

FIRST PRINT

SUPREME COURT (VIDEO LINK) AMENDMENT BILL 1992

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The object of this Bill is to enable bail review proceedings before the Supreme Court to be conducted by means of video link facilities.

Clause 1 specifies the short title of the proposed Act.

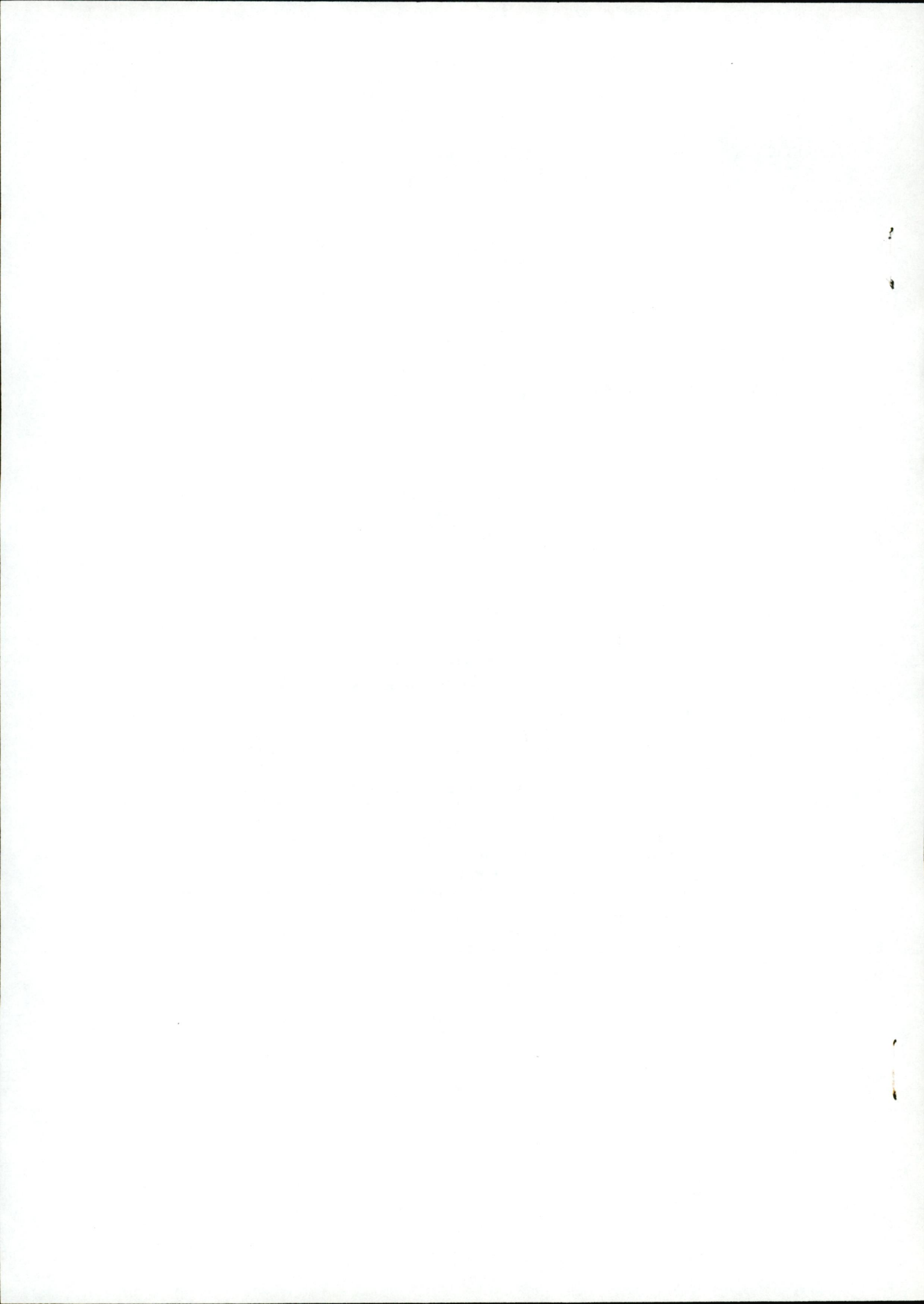
Clause 2 provides for the commencement of the proposed Act.

Clause 3 amends the Supreme Court Act 1970 to provide that bail review proceedings before the Supreme Court are to be conducted by means of video link facilities unless the Court, in the interests of justice, otherwise orders.

The video link facilities will provide for audio and visual communication of television standard between the place at which the Court is sitting and the other place at which the facilities are operated. Facilities will also be available for private communication between a person and the person's representative in the proceedings if the representative is at the place where the Court is sitting.

The Minister is to review the operation of the amendments within the third year after their commencement and is to table in Parliament a report of the results of the review.

Clause 4 contains a transitional provision that applies the amendments to bail review proceedings whether the proceedings for an offence from which those bail review proceedings arose were commenced before or after the amendments take effect.



FIRST PRINT

SUPREME COURT (VIDEO LINK) AMENDMENT BILL 1992

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Supreme Court Act 1970 No. 52
 4. Transitional provision
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SUPREME COURT (VIDEO LINK) AMENDMENT BILL 1992

NEW SOUTH WALES



No. , 1992

A BILL FOR

An Act to amend the Supreme Court Act 1970 to enable certain proceedings to be conducted by means of video link facilities.

Supreme Court (Video Link) Amendment 1992

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Supreme Court (Video Link) Amendment Act 1992.

5 **Commencement**

2. This Act commences on a day to be appointed by proclamation.

Amendment of Supreme Court Act 1970 No. 52

3. The Supreme Court Act 1970 is amended by inserting after Part 7 the following Part:

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PART 7A—USE OF VIDEO LINK FACILITIES

Proceedings to which video link facilities apply

110A. (1) Proceedings before the Court for the review of a decision concerning bail are to be conducted by means of video link facilities unless the Court, in the interests of justice, otherwise orders.

15

(2) The Court may at any time vary or revoke an order made under this Part, either of its own motion or on application by a party to the proceedings.

Manner of operation of video link facilities

20

110B. (1) Video link facilities used for the purposes of this Part are to be operated in a manner which ensures two-way audio and visual communication of television standard between the place at which the Court is sitting and the other place at which the facilities are being operated.

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(2) The regulations may contain further provisions with respect to the technical and performance specifications for video link facilities.

Facilities for private communication

30

110C. Facilities are to be available for private communication between a person using the video link facilities and the person's representative in the proceedings if the person's representative is at the place where the Court is sitting.

Premises to be considered part of Court premises

110D. (1) Any place at which video link facilities are being used in proceedings in accordance with this Part are taken to be part of the Court premises for the purpose of conducting those proceedings.

Supreme Court (Video Link) Amendment 1992

(2) A person present at a place at which video link facilities are being used in proceedings in accordance with this Part is taken to be in the presence of the Court.

(3) If video link facilities fail in relation to proceedings, the Court may adjourn the proceedings or make such other order as is appropriate in the circumstances as if a person present at the place at which the video link facilities are located were in the presence of the Court.

5

Entitlement to be present during proceedings

110E. Any entitlement of a person under any law to be present in proceedings before the Court for the review of a decision concerning bail is taken to be satisfied by the use in relation to that person of video link facilities in accordance with this Part.

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Regulations for the purposes of this Part

110F. The Governor may make regulations for the purposes of this Part.

15

Review of the operation of this Part

110G. (1) During the third year after the commencement of this Part, the Minister is to conduct a review of the operation of video link facilities in accordance with this Part and to prepare a report in the result of the review.

20

(2) The Minister is to table or cause to be tabled in each House of Parliament a copy of the report, within 14 sitting days of the House after the report has been prepared.

Transitional provision

4. Part 7A of the Supreme Court Act 1970 (as inserted by this Act) applies to proceedings for the review of a decision concerning bail whether the proceedings for the offence from which the bail review proceedings arose were commenced before or after the commencement of this Act.

25

THIS SPEECH MAY BE TABLED

SECOND READING SPEECH

LEGISLATIVE COUNCIL

SUPREME COURT (VIDEO LINK)

AMENDMENT BILL 1992

MINISTER TO SAY:

MR PRESIDENT, I MOVE THAT LEAVE BE GIVEN TO BRING IN A BILL FOR AN ACT TO AMEND THE SUPREME COURT ACT 1970 TO ENABLE CERTAIN PROCEEDINGS TO BE CONDUCTED BY MEANS OF VIDEO LINK FACILITIES.

(PRESIDENT PUTS QUESTION THAT LEAVE BE GIVEN - NO DEBATE ALLOWED)

(WHEN AGREED TO)

MINISTER TO SAY:

MR PRESIDENT, I BRING UP THE BILL.

(MINISTER HANDS TWO COPIES OF BILL TO CLERK WHO READS IT A FIRST TIME.)

MINISTER TO SAY:

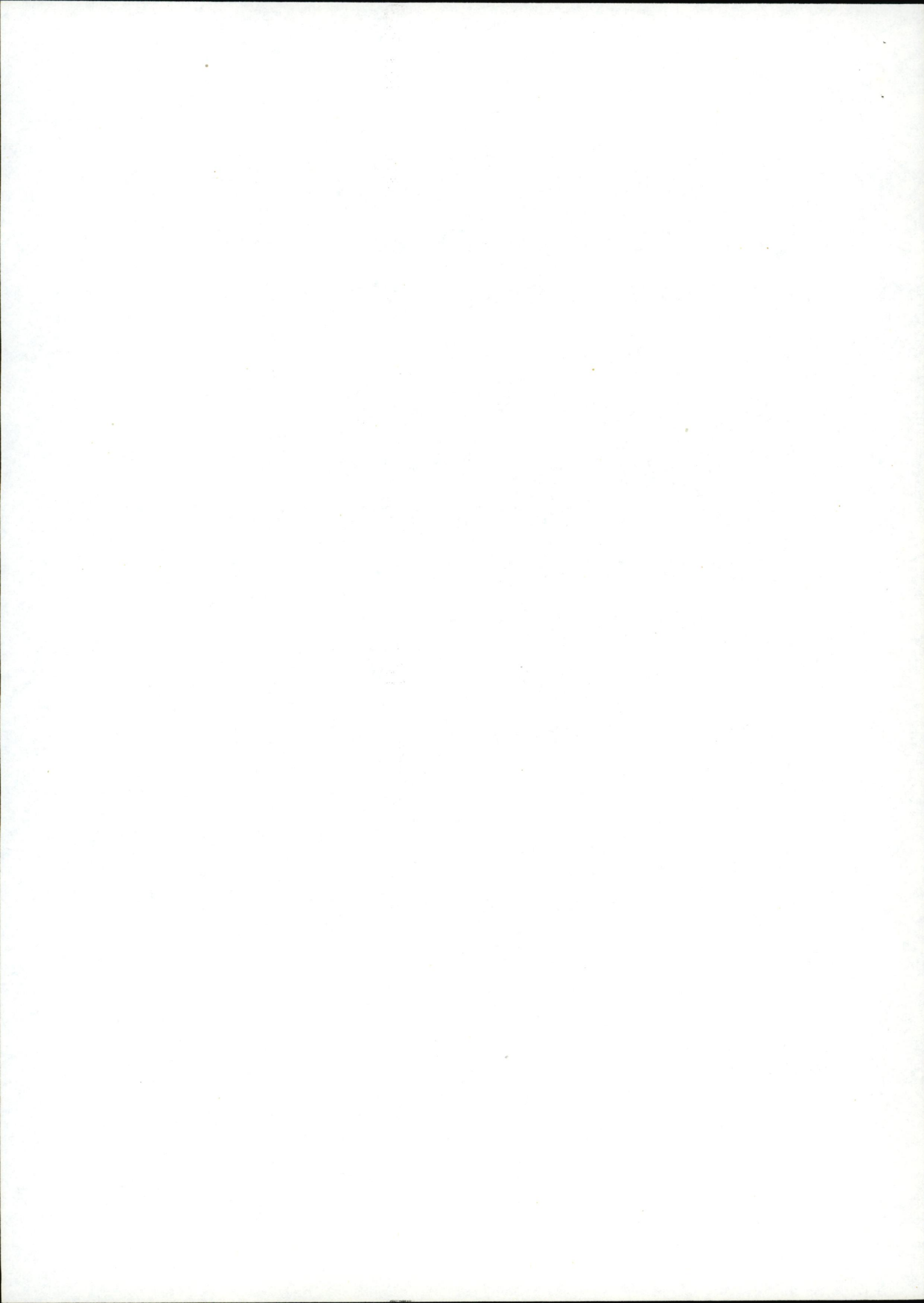
MR PRESIDENT, I MOVE THAT THIS BILL BE NOW READ A SECOND TIME.

THIS BILL WILL PERMIT CERTAIN COURT APPEARANCES IN THE NEW SOUTH WALES SUPREME COURT TO BE MADE USING VIDEO FACILITIES.

THESE 'ELECTRONIC' APPEARANCES WILL ROUTINELY OCCUR IN BAIL REVIEW PROCEEDINGS DURING A PILOT PROGRAMME TO BE CONDUCTED IN THE SUPREME COURT.

UNDER THIS ARRANGEMENT, BAIL REVIEW APPLICANTS WHO ARE IN CUSTODY AT THE METROPOLITAN REMAND CENTRE WILL 'ATTEND' COURT WITHOUT ACTUALLY LEAVING THE SECURE ENVIRONMENT OF THE REMAND CENTRE, BY USING VIDEO LINK FACILITIES.

AT THE OUTSET I WISH TO CLARIFY THAT THE PROCEDURE AUTHORISED BY THIS BILL DOES NOT INVOLVE THE USE OF VIDEO-TAPED APPEARANCES.

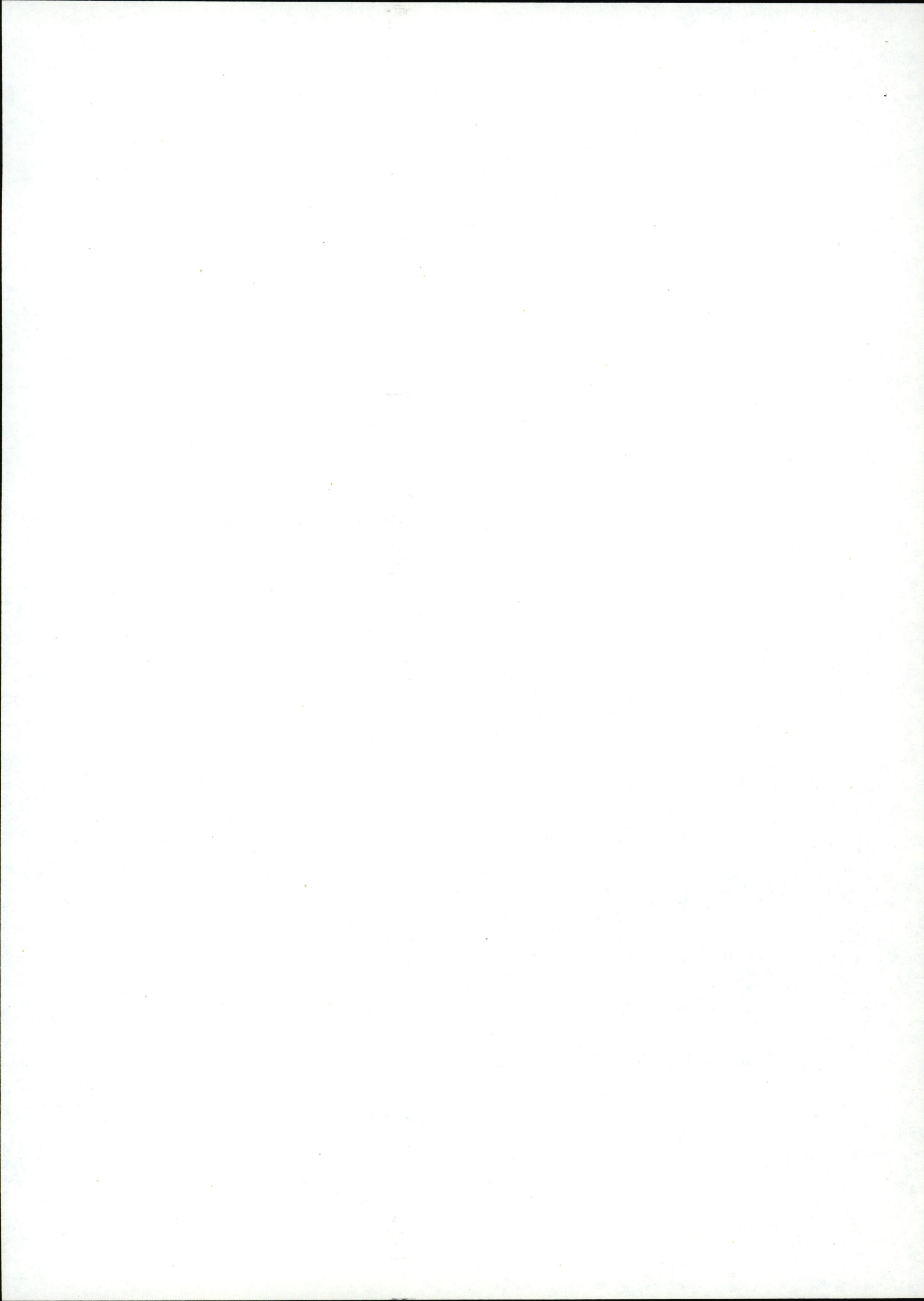


ALL APPEARANCES USING THE VIDEO FACILITIES WILL BE 'LIVE'.

THE WORD 'VIDEO' IN THIS BILL CARRIES ITS WIDER MEANING, AND REFERS TO A TWO-WAY, AUDIO-VISUAL COMMUNICATION LINK BETWEEN TWO SEPARATE LOCATIONS, USING LIVE TELEVISED IMAGES.

THE IMPORTANCE OF THIS BILL LIES IN THE SIGNIFICANTLY REDUCED SECURITY RISKS TO THE COMMUNITY WHICH WILL ENSUE FROM ITS IMPLEMENTATION.

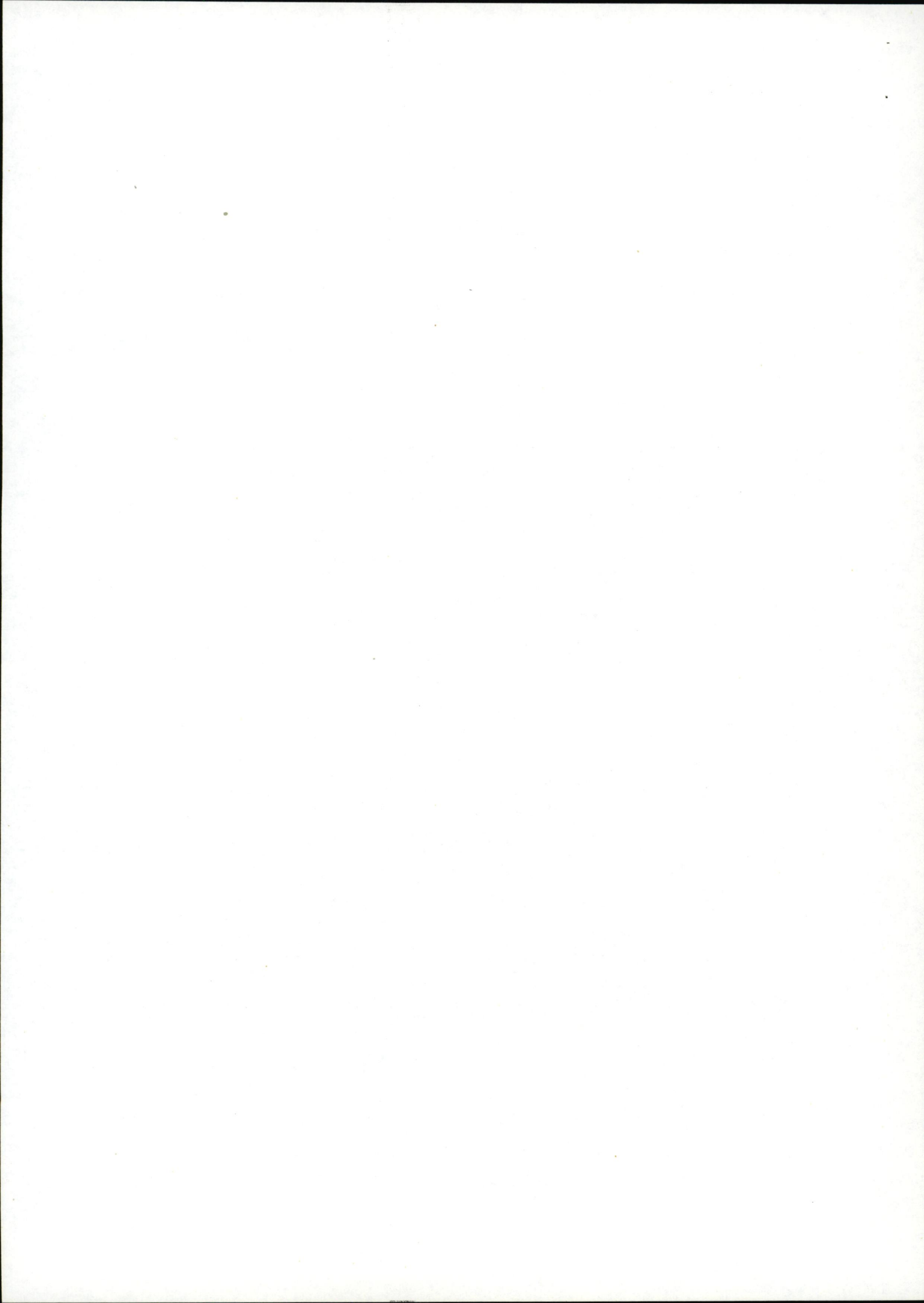
WORLDWIDE, IT IS RECOGNISED THAT TRANSPORTING PRISONERS FROM ONE SECURE LOCATION TO ANOTHER IS A PROCESS OF INHERENT RISK TO THE TRANSPORTERS AND TO THE COMMUNITY GENERALLY. THE TRANSPORTATION



PROCESS PRESENTS A NUMBER OF PROBLEMS, AND IS THEREFORE CONSIDERED THE 'WEAKEST LINK IN THE CHAIN' OF SECURITY PRECAUTIONS TAKEN IN RESPECT OF PRISONERS.

THERE ARE MANY EXAMPLES OF BREACHES OF SECURITY OCCURRING DURING PRISONER TRANSPORTATION.

AS RECENTLY AS MARCH OF THIS YEAR, A DANGEROUS PRISONER ESCAPED FROM CUSTODY WHILST BEING TRANSPORTED TO THE DOWNING CENTRE FOR A COURT APPEARANCE. THIS INCIDENT OCCURRED IN A BUSY SUBURBAN STREET AND INVOLVED THE USE OF FIREARMS. THE COMMUNITY WAS AT RISK WHEN THE ESCAPE TOOK PLACE, AND CONTINUES TO BE AT RISK WHILE THE PRISONER IS AT LARGE.

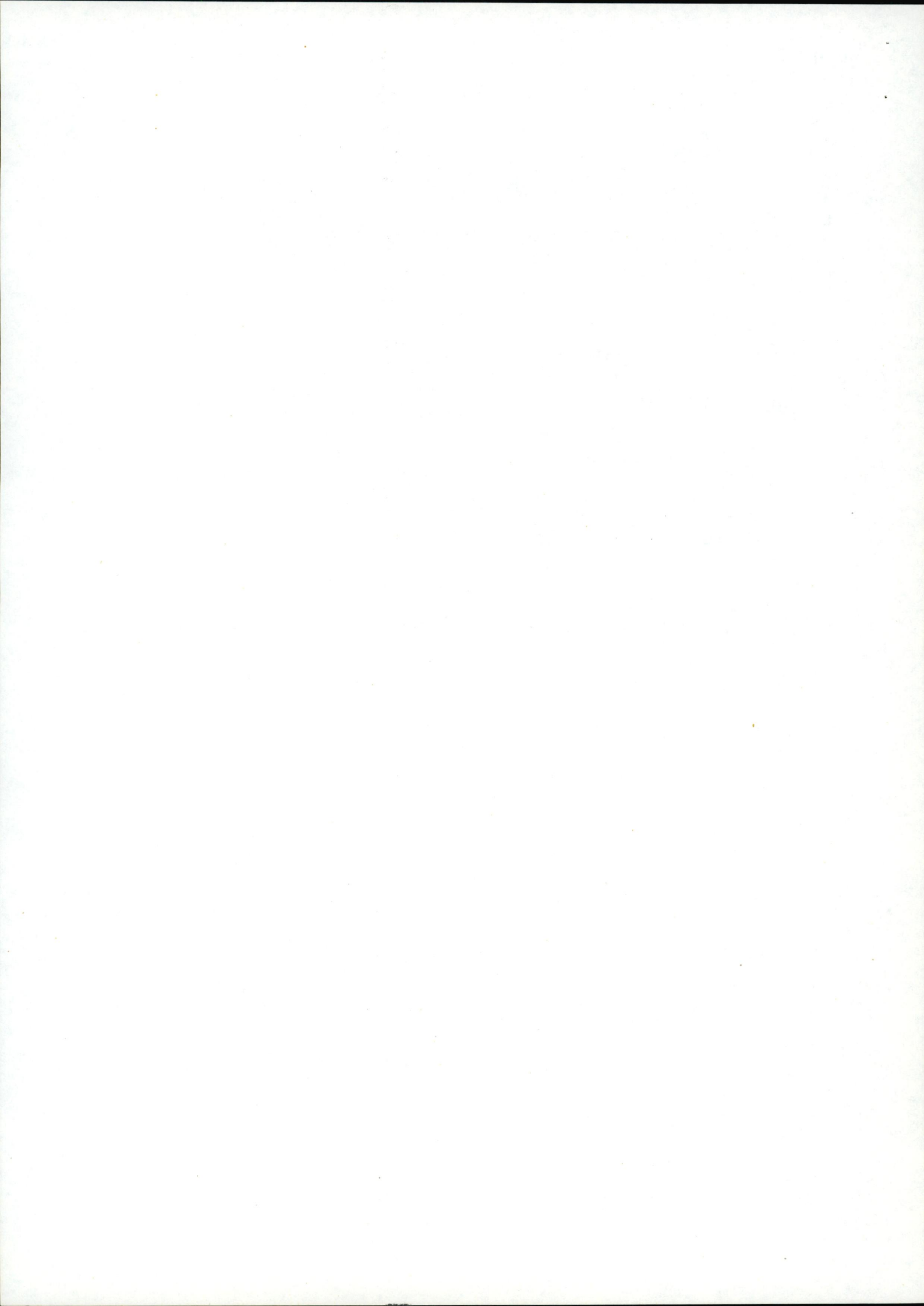


OPPORTUNITIES FOR EXPLOITING THE SECURITY
'WEAK LINK' MUST BE KEPT TO A MINIMUM.

REDUCING THE NEED FOR ATTENDANCE AT COURT,
BY PERMITTING ELECTRONIC APPEARANCES TO BE
MADE, IS ONE VERY EFFECTIVE MEANS BY WHICH
THIS MAY BE ACHIEVED.

APART FROM SECURITY ASPECTS, IMPLEMENTATION
OF THIS LEGISLATION WILL OFFER OTHER
ADVANTAGES.

FOR ONE THING, ELECTRONIC BAIL REVIEW
APPLICATIONS WILL BE LESS DISRUPTIVE FOR THE
REMANDEE, AS TRANSPORT VAN SCHEDULES WILL
NO LONGER DICTATE MOVEMENTS. CONFINEMENT
IN UNCONVIVIAL, AND OFTEN OVERCROWDED
HOLDING CELLS AT THE COURT WILL ALSO BE
AVOIDED.

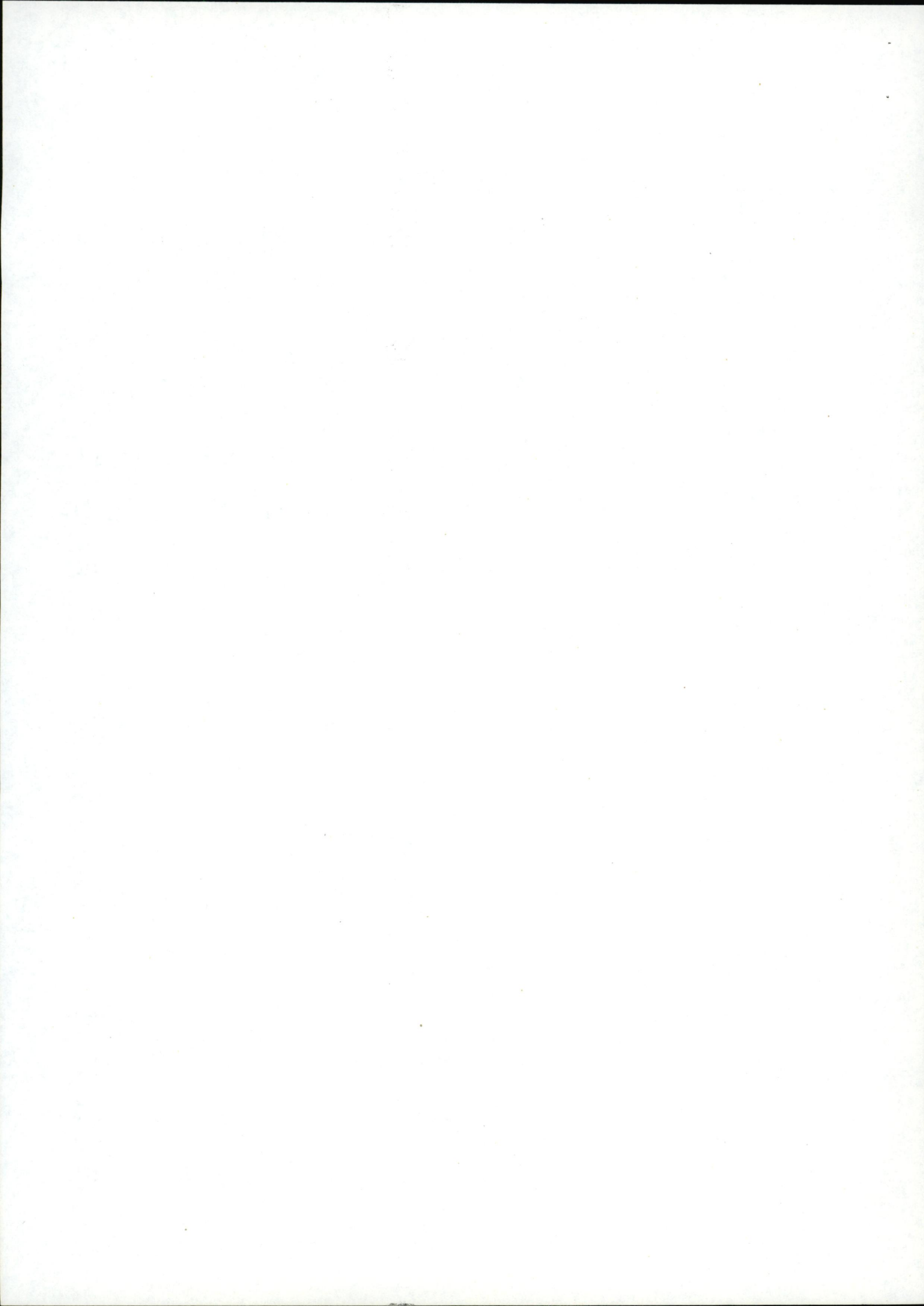


THE COURT WILL BENEFIT BY AVOIDING TIME WASTED AS A RESULT OF DELAYS IN APPLICANTS ARRIVING AT THE COURT COMPLEX, OR BEING ESCORTED UP FROM THE HOLDING CELLS.

SOME OF THE CORRECTIVE SERVICE OFFICERS THAT HAVE, UNTIL NOW, BEEN ENGAGED IN ESCORT AND GUARD DUTIES MAY ALSO NOW BE FREED FOR OTHER DUTIES.

EVENTUALLY, IF THE PROGRAMME IS EXTENDED, IT IS EXPECTED THAT SIGNIFICANT COST SAVINGS WILL ACCRUE FROM THE REDUCED DEMAND FOR PRISONER TRANSPORTATION AND SECURITY ESCORTS.

MR PRESIDENT, THE CONCEPT OF ELECTRONIC APPEARANCES BEFORE A COURT IS NOT A NEW ONE. INDEED, AS A RESULT OF LEGISLATION PASSED BY THIS HOUSE IN 1990, CHILD WITNESSES IN SEXUAL



ASSAULT CASES ARE NOW ABLE TO GIVE THEIR EVIDENCE FROM A ROOM AWAY FROM THE COURTROOM, USING CLOSED-CIRCUIT TELEVISION FACILITIES.

ELECTRONIC COURT APPEARANCES HAVE ALSO BEEN SUCCESSFULLY USED FOR SOME TIME IN MANY AMERICAN JURISDICTIONS. IN MANY AMERICAN COURTS, SUCH APPEARANCES HAVE BECOME AN ACCEPTED, AND SUPPORTED, PRACTICE IN A WIDE RANGE OF PROCEEDINGS.

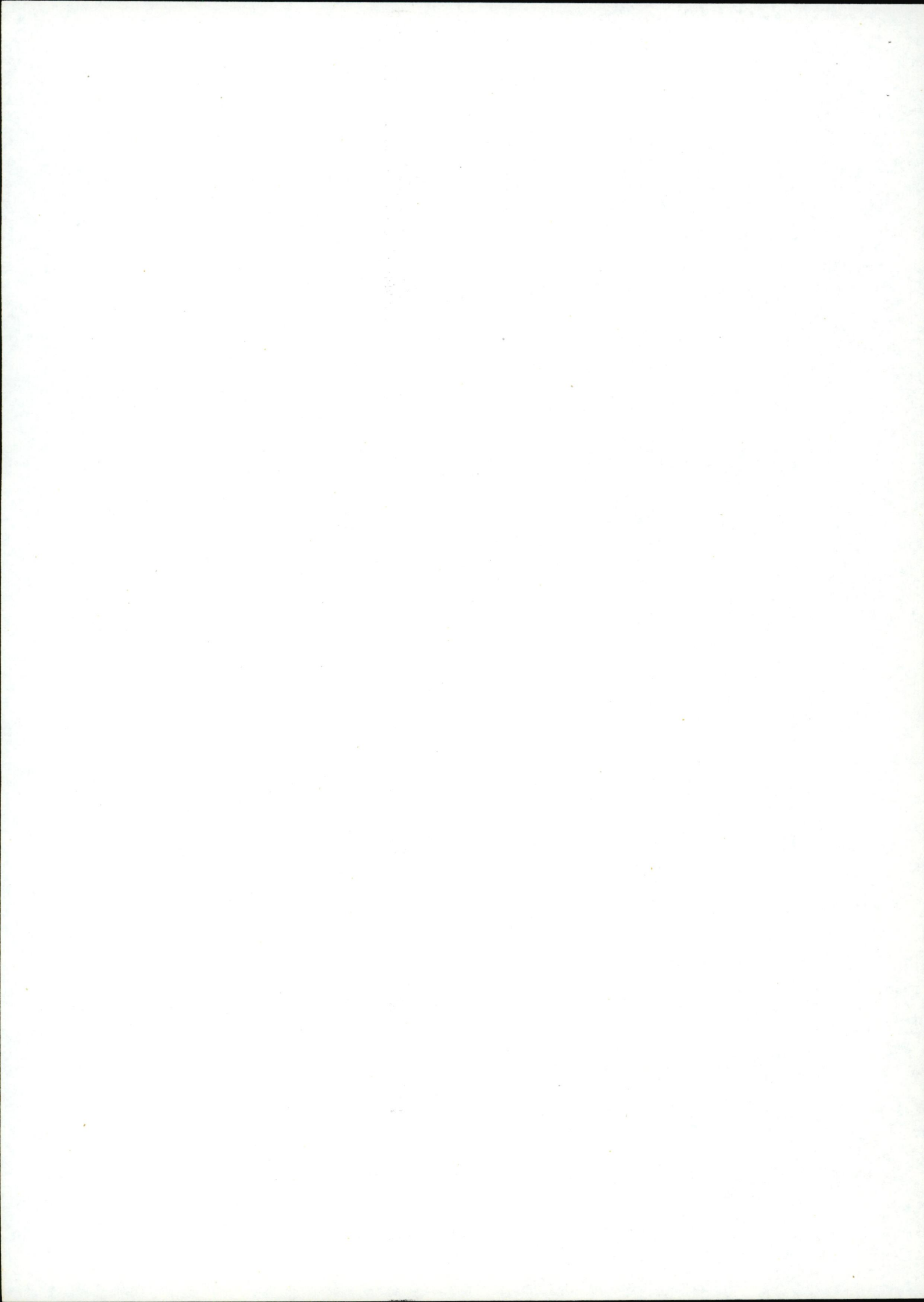
A PROGRAMME FOR BAIL HEARINGS INVOLVING ELECTRONIC APPEARANCES HAS ALSO BEEN OPERATING IN THE MELBOURNE MAGISTRATES COURT SINCE 1989.

THE PILOT PROGRAMME FOR ELECTRONIC APPEARANCES IN THE NSW SUPREME COURT IS THEREFORE NOT WITHOUT PRECEDENT.

NOTWITHSTANDING THE SUCCESSFUL PRECEDENTS IN OTHER JURISDICTIONS, ANY PROPOSAL TO REPLACE TRADITIONAL COURT APPEARANCES WITH ELECTRONIC APPEARANCES, MUST BE APPROACHED WITH CAUTION.

IT IS IMPERATIVE THAT CARE IS TAKEN TO ENSURE THAT SUCH PROPOSALS DO NOT COMPROMISE THE RIGHTS OF THE ACCUSED, AND DO NOT INHIBIT THE FAIRNESS AND EFFICIENCY OF COURT PROCEEDINGS.

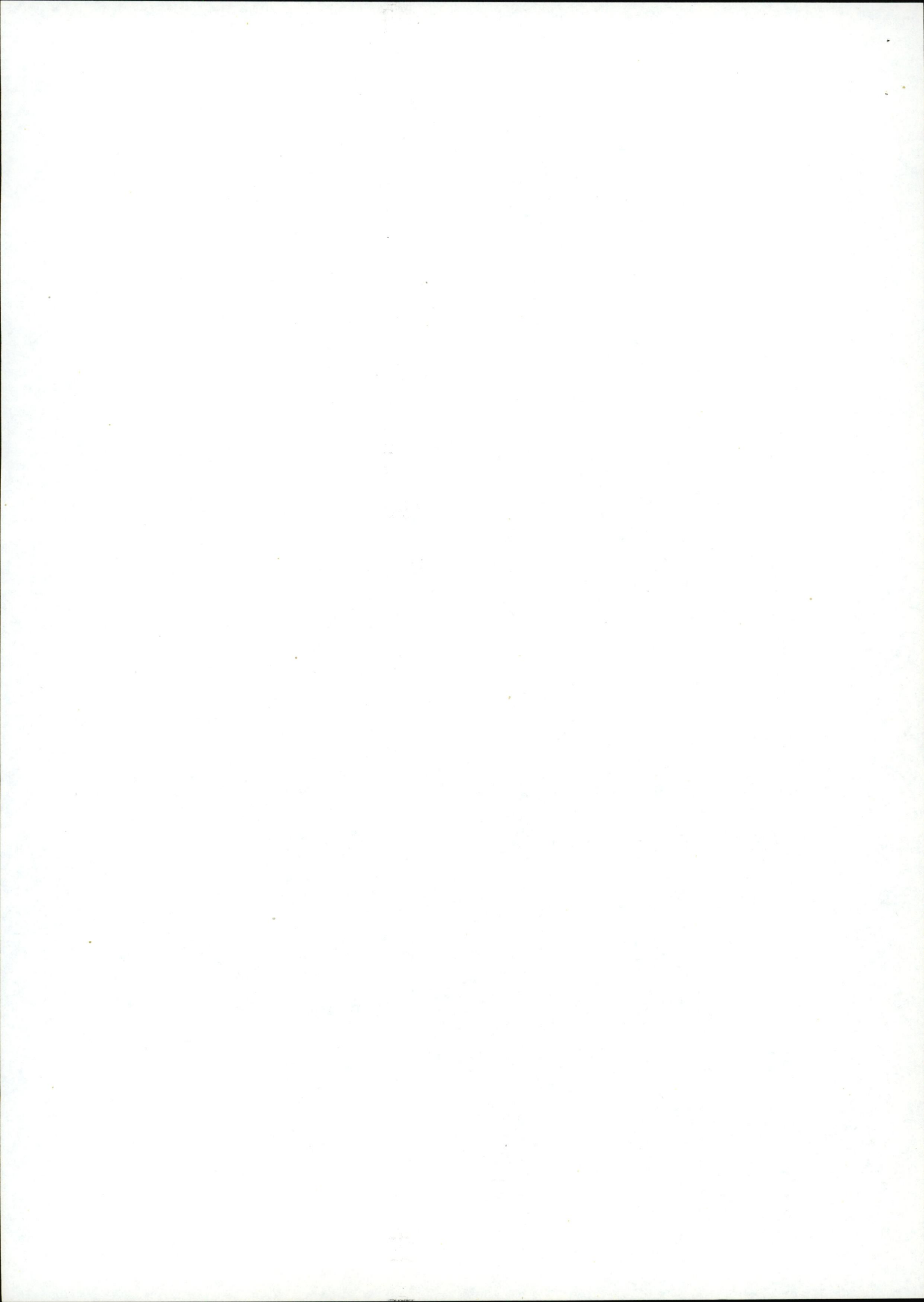
THE NEED TO PROTECT THE INTERESTS OF THE PERSON BEFORE THE COURT, AND TO PRESERVE THE INTEGRITY OF THE COURT PROCEEDINGS, IS ACCOMMODATED FULLY IN THE SUPREME COURT (VIDEO LINK) AMENDMENT BILL.



FIRSTLY, THIS BILL PRESCRIBES MINIMUM STANDARDS FOR THE QUALITY OF AUDIO-VISUAL COMMUNICATION BETWEEN THE COURT AND THE REMOTE LOCATION.

AS DEMANDED BY CLAUSE 100B, THE QUALITY OF SOUND AND IMAGE TO BE PRODUCED BY THE VIDEO LINK FACILITIES WILL BE EQUIVALENT TO THE STANDARD THAT WE EXPECT OF A COMMERCIAL TELEVISION BROADCAST. UNDER THE LEGISLATION, THE EQUIPMENT WILL BE REQUIRED TO COMPLY WITH CERTAIN AUSTRALIAN STANDARDS WHICH WILL BE SPECIFIED IN THE REGULATIONS.

THIS WILL ENABLE CLEAR, UNIMPEDED COMMUNICATION, BOTH AURAL AND VISUAL, BETWEEN THE PARTICIPANTS AT THE TWO LOCATIONS.

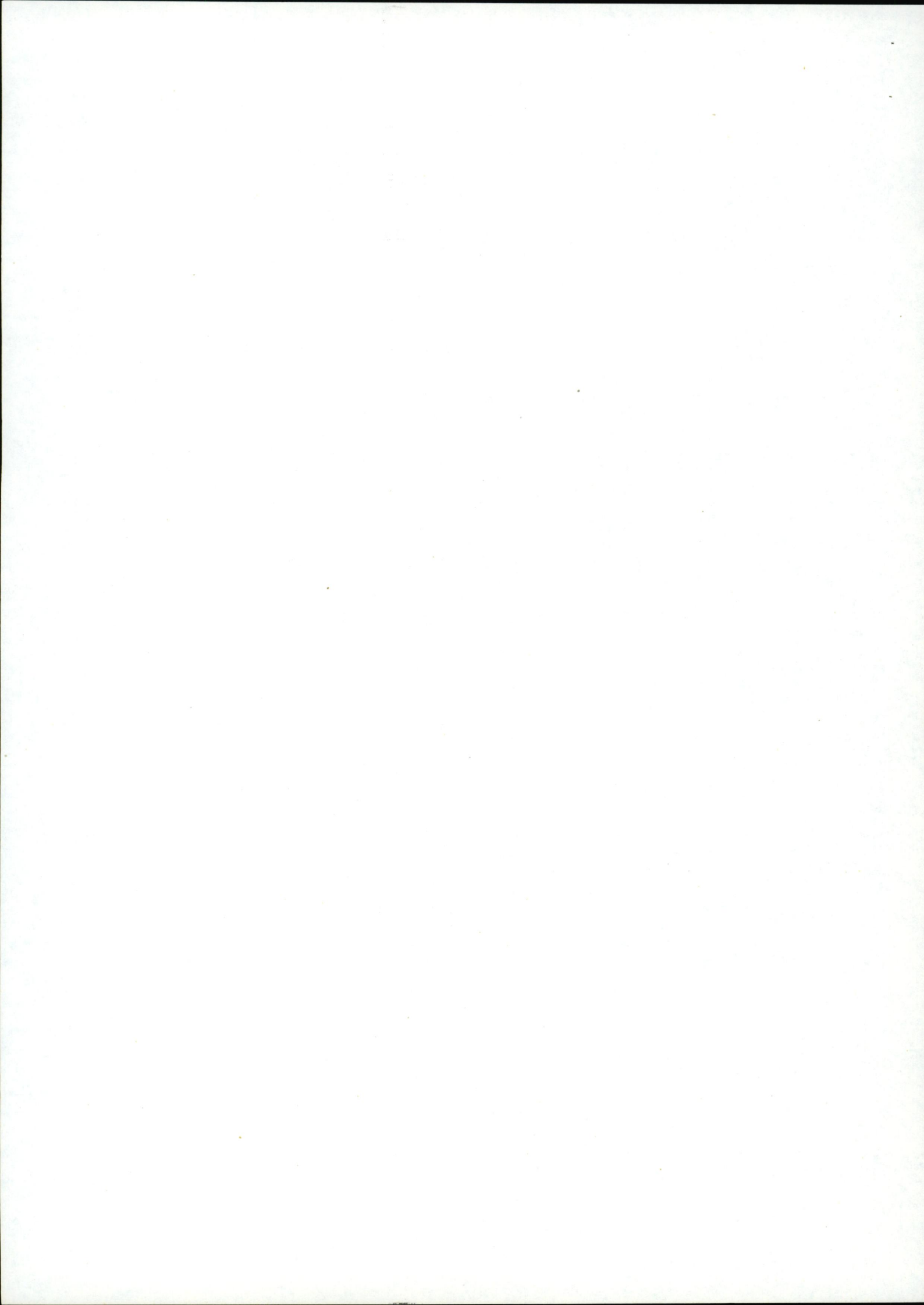


THE BILL ALSO PROVIDES OTHER IMPORTANT GUARANTEES AND SAFEGUARDS.

FOR EXAMPLE, THE GUARANTEE CONTAINED IN CLAUSE 110C WILL ENSURE THAT A BAIL REVIEW APPLICANT'S ACCESS TO LEGAL REPRESENTATION AND ADVICE IS NOT ADVERSELY AFFECTED BY AN ELECTRONIC APPEARANCE.

PURSUANT TO THIS PROVISION, SECURE TELEPHONE AND FACSIMILE FACILITIES WILL BE PROVIDED AT THE COURT AND THE REMAND CENTRE, TO PERMIT CONFIDENTIAL COMMUNICATION BETWEEN REMANDEES AND THEIR LEGAL REPRESENTATIVES DURING, PRIOR TO, AND AFTER THE PROCEEDINGS.

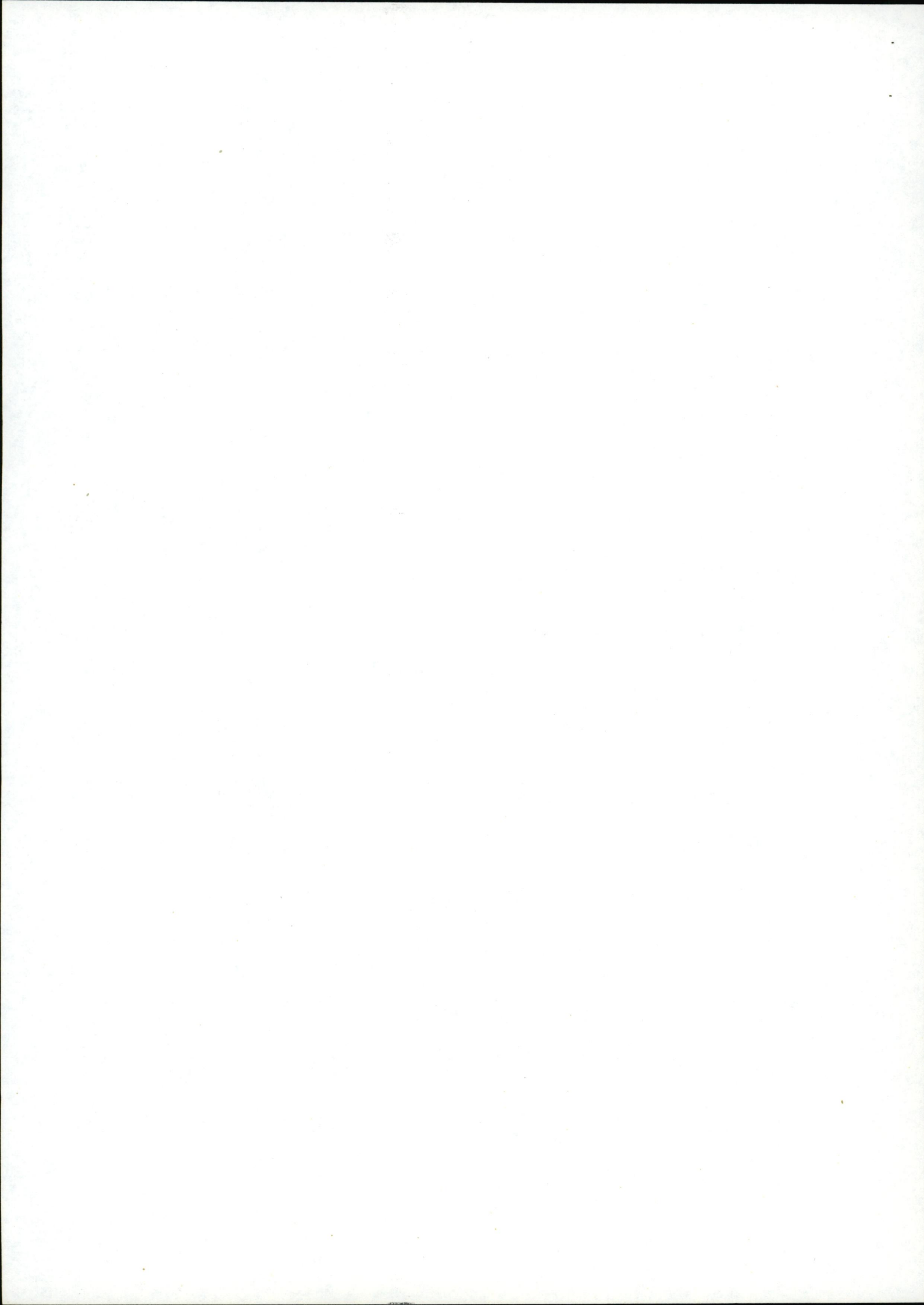
FURTHERMORE, CLAUSE 110A PROVIDES THAT IN ALL CASES, THE PRESIDING JUDICIAL OFFICER MAY ORDER THE APPLICANT TO BE BROUGHT INTO THE COURTROOM, SHOULD THE INTERESTS OF JUSTICE SO



DEMAND. THIS WILL ENSURE THAT THE NEW PROCEDURE IS SUFFICIENTLY FLEXIBLE TO DEAL WITH ALL MATTERS IN A MANNER ACCEPTABLE TO A COURT.

THE INTEGRITY OF PROCEEDINGS IN WHICH ELECTRONIC APPEARANCES ARE TO BE MADE IS FURTHER PROTECTED BY THE ATTENTION THAT THIS BILL PAYS TO ENSURING HIGH SOUND AND PICTURE QUALITY, AND BY THE DEEMING OF THE REMOTE LOCATION AS A PART OF THE COURTROOM, AND THEREFORE WITHIN THE JURISDICTION AND CONTROL OF THE PRESIDING JUDGE.

THE POSITIONING OF CAMERAS, MICROPHONES, AND OTHER EQUIPMENT IS OBVIOUSLY A MATTER TO WHICH CAREFUL ATTENTION MUST BE PAID IN IMPLEMENTING THE PILOT PROJECT.



AS CLOSELY AS POSSIBLE, THE VIDEO LINK FACILITIES WILL SIMULATE THE PERSPECTIVES THAT ARISE FROM A TRADITIONAL COURT APPEARANCE. THIS WILL INCLUDE PROVIDING THE PUBLIC GALLERY WITH A VIEW OF THE APPLICANT, AND GIVING THE APPLICANT THE OPPORTUNITY TO SEE FAMILY AND FRIENDS WHO MAY BE IN THE COURTROOM.

MR PRESIDENT, THE PILOT PROGRAMME WILL HAVE AN EFFECTIVE LIFE OF TWO YEARS, AFTER WHICH IT MUST BE REVIEWED. CLAUSE 110G OF THE BILL REQUIRES THAT THE PILOT PROGRAMME BE ADEQUATELY ASSESSED, AND THAT THIS PARLIAMENT BE PROPERLY INFORMED OF THE OPERATIVE EFFECT OF THIS LEGISLATION.

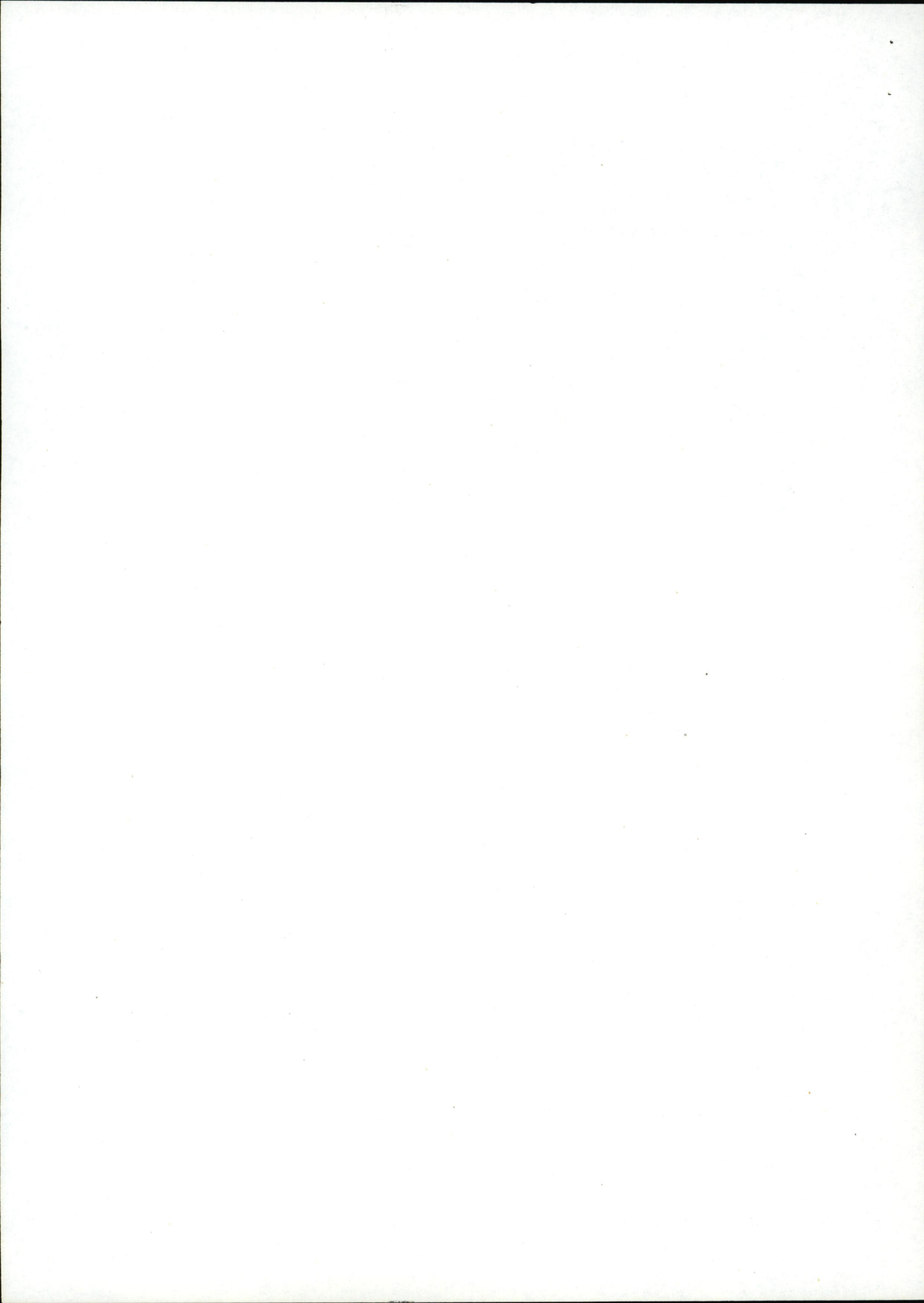
IN RESULT, THE PILOT PROGRAMME AND ELECTRONIC COURT APPEARANCES GENERALLY,

WILL REMAIN UNDER CLOSE SCRUTINY UNTIL SUCH TIME THAT THEY ARE PROVEN TO BE EFFECTIVE.

I SHOULD ADVISE THE HOUSE THAT THIS PILOT PROGRAMME HAS THE COMPLETE SUPPORT OF THE CHIEF JUSTICE OF NSW.

CONSULTATION HAS ALSO TAKEN PLACE WITH BOTH PROSECUTION AUTHORITIES AND THE LEGAL PROFESSION TO ENSURE THAT, IN ITS IMPLEMENTATION, THE PROGRAMME WILL HAVE THE GREATEST POSSIBLE SUPPORT AND CO-OPERATION FROM ALL KEY PLAYERS IN BAIL REVIEW PROCEEDINGS.

IN THIS REGARD, I NOTE THAT THE BILL AS IT NOW STANDS HAS BEEN SUBSTANTIALLY ALTERED IN ORDER TO ADDRESS SOME OF THE CONCERNS EXPRESSED DURING THESE CONSULTATIONS.

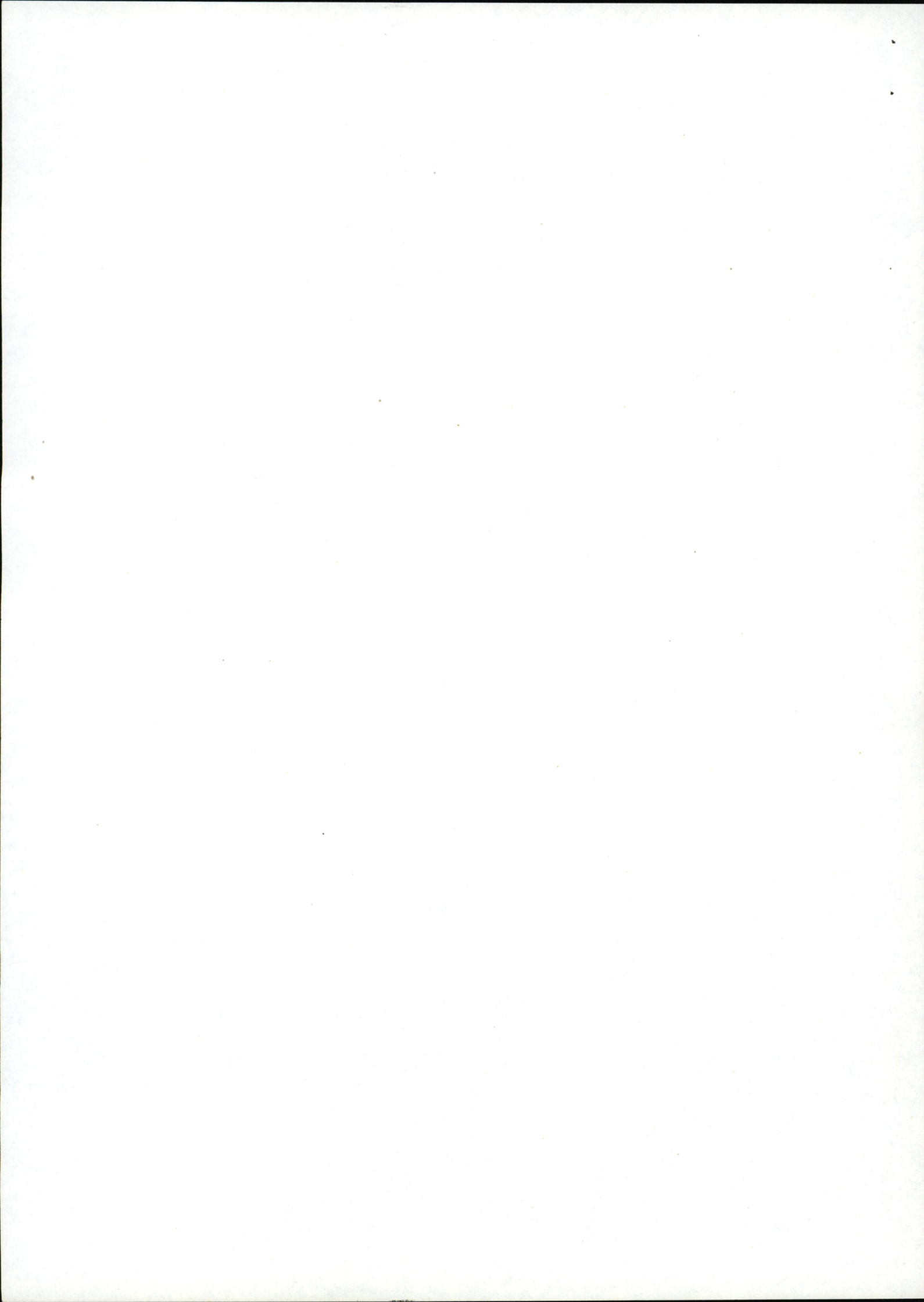


SIGNIFICANTLY, THE BILL ONLY PROVIDES FOR ELECTRONIC APPEARANCES IN THE CONTEXT OF THE PILOT PROGRAMME, AND GUARANTEES THAT THE PILOT WILL BE EVALUATED BEFORE ANY DECISION IS MADE TO MAKE IT A PERMANENT FEATURE. DRAFTING OF THE BILL IN THESE TERMS HAS BEEN A RESPONSE TO THE CONSULTATION PROCESS.

IT IS BECAUSE THIS BILL PROVIDES THE MEANS BY WHICH PRISONER SECURITY CAN BE MAINTAINED, AND UNNECESSARY EXPOSURE TO RISK AVOIDED, WITHOUT ANY JEOPARDY TO THE RIGHTS OF THE ACCUSED, THAT I COMMEND THE BILL TO THE HOUSE.

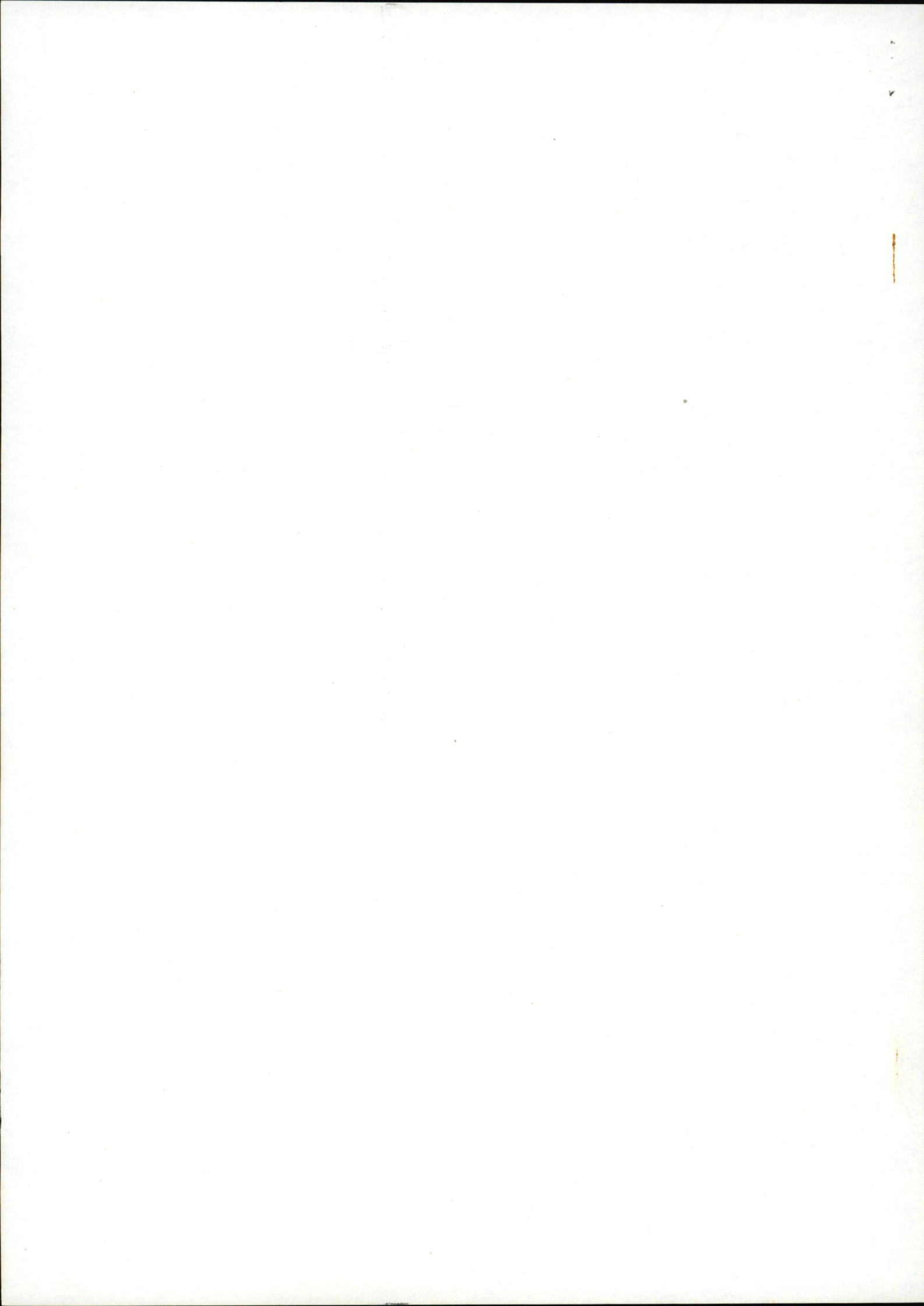
(AT CONCLUSION OF SPEECH, AN OPPOSITION MEMBER WILL MOVE THAT THE DEBATE BE ADJOURNED.)

(WHEN AGREED TO)



MINISTER TO SAY:

MR PRESIDENT, I ASK THAT YOU FIX THE
RESUMPTION OF THIS DEBATE AS AN ORDER OF THE
DAY FOR A FUTURE DAY.



SUPREME COURT (VIDEO LINK) AMENDMENT ACT 1992
No. 69

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
 2. Commencement
 3. Amendment of Supreme Court Act 1970 No. 52
 4. Transitional provision
-

SUPREME COURT (VIDEO LINK) AMENDMENT ACT 1992
No. 69

NEW SOUTH WALES



Act No. 69, 1992

An Act to amend the Supreme Court Act 1970 to enable certain proceedings to be conducted by means of video link facilities. [Assented to 4 November 1992]

Supreme Court (Video Link) Amendment Act 1992 No. 69

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Supreme Court (Video Link) Amendment Act 1992.

Commencement

2. This Act commences on a day to be appointed by proclamation.

Amendment of Supreme Court Act 1970 No. 52

3. The Supreme Court Act 1970 is amended by inserting after Part 7 the following Part:

PART 7A—USE OF VIDEO LINK FACILITIES

Proceedings to which video link facilities apply

110A. (1) Proceedings before the Court for the review of a decision concerning bail are to be conducted by means of video link facilities unless the Court, in the interests of justice, otherwise orders.

(2) The Court may at any time vary or revoke an order made under this Part, either of its own motion or on application by a party to the proceedings.

Manner of operation of video link facilities

110B. (1) Video link facilities used for the purposes of this Part are to be operated in a manner which ensures two-way audio and visual communication of television standard between the place at which the Court is sitting and the other place at which the facilities are being operated.

(2) The regulations may contain further provisions with respect to the technical and performance specifications for video link facilities.

Facilities for private communication

110C. Facilities are to be available for private communication between a person using the video link facilities and the person's representative in the proceedings if the person's representative is at the place where the Court is sitting.

Premises to be considered part of Court premises

110D. (1) Any place at which video link facilities are being used in proceedings in accordance with this Part are taken to be part of the Court premises for the purpose of conducting those proceedings.

Supreme Court (Video Link) Amendment Act 1992 No. 69

(2) A person present at a place at which video link facilities are being used in proceedings in accordance with this Part is taken to be in the presence of the Court.

(3) If video link facilities fail in relation to proceedings, the Court may adjourn the proceedings or make such other order as is appropriate in the circumstances as if a person present at the place at which the video link facilities are located were in the presence of the Court.

Entitlement to be present during proceedings

110E. Any entitlement of a person under any law to be present in proceedings before the Court for the review of a decision concerning bail is taken to be satisfied by the use in relation to that person of video link facilities in accordance with this Part.

Regulations for the purposes of this Part

110F. The Governor may make regulations for the purposes of this Part.

Review of the operation of this Part

110G. (1) After 18 months from the commencement of this Part, the Minister is to conduct a review of the operation of video link facilities in accordance with this Part and to prepare a report on the result of the review.

(2) The Minister is to table or cause to be tabled in each House of Parliament a copy of the report, within 14 sitting days of the House after the report has been prepared.

Transitional provision

4. Part 7A of the Supreme Court Act 1970 (as inserted by this Act) applies to proceedings for the review of a decision concerning bail whether the proceedings for the offence from which the bail review proceedings arose were commenced before or after the commencement of this Act.

[Minister's second reading speech made in—
Legislative Assembly on 29 April 1992
Legislative Council on 27 October 1992]

SECOND PRINT

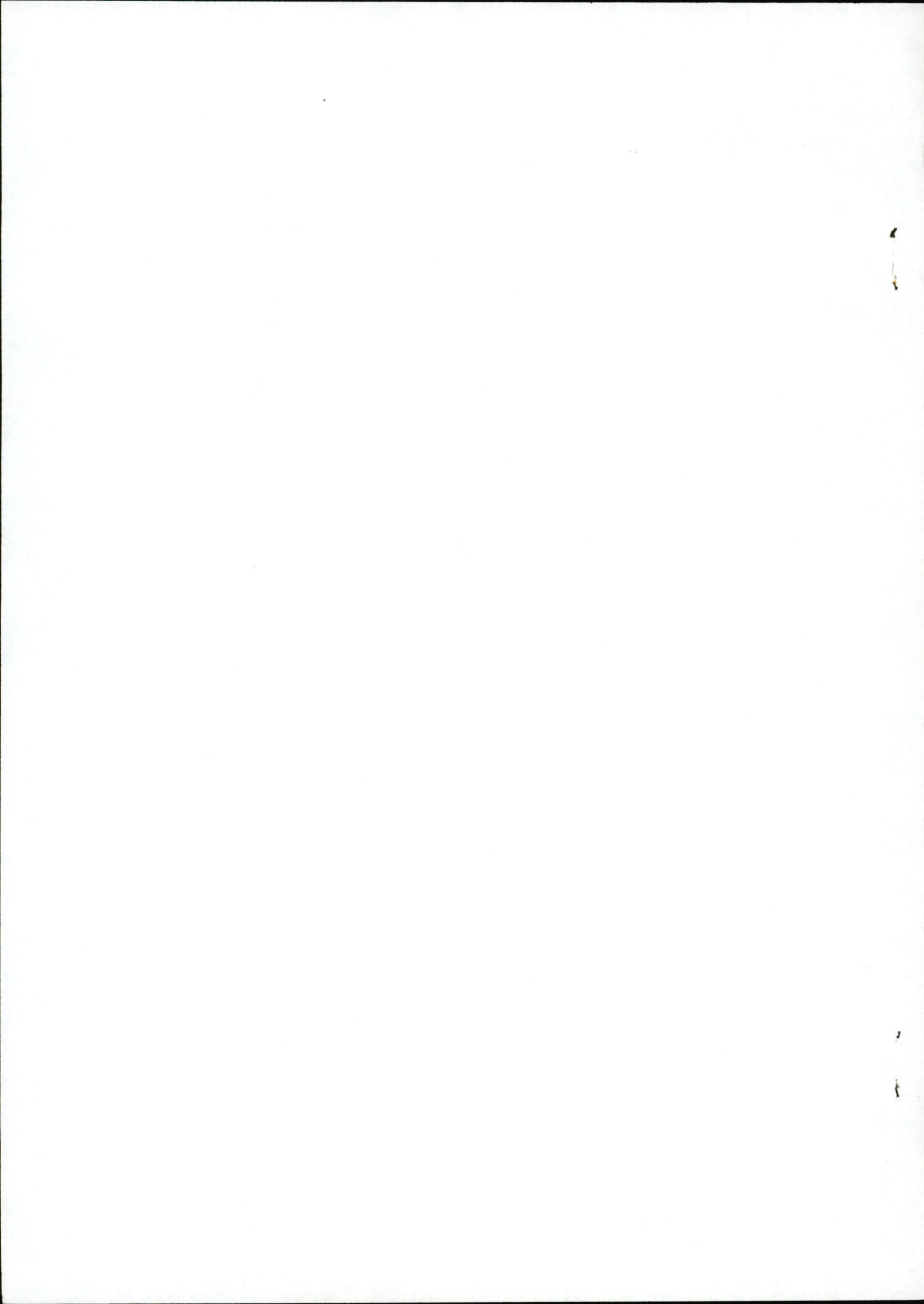
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NEW SOUTH WALES



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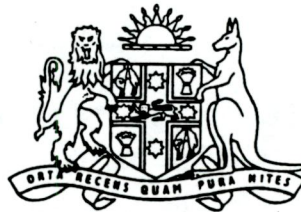


This PUBLIC BILL, originated in the LEGISLATIVE ASSEMBLY and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly

Clerk of the Legislative Assembly.

NEW SOUTH WALES



Act No. , 1992

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Supreme Court (Video Link) Amendment 1992

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(2) The Minister is to table or cause to be tabled in each House of Parliament a copy of the report, within 14 sitting days of the House after the report has been prepared.

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