

gateways to justice: *design and operational guidelines for remote participation in court proceedings*

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A SYNTHESIS OF THE FINDINGS FROM THE AUSTRALIAN RESEARCH COUNCIL LINKAGE PROJECT
GATEWAYS TO JUSTICE: IMPROVING VIDEO-MEDIATED COMMUNICATIONS FOR JUSTICE PARTICIPANTS
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A note on printing:

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COVER IMAGE: Remote Witness in Enhanced Condition, as seen from the prosecutor's perspective in the courtroom - taken during the Gateways experiment in the County Court of Victoria, August 2009 (© Emma Rowden).

foreword

While courts are conservative institutions, and that is often justified, they are not immune to changes in society, nor should they be. In particular, we have seen in recent times the significant developments of technology used to enhance the delivery of justice by courts in many ways.

Indeed, the introduction of modern forms of technology into courtrooms has been one of the most significant changes in courts in recent decades. None of these technologies has had a greater impact than videoconferencing and CCTV, which, as this report notes, is now widely used in courts for a variety of purposes.

This study, a partnership between justice agencies and researchers, set out to address an important issue for justice policy: how to improve the quality of participation in court processes using these technologies. As the former Director of Public Prosecutions for the Australian Capital Territory, I was enthusiastic about the project and was pleased to join it as an industry partner; other industry partners included the justice departments of Victoria and Western Australia.

Courts and justice departments have a duty of care to court users; they should ensure that people are treated courteously and their needs for information and safety are met. One group of users who require special attention are vulnerable witnesses, especially child witnesses and adult victims of sexual assault. Another such group are witnesses, defendants or accused persons who live substantial distances from the court.

Yet a further issue is caused by the increasing reliance of courts on testimony from experts, who may be based interstate or overseas. Even for those based locally, but especially for those further away, time spent travelling or waiting in court is time not spent on processing other cases or dealing with clients or patients for those experts who are not full-time forensic experts. Reducing this time can save costs for parties as well as minimising disruption to busy practices and those they serve.

There are also concerns about implications for cost, safety and security associated with transporting defendants to and from courts for preliminary hearings or bail applications.

To provide more effective and less disruptive participation in court processes by vulnerable and expert witnesses, as well as prisoners or protected witnesses, remote facilities are now being provided to allow their participation without the need to enter the courtroom physically. These facilities may be purpose-built, that is, designed specifically for that purpose, or they may have uses beyond providing an entry point to the court via videoconferencing.

This research reveals that remote participation facilities have often been sub-standard – cramped, cluttered, uncomfortable and not conducive to providing an appropriate environment for the remote participant. Video technologies have often been inadequate, with restricted vision and sound both for the court and the witness and limited eye-contact. Court processes have not always adjusted to video technologies, with inadequate preparation of witnesses and insufficient orientation for the remote interaction.

The Gateways study developed ‘enhanced’ processes and environments for remote witnesses and, in an experimental situation in the Victo-

rian County Court, measured the impact of any change on both witnesses and ‘jurors’.

Having experience as both a litigator and now as a judicial officer, I am very aware of the importance of this study and the value of its outcomes to courts struggling to address the need to make best use of the available technology.

The set of guidelines presented here provides detailed recommendations about how to use remote witness facilities more effectively in court processes. Proposals in these guidelines include: making remote witness rooms more comfortable, with access to natural light and visual relief; improving eye-contact between the remote participant and the person with whom they are speaking in the court; providing different views of the court for vulnerable and expert witnesses; and providing a second channel for display technologies. This document provides a valuable resource for those developing new courts, such as those in the ACT.

The guidelines also suggest that, while improving the technology and environment will result in improved outcomes for remote participation,


courts will get even better value out of investments in infrastructure when court processes are adapted to change the way remote participants are oriented and introduced to the courtroom.

I strongly endorse the guidelines and recommend that courts, other justice agencies, justice departments, architects, planners and all involved in the administration of justice through the court system pay careful regard to them and the implications they have for a healthier justice system and courts that better meet the needs of those required to participate in it, often not of their own wish.

This research most successfully brought together scholars from many different disciplines. It resulted in the successful completion of two doctoral theses: Dr Emma Rowden in Architecture and Professor Anne Wallace in Law. Its undoubted success was also very much dependent on the contributions of many judicial officers, court administrators and court staff, who donated time and expertise to contribute as participants in the research.

For my part, it was a fascinating, educative, eye-opening and very satisfying experience.

I thank very much all of the participants for the valuable contribution they made to this project and through it, hopefully, to a better justice system.



The Honourable Justice Richard Refshauge
Supreme Court of the ACT
20th March 2013

table of contents

1.	executive summary_____	6
2.	introduction_____	19
3.	policy context_____	20
4.	<i>gateways to justice</i> project overview_____	24
5.	synthesis of key findings: design and operational guidelines to improve the remote encounter_____	45
	5.1 prior_____	52
	5.2 thresholds_____	62
	5.3 the encounter_____	68
	5.4 afterwards_____	76
6.	‘before and after’ case studies _____	80
	6.1 a remote space in a heritage building _____	81
	6.2 existing purpose-built remote spaces_____	86
7.	glossary_____	88
8.	selected bibliography_____	91

appendix a:	table of australian legislation enabling remote participation
appendix b:	guidelines for the design and construction of remote court facilities and videolinked courtrooms
appendix c:	guidelines for selecting multipurpose remote spaces for court appearances
appendix d:	suggested proforma for collecting data on videolink use

1. executive summary



Introduction

This report details the findings and recommendations of a three-year Australian Research Council Linkage Project *Gateways to Justice: improving video-mediated communication for justice participants* (2008-2011; LP0776248) led by Professor David Tait of the Justice Research Group, University of Western Sydney. This project set out to investigate whether the use of videolinks¹ in justice settings was achieving its objectives and to make recommendations to improve its use, with a particular focus on the use of videolinks to take evidence in court.

This study found that current practices do not necessarily ensure that the benefits promised by new technologies are being realised to their full extent. As courts are recognising the need for a holistic approach in other areas of their operations, this report confirms that the use of this technology should be considered within a framework that includes:

¹ 'Videolinks' is a term used throughout to encompass both Closed Circuit Television (CCTV) and videoconferenced enabled video-mediated communications. See glossary for further information.

- The legislation guiding its use;
- The built environment in the courtroom and in the remote location;
- Court processes, protocols and rituals;
- Training regimes provided for courts staff, lawyers and judicial officers;
- The design and configuration of the videolink technology itself.

This research found that remote court participation is more likely to be successful if each of these elements are designed to complement one another.

Videolink Use In Australian Courts

Moves towards increasing use of videolink technologies and remote participation in court proceedings need to be viewed within the following institutional policy context:

- The shift from an institutional framework to a service-provider model;
- Efforts to make courts more accessible;
- Increasing diversity and specialisation of court types; and,
- Increased concern about security.

The use of videolinks has expanded considerably from their original purposes: to allow vulnerable and child witnesses to give evidence remotely during a trial and to link defendants to the court from prisons. Videolinks are now used for a multitude of other purposes that are detailed on pages 21-2 of this report, and the range of uses seems to be continually expanding. However, perhaps surprisingly, our research found that courts generally do not keep systematic records of videolink use.

The Gateways to Justice Project

The *Gateways to Justice* Project had four aims:

1. To describe how the social, technological and built environments of remote witness facilities affect the experience of justice participants.
2. To identify the factors that produce a greater sense of presence for users of remote witness facilities and facilitate more effective communication between them and participants elsewhere.
3. To measure the impact of selected changes in the design and use of remote witness facilities on a sense of presence and quality of communication.

4. To develop best practice guidelines for the most effective use of remote access facilities in the administration of justice.

These aims were to be met by the three main research questions:

1. How are video communication facilities currently used for justice purposes?
2. What is the relative impact on presence and quality of communication of upgrading the technological environment of video communication facilities, the social and built form environment, and both of these together?
3. How can video hearings be introduced into regular justice processes in a way that best promotes effective communication and sense of presence?

Methods

To ensure robust findings, data was collected through a variety of different methods. The methods and the key findings they produced are summarised below.

a) LITERATURE REVIEW

Different types of information and research surrounding videolink use in courts were analysed. These included criminological studies of videolink use in courts, government reports, academic commentaries, and literature from the disciplines of media, communications studies, architecture, design and environmental psychology.

Key findings from the literature review:

- Most studies of videolink use in courts address questions from within a single disciplinary perspective;
- Architectural perspectives and other analyses of the design of remote spaces are lacking, particularly regarding what features constitute ‘healthy’ environments that promote wellbeing and improved human performance;
- There is a focus on its use for witnesses and defendants as opposed to other users, such as the remote expert or the remote judge;
- The ritual elements of courtroom experiences, including establishing distances, recognising hierarchy and being ‘on show’ were recognised in the commentaries, but were insufficiently recognised in the experimental studies and evaluations;

- Studies from the disciplines of media and communication studies can be helpful in identifying features of technology-mediated communications that may contribute to their effectiveness for particular tasks.

b) ANALYSIS OF LEGISLATION AND CASE-LAW

Legislation in all Australian jurisdictions permits remote participation for a range of purposes, including giving evidence (both for witnesses deemed vulnerable and those who are not) and linking defendants in custody to courts. A review of legislation enabling remote participation in all Australian States and Territories was conducted for this project (see Appendix A), as well as international practices (e.g. EU and the USA). Subordinate legislation was also examined, as well as court rules and practice directions. Case-law from all Australian jurisdictions that interpreted and applied these provisions was also analysed to ascertain to what extent courts were requiring performative standards to be met when permitting the use of videolinks.

Key findings from legislation and case law:

- Although some attempts at uniformity are rec-

ognizable, particularly in the case of interstate witnesses, statute law appears to have developed on a fairly ad hoc basis.

- There is no complete and comprehensive legislative provision for the use of videolinks in courts in any Australian jurisdiction;
- There is a presumptive use for vulnerable and child witnesses;
- Approaches to participation by defendants vary;
- Judicial officers have broad discretionary powers in relation to the use videolinks;
- Only some operational issues are addressed in the legislation;
- Legislation, court rules and practice directions include little in the way of performative standards;
- There is limited attention to technical standards;
- Case-law reveals that discretionary powers to impose conditions appear to be under-utilised;
- Unlike some overseas jurisdictions, there is a lack of detailed guidelines to help guide decision-making processes.

c) SITE VISITS

The research team analysed sites involved with

videolinked court proceedings in over 40 courthouses and 20 remote sites. Researchers collected data on a range of spaces that a remote participant might experience. They documented the quantitative elements (such as room size, number of windows, location proximate to other places in the building, the physical arrangement of furniture, the items of technology present), as well as more qualitative elements (such as the quality of finishes, the quality of the technology, the ambience of the room, and the extent to which the technology had been integrated into the built fabric).

Key findings from site visits:

- There are a diverse range of types, sizes and scales of spaces used for remote court participation, some of which are used solely for videolinks to courts, others of which are used for other purposes when not linked to court;
- Many remote facilities could be described as ‘unhealthy’ spaces when examined from the perspective of the environmental psychology literature that describe spaces promoting wellbeing;
- Remote spaces are generally small, bland and anonymous in character;

- Remote rooms often lack access to natural light and views;
- The videolink equipment dominates the design;
- The videolink equipment is not well integrated to the built environment, often appearing on a moveable trolley;
- The remote participant generally has limited views of the courtroom onscreen;
- There are often difficulties viewing documents over the link.

d) OBSERVATIONS AND EXPERIENCES OF REMOTE PARTICIPATION

The research team observed remote and discrete courtroom settings. Observation findings revealed discrepancies between the legislation and practice notes describing how remote participation should occur, and what was happening in practice.

Key findings from observations and experiences:

- The image of remote participant is often distorted;
- There are difficulties with simulating eye-contact;
- There are difficulties displaying multiple images;

- There is often an unnatural dislocation of the sound of the voice from image of speaker;
- Audio quality is often poor with voices sounding unnatural and lacking in clarity.

e) SEMI-STRUCTURED INTERVIEWS

Interviews were conducted with 61 stakeholders, including judicial officers, lawyers, court staff, expert witnesses, remote court officers, court administrators and architects experienced in court buildings.

Key findings from semi-structured interviews:

- A diverse range of opinions were expressed, but overall, videolinks were seen as a positive step. Where concerns were voiced, they focused on:
- The adequacy of the environmental and technological conditions of the remote space and videolink;
 - The effect of the perceived “remoteness” of the remote participant on the impressions of that person formed by the jury;
 - The ability to assess credibility and the capacity to confront the remote participant;
 - The effect of appearing from the remote space on the behaviour of remote participants, feeling

that this often led remote participants to act in a manner out of keeping with a courtroom setting;

- The practice of sentencing by videolink resulting in a loss of impact on the defendant and the wider community.

f) THE GATEWAYS EXPERIMENT

This was a controlled experiment designed to test the relationship between some of the variables that had been identified as having the potential to impact on the success of video-mediated encounters. It focused on one particular type of encounter: between the witness (expert or non-expert) and the courtroom participants who receive their evidence (lawyers, judicial officers and jurors).

Four conditions were tested, including one control condition. The control condition involved a ‘standard’ environment and ‘standard’ process (BB) and the three experimental conditions were: enhanced environment and enhanced process (AA), standard environment and enhanced process (BA), and enhanced environment and standard process (AB). Participants included 170 mock jurors, 64 lay witnesses and 21 expert witnesses.

Witnesses viewed a short extract from a film showing a shooting incident, and they were then escorted to the remote witness room. Jurors observed the four remote witnesses giving their testimony, representing each of the four conditions. The responses of both witnesses and jurors to these conditions was measured from their responses to questionnaires administered at the conclusion of each witness's testimony (see pages 33-34 for more details on methodology).

Key findings from the experiment:

- Improving the process (that is, the way the remote participant is informed, supported and orientated to the courtroom) has a positive effect, and improving the environment has a positive effect. However, improving both has a compounding effect;
- The quality of the environment of the remote space is noticed by those in the courtroom;
- Improving the quality of the videolink technology is noticeable by those in the remote space and the courtroom;
- Improved technology and environment in the remote space indicates an improved interaction with those in the courtroom.

Synthesis of the findings

The study had two major findings:

Firstly, the way in which videolink technology is implemented has a real impact on service delivery, and therefore justice outcomes; how videolinks are used, their design and operation, matters.

Secondly, a successful videolinked court encounter requires careful consideration of the technology, environments, personnel, protocols and legislation that enable their use. These factors work together and none of them should be ignored or viewed in isolation. The type of the remote participant, the reason for their remote participation, and the nature of the remote space from which they appear, are key factors in determining the way in which these components should be configured to achieve the best result.

Types of remote participants

We identified nine main categories of potential remote participants:

1. Lay witness
2. Vulnerable witness
3. Expert witness

4. Defendant
5. Judicial officer
6. Lawyer
7. Public gallery
8. Media (press gallery)
9. Interpreters.

In the operational and design guidelines we identify the recommendations that have more specific relevance to a particular type of participant where appropriate.

Remote for access, remote for separation²

Reasons for participating remotely may also be defined as either:

1. Remote for providing access:

- giving evidence
- for appearing (e.g. remote defendant)
- attending (e.g. family in remote location)
- presiding (remote judge)
- advocating (remote lawyer), or,

2. Remote for providing separation:

- giving evidence (vulnerable or protected wit-

² Rowden (2011): 67. Full bibliographic details of all references can be found in the "selected bibliography", page 91.

ness)
- attending (parties in conflict, disruptive defendant).

Types of remote spaces

Remote Spaces can be classified according to whether or not they are used for other purposes, or, whether they are used solely for videolinks. They are either:

1. **Dedicated remote facilities:** These are generally purpose-built remote rooms and associated spaces that are only used for videolinks and are not used for any other purpose. Examples of this type include the Remote Witness Facility within or attached to a courthouse, or a videoconferencing room in a prison, or,
2. **Multipurpose remote spaces:** These spaces are only occasionally linked to the courtroom. For instance, our study found that a remote court participant might find themselves in settings as varied as a hospital chapel or tea room, a business centre videoconference room, a university office, a multifunction meeting room, or a room that doubles as a storeroom.

Assistance to the remote participant:

We identified two different types of remote appearances:

1. **Assisted appearances:** some remote participants are accompanied by a remote court officer, or other support person (e.g. child witnesses; defendants appearing from prison). The remote court officer operates the technology and may provide additional information about the court process to the participant, or,
2. **Unassisted appearances:** some remote participants are alone in the remote space (e.g. most expert witnesses) and have the responsibility for accepting the videolink call, and setting up the room beforehand.

Two rooms in one: what the court sees and what the remote participant sees

Any remote space can be seen as divided in two: Remote Room a = what the remote participant sees of the space (when seated); and, Remote Room b = what the court sees of the remote participant and the remote space (Figure E1).³

³ Rowden (2011): 332 & Appendix H.

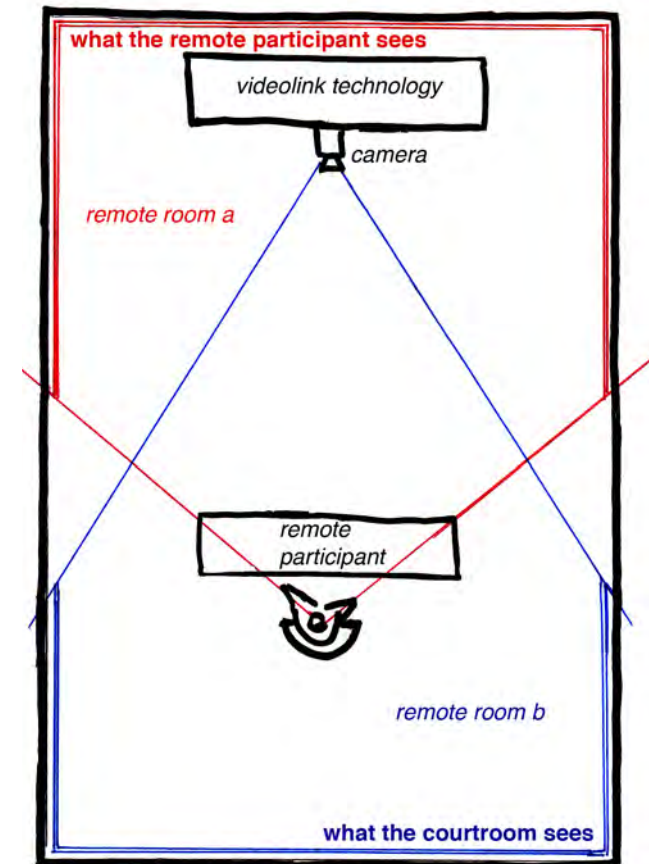


Figure E1: Plan of the remote space showing 'two rooms in one' - demonstrating that what the remote participant sees of the room (remote room a) is different from what the courtroom sees (remote room b). (© Emma Rowden).

Recommendations

Our recommendations are configured around four stages of “the remote court encounter”:

1. **Prior:** What happens before the day of the court appearance;
2. **Thresholds:** A threshold is the transition between one state, or place, with another. This stage refers to what occurs at the remote space on the day of the court encounter. Thresholds may be crossed multiple times and at several points during a remote appearance. They may take the form of a physical threshold (moving in and out of the remote room), as well as a technological threshold (connecting and disconnecting the videolink to the court).
3. **The Encounter:** What occurs over the course of the videolink; and,
4. **Afterwards:** What occurs after its conclusion (both short-term and longer-term actions).

Our recommendations and design guidelines identify and address key issues that arise at each stage, and are either to do with suggested changes to the **process** (addressing court protocols, procedures and administrative matters), or the

design (addressing the technological and environmental conditions) of the videolink.

General Recommendations:

- The court should consider the nature of the evidence to be given (traumatic personal evidence versus non-controversial and non-personal evidence) when considering additional support.
- All vulnerable witnesses should be assisted, as the additional cognitive load caused by the operation of the technology can cause undue stress.
- Unassisted remote witnesses may require additional checking to ensure that they understand instructions and/or what is occurring.
- Remote room b (see Figure E1 on p11) should always frame the remote participant in a way that gives the impression to those watching from the courtroom that the remote participant is being treated with dignity and respect, and that there is nothing distracting or diminishing the appearance of the remote participant.

The following tables on pages 13-16 provide a summary of key strategies to operationalise the findings of this research. A more detailed version of these recommendations can be found on pages 45-79.

summary of key strategies for improving the remote encounter

KEY ISSUES: "PRIOR"	IMPROVING THE PROCESS	IMPROVING THE DESIGN
<p>5.1.1 INFRASTRUCTURE AND PROCEDURES FOR VIDEOLINKS</p>	<ul style="list-style-type: none"> • Maintain a central registry of facilities available for videolinks • Streamline the process for court permissions • Standardise procedures for booking the link and rescheduling the link 	<ul style="list-style-type: none"> • Adopt minimum standards for optimum design of remote witness facilities and for selecting sites suitable for occasional links to courts (see Appendices B & C) • Design technology at same time as the built environment • Fine-tune the design of the remote facilities during the commissioning stage and document optimum conditions in central registry
<p>5.1.2 PREPARING FOR EACH VIDEOLINKED ENCOUNTER</p>	<ul style="list-style-type: none"> • Brief the remote participant about a) what to bring with them; b) what to wear; and, c) what to expect • Test and modify the link as necessary with the remote participant prior to their scheduled appearance • Provide the remote participant with information and support on the day of their appearance • Provide orientation to the court for all remote participants • Ensure day-to-day maintenance for dedicated remote facilities and for multipurpose remote spaces • Allow for pre-and post-court videolinks as required 	<ul style="list-style-type: none"> • Tailor the configuration of the videolink for each individual case • Plan for the possible need to reconfigure the technology, the courtroom and/or the remote space • Establish pre-set camera configurations for different types of remote participants • Provide capacity: <ul style="list-style-type: none"> - to display documents and exhibits - to display a wide variety of courtroom views - for a self-view

KEY ISSUES: “THRESHOLDS”	IMPROVING THE PROCESS	IMPROVING THE DESIGN
5.2.1 WAITING IN SAFETY	<ul style="list-style-type: none"> • Provide information for remote participant as to approximate duration of waiting time (20 minutes away; 5 minutes away; 60 seconds before appearance, etc) • Provide appropriate reading material for the type of remote participant in the waiting area 	<ul style="list-style-type: none"> • Provide an entry sequence that ensures safety and privacy • Provide adequate facilities in waiting areas (e.g. tea bench, toilets) with a pleasant outlook, paintings and natural light • Provide a second line of communication between remote space and the court
5.2.2 TRANSITION FROM THE OUTSIDE WORLD TO THE COURT SPACE	<ul style="list-style-type: none"> • Provide information and support when the unassisted remote participant needs to accept the videolink call • Greet and welcome the remote participant to the court • Check sound and vision is adequate by asking if all participants can see and hear • Check the comfort of the remote participant 	<ul style="list-style-type: none"> • Exaggerate the threshold through architectural features (such as lighting, change in ceiling height, change in materials, deep architraves, or colour) to help clarify the distinction between the remote court space and the waiting areas • Make clear the distinction between being “in court” and “out of court” through signals and/or technology
5.2.3 BEING IN COURT	<ul style="list-style-type: none"> • Provide a clear signal to indicate that the remote space is ‘live’ to the courtroom, or not (e.g. On or Off signalling) • Create a formal atmosphere to assist the remote participant to maintain a demeanour appropriate for the court setting 	<ul style="list-style-type: none"> • The remote space should convey a sense of respect and dignity towards the remote participant and be evident to those watching from the courtroom • The view of the court should convey the presence of the court to the participant • The remote facility should be comfortable, spacious, clean and private, ideally with an outlook and natural light.

KEY ISSUES: “THE ENCOUNTER”	IMPROVING THE PROCESS	IMPROVING THE DESIGN
5.3.1 PRESENTING THE REMOTE PARTICIPANT TO THE COURT	<ul style="list-style-type: none"> • Uphold presentation standards during the link, e.g. good audibility; size of participant onscreen is life-size, etc. • If standards are not met, act immediately to rectify (including halting proceedings to follow necessary steps) • Provide capacity for multiple views during a videolink • Be alert for distractions and unanticipated effects • Exert judicial control over the remote space 	<p><i>(No design issues have been noted here as these should be addressed at other stages of the process)</i></p>
5.3.2 PRESENTING THE COURTROOM TO THE REMOTE PARTICIPANT	<ul style="list-style-type: none"> • Uphold presentation standards during the link 	
5.3.3 DEALING WITH BREAKDOWNS AND FAILURES	<ul style="list-style-type: none"> • Take a broad view of what constitutes a breakdown or failure and have established contingency plans • Encourage all participants to notify the judicial officer if modifications are required or if a breakdown has occurred • Judicial officers should facilitate management of remote space, and support for remote participant • Provide training for judicial officers as to the capacity of the technology 	

KEY ISSUES: “AFTERWARDS”	IMPROVING THE PROCESS	IMPROVING THE DESIGN
<p>5.4.1 IMMEDIATELY AFTER THE LINK HAS FINISHED</p>	<ul style="list-style-type: none"> • Define clearly when the videolink has ended for the remote participant and in-court participants • Provide de-briefing information to the remote participant to ensure they have adequate follow-up with support person and/or their lawyer 	<ul style="list-style-type: none"> • Provide facilities to enable pre- and post-appearance links between remote participant and their support person and/or their lawyer (see Appendix B)
<p>5.4.2 ONGOING</p>	<ul style="list-style-type: none"> • Undertake regular reviews of videolink procedures (establish a working party) • Obtain feedback from court users on the remote court experience • Create regular opportunities for reflection and feedback from the judiciary, court staff and others appearing by videolink • Maintain accurate records of both CCTV and videoconference use, as well as other platforms such as Skype, to help target improvements (see Appendix D for suggested proforma) 	<ul style="list-style-type: none"> • Regularly update the design guidelines for remote facilities and courtrooms (Appendix B), and selection of multipurpose remote facilities (Appendix C) based on feedback and recommendations of review process

Publications arising from the research

The findings of this research have been published in a variety of different formats, and further publication is ongoing. The following is a list of publications to date that readers may find useful for further reference.

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