

AUDIO VISUAL AND AUDIO LINKS AMENDMENT BILL 1999

EXPLANATORY NOTES

Objectives of the Legislation

There are two objectives of the legislation.

First, by inserting new Part 3A—AUDIO VISUAL LINKS AND AUDIO LINKS into the *Evidence Act 1977*, the Bill:

- (a) provides for Queensland to participate in a substantially uniform interstate scheme for the taking or receiving of evidence, and the making or receiving of submissions, from or in participating States; and
- (b) facilitates the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings, by audio visual link or audio link.

Second, the Bill empowers Queensland courts to arraign and sentence people by means of audio visual or audio links but only with the consent of all parties. This second objective is met by making minor amendments to the Criminal Code, *Juvenile Justice Act 1992* and *Penalties and Sentences Act 1992*.

Reasons for the Bill

Part 2 of the Bill:

Insertion of new part 3A into the *Evidence Act 1977* implements an agreement by the Standing Committee of Attorneys-General to enact provisions enabling the taking or receiving of evidence and the making or receiving of submissions by video link or telephone within Australia. These provisions will enable Queensland to participate in a substantially uniform interstate scheme for the taking or receiving of evidence and the making or receiving of submissions from or in participating States and Territories. Further, Part 2 of the Bill includes general provisions about the use of audio

visual links or audio links inside or outside Queensland, including outside Australia.

Part 3A of the Evidence Act will operate in addition to any existing provisions for the reception of evidence from external locations and is intended to be simply an alternative method of obtaining evidence. The provisions are not a code—they are facilitative rather than prescriptive or restrictive. Parties may also agree to the reception of evidence by other means.

Parts 3, 4 and 5 of the Bill:

Use of audio visual or audio links for arraignment and sentencing furthers the use of modern technology in the courtroom enhancing court efficiency and cost effectiveness. An appropriate use of the technology for these purposes will alleviate unnecessary expenses associated with travelling to the nearest circuit court centre with no detriment to the standards necessary for the proper administration of justice.

Administrative Cost

There is no immediate additional cost to Government in implementing the proposed Bill. Regular use of electronic facilities in the conduct of court proceedings will necessitate investment in court infrastructure and a strategic plan for information technology in the courts is currently being developed by the Department of Justice and Attorney-General.

Fundamental legislative principles

In Part 2 of the Bill, section 39B (**Application of pt 3A**) extends the operation of part 3A of the Evidence Act to a proceeding commenced before or after the commencement of the part. It does not, however, have retrospective operation. The section does not assume to alter any rights, affect liberties or impose obligations retrospectively and therefore does not offend fundamental legislative principles.

Parts 3, 4 and 5 of the Bill include provisions that enable courts to arraign and sentence a person by means of audio visual and audio links with the consent of all parties. Consideration was given to whether these provisions have sufficient regard to rights of individuals, for example, the right to appear in person in court.

These provisions have sufficient regard to fundamental legislative principles as the requirement to obtain the consent of all parties to the use of the technology for arraignment and sentencing purposes is reasonable and ensures an accused person's right to appear in person in court should they wish to do so. It also ensures that the rights of victims of crime, to confront the perpetrator of the crime, are not overlooked.

Consultation

Consultation occurred with the Courts and various interest groups, including the Queensland Law Society, the Bar Association of Queensland, Legal Aid Queensland, Queensland Council for Civil Liberties, and the Director of Public Prosecutions. The Queensland Police Service, Treasury Department, Department of Families, Youth and Community Care and Department of Employment, Training and Industrial Relations were also consulted.

NOTES ON CLAUSES

Part 1—Preliminary

Clause 1 sets out the short title of the Bill.

Clause 2 provides for the commencement of the Act on a date to be fixed by proclamation.

Part 2—Amendment of Evidence Act 1977

Clause 3 provides that part 2 amends the *Evidence Act 1977*.

Clause 4 inserts new part 3A—AUDIO VISUAL LINKS AND AUDIO LINKS into the *Evidence Act 1977*. New part 3A is structured into 4 divisions, made up of sections 39A to 39Z as follows:

Division 1—Preliminary

section 39A states the purposes of part 3A which are:

- (a) to provide for Queensland to participate in a substantially uniform interstate scheme for the taking or receiving of evidence and the making or receiving of submissions from or in other States participating in the scheme; and
- (b) to facilitate the giving and receiving of evidence, and the making and receiving of submissions, in Queensland court proceedings, by audio visual link or audio link.

section 39B makes it clear the part 3A extends to a proceeding whether commenced before or after the commencement of this part and that it does not limit other laws for the use of audio visual links or audio links, or the taking of evidence, or the making of submissions, in or outside Queensland for the purpose of a proceeding in Queensland.

It is clear, therefore, that part 3A will operate in addition to any existing provisions for the reception of evidence or submissions from external locations and is intended to be an alternative method of obtaining evidence and making submissions.

section 39C sets out definitions used in part 3A.

Division 2—Use of interstate audio visual links or audio links in proceedings before Queensland courts

section 39D applies division 2 to any proceeding before a Queensland court.

section 39E enables a Queensland court to direct that evidence be taken or submissions be made by audio visual link or audio link from a participating State. A participating State is defined in section 39C to mean another State in which provisions of an Act of that State in terms that substantially correspond to divisions 2 and 3 are in force. Further, the section provides that the court may exercise in the participating State, in connection with taking evidence or receiving submissions over the links, any of its powers that the court may be permitted, under the law of the participating State, to exercise in the participating State.

section 39F confers on persons entitled to practise as a legal practitioner in a participating State an entitlement to practise as a barrister or solicitor or both for the purposes of examining witnesses giving evidence, or making submissions by audio visual link or audio link.

Division 3—Use of interstate audio visual links or audio links in proceedings in participating States

section 39G applies division 3 to proceedings before recognised courts. A recognised court is defined in section 39C to mean a court or tribunal of a participating State that is authorised by the provisions of an Act of that State in terms substantially corresponding to part 3A, divisions 2 and 3 to direct that evidence be taken or submissions be made by audio visual link or audio link from Queensland.

section 39H enables a recognised court to take evidence or receive submissions by audio visual link or audio link from people in Queensland.

section 39I authorises the recognised court to exercise any of its powers, other than its powers to punish for contempt or to enforce its judgments or process in connection with taking evidence or receiving submissions by audio visual link or audio link. Under the section, the laws of the participating State that apply to the proceeding in that State also apply to the practice and procedure of the recognised court in taking evidence or receiving submissions by audio visual link or audio link from Queensland.

section 39J specifies some of the orders that may be made by a recognised court when taking evidence or receiving submissions by audio visual link or audio link under part 3A, division 3.

section 39K imposes an obligation to comply with an order made by a recognised court under section 39J. The orders may be enforced by the Supreme Court as if the order were an order of that court. A person who contravenes the order is taken to be in contempt of the Supreme Court and is punishable accordingly, unless the person establishes that the contravention should be excused.

section 39L provides that the privileges, protections and immunities extended to judges, legal practitioners and witnesses in relation to proceedings before a recognised court are the same as those extended to persons in relation to proceedings before the Supreme Court.

section 39M authorises a recognised court to administer oaths or affirmations to persons in Queensland for the purpose of obtaining evidence by audio visual link or audio link under part 3A, division 3.

section 39N authorises officers of a Queensland court, if asked by the recognised court, to attend at the external location, facilitate the proceeding as directed by the court, and administer an oath or affirmation.

section 39O creates offences, each punishable by 3 months imprisonment, relating to contempt of court where evidence or a submission is to be, is being, or has been given or made in Queensland by audio visual or audio link in a proceeding before a recognised court.

section 39P ensures that a person who does an act or makes an omission that constitutes an offence both under part 3A and under a law of a participating State cannot be punished twice for the offence. The section states that the person must not be prosecuted or punished under part 3A if already prosecuted or punished under the law of the participating State for the offence.

Division 4—General provisions about the use of audio visual links or audio links

section 39Q applies part 3A, division 4 to any proceeding before a Queensland court. The application of division 4 does not limit, and is not limited by, division 2 or 3.

section 39R enables a Queensland court to direct that a person appear before, or give evidence or make a submission to the court by audio visual link or audio link from a location inside or outside Queensland, including outside Australia. The court may vary or revoke such direction on its own initiative or on the application of a party to the proceeding.

section 39S states how the court is to deal with a failure of an audio visual link or audio link.

section 39T empowers the Queensland court to make just orders for the payment of expenses incurred in connection with taking evidence or making submissions by audio visual or audio link.

section 39U deems an external location, which is defined in section 39C, to be part of the court location in the proceeding for all purposes relating to a Queensland law for the administration of justice.

section 39V deals with the compellability of a witness outside Queensland to give evidence by audio visual link or audio link. A witness is compellable to give evidence only to the extent the witness would be compellable to give the evidence if present in Queensland, and would be compellable to give the evidence in court proceedings under the law of the place from which the evidence is given.

section 39W provides that an oath or affirmation may be sworn over the link in a way that is as near as practicable to the way the witness could be sworn at the court location, or by a person at the external location in accordance with the court's direction. The provision makes use of the definition of "swear" in section 36 of the *Acts Interpretation Act 1954* which includes affirm.

section 39X states that where the external location is in a country other than Australia and an oath is not allowed under the law of the country, evidence may be given under a caution or admonition that would be accepted by a court in that country for the purpose of giving evidence in the court. When given in this manner, the probative value of the evidence is not diminished and a person is liable to be convicted of perjury as if the evidence were given on oath.

section 39Y provides for the putting of documents to a person at a remote location.

section 39Z provides for an extension of court rule-making powers under other Acts to include a power to make rules, not inconsistent with part 3A, that are necessary or convenient for carrying out or giving effect to part 3A.

PART 3—AMENDMENT OF CRIMINAL CODE

Clause 5 provides that part 3 amends the Criminal Code.

Clause 6 amends section 594 (**Accused person to be called upon to plead to indictment**) of the Criminal Code to allow an arraignment of an

accused person to be done over an audio visual link or audio link but only if the prosecutor and accused person agree to its use. Pertinent provisions of the *Evidence Act 1977*, relating to the use of an audio visual or audio link in criminal proceedings, apply for the purposes of such arraignments.

PART 4—AMENDMENT OF JUVENILE JUSTICE ACT 1992

Clause 7 provides that part 4 amends the *Juvenile Justice Act 1992*.

Clause 8 inserts new section 118A (**Audio visual link or audio link may be used to sentence**) into the *Juvenile Justice Act* to allow the sentencing of a child over an audio visual or audio link but only if the prosecutor and child agree to its use. Pertinent provisions of the *Evidence Act 1977*, relating to the use of audio visual or audio link in criminal proceedings, apply for the purposes of such sentencing.

PART 5—AMENDMENT OF PENALTIES AND SENTENCES ACT 1992

Clause 9 provides that part 5 amends the *Penalties and Sentences Act 1992*.

Clause 10 inserts new section 15A (**Audio visual link or audio link may be used to sentence**) into the *Penalties and Sentences Act* to allow the sentencing of an offender over an audio visual or audio link but only if the prosecutor and offender agree to its use. Pertinent provisions of the *Evidence Act 1977*, relating to the use of audio visual or audio link in criminal proceedings, apply for the purposes of such sentencing.