused person](#) and his or her legal representative in accordance with this Part is as confidential and as inadmissible in any proceeding as it would be if the communication took place or the [document](#) was produced while they were in each other's presence.

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EVIDENCE ACT 1958 - SECT 42T

Application of Surveillance Devices Act 1999

42T. Application of [Surveillance Devices Act 1999](#)

The [Surveillance Devices Act 1999](#) applies to a communication by [audio link](#) or [audio visual link](#), or a [document](#) transmitted, between an [accused person](#) and his or her legal representative in accordance with this Part as if-

- (a) the communication were a private conversation within the meaning of that Act to which the parties were the [accused person](#) and his or her legal representative; and
- (b) any data, text or visual images in the transmitted [document](#) were words spoken to or by a person in a private conversation within the meaning of that Act to which the parties were the [accused person](#) and his or her legal representative; and
- (c) references in that Act to the use of a listening device to overhear, record, monitor or listen to a private conversation included, in relation to a transmitted [document](#), references to reading the [document](#).

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EVIDENCE ACT 1958 - SECT 42U

Putting documents to a remote person

42U. Putting [documents](#) to a remote person

(1) If in the course of the examination of a person by [audio visual link](#) or [audio link](#) it is necessary to put a [document](#) to him or her, the presiding judge or magistrate may permit the [document](#) to be put to the person-

- (a) if the [document](#) is at the [court point](#), by transmitting a copy of it to the [remote point](#) by any means and the copy so transmitted being then put to the person; or
- (b) if the [document](#) is at the [remote point](#), by putting it to the person and then transmitting a copy of it to the [court point](#) by any means.

(2) A [document](#) put to a person in accordance with sub-section (1) is admissible in evidence without proof that the transmitted copy is a true copy of the relevant [document](#).

(3) Nothing in this section prevents a [document](#) or exhibit being shown to a person over the [audio visual link](#) itself.

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EVIDENCE ACT 1958 - SECT 42V

Direction to jury in criminal trial

42V. Direction to jury in criminal trial

If a [court](#) makes a direction under section 42E(1) in a criminal trial or an [accused person](#) appears before a [court](#) in a criminal trial by [audio visual link](#) in accordance with Division 3, the judge must warn the jury not to draw any inference adverse to the [accused person](#) or give any evidence given by the witness or the [accused person](#) any greater or lesser weight because of the making of the direction or the appearance by [audio visual link](#).

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EVIDENCE ACT 1958 - SECT 42W

Application of laws about witnesses, etc.

42W. Application of laws about witnesses, etc.

(1) The [remote point](#) must be taken to be part of the [court point](#), and to be [court](#) premises within the meaning of the [Court Security Act 1980](#), while a person is at the [remote point](#) for the purpose of appearing before, or giving evidence or making a submission to, the [court](#) in accordance with Division 2 or 3.

(2) Sub-section (1) has effect, for example, for the purposes of laws relating to evidence, procedure, contempt of [court](#) and perjury.

(3) Sub-section (1) also has the effect that any offence committed at the [remote point](#) must be taken to have been committed at the [court point](#) for the purposes of the laws in force in Victoria.

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EVIDENCE ACT 1958 - SECT 42X

Arraignment

42X. Arraignment

An [accused person](#) who appears before a [court](#) for arraignment by [audio visual link](#) in accordance with Division 3 must be taken for all purposes to be at the bar of the [court](#).

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EVIDENCE ACT 1958 - SECT 42Y

Administration of oaths and affirmations

42Y. Administration of oaths and affirmations

An oath to be sworn or affirmation to be made by a witness who is to give evidence by [audio visual link](#) or [audio link](#) may be administered either-

- (a) by means of the [audio visual link](#) or [audio link](#), in as nearly as practicable the same way as if the witness were to give evidence at the [court point](#); or
 - (b) at the direction of, and on behalf of, the [court](#) at the [remote point](#) by a person authorised by the [court](#).
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