

Version
as at 28 October 2021



Courts (Remote Participation) Act 2010

Public Act 2010 No 94
Date of assent 6 July 2010
Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Courts (Remote Participation) Act 2010.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Preliminary provisions

3 Interpretation

In this Act, unless the context otherwise requires,—

audio-visual link, or **AVL**, in relation to a participant's appearance at any proceeding, means facilities that enable both audio and visual communication between participants, when some or all of them are not physically present at the place of hearing for all or part of the proceeding

civil proceedings means any proceedings in a court, other than criminal proceedings

Community Magistrate has the same meaning as in section 4 of the District Court Act 2016

court means a New Zealand court

Court of Appeal means the Court of Appeal of New Zealand constituted under Part 3 of the Senior Courts Act 2016

criminal procedural matter means any matter, in a criminal proceeding, in respect of which no evidence is to be called

criminal substantive matter means any matter, in a criminal proceeding, in respect of which evidence is to be called

District Court includes—

- (a) the Family Court and the Youth Court; and
- (b) the District Court sitting in its admiralty jurisdiction

High Court includes the High Court sitting in its admiralty jurisdiction, or sitting as a permanent Prize Court under the jurisdiction conferred by section 8 of the Admiralty Act 1973

Judge means a Judge of any court

judicial officer means a Judge, a Community Magistrate, or a Justice

Justice has the same meaning as in section 2 of the Justices of the Peace Act 1957

Minister means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

New Zealand court means—

- (a) the Supreme Court, the Court of Appeal, the High Court, or the District Court; or
- (b) any of the following specialist courts: the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007, the Court Martial Appeal Court constituted by the Court Martial Appeals Act 1953, the Employment Court, the Environment Court, the Maori Appellate Court, and the Maori Land Court

participant, in relation to a proceeding, means a person who is, in that proceeding, any of the following:

- (a) a party:
- (b) the defendant:
- (c) counsel:
- (d) a witness:
- (e) a member of the jury:
- (f) a judicial officer who is presiding over the proceeding:
- (g) a Registrar who is presiding over the proceeding:
- (h) any other person directly involved in the proceeding whom the judicial officer or Registrar considers appropriate

proceeding means any proceeding in a New Zealand court

Registrar includes a Deputy Registrar

Supreme Court has the same meaning as in section 65 of the Senior Courts Act 2016

witness means a person who gives evidence and is able to be cross-examined in a proceeding.

Section 3 **Community Magistrate**: replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 3 **Court of Appeal**: amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

Section 3 **District Court**: replaced, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 3 **New Zealand Court** paragraph (a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 3 **Supreme Court**: amended, on 1 March 2017, by section 183(b) of the Senior Courts Act 2016 (2016 No 48).

4 Act binds the Crown

This Act binds the Crown.

Part 2

Use of audio-visual links in proceedings

5 General criteria for allowing use of audio-visual links

A judicial officer or Registrar must consider the following criteria when he or she is making a determination under this Act whether or not to allow the use of AVL for the appearance of any participant in a proceeding:

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology that is to be used;
- (c) the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including—
 - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the court; and
 - (ii) the level of contact with other participants;
- (d) any other relevant matters.

6 Additional criteria for allowing use of audio-visual links in criminal proceedings

A judicial officer or Registrar must also consider, when he or she is required to determine under this Act whether or not to allow the use of AVL for the appearance of any participant in a criminal proceeding, the potential impact of the use of the technology on the effective maintenance of the right of the defendant to a fair trial, and on his or her rights associated with the hearing, and, in particular,—

- (a) the ability of the defendant—
 - (i) to comprehend the proceedings; and
 - (ii) to participate effectively in the conduct of his or her defence; and
 - (iii) to consult and instruct counsel privately; and
 - (iv) to access relevant evidence; and
 - (v) to examine the witnesses for the prosecution; and
- (b) the level of contact the defendant has with other participants; and
- (c) any adverse impression that may arise through the defendant or any other participant appearing by means of AVL, and whether that adverse impression may be mitigated.

7 Use of audio-visual links in civil proceedings

- (1) AVL may be used in a civil proceeding for the appearance of a participant in the proceeding if a judicial officer or Registrar determines to allow its use for the appearance of that participant.
- (2) A judicial officer or Registrar may make a determination under subsection (1)—
 - (a) on his or her own motion; or
 - (b) on the application of any participant in the proceeding.
- (3) A determination under subsection (1) must—
 - (a) be made in accordance with the criteria in section 5; and
 - (b) take into account whether or not the parties consent to the use of AVL for the appearance of the participant.

7A Use of audio links in civil proceedings

- (1) In any circumstances in which a judicial officer or a Registrar would otherwise have determined under section 7 that AVL be used for the appearance of a participant in a civil proceeding, the judicial officer or Registrar may determine that AL be used instead of AVL if—
 - (a) the judicial officer or Registrar considers the criteria set out in section 5 (which applies as if the reference to AVL were a reference to AL) in deciding whether the use of AL is appropriate in the circumstances; and
 - (b) the judicial officer or Registrar determines that it is not contrary to the interests of justice to use AL instead of AVL.
- (2) For the purposes of this section and section 8A, **audio link** or **AL**, in relation to a participant's appearance at any proceeding, means facilities that enable audio communication between participants when some or all of them are not physically present at the place of hearing for all or part of the proceeding.
- (3) This section is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Section 7A: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

8 Use of audio-visual links in criminal procedural or sentencing matters

- (1) AVL must be used for the appearance of a participant in a criminal procedural matter if AVL is available and the participant is in custody, unless a judicial officer or a Registrar determines that the use of AVL is contrary to the interests of justice.
- (1A) AVL may be used for the appearance of a participant in a criminal procedural matter—
 - (a) if AVL is available; and
 - (b) unless a judicial officer or a Registrar determines that the use of AVL is contrary to the interests of justice.
- (2) AVL may be used for the appearance of a participant in a sentencing matter if—
 - (a) AVL is available; and
 - (b) the participant is in custody; and
 - (c) a judicial officer determines that the use of AVL is not contrary to the interests of justice.
- (3) Before making a determination under subsection (1), (1A), or (2), the judicial officer or Registrar (as the case may be) must take into account the criteria specified in sections 5 and 6.
- (4) To avoid doubt, a motion to determine whether AVL is contrary to the interests of justice may be made by the participant or the judicial officer or Registrar (as the case may be).

Section 8: replaced, on 1 March 2017, by section 4 of the Courts (Remote Participation) Amendment Act 2016 (2016 No 60).

Section 8 heading: amended, on 14 November 2018, by section 108(1) of the Courts Matters Act 2018 (2018 No 50).

Section 8(1A): inserted, on 14 November 2018, by section 108(2) of the Courts Matters Act 2018 (2018 No 50).

Section 8(3): amended, on 14 November 2018, by section 108(3) of the Courts Matters Act 2018 (2018 No 50).

8A Use of audio links in criminal procedural matters

- (1) In any circumstances in which AVL must or may be used in accordance with section 8 for the appearance of a participant in a criminal procedural matter, the judicial officer or Registrar may determine that AL be used instead of AVL if—
 - (a) the judicial officer or Registrar considers the criteria set out in sections 5 and 6 (which apply as if the reference to AVL were a reference to AL) in deciding whether the use of AL is appropriate in the circumstances; and

- (b) the defendant is not required to attend the hearing; and
 - (c) the judicial officer or Registrar determines that it is not contrary to the interests of justice to use AL instead of AVL.
- (2) To avoid doubt, a motion to determine whether AL is contrary to the interests of justice may be made by the participant or the judicial officer or Registrar (as the case may be).
- (3) This section is repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expires or is revoked.

Section 8A: inserted, on 16 May 2020, by section 3 of the COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13).

9 Use of audio-visual links in criminal substantive matters

- (1) AVL must not be used in any criminal substantive matter for the appearance of a participant unless a judicial officer determines to allow its use for the appearance of that participant in the proceeding—
- (a) in accordance with the criteria in sections 5 and 6; and
 - (b) taking into account whether the parties to the proceeding consent to the use.
- (2) Despite subsection (1), AVL must not be used for the appearance of the defendant in a trial that determines his or her guilt or innocence unless the defendant consents to that use.

10 Judicial officer or Registrar may vary or revoke determination

- (1) A judicial officer may at any time vary or revoke a determination to allow the use of AVL for the appearance of a participant if the judicial officer considers that any reason for the determination, with respect to the criteria in section 5, or sections 5 and 6 (as the case may be), no longer applies.
- (2) A Registrar may at any time vary or revoke his or her determination, or the determination of another Registrar, to allow the use of AVL for the appearance of a participant if the Registrar considers that any reason for the determination, with respect to the criteria in section 5, or sections 5 and 6, as the case may be, no longer applies.

11 Judicial officer or Registrar may make direction

A judicial officer or Registrar who makes a determination under this Act in relation to the use of AVL for the appearance of a participant in a proceeding may make a direction in accordance with that determination.

12 Direction to jury

In a proceeding tried with a jury, the Judge may direct the jury that it must not draw any adverse inference against any party to the proceeding because of the use of AVL in the proceeding.

13 Determining place of hearing

The place of hearing of any proceeding in which 1 or more of the participants appear by the use of AVL—

- (a) is the place that the relevant judicial officer determines as appropriate in the circumstances; or
- (b) is, in the case where the participants consent to having a Registrar make the decision, the place that the relevant Registrar determines as appropriate in the circumstances.

Section 13: replaced, on 1 March 2017, by section 5 of the Courts (Remote Participation) Amendment Act 2016 (2016 No 60).

14 Attendance at hearing

- (1) A participant who appears at a proceeding, or part of a proceeding, by the use of AVL under this Act is regarded as being present in the place of hearing at the proceeding, or that part of the proceeding, for the duration of that use.
- (2) Subsection (1) applies whether or not the participant is in New Zealand.

15 Documents and other exhibits when person appears at proceeding by use of AVL

A document may be put to or by a person appearing at a proceeding by the use of AVL, or another exhibit may be shown to or by that person,—

- (a) by transmitting the document or other exhibit electronically; or
- (b) by use of AVL; or
- (c) by any other manner that the judicial officer or Registrar thinks fit.

16 Relationship with other enactments

- (1) The appearance by a participant at a proceeding by the use of AVL to the extent that is authorised by this Act fulfils the corresponding legal requirements in relation to his or her appearance in person at the proceeding under every enactment and rule of court, unless that other enactment or rule of court expressly provides otherwise.
- (2) If an enactment or rule of court provides for the appearance by a participant at a proceeding by the use of AVL or video link in a court proceeding, then this Act must be read subject to that enactment or rule of court.

17 AVL does not affect exercise of judicial officer's powers

To avoid doubt, a judicial officer or Registrar presiding in a proceeding in which AVL is used has all the powers that he or she would have if the participant appeared in person.

18 Regulations

- (1) The Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations—
 - (a) prescribing the procedure to be followed, the type of equipment to be used, and the arrangements to be made where a person is to appear by the use of AVL;
 - (b) prescribing any method or technology of AVL as one which is suitable for use as AVL under this Act;
 - (c) prescribing forms for the purposes of this Act;
 - (d) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Before making a recommendation under subsection (1)(b), the Minister—
 - (a) must be satisfied that the method or technology is appropriate for use in proceedings; and
 - (b) may consult with other Ministers as he or she considers appropriate.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 18(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

19 Amendment to Evidence Act 2006

- (1) This section amends the Evidence Act 2006.
- (2) The following section is inserted after section 102:

102A Relationship of Courts (Remote Participation) Act 2010 to sections 103 to 106

Nothing in the Courts (Remote Participation) Act 2010 affects or limits the ability of—

- (a) a party to apply under section 103(1) for evidence to be given in an alternative way; or
- (b) a Judge to make directions under that subsection.

Notes

1 *General*

This is a consolidation of the Courts (Remote Participation) Act 2010 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Secondary Legislation Act 2021 (2021 No 7): section 3

COVID-19 Response (Further Management Measures) Legislation Act 2020 (2020 No 13): section 3

Courts Matters Act 2018 (2018 No 50): Part 4 subpart 3

Courts (Remote Participation) Amendment Act 2016 (2016 No 60)

District Court Act 2016 (2016 No 49): section 261

Senior Courts Act 2016 (2016 No 48): section 183(b)