

COURTS (VIDEO LINK) AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill, which amends the *Supreme Court of Queensland Act 1991*, the *District Courts Act 1967* and the *Justices Act 1886*, has the following objectives:

- (a) to compel the use of video link facilities in bail and remand proceedings (unless the court in the interests of justice otherwise orders) if:—
 - the defendant would otherwise be required to appear in court in person;
 - the facilities are installed in the court; and
 - the defendant is held in a correctional centre where such facilities are installed; and
- (b) in other criminal proceedings where the defendant is in custody (eg. full hand up committals and pleas of guilty), to permit the use of video link facilities between the court and the defendant at the court's discretion where the parties consent.

Use of video link technology will remove the security risks involved in moving defendants between the courts and correctional institutions for bail and remand proceedings and other criminal proceedings where it is used. In addition, transport and security costs will be reduced. At the present time, video link technology connecting the Brisbane Courts to the Arthur Gorrie Correctional Centre is installed and ready for operation. However the Bill applies to all correctional institutions and courts in Queensland where the video link facilities are located to allow for any future expansion of the technology.

Achievement of Objectives

The policy objectives of the Bill are achieved by use of video link technology which has been installed at the Arthur Gorrie Correctional Centre and the Brisbane Supreme, District and Magistrates Courts. Using this technology means that the need to transport defendants in custody to enable them to be present in the court is no longer necessary. The presence of a defendant in court is achieved by use of the technology.

Alternative Ways of Achieving Policy Objectives

An alternative to mandatory use of video link technology for bail and remand proceedings is to limit the mandatory requirement to defendants who have legal representation. This alternative was rejected as the court retains the discretion at any time to require the personal attendance of the defendant and, as defendants are currently only required to appear for Supreme Court bail proceedings where they are unrepresented, there would be little use for the video link in that Court.

A second alternative is to rely on the rules of court which grant courts a discretion to use telephone, video link or similar form of communication to receive evidence or submissions. However, this would require the holding of preliminary hearings to determine if it was suitable to use video link for the matter. Also, a rule could not operate to remove a legal requirement or entitlement for a person to be present in court.

Estimated Costs for Government Implementation

The video link facilities have already been installed. The Bill will save costs to the Government by reducing transport and security costs.

Fundamental Legislative Principles

The Bill does not breach any fundamental legislative principles.

Consultation

The Aboriginal Justice Advisory Committee, the Queensland Law Society, the Legal Aid Office, the Queensland Council for Civil Liberties, the Queensland Bar Association and the Litigation Reform Commission have been consulted in relation to the Bill.

NOTES ON PROVISIONS

Part 1—Preliminary

Clause 1 provides for the short title.

Clause 2 provides for the Act to commence on a day to be fixed by proclamation.

Part 2—Amendment of Supreme Court of Queensland Act 1991

Clause 3 provides for the amendment to the *Supreme Court of Queensland Act 1991*.

Clause 4 inserts a Part 8A (sections 116A to 116G and 127) into the *Supreme Court of Queensland Act 1991*.

Section 116A provides for the purpose of Part 8A, being the use of video link facilities for certain proceedings in the Supreme Court.

Section 116B provides for the definitions of terms used in the Part.

Section 116C provides for the use of video link facilities in the circumstances where the facilities are available, the defendant is required or entitled to be present in court and is in custody and the proceedings are about an offence with which the defendant is charged. This section also ensures that the video link facilities can only be used by the court, the defendant and his or her representative for such proceedings. It is not intended to be used for other purposes, such as the taking of evidence from a person who is not a party to the proceedings. Use of the video link facilities in bail and remand proceedings is mandatory unless the court otherwise orders in the interests of justice. Use of video link facilities is at the discretion of the court in criminal proceedings other than bail or remand (for example, pleas, hand up committals, taking of evidence) where the parties consent.

Section 116D provides that the use of the facilities satisfies the right or entitlement of a person to be present in court and that the person is taken to be present at court for the conduct of the proceedings. It also provides that the part of the correctional institution is to be part of the court premises.

Section 116E ensures two-way audio and visual communication in the operation of the facilities and for the adjournment of proceedings in the event of the facilities failing.

Section 116F provides for the availability of facilities for private communication between the defendant in custody and the representative in court and ensures that such communications are as confidential and inadmissible as if they were in each other's presence.

Section 116G enables the court to vary or revoke an order made under section 116C.

Section 127 is transitional.

Part 3—Amendment of District Court Act 1967

Clause 6 provides for the amendment to the *District Courts Act 1967*.

Clause 7 inserts Parts 7A (sections 110A to 110G) into the *District Courts Act 1967*.

Section 110A provides for the purpose of Part 7A, being the use of video link facilities for certain proceedings in the District Court.

Section 110B provides for the definitions of terms used in the Part.

Section 110C provides for the use of video link facilities in the circumstances where the facilities are available, the defendant is required or entitled to be present in court and is in custody and the proceedings are about an offence with which the defendant is charged. This section also ensures that the video link facilities can only be used by the court, the defendant and his or her representative for such proceedings. It is not intended to be used for other purposes, such as the taking of evidence from a person who is not a party to the proceedings. Use of the video link facilities in bail and remand proceedings is mandatory unless the court otherwise orders in the interests of justice. Use of video link facilities is at

the discretion of the court in criminal proceedings other than bail or remand (for example, pleas, hand up committals, taking of evidence) where the parties consent.

Section 110D provides that the use of the facilities satisfies the right or entitlement of a person to be present in court and that the person is taken to be present at court for the conduct of the proceedings. It also provides that the part of the correctional institution is to be part of the court premises.

Section 110E ensures two-way audio and visual communication in the operation of the facilities and for the adjournment of proceedings in the event of the facilities failing.

Section 110F provides for the availability of facilities for private communication between the defendant in custody and the representative in court and ensures that such communications are as confidential and inadmissible as if they were in each other's presence.

Section 110G enables the court to vary or revoke an order made under section 110C.

Clause 8 inserts **Section 137** which is transitional.

Part 4—Amendment of Justices Act 1886

Clause 9 provides for the amendment to the *Justices Act 1886*.

Clause 10 inserts Part 6A (sections 178A to 178G) into the *Justices Act 1886*.

Section 178A provides for the purpose of Part 6A, being the use of video link facilities for certain proceedings in the Magistrates Court.

Section 178B provides for the definitions of terms used in the Part.

Section 178C provides for the use of video link facilities in the circumstances where the facilities are available, the defendant is required or entitled to be present in court and is in custody and the proceedings are about an offence with which the defendant is charged. This section also ensures that the video link facilities can only be used by the court, the defendant and his or her representative for such proceedings. It is not

intended to be used for other purposes, such as the taking of evidence from a person who is not a party to the proceedings. Use of the video link facilities in bail and remand proceedings is mandatory unless the court otherwise orders in the interests of justice. Use of video link facilities is at the discretion of the court in criminal proceedings other than bail or remand (for example, pleas, hand up committals, taking of evidence) where the parties consent.

Section 178D provides that the use of the facilities satisfies the right or entitlement of a person to be present in court and that the person is taken to be present at court for the conduct of the proceedings. It also provides that the part of the correctional institution is to be part of the court premises.

Section 178E ensures two-way audio and visual communication in the operation of the facilities and for the adjournment of proceedings in the event of the facilities failing.

Section 178F provides for the availability of facilities for private communication between the defendant in custody and the representative in court and ensures that such communications are as confidential and inadmissible as if they were in each other's presence.

Section 178G enables the court to vary or revoke an order made under section 178C.

Clause 11 inserts **Section 273** which is transitional.