



## **GUIDELINE FOR APPEARING BY AUDIO-VISUAL LINK, INCLUDING IN VIRTUAL HEARINGS**

[1] The Courts (Remote Participation) Act 2010 (the Act) allows for participation in proceedings remotely by Audio Visual Link (AVL).<sup>1</sup> It may be used to link any participant in the proceedings, meaning a person who is a party, a witness, counsel, a Judge, Registrar, or any other person directly involved who is allowed to appear in this way.<sup>2</sup>

### **Purpose of this Guideline**

[2] The following guideline is intended to assist any party in applying to participate remotely. This guideline is not intended to replace the orders of a Judge.

### **The criteria**

[3] The Act requires the following criteria to be applied when considering an application to participate remotely:

- (a) the nature of the proceeding;
- (b) the availability and quality of the technology 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 witnesses' credibility and the reliability of the evidence presented to the Court;
  - (ii) the level of contact with other participants; and
- (d) any other matters considered relevant.<sup>3</sup>

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<sup>1</sup> A link to the Courts (Remote Participation) Act 2010 is provided [here](#). See also the Court's general power to regulate its own procedure: s 189 of the Employment Relations Act 2000.

<sup>2</sup> See s 3 of the Act for the full definition of "participant".

<sup>3</sup> See s 5 of the Act for a full description of the criteria.

[4] The use of remote participation is discretionary and is contingent on the Court being satisfied that it is appropriate considering the nature of the proceeding, and that the other criteria have been established and continue to apply. An order allowing a participant to appear remotely may be varied or revoked if the criteria no longer apply.<sup>4</sup>

[5] Orders may follow any application from the parties, or on Court's own motion whenever an appearance in person is not suitable.

## **Application**

[6] An application to participate remotely must be made in sufficient time to allow a decision to be made and, if granted, for all necessary arrangements to be completed before the link is required.

[7] To establish the criteria an application should specify the technology proposed to be used, the place from which the remote participation is proposed to occur and whether it is for a witness to give evidence or for any other type of participation allowed by the Act.<sup>5</sup>

[8] The flexibility of the Act allows remote participation from any suitable place. Generally, remote participation is by Virtual Meeting Rooms (VMR), a web-based videoconferencing system supported by the Ministry of Justice and Spark. A Judge may direct another suitable arrangement, however, for example an appearance from AVL-enabled courtroom or any other place suitable for remote participation. In some cases, a virtual hearing might be run using Microsoft Teams (Teams), a meeting solution that uses an internet browser or the Teams app.

[9] Unopposed applications may be granted on the papers. Opposed applications will be decided in the same way as other opposed applications. All successful applications are likely to result in orders to ensure the remote participation proceeds smoothly and efficiently. Orders may require the successful applicant to comply with instructions from the Registrar on matters such as the layout of the remote place to ensure the participant is not interrupted or distracted, the placement of the AVL equipment, and steps to maintain the quality of any image transmitted to the Court.

## **Remote place**

[10] The remote place will be expected to meet at least the following requirements:

- (a) to allow remote participation without interruption or distraction;

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<sup>4</sup> See ss 10(1) and (2).

<sup>5</sup> See s 5.

- (b) be well lit to enable the Judge, and the other parties, to see the participant and the remote place at all times;
- (c) be sufficiently spacious so as to enable suitable images of the participant to be transmitted to the hearing courtroom at all times;
- (d) be available for tests to be conducted in advance of the participation taking place; and
- (e) if an oath is to be taken, that a Bible is available for use.

[11] In terms of [s 13 of the Courts \(Remote Participation\) Act 2010](#), the place of hearing will be the Courtroom with the Registrar. The Registrar will physically be present in the courtroom.

### **Technical requirements**

[12] When the remote place is a Ministry of Justice courtroom, or another professional audio-visual provider, the Registry will ensure that the remote place satisfies all technical requirements.

[13] In cases of VMR or MS Teams appearances the Registry will need to know whether the participant will be able to meet the following requirements:

- (a) **Browser:** *For Windows* - Microsoft Edge or Google Chrome (recommended but others may work; do **not** use Internet Explorer or Mozilla Firefox). *For Apple* – Google Chrome or Safari (recommended but others may work; do **not** use Internet Explorer or Mozilla Firefox).
- (b) **Connectivity:** a strong and stable internet connection (preferably broadband or Wi-Fi, otherwise any stable high-speed data connection).
- (c) **Device and hardware:** a computer or laptop with a microphone and camera; headphones with an in-built microphone (strongly recommended) or, as a minimum, you can use the device microphone with regular headphones.
- (d) **Positioning:** sit before a blank background – this reduces picture distortion for other participants.

[14] If the participant cannot meet any of the above requirements, please let the Registry know immediately.

[15] The Registry may ask the participant to participate in a test call. If so:

- (a) VMR hearings – The Registry will provide instructions and set a date and time for a test call and provide a link and a password to connect to the VMR system. The participant must copy and paste the link into their browser (see paragraph 13(a) above) and press ‘Enter’. They will then be able to enter the password.
- (b) Microsoft Teams hearings – The Registry will send an email or Outlook calendar invitation with the Teams meeting link. The participant needs to click on the link to join the remote hearing.
- (c) They will be taken to a new screen where they will then be asked to set up their video, microphone and speakers (if they have an inbuilt microphone, camera and speakers these should be working already).
- (d) The Registry will ensure that all parties can hear and see one another and then provide a rundown of how the system works. This is a good chance for a participant to ask any questions about the VMR system or the virtual hearing itself.
- (e) No formal attire is required for the test call.

[16] The Court will need to be satisfied that the AVL link will be secure at all times.

## **Hearing**

[17] Where VMR is to be used, the Registry will let the participant know the date and time for the virtual hearing and provide them with a link and password for the VMR at the same time. Please note that this may not be the same link and password as for the test call. The link and password provided is for the participant’s personal use. They must not pass it onto to someone else.

[18] If the remote hearing is by MS Teams you will be provided with a meeting link.

[19] The participants appearing remotely must connect at least 10 minutes before the hearing starts, unless otherwise advised by the Registrar. If it is a VMR hearing, the Registrar will connect at this time. The Judge or Judges will then enter the virtual hearing once the Registrar confirms that all parties are connected, with no audio-visual issue. If it is a Teams hearing, the participants will remain in the “lobby” until admitted to the hearing by the Registrar. The Judge(s) will already be in the hearing when participants are admitted.

[20] The Registrar will then call the case and the presiding Judge will ask representatives to enter appearances as usual. The presiding Judge will then inform participants of how the hearing is to proceed.

[21] Participants should remain alert to any deterioration in picture and sound quality and inform the Court immediately if this is impacting on their ability to participate fully in the hearing.

### **Important information**

[22] Participants appearing remotely should:

- (a) Speak directly into the microphone when addressing the Court.
- (b) Be familiar with how to mute their microphone and turn their video off.
- (c) Mute their microphone when you are not speaking.
- (d) Reduce their body movements as much as possible.
- (e) When positioning the camera on their device, be mindful of camera angles, glare from windows, and the background.
- (f) Speak more slowly than a normal courtroom pace. Speak as clearly as possible.
- (g) Note that audio cues are more important in a remote context. If their remarks are addressed to a particular person, the participant should identify them and audibly signal when they expect a response.
- (h) Attempt to find a remote site that is free from as much background noise and interruption as possible. Ensure mobile phones are on silent mode and switch off notifications on the device being used for the virtual hearing.

[23] For remote attendances, standing is not required and counsel are not required to wear gowns. Formal wear, however, is required for all participants.

[24] Any participant who wishes to display the hearing on a larger screen to a group must first obtain permission to do so from the Registry.

[25] Participants attending remotely:

- (a) Must not record the screen (video) or audio and must not take still photographs. This includes a prohibition on downloading or capturing, by any means, sounds or images from the video feed, whether by software or digital devices, including cell phones, and a prohibition on electronic sharing of any content from the hearing.
- (b) Must not publish any report of the hearing while it is in progress. This includes publishing material on any social media platform or any other media.
- (c) Must adhere to Court suppression orders. This includes a prohibition on publishing information on social media.

[26] An order allowing a person to participate in a hearing remotely is on the basis the participant will do so in accordance with this protocol and that the participant will comply in all respects with the conditions set out above. The purpose of these conditions is to preserve the integrity of the Court process and to protect the privacy of those involved in the proceeding. Failure to comply with paragraphs [17], [23], [24] and [25] of this protocol will be treated as a breach of a court order.

### **Media access**

[27] Accredited members of the media may also be permitted to view virtual hearings remotely: see the [Guideline for Remote Viewing of Hearings](#).

### **Requirements for remote witnesses**

[28] When an application is granted orders may be made to schedule a time for evidence to be given, to ensure the efficient use of Court time, accommodate the parties or witness, or because of time differences between places.

[29] To avoid unnecessary delays, and unless otherwise directed, a witness will usually be required to be at the remote place 10 minutes before the scheduled time for their evidence.

[30] In advance of the AVL the party calling the witness must provide them with:

- (a) an up-to-date copy of their brief of evidence; and
- (b) copies of all documents to be referred to or relied on.

[31] All documents supplied for the use of the remote witness must:

- (a) be identified in the same way in which they are to be identified when produced in Court;

- (b) not to be marked in any way by the witness unless that action is to comply with a direction of the Judge (such as where the witness is asked to mark a passage of text or to identify part of a document); and
- (c) unless the Judge directs otherwise, the party calling the witness is responsible for securing documents referred to or relied on at the remote place and sending them to the Court as soon as possible after the AVL ends.

[32] For the avoidance of doubt, if the witness is expected to refer to or rely on a lot of documents that possibility should be stated in the application so that an order may be made to require a copy of the common bundle of documents to be supplied in advance to the remote place, if necessary in digital form.<sup>6</sup>

[33] At the end of this guideline there is a summary to be provided to a witness who is to participate by AVL. The party calling the witness must ensure that a copy of the summary is provided to the witness as soon as possible after the application has been granted.

[34] The witness giving evidence from the remote place must be informed that the AVL will only be terminated at the direction of the Judge and, once that has happened, he or she is free to leave.

### **Other requirements**

[35] During AVL or virtual hearing, the participants are taking part in a court case and will be expected to behave in an appropriate manner. In particular, the participants must not consume drink (other than water), or eat food.

[36] The remote participants may need to operate AVL equipment or an electronic device for the purposes of a VMR link but will not be able to use other electronic devices such as smart phones, iPads, tablets, or laptops at any time while participating in the hearing, except with the prior permission of the Judge.

[37] If any participant has a special need (for example a hearing impairment) the existence of that need, and how it is to be addressed, should be identified in the application to use AVL. If it is not possible to refer to the special need at that time it must be drawn to the Court's attention as soon as possible.

### **Support person**

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<sup>6</sup> See [Employment Court Electronic Casebook Protocol](#).

[38] With the prior permission of a Judge, the participants by AVL or virtual hearing may have a support person present at the remote place. During the hearing the authorised support person must, at all times, be visible to the Judge. While a witness is giving evidence from the remote place the support person must not communicate in any way with the witness.

### **Public access**

[39] Unless a Judge directs otherwise, where AVL is being provided by link from a New Zealand courtroom, that courtroom will be open to the public.

### **Interpreters**

[40] There are times where the Court hears evidence from a witness which requires the assistance of an interpreter. In most cases where evidence is to be translated the Court is likely to require the interpreter to be present in the hearing courtroom with the Judge and other parties.

### **Costs of AVL**

[41] Where an application succeeds the Court's orders will usually require all non-Ministry of Justice expenses of establishing and maintaining the link to the hearing courtroom, including any venue and equipment hire, to be met by the party (or parties) seeking to use AVL.<sup>7</sup>

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<sup>7</sup> This Guideline does not prevent an application for costs seeking to include recovery of these expenses.