

# **Courts (Remote Participation) Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Courts (Remote Participation) Amendment Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy implemented by the amendments in this Bill is increasing remote participation in court proceedings.

The Courts (Remote Participation) Amendment Bill contributes to one of the Government's "restore law and order" commitments in the 100-Day Plan: to enable more virtual participation in court proceedings.

The court system is currently experiencing delays, particularly in the criminal and family jurisdictions of the District Court. These delays are felt by all participants in the justice system, particularly victims.

Enabling more virtual participation in court proceedings contributes to the Government's objective of improving court performance generally. Virtual or remote participation in court proceedings can, when used appropriately, increase access to justice and support the efficient and timely resolution of court proceedings. It reduces travel time and costs for participants (such as prosecutors and lawyers) and is a safer and more efficient option for court appearances of defendants who are in custody.

The Courts (Remote Participation) Amendment Bill will enact 3 small legislative changes that can be progressed quickly to improve and clarify the law regarding remote participation in court proceedings.

**Amendment 1: creating a presumption that victims can remotely observe criminal trials and sentencing where appropriate**

This amendment adds a presumption to the Courts (Remote Participation) Act 2010 that a victim may observe a criminal trial and sentencing remotely if the victim wishes to do so and certain criteria are met (including that suitable technology is available and that a judicial officer or court registrar does not determine that it is contrary to the interests of justice).

Remote observation will make the court process safer and easier for some victims. They may also benefit from reduced travelling time and associated costs.

The presumption preserves judicial flexibility regarding how proceedings are conducted—for example, the judiciary is able to decide how to ensure compliance with closed court arrangements or name suppression. Courts will be able to impose conditions to protect the integrity of the court process. For example, victims could be required to comply with court requirements such as not sharing access links or recording proceedings.

**Amendment 2: allowing use of audio links for remote court proceedings**

This amendment authorises the use of audio links such as teleconferences for criminal proceedings that defendants are not required to, and do not wish to, attend and for appropriate civil and family proceedings. This will enable participants and victims who do not have access to audiovisual technology to participate in hearings remotely.

Audio links will be used in criminal proceedings only when the defendant is not attending because, among other things, judges need to be able to see criminal defendants to assess their credibility and their comprehension of the proceedings. Similarly, defendants need to be able to see and hear the other participants to participate in proceedings effectively.

In addition, audio links will be able to be used for civil proceedings only if the judicial officer or Registrar considers the potential impact of the use of audio link on the parties' abilities to comprehend and effectively take part in the proceeding. Further, hearings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, Mental Health (Compulsory Assessment and Treatment) Act 1992, and the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, which determine whether a person needs to be compulsorily detained and treated, will not be able to be heard by audio link if the affected person is required by the legislation to be present throughout the hearing.

The use of audio links for court proceedings was tested during the pandemic.

**Amendment 3: clarifying the interrelationship between virtual participation and open justice**

This amendment makes permanent a temporary change made during the pandemic that will be repealed when the COVID-19 Public Health Response Act 2020 is repealed. It is in the public interest to make permanent the statutory clarity this change provides.

This amendment clarifies that provisions requiring criminal proceedings to be open to the public or media do not affect the ability of a court to conduct a hearing remotely or virtually. This reflects the underlying principle of the Criminal Procedure Act 2011 that the courts are open and transparent—that is, justice is seen to be done—when some or all participants are appearing remotely or virtually.

The amendment also states that the court can require the public and the media to observe proceedings remotely.

### Departmental disclosure statement

The Ministry of Justice is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2024&no=29>.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* is the commencement clause. It provides that *clause 7* of the Bill comes into force 6 months after Royal assent and the rest of the Bill comes into force on the day after Royal assent.

## Part 1

### Amendments to Courts (Remote Participation) Act 2010

*Clause 3* provides that *Part 1* amends the Courts (Remote Participation) Act 2010 (the **principal Act**).

*Clause 4* inserts new definitions of—

- audio link, or AL, which is based on the definition used in the repealed section 7A of the principal Act (this definition ties into multiple provisions of the principal Act, which the Bill amends to provide for participation in proceedings by audio link); and
- offence, which takes its meaning from the Victims' Rights Act 2002 and therefore includes, among other things, an alleged offence whether or not a person is convicted of the offence (this definition ties into *new section 9A*, which provides for victims and their support persons to remotely observe the trial and sentencing for offences); and
- victim, which takes its meaning from the definition of victim in section 4 of the Victims' Rights Act 2002 and includes paragraph (b)(i) and (ii) of that definition that would otherwise only apply for the purposes of sections 7 and 8 of that Act (this definition also ties into *new section 9A*).

*Clause 5* has the effect of reinstating, and making some modifications to, old section 7A of the principal Act, which was automatically repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expired. *New section 7A*, like its predecessor, enables the use of audio links (AL) instead of audio-visual links (AVL) for participation in civil proceedings if certain conditions are met. It now also makes it clear that AL can be used where AVL is not available and provides that additional criteria (relating to the potential impact of the use of AL on the ability of the parties to comprehend and effectively take part in the proceedings) must be taken into account in deciding whether AL is used.

*New section 7A* now also provides that AL may not be used instead of AVL if the proceeding in question is a hearing of an application for which the participant is required to be present under—

- section 121 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or
- section 19 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
- section 76 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.

*Clause 6* has the effect of reinstating, and making some modifications to, old section 8A of the principal Act, which was automatically repealed when the Epidemic Preparedness (COVID-19) Notice 2020 expired. *New section 8A*, like its predecessor, enables the use of AL instead of AVL for participation in criminal procedural matters if certain conditions are met. It now also makes it clear that AL can only be used if the defendant is not required to, and does not wish to, attend the hearing (the repealed section 8A provided that AL could only be used if the defendant was not required to attend the hearing, but did not prevent the use of AL if the defendant chose to attend despite not being required to).

*Clause 7* inserts *new section 9A* into the principal Act. *New section 9A* provides that, unless a judicial officer or a Registrar determines that it is contrary to the interests of justice, a victim of an offence and any support person of the victim are entitled to observe all or part of the trial and sentencing using AVL or AL, if certain conditions are met.

*Clause 8* requires that the consequential amendments set out in *Schedule 1* be made to the principal Act.

*Schedule 1* makes amendments to the principal Act that are consequential on the changes made by *clauses 4 to 7*.

## **Part 2**

### **Amendments to Criminal Procedure Act 2011**

*Clause 9* provides that *Part 2* amends the Criminal Procedure Act 2011.

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*Clauses 10 and 11* repeal clause 1 of Schedule 1AB (which is a temporary provision inserted into the Criminal Procedure Act 2011 by the COVID-19 Response (Courts Safety) Legislation Act 2022) and replicate its text in *new section 198A*. The effect of *new section 198A* (like clause 1 of Schedule 1AB) is to make it clear that hearing proceedings remotely would not be inconsistent with the rights of the public and media to be present at criminal hearings (as set out in sections 196 to 198). *Clauses 10 and 11* have the effect of ensuring that this is a permanent provision in the Criminal Procedure Act 2011.



*Hon Nicole McKee*

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**Schedule 1**  
**Minor and consequential amendments to Courts (Remote Participation) Act 2010**

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**The Parliament of New Zealand enacts as follows:**

**1 Title**

This Act is the Courts (Remote Participation) Amendment Act **2024**.

**2 Commencement**

(1) **Section 7** comes into force 6 months after Royal assent.

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(2) The rest of this Act comes into force on the day after Royal assent.

**Part 1**

**Amendments to Courts (Remote Participation) Act 2010**

**3 Principal Act**

This Part amends the Courts (Remote Participation) Act 2010.

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**4 Section 3 amended (Interpretation)**

In section 3, insert in their appropriate alphabetical order:

**audio link**, or **AL**, in relation to a proceeding, means facilities that enable audio communication to take place between participants or (as the case may be) to be received by a victim or support person under **section 9A**, when some or all of them are not physically present at the place of hearing for all or part of the proceeding

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**offence** has the meaning given in section 4 of the Victims' Rights Act 2002

**victim** has the meaning given in section 4 of the Victims' Rights Act 2002 (and paragraph (b)(i) and (ii) of that definition also applies for the purposes of this Act)

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**5 New section 7A inserted (Use of audio links in civil proceedings)**

After section 7, insert:

**7A Use of audio links in civil proceedings**

(1) This section applies if—

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(a) a judicial officer or Registrar would otherwise have determined under section 7 that AVL be used for the appearance of a participant in a civil proceeding; or

(b) the only reason that a judicial officer or Registrar would not have made such a determination is because AVL is not available.

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- (2) The judicial officer or Registrar may determine that AL be used instead of AVL for the appearance of the participant in the civil proceeding if—
  - (a) the judicial officer or Registrar considers the criteria set out in section 5 in deciding whether the use of AL is appropriate in the circumstances; and 5
  - (b) the judicial officer or Registrar considers the potential impact of the use of AL on the ability of the parties to the proceeding—
    - (i) to comprehend the proceeding; and
    - (ii) to participate effectively in the proceeding; and
    - (iii) to consult and instruct counsel privately; and 10
    - (iv) to access relevant evidence; and
    - (v) to examine witnesses; and
  - (c) the judicial officer or Registrar determines that it is not contrary to the interests of justice to use AL instead of AVL.
- (3) However, the judicial officer or Registrar may not determine that AL be used instead of AVL for the appearance of the participant in the civil proceeding, if the proceeding is the hearing of an application for which the participant must be present under— 15
  - (a) section 121 of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; or 20
  - (b) section 19 of the Mental Health (Compulsory Assessment and Treatment) Act 1992; or
  - (c) section 76 of the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.

**6 New section 8A inserted (Use of audio links in criminal procedural matters) 25**

After section 8, insert:

- 8A Use of audio links in criminal procedural matters**
- (1) This section applies if—
    - (a) section 8 requires or permits AVL to be used for the appearance of a participant in a criminal procedural matter; or 30
    - (b) the only reason that section 8 does not require or permit AVL to be so used is because AVL is not available.
  - (2) A judicial officer or Registrar may determine that AL be used instead of AVL for the appearance of the participant in the criminal procedural matter if— 35
    - (a) the judicial officer or Registrar considers the criteria set out in sections 5 and 6 in deciding whether the use of AL is appropriate in the circumstances; and

	(b) the defendant is not required to, and does not wish 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.	
<b>7</b>	<b>New section 9A inserted (Use of audio-visual links and audio links by victims and support persons to observe trial and sentencing)</b>	<b>5</b>
	After section 9, insert:	
<b>9A</b>	<b>Use of audio-visual links and audio links by victims and support persons to observe trial and sentencing</b>	
(1)	Despite section 9, a victim of an offence and any support person of the victim are entitled to observe all or part of the trial and sentencing for the offence by the use of AVL or AL (the <b>relevant technology</b> ) if—	10
	(a) the relevant technology is available; and	
	(b) the victim gives the court notice that they wish to use the relevant technology; and	15
	(c) there is reasonable time, after the victim gives notice, for the court to make the necessary arrangements for the use of the relevant technology; and	
	(d) the trial or sentencing that is to be observed is open to the public; and	
	(e) the victim and any support person are otherwise entitled to be physically present.	20
(2)	However, <b>subsection (1)</b> does not apply if a judicial officer or a Registrar determines that the use of the relevant technology is contrary to the interests of justice.	
(3)	Before making a determination under <b>subsection (2)</b> , the judicial officer or Registrar (as the case may be) must take into account the criteria specified in sections 5 and 6.	25
<b>8</b>	<b>Minor and consequential amendments to Courts (Remote Participation) Act 2010</b>	
	Amend the Courts (Remote Participation) Act 2010 as set out in <b>Schedule 1</b> .	30

## Part 2

### Amendments to Criminal Procedure Act 2011

#### 9 Principal Act

This Part amends the Criminal Procedure Act 2011.

**10 New section 198A inserted (Hearing may be conducted by audiovisual link or audio link)**

After section 198, insert:

**198A Hearing may be conducted by audiovisual link or audio link**

- (1) Nothing in sections 196 to 198 limits or affects the ability of a court to conduct a hearing wholly or partly by audiovisual link (**AVL**) or audio link (**AL**) and to require some or all members of the media or the public who wish to observe the hearing to attend by AVL or AL. 5
- (2) For the purposes of **subsection (1)**,—
  - audio link** or **AL**, in relation to a proceeding, means facilities that enable audio communication between, or to be received by, participants when some or all of them are not physically present at the place of hearing for all or part of the proceeding 10
  - audiovisual link** or **AVL**, in relation to a proceeding, means facilities that enable both audio and visual communication between, or to be received by, participants when some or all of them are not physically present at the place of hearing for all or part of the proceeding. 15

**11 Schedule 1AB amended**

In Schedule 1AB, repeal clause 1.

**Schedule 1**  
**Minor and consequential amendments to Courts (Remote Participation) Act 2010**

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<b>Section 3</b>	5
In section 3, replace the definition of <b>audio-visual link</b> , or <b>AVL</b> , with:	
<b>audio-visual link</b> , or <b>AVL</b> , in relation to a proceeding, means facilities that enable both audio and visual communication to take place between participants or (as the case may be) to be received by a victim or support person under <b>section 9A</b> , when some or all of them are not physically present at the place of hearing for all or part of the proceeding	10
<b>Part 2 heading</b>	
In the Part 2 heading, after “ <b>audio-visual links</b> ”, insert “ <b>and audio links</b> ”.	
<b>Section 5</b>	
In the heading to section 5, after “ <b>audio-visual links</b> ”, insert “ <b>and audio links</b> ”.	
In section 5, replace “he or she is” with “they are”.	
In section 5, after “AVL”, insert “or AL”.	
In section 5, after “for the appearance of any participant in a proceeding”, insert “or for the observation of a proceeding by a victim or support person”.	
<b>Section 6</b>	20
In the heading to section 6, after “ <b>audio-visual links</b> ”, insert “ <b>and audio links</b> ”.	
In section 6, replace “he or she is” with “they are”.	
In section 6, after “AVL”, insert “or AL”.	
In section 6, after “for the appearance of any participant in a criminal proceeding”, insert “or for the observation of a criminal proceeding by a victim or support person”.	
In section 6, replace “his or her” with “the defendant’s”.	
In section 6(a)(ii), replace “his or her” with “their”.	
In section 6(c), after “any other participant appearing”, insert “, or a victim or a support person observing.”.	
In section 6(c), after “AVL”, insert “or AL”.	
<b>Section 7</b>	
In section 7(2)(a), replace “his or her” with “their”.	
<b>Section 9</b>	
In section 9(2), replace “his or her” with “the defendant’s”.	

**Section 10**

In section 10(1), after “AVL”, insert “or AL”.

In section 10(1), after “for the appearance of a participant”, insert “, or a determination in relation to the use of AVL or AL for observation by a victim or support person,”.

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In section 10(2), replace “his or her” with “their”.

In section 10(2), after “AVL”, insert “or AL”.

In section 10(2), after “for the appearance of a participant”, insert “, or in relation to the use of AVL or AL for observation by a victim or support person,”.

**Section 11**

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In section 11, after “AVL”, insert “or AL”.

In section 11, after “appearance of a participant in a proceeding”, insert “, or for the observation of a proceeding by a victim or support person,”.

**Section 12**

In section 12, after “AVL”, insert “or AL”.

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**Section 13**

In section 13, after “AVL”, insert “or AL”.

**Section 14**

In section 14(1), after “participant”, insert “, victim, or support person”.

In section 14(1), after “appears at”, insert “or observes”.

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In section 14(1), after “AVL”, insert “or AL”.

In section 14(2), after “participant”, insert “, victim, or support person”.

**Section 15**

In the heading to section 15, after “AVL”, insert “or AL”.

In section 15, after “proceeding by the use of AVL”, insert “or AL”.

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**Section 16**

In section 16(1), after “AVL”, insert “or AL”.

In section 16(1), replace “his or her” with “their”.

In section 16(2), after “appearance by a participant at a proceeding”, insert “, or the observation of a proceeding by a victim or support person,”.

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In section 16(2), after “AVL”, insert “, AL,”.

**Section 17**

In the heading to section 17, after “AVL”, insert “or AL”.

**Section 17**—*continued*

In section 17, after “AVL”, insert “or AL”.

In section 17, replace “he or she” with “they”.

In section 17, after “the participant”, insert “, victim, or support person”.

**Section 18**

In section 18(1)(a), after “AVL”, insert “or AL”.

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In section 18(1)(b), after “AVL”, insert “or AL” in each place.

In section 18(2)(b), replace “he or she” with “the Minister”.