



## **GUIDELINE FOR APPEARING BY AUDIO-VISUAL LINK**

[1] The Courts (Remote Participation) Act 2010 (the Act) allows for participation in proceedings 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 by AVL. This guideline is not intended to replace the orders of a Judge in response to an application to use AVL.

### **The criteria**

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

- (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 AVL 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 granting the use of AVL may be varied or revoked if the criteria no longer apply.<sup>4</sup>

## **Application**

[5] An application to participate by AVL 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.

[6] 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>

[7] The flexibility of the Act allows remote participation by AVL from any suitable place. Generally, New Zealand courtrooms in main centres are enabled for AVL and will be suitable for use. However, not all courtrooms are AVL enabled. An application will be expected to establish that courtrooms that are not in main centres, and any other place from which remote participation is to occur, are suitable for participation by AVL.

[8] 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**

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

- (a) to allow remote participation without interruption or distraction;
- (b) be well lit to enable the Judge, and the other parties, to see the participant and the remote place at all times;

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<sup>4</sup> [See s 10\(1\) and \(2\).](#)

<sup>5</sup> [See s 5.](#)

- (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 sufficiently spacious so as to allow the participant to stand when the Judge enters or leaves the courtroom and when taking an oath or making an affirmation;
- (e) be available for tests to be conducted in advance of the participation taking place; and
- (f) if an oath is to be taken, that a Bible is available for use.

### **Technical requirements**

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

[11] The AVL equipment to be used at the remote place must:

- (a) be reliable;
- (b) have a secure power source to maintain the link at all times; and
- (c) ensure the link is of sufficient quality for the participant to clearly see the hearing courtroom, be seen from that courtroom, to hear and be heard.

[12] To ensure the proposed AVL equipment is compatible with the Ministry of Justice technology, and works satisfactorily, tests will be required to be conducted in advance, under the supervision of the Registrar. The number of tests, and the timing of them, will usually be determined by the Registrar. Generally, two tests will be needed; one to establish the suitability of the remote place and the compatibility of the AVL equipment. The other test will usually be shortly before the scheduled time for the AVL link to avoid last minute problems.

[13] The Registrar may direct the placement of the AVL equipment at the remote place to ensure a fair and reasonable image of the participant is transmitted at all times. The Registrar may require the AVL images transmitted to the Court to show, or be capable of showing, the whole of the remote place.

[14] Arrangements must be made before any AVL link is established for any technical difficulties to be able to be drawn to the Judge's attention promptly and, if necessary, for technical support to be available at the remote place at short notice.

[15] The AVL equipment used at the remote place must not record any part of the proceeding for any reason.

### **Requirements for remote witnesses**

[16] 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.

[17] To avoid unnecessary delays, and unless otherwise directed, a witness will usually be required to be at the remote place 15 minutes before the scheduled time for his or her evidence.

[18] In advance of the AVL the party calling the witness must provide him or her with:

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

[19] 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.

[20] 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.

[21] 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.

[22] 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**

[23] During AVL, the participant is taking part in a court case and will be expected to behave in an appropriate manner. In particular, the participant must not consume drink, other than water, or eat food.

[24] The remote participant may need to operate AVL equipment for the purposes of the link but will not be able to use other 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.

[25] If a 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**

[26] With the prior permission of a Judge a participant by AVL may have a support person present at the remote place. During the AVL an 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 him or her.

## **Public access**

[27] 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**

[28] 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**

[29] The costs of AVL between courtrooms in New Zealand will be borne by the Ministry of Justice. AVL costs will also be met by the Ministry of Justice where it was required by the Court. In other cases the Court's orders will usually require all 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>6</sup>

**Advisory note:** For appearances by AVL where there is a prosecution for an offence under the Employment Relations Act 2000 see the Employment Court Practice Directions No 14.

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<sup>6</sup> This guideline does not prevent an application for costs seeking to include recovery of these expenses.