

Courts (Remote Participation) Bill

Government Bill

As reported from the committee of the whole
House

Courts (Remote Participation) Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

Hon Simon Power

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Courts (Remote Participation) Act **2009**.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent. 5

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 10
- civil proceedings** means any proceedings in a court, other than criminal proceedings 15
- Community Magistrate** has the same meaning as in section 2(1) of the District Courts Act 1947
- court** means a New Zealand court
- Court of Appeal** means the Court of Appeal of New Zealand constituted under Part 2 of the Judicature Act 1908 20
- 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 25
- District Court** includes—
- (a) a Family Court and a Youth Court; and

(b) a 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 5

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 10

New Zealand court means—

(a) the Supreme Court, the Court of Appeal, the High Court, or a District Court; or 15

(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 20

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

(a) a party: 25

(b) the defendant:

(c) counsel:

(d) a witness:

(e) a member of the jury:

(f) a judicial officer who is presiding over the proceeding: 30

(fa) a Registrar who is presiding over the proceeding:

(g) 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 35

Registrar includes a Deputy Registrar

Supreme Court has the same meaning as in section 4 of the Supreme Court Act 2003

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

- 4 Act binds the Crown**
This Act binds the Crown.

Part 2

5

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: 10

- (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— 15
 - (i) the ability to assess the credibility of witnesses and the reliability of evidence presented to the court; and 20
 - (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,— 25 30

- (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 35

- (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 5
 - (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** 10
 - (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)**— 15
 - (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**; 20
 - and
 - (b) take into account whether or not the parties consent to the use of AVL for the appearance of the participant.

- 8 **Use of audio-visual links in criminal procedural matters**
 - (1) Judicial officers and Registrars must determine whether to require any 1 or more of the participants in a criminal procedural matter to use AVL for his or her appearance, if AVL is available for that appearance. 25
 - (2) A judicial officer may determine not to allow the use of AVL for the appearance of a participant in a criminal procedural matter, despite a previous requirement under **subsection (1)** made by a Registrar or a judicial officer. 30
 - (3) A determination under **subsection (1) or (2)** may be made on the objection of any party to the proceeding or on the motion of the judicial officer. 35

- (4) Any determination made under this section must be made in accordance with the criteria in **sections 5 and 6**.

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— 5
- (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. 10
- (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 15

- (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. 20
- (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. 25

10A 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. 30

- 11 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.
- 12 Determining place of hearing** 5
The place of hearing of any proceeding in which 1 or more of the participants appears by the use of AVL is the same as if none of the participants in that proceeding were to appear by the use of AVL.
- 13 Attendance at hearing** 10
(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
- 14 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,— 20
(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. 25
- 15 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. 30

- (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.
- 16 AVL does not affect exercise of judicial officer’s powers** 5
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.
- 17 Regulations**
- (1) The Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations— 10
- (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: 15
 - (b) prescribing any method or technology of AVL as one which is suitable for use as AVL under this Act: 15
 - (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. 20
- (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. 25
- 18 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 2009 to sections 103 to 106** 30
- Nothing in the Courts (Remote Participation) Act **2009** 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 35

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“(b) a Judge to make directions under that subsection.”

Legislative history

8 December 2009	Introduction (Bill 107-1)
23 March 2010	First reading and referral to Justice and Electoral Committee
31 May 2010	Reported from Justice and Electoral Committee (Bill 107-2)
29 June 2010	Second reading
30 June 2010	Committee of the whole House (Bill 107-3)
