# Digital vulnerability in criminal justice: *Vulnerable people and communication technologies*

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## Aims

- A national evaluation of **remote hearings**, videolinks and pre-recorded testimony for vulnerable individuals in the criminal justice system.
- The development of **'digital vulnerability'** as a framework for understanding what happens when vulnerable individuals use videolinks to access the criminal justice system.

## Significance

**Addresses the critical need to understand vulnerability in the digitalised legal environment, given:**

- The increased use and normalisation of videolinks in courts and legal practice; and
- The disproportionate impacts of the criminal justice system on vulnerable individuals.

**Informs policies, courts and legal practitioners** in understanding how digitalised justice impacts equitable access to justice.

## Method

**175 fieldwork interviews and surveys** with Australian judicial officers, lawyers and justice professionals.

**Link to the open-access book:**
*Digital Vulnerability in Criminal Justice: Vulnerable People and Communication Technologies.*

**link.springer.com/book/9783032100276**

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## Key findings

Key findings were sharply delineated between vulnerable witnesses and vulnerable defendants.

**1. Videolinks, pre-recorded testimony and vulnerable prosecution witnesses and complainants**

- Protection from the intimidation and trauma of the adversarial courtroom.
- Facilitation of best evidence through improved recall and coherence.

*'Many victims would be incapable of giving quality evidence absent videolink technology.'*

**(Respondent)**

- Emotional weight of remote or pre-recorded testimony may be sanitised and diminished by technological mediation.

**2. Videolinks and vulnerable defendants**

- Avoiding prison-court transport.
- Convenient for conveying "transactional" information (e.g., release dates).

*'When it comes to defendants ... we probably learned the lesson that justice is done best in-person.'*

**(SCJ3)**

- Inadequate substitute for face-to-face legal meetings.
- Impedes the identification of 'markers of vulnerability' in defendants, undermining informed legal advice regarding defences and mitigating factors.
- Inhibiting human **Connection, Communication, Confidentiality,** engagement and participation in criminal process, leading to 'muted' **Comprehension**.

**3. Universal experiences for vulnerable witnesses and defendants**

- Systematic screening of vulnerable individuals required.
- Social disadvantage impacts both groups in similar ways, notably in relation to digital literacy and access.

**4. Theoretical findings: 'Digital vulnerability'**

Applying digital vulnerability, videolinks for vulnerable witnesses act as **'techniques of mitigation'** in building resilience and enabling access to justice. For vulnerable defendants, videolinks often act as **'techniques of intensification'**, compounding barriers to justice and inequalities.

## Future visions

Broad support for **expanding high quality videolink infrastructure** throughout criminal courts, justice agencies, legal practice and regional community hubs.

*Videolinks are 'an amazing technology. It is the future, it is the way forward.'*

**(P7)**

However, **technologies should not replace the human element**, particularly for vulnerable people or substantive criminal procedures.

*'You cannot substitute videolinks and just think it's going to be exactly like a person-to-person contact, because...we're not dealing with robots.'*

**(P7)**

## Key insights

Videolinks can both mitigate and intensify vulnerabilities by supporting/depleting resilience, humanising/dehumanising and connecting/disconnecting individuals from effective participation, comprehension and communication.

Human needs and the human element must remain central for a fair, accessible and participatory criminal justice system.