Review of the Courts (Remote Participation)

Act 2010

Discussion document

Ministry of Justice

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# Introduction

In December 2023, Cabinet directed the Ministry of Justice (the Ministry) to undertake a first principles review of the Courts (Remote Participation) Act 2010 (the Act). The review contributes to the Government’s 100-Day Plan commitment to enable more virtual participation in court proceedings.

Enabling increased use of remote participation is a priority for the Government. It contributes to wider goals of enhancing access to justice and improving the performance of the courts system.

Courts in New Zealand have been under increasing pressure, resulting in delays to court proceedings. This negatively affects people’s experience of the system, and public confidence in the ability to access fair and timely justice.

Enabling greater use of remote participation in court proceedings is one of a range of initiatives underway across the justice sector to help improve the performance of the courts system. Other work underway includes:

* rolling out Te Au Reka – a new digital case management system;
* considering changes to the law around jury trials to increase court timeliness; and
* a range of operational initiatives as part of the District Court Timeliness Programme. This includes initiatives such as the Duty Lawyer Operational Policy.[[1]](#footnote-2)

The Ministry has been reviewing the Act. A key objective of the review is identifying a fit-for-purpose legislative regime that enables more remote participation use, supports access to justice, and promotes efficiency in our courts, in a way that is consistent with the interests of justice.

This discussion document describes the current Act and the potential problems and opportunities associated with the law. It proposes options to address those problems and opportunities and seeks your views. Your views will help to inform our advice to the Government on potential changes to the law.

# Glossary

## Key terms used throughout discussion document

|  |  |
| --- | --- |
| **Term used** | **Definition** |
| Audio-link / audio technology (AL) | The Act defines audio link or AL as facilities that enable audio communication to take place between participants. |
| Audio-visual link / audio-visual technology (AVL)  | The Act defines audio-visual link or AVL as facilities that enable both audio and visual communication to take place between participants.  |
| Court Rules | Court Rules are formal and binding rules about how court procedure works. |
| Criminal procedural matter | The Act defines a criminal procedural matter as a matter where no evidence is to be called. |
| Criminal substantive matter | The Act defines a criminal substantive matter as a matter where evidence is to be called. |
| Hearing | A hearing is an event at court where a judicial officer decides an issue, based on the evidence and legal argument. Hearings include criminal and civil trials, and criminal sentencings.  |
| Judicial Protocols | Protocols are guides issued by Heads of Bench on court procedure. They are not legislation and are not strictly binding.  |
| Proceeding | Proceeding is the technical term for a court case. Proceedings start with an application to the court to use its power to make an order: for example, to order a party to pay money, or to convict and sentence a criminal defendant. |
| Remote observation | Refers to a one-way communication where someone watches and/or listens in to a hearing from outside the courtroom but does not contribute anything to the hearing. |
| Remote participation | Remote participation is used as an umbrella term to describe when one or more court participants participate in a court proceeding using audio-visual or audio-only technology instead of being there in person. Where it is necessary to distinguish between audio-visual and audio-only technology, we will refer to those terms directly. |
| Specialist Courts | The specialist courts are the Employment Court, the Environment Court, the Māori Appellate Court, and the Māori Land Court. |

# Purpose and scope

## The Ministry is exploring options to change the Act

### Objective of the review

The key objective is to identify a modern, fit-for-purpose legislative regime that enables more remote participation use, supports access to justice, and contributes to court efficiencies, in a way that is consistent with the interests of justice.

The Ministry has completed initial policy work to review the Act. We have identified problems and opportunities associated with the current Act and potential options for a new approach.

### Scope of the review

The Ministry is undertaking a first principles review of the Act. The review involves a broad scope, covering all the key features of a remote participation regime. This includes looking at who can participate remotely in court proceedings, what ‘modes’ of remote participation technology can be used, who should make decisions about remote participation use, and what factors they should consider.

It also involves considering where the detailed rules on when to use remote technology should be set (e.g. in primary legislation or somewhere else like Court Rules or Judicial Protocols) and what those detailed rules should be.

Options being considered include an entirely new Act that takes a different approach to the current one, or changes to the current Act.

#### The review is confined to considering legislative change

Legislative change is one of many components required to enable greater use of remote participation. Changing the legislation governing remote participation may not, by itself, result in significantly increased use.

We recognise that investment in remote participation infrastructure, such as technology, facilities, resources, and training, is also needed. Audio-visual technology is not consistently available across all courts and other justice sector facilities. Effective remote participation also depends on individual participants having access to technology and appropriate facilities in which to use it.

Many options in this discussion document depend on investment in remote participation infrastructure for the benefits to be fully realised. The Ministry is working with the judiciary and justice sector agencies to address remote participation infrastructure separately.

#### Other laws that include rules about the use of remote participation are not being considered in this review

In limited instances other legislation contains rules about remote participation use.

The Evidence Act 2006 and the Victims’ Rights Act 2002, also contain rules relating to the use of remote participation by witnesses giving evidence, and victims. The Trans-Tasman Proceedings Act 2010 and various court rules permit use of remote participation in certain civil hearings.[[2]](#footnote-3)

The Ministry has considered the interaction between the current Act and other legislation. However, we have not proposed changes that would alter or cut across these specific regimes.

## We are seeking your feedback

We want to know what you think about the options proposed in this document. The feedback we receive will be used to inform our advice to the Government on what changes to the law may be required. The options in the document are preliminary only. New options may be developed based on the feedback we receive.

We have asked a series of questions after each option to help you address the issues, but these are just prompts and you may wish to comment more generally.

We understand that you may not have a view on every option. Please feel free to comment on any part of the discussion document that you wish.

## How to have your say

Please submit your feedback online through the Ministry of Justice consultation hub: [Ministry of Justice – Citizen Space](https://consultations.justice.govt.nz/) by 6 December 2024. This site provides an easy way to provide feedback on all the proposals, or sections of the discussion document.

You can also submit your views:

* by email to courtspolicy@justice.govt.nz
* or by post to:

Courts System Policy

Ministry of Justice – National Office

DX SX10088

Wellington

Please feel free to share this document across your networks.

## What will happen to your feedback?

The Ministry of Justice will use your feedback to help inform our advice to the Government on what changes to the law may be required.

Once the Government has made decisions, the Ministry will publish a summary of feedback on our website. The summary will not include information that could identify individuals.

Your feedback is subject to the Official Information Act 1982 (OIA). If your feedback is within scope of an OIA request for information, the Ministry is required to release the information unless one of the withholding grounds of the OIA apply. The Ministry can withhold personal details under the OIA, including your name and address.

If you do not want any information in your feedback to be released, please state this clearly and explain why. For example, some information may be commercially sensitive or personal. The Ministry will take your views into account when responding to such requests.

The Privacy Act 2020 governs how the Ministry collects and uses the personal information about you and your submission. You have the right to access and correct personal information.

# Context

## The role of the courts

Policy and legislation providing for the use of remote participation in courts needs to recognise the judiciary’s constitutional responsibility for the administration of justice and the fair and efficient conduct of court proceedings, including the conduct of court hearings.

There are a range of ways in which court hearings are currently conducted – on the papers,[[3]](#footnote-4) one or more participants attending remotely by audio, one or more participants attending remotely by audio-visual link, and fully in person. The courts derive their powers to conduct hearings other than in person from the Act and other statutes, as well as by virtue of their inherent and implied powers to control court proceedings.[[4]](#footnote-5)

It is the judiciary’s role to ensure a court hearing is a fair process so that they can reach just decisions in accordance with the law. This includes ensuring parties are heard and understood, and are able to respond to what other parties say. What a fair process requires in a particular context, and whether remote participation can provide this, will depend on the nature and purpose of the hearing and the circumstances of the participants. Remote participation can enhance access to justice and effective participation in hearings for some participants. In other cases, it may hinder access to justice and participation.

It is important that legislation continues to provide for the use of remote participation in a way that ensures that court proceedings remain fair.

## The New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 (NZBORA) affirms fundamental rights that have implications for the conduct of court proceedings. It informs the development of all legislation, including legislation governing court procedure. During court hearings, the judiciary are responsible for giving effect to the rights protected by the NZBORA, including:

* section 23 – the right of a person who has been arrested to be brought as soon as possible before a court;
* section 24 – the right to consult and instruct a lawyer;
* section 25 – the right of a person to a fair and public hearing and to be present at their trial; and
* section 27 – the right to natural justice.

A key consideration in development of the Act was ensuring the use of remote technology in our courts is consistent with the NZBORA.

# Overview of the current Act

## The Courts (Remote Participation) Act

Parliament passed the Act in 2010 to support increased use of remote participation in courts and provide a strong legislative basis for its use. The Act has also been used to convey Parliament’s expectations regarding the appropriate use of remote participation. Although remote participation technology is no longer new, the rationale for having a legislative framework still holds.

The Act applies to all court events, all participants, all proceeding types, and all courts. The Act does not apply to tribunals. It includes rules and presumptions about remote participation use, and criteria that must be considered by judicial officers or Registrars when they are making decisions on individual cases. These criteria includes the availability and quality of the remote participation technology, the potential impact of the technology on the defendant’s fair-trial rights, and court participants’ rights to natural justice.

Rules differ across civil proceedings, criminal procedural matters, and criminal substantive matters. There is a higher threshold for the use of remote participation technology in criminal substantive proceedings (where evidence is heard) than procedural ones.

The Act states that if another enactment or court rule permits a participant to appear using remote technology in a court proceeding, then the Act must be read subject to that enactment or rule (section 16).

### Recent targeted amendments to the Act

The Courts (Remote Participation) Amendment Act 2024 recently made the following targeted amendments to the Act:

* authorising the use of audio links (such as teleconferences) for criminal proceedings that defendants do not attend, and for civil proceedings (including the Family Court). This is already in effect; and
* enacting a presumption that victims may observe a criminal trial and sentencing remotely if suitable technology is available and they wish to do so. This will come into effect on 2 March 2025.

### The Act influences how likely it is that remote technology will be used

Judicial officers or Registrars make final decisions in individual cases. However, the Act influences how likely it is that remote participation will be used, as summarised in this table:

|  |  |  |  |
| --- | --- | --- | --- |
| **Likelihood of remote participation**  | **Type of matter** | **Presumption or discretion** | **Key qualifications** |
| High | Criminal procedural matter (except sentencing) | AVL *must* be used for defendants in custody and *may* be used for other participants.AL *may* be used if the defendant is not attending. | Sections [5](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600757.html) and [6](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600758.html) criteria must be considered, and use must not be contrary to the interests of justice. For AVL, the required technology must be available.  |
|  | Sentencing | AVL *may* be used for defendants in custody.[[5]](#footnote-6)  | Sections [5](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600757.html) and [6](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600758.html) criteria must be considered, and use must not be contrary to the interests of justice. For AVL, the required technology must be available.  |
| Civil matter | AVL and AL *may* be used.[[6]](#footnote-7) | Section [5](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600757.html) criteria must be considered. For AVL, consent of the parties must be taken into account. For AL, additional section [7A](https://www.legislation.govt.nz/act/public/2010/0094/latest/LMS986906.html) criteria must be considered and use must not be contrary to the interests of justice.  |
| Criminal substantive matter | AVL *must not* be used, unless a judicial officer determines to allow it. | Sections [5](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600757.html) and [6](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600758.html) criteria must be considered. Consent of the parties must be taken into account.  |
| Low | Criminal trial | AVL *must not* be used for the defendant, unless the defendant consents. | Sections [5](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600757.html) and [6](https://www.legislation.govt.nz/act/public/2010/0094/latest/DLM2600758.html) criteria must be considered. Cannot occur without defendant’s consent.  |

# Current use of remote participation in courts

Remote participation is used to varying degrees across all courts. A range of participants can remotely participate. This includes witnesses, defendants, victims/complainants, parties, and judicial officers.

The Ministry holds data on the use of AVL for defendants in custody. This data covers AVL use in eligible criminal events.[[7]](#footnote-8) Overall, AVL use has increased over the past five years. While AVL use declined from 2022 to 2023, it remains higher than before the COVID-19 pandemic.

The Ministry currently has limited data on remote participation use by other participants, across jurisdictions. It is looking to improve data capture and reporting.

## Remote participation technology is continually evolving

Technology, both within and outside the courts, is continually changing and improving. The cost of remote technology is reducing, and it is becoming ever more widely available. Societal views about the use of technology are also changing. There is greater acceptance of technology use now than in the past, and an increasing expectation from many people that they will be able to remotely engage with services when appropriate. These trends are likely to continue.

## Remote participation may enhance access to justice and improve court performance

Remote participation can help to support effective and efficient resolution of court proceedings. Use of remote participation can reduce travel time, wait times, and costs for participants. It may also be more convenient for people who experience mobility barriers. Remote observation can also support victims/complainants to be involved in proceedings without the trauma of being in the same room as the defendant/offender.

However, remote participation may not be appropriate for all participants. For example, many participants in the criminal jurisdiction are at-risk and already experience barriers to participating in court proceedings.[[8]](#footnote-9)  For some participants, remote participation could create additional barriers, and make engaging in and understanding court proceedings more difficult.

We are also aware of the cultural importance of kanohi ki te kanohi (face-to-face) interactions for some participants. The extent to which tikanga Māori translates in a court setting using remote participation may depend on the circumstances of that case.

## Access to technology and the ability to use it affects who can take advantage of remote participation

Not all people in Aotearoa New Zealand have access to suitable technology or appropriate facilities in which to use it. Government research into digital inclusion estimates that one in five people lack at least one of the four elements needed to be digitally included. These elements are: access, motivation, skills and trust.[[9]](#footnote-10)

Seniors, disabled people, people living in rural communities, people living in social housing, unemployed people and those not actively seeking work, Pacific peoples, and Māori are most at risk of not being digitally included. Cost is a significant barrier to digital inclusion and digital-only services can have marginalising effects on these groups.

Reflecting this, some court participants will be unable to take advantage of opportunities offered by remote participation. All options set out in this discussion document depend on the participant having access to technology, the ability to use it, and appropriate facilities. Where this is not available, participants should remain able to attend court in person.

# Options for change

This discussion document seeks feedback on options to change the current Act. The document covers three parts:

* **Part 1: What a remote participation Act should apply to**: this includes its purpose, which courts it applies to, who can appear remotely, and what modes of remote participation technology can be used. It also proposes introducing an offence for taking unauthorised recordings of court proceedings.
* **Part 2: How remote participation decisions should be made**: this includes who makes decisions about whether remote participation is used and how those decisions are made.
* **Part 3: When remote participation should be used:** this covers where detailed rules and expectations about remote participation use should be set (whether in primary legislation, through Court Rules, or through Judicial Protocols). It then discusses a range of options that could be progressed if detailed rules and expectations remain in primary legislation. These options relate to both civil and criminal proceedings.

Each part describes the current law and the problems or opportunities associated with it. It then suggests options for change. Some options could be progressed together, and some would be standalone. We are interested in your views on the full range of options.

## Important considerations when thinking about an Act

The Ministry has identified the following key considerations when thinking about an Act:

* **Constitutional principles**,including the separation of powers and the judiciary’s role in the administration of justice, consistency with the protections provided in the NZBORA, and the Crown’s obligation to ensure all citizens have an equal opportunity to access the courts.
* **Public confidence** in the integrity of the justice system, including the maintenance of open justice.
* **Effectiveness**, including:
	+ **fair and just processes**, in particular rights to a fair trial and natural justice, and processes that meet the needs of complainants and victims;
	+ **clarity** for court participants and decision-makers; and
	+ **future-proofing** the Act so that it remains fit for purpose ascourt technology and practice change over time.
* **Efficiency**,including time and cost savings for the court, justice sector agencies, the judiciary, and court participants.

Identifying which options align best with the objective of the review requires an assessment and balancing of all these considerations.

# Part 1: What a remote participation Act should apply to

## Purpose of a remote participation Act

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| --- | --- |
| Current law | The Act does not include a purpose statement or objectives. In 2010, the Act was developed to provide a legal basis for the use of remote participation and enable increased use. At that time, remote technology use was limited and there were concerns around its consistency with NZBORA. |
| Problem or opportunity  | We have identified an opportunity to clarify the purpose of an Act, and ensure it reflects contemporary views about remote participation use in courts.The way in which courts work, and decisions are made about use of technology, has changed significantly since 2010. When used appropriately, it is now recognised as a tool to facilitate access to justice and a potential contributor to court efficiency. |
| Option we are considering | **Add a purpose statement.** This could clarify that the purpose of an Act is to facilitate and promote increased use of remote participation in court proceedings to:* enhance access to justice;
* support the just, effective, efficient, and timely resolution of court proceedings; and
* comply with open justice principles.

A purpose statement could modernise and future-proof an Act, provide clarity and direction to users of that Act (supporting the rule of law), and align with the objective of enabling increased remote participation.  |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. What are your views on including a purpose statement?
2. What else, if anything, should be included in the purpose statement?
 |

## Which courts an Act should apply to

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| --- | --- |
| Current law | The Act applies generally to all courts. Separate legislation applies to tribunals. The Act defines courts to include the Supreme Court, the Court of Appeal, the High Court, and the District Court. It also includes the following specialist courts: the Employment Court, the Environment Court, the Māori Appellate Court, and the Māori Land Court. The Act also applies to the Court Martial and Court Martial Appeal Court. |
| Problem or opportunity  | There is an opportunity to consolidate requirements for remote participation use in the coronial jurisdiction. The current Act does not include coroners as a court. Instead, coroners rely on section 102A of the Coroners Act 2006, which states that the Courts (Remote Participation) Act 2010 applies to coroners as if it were a civil court. We are not aware that this is causing problems. However, there is an opportunity to reduce cross-referencing and circularity, and align the coroners with the other specialist courts under an Act. |
| Option we are considering | **Add the Coroners Court** to the defined list of courts to which an Act applies. Section 102A of the Coroners Act could then be repealed. We do not expect this change will make a material difference to remote participation use in the coronial jurisdiction. An Act will continue to apply to coroners as if it were a civil court. However, bringing coroners within an Act could create a simpler, more coherent regime and increase clarity for users. It would also recognise coroners’ role as judicial officers. |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. What are your views on including the Coroners Court within an Act? Do you have any other comments to make?
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## Who should be able to participate remotely

#### Overview

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| Current law | The Act defines “participants” widely to include: a party, defendant, counsel, witness, member of the jury, judicial officer, Registrar, and any other person directly involved in the proceeding whom the decision-maker considers appropriate.  |
| Problem or opportunity | We have identified three potential issues relating to participants. We discuss each issue separately below. |

#### Issue 1: Remote observation

|  |  |
| --- | --- |
| Current law | The Courts (Remote Participation) Amendment Act 2024 enacted a presumption that victims may remotely observe criminal trials and sentencing hearings where appropriate.[[10]](#footnote-11) This comes into force in March 2025. This presumption will support victims and enable them to avoid the stress and potential retraumatisation they may experience when physically attending court.  |
| Problem or opportunity  | We have identified a potential unintended consequence of introducing a victims’ remote observation ‘presumption’ under the Act. It may create doubts about whether the Act covers other observers, such as the media and public. Courts already permit the media and public to observe some hearings remotely. A lack of clarity about the Act’s application to these observers, and the interplay with the courts’ inherent and implied powers, could create unnecessary confusion and raise questions about existing court practice. |
| Option we are considering  | **Carry through the presumption that victims can remotely observe criminal trials and sentencings, and** **clarify that the Act covers remote observers,** including victims, the media, and public. This could involve formalising a remote observation framework in an Act. The framework could apply to all observers, all hearings, and appropriate courts. Decision-makers would need to consider statutory criteria before determining appropriate use. Criteria are discussed further at page 22. A new framework would maintain existing restrictions on public and media court attendance. For example, many Family Court cases are closed to the public. We would also need to consider implications that may arise if people are observing from outside of New Zealand. Creating a clear framework to facilitate remote observation would formalise what already occurs in practice. It would also support the principle of open justice and could help to improve public understanding of the courts and strengthen the connection between the courts and communities.Any increase in remote observation use would increase the risks of unauthorised recordings of court hearings. We discuss this issue separately on page 20. A significant increase in remote observation use would also have a big impact on court registries in managing observation. It would require substantial investment in remote-participation infrastructure. |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you think it is necessary to clarify that legislation governing remote participation covers remote observers, including victims, the media, and the public?
2. If we formalise a remote observation framework in an Act, what else, if anything, should be included in the framework?
 |

#### Issue 2: Remote participation by jury members

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| --- | --- |
| Current law | The Act states that AVL must not be used for the appearance of a participant in a criminal substantive matter unless a judicial officer permits this (after considering the statutory criteria and whether parties consent). This means that individual jurors (as participants) could theoretically participate remotely in a trial. |
| Problem or opportunity  | We have identified potential risks associated with remote jurors. If one or more jurors participated remotely from outside the courtroom, it may be difficult to control juror interference. Similarly, jurors may not engage in the same way as they would together in a group. These situations could raise fair trial concerns. We do not have any evidence that the current settings are creating any problems, as in practice jurors do not participate remotely. Despite this, we want to test whether there is a need to tighten settings if it is ever considered that jurors should be able to participate remotely (e.g., in a pandemic). |
| Option we are considering | **Clarify that jurors may only participate remotely together as a group, in exceptional circumstances**. This would allow jurors to hear evidence together, decide a verdict together, and deliberate only with one another. Court staff could monitor them and ensure that there is no juror interference. England and Wales introduced a similar provision as a safeguard, for use in exceptional circumstances, such as during a pandemic.  |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. What are your views on clarifying that members of the jury may only participate remotely together as a group?
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#### Issue 3: Clarifying fully remote hearings

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| --- | --- |
| Current law | The Act sets out different levels of expectations over the use of remote participation for individual participants in civil and criminal proceedings. Current rules are framed around both the type of participant and the type of matter (whether civil, criminal procedural, or criminal substantive). |
| Problem or opportunity  | We have identified an opportunity to clarify the position regarding fully remote hearings (a hearing where everyone participates remotely instead of in the courtroom). Fully remote courts have potential for efficiency gains, such as freeing up courtrooms for other hearings and reducing travel for judicial officers and lawyers.While the current Act does not prevent fully remote hearings from occurring, this is only clear when piecing together individual rules for each participant and matter. We are not aware that this is causing problems. However, there is an opportunity to provide a clearer and more user-friendly legislative framework for fully remote hearings. |
| Option we are considering | **Clarify that fully remote hearings are enabled**, provided the relevant statutory criteria are met. Statutory criteria are discussed further at page 22. Including an explicit reference to fully remote hearings could increase clarity for users and future proof the legislative framework. Fully remote hearings depend on appropriate technology being available for all court participants. Providing a legislative framework for fully remote hearings will support use if and when the necessary technology becomes available.If the use of fully remote hearings increases, it will be important to consider the principle of open justice. It may be necessary to permit members of the media and public to remotely observe fully remote hearings. |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. What are your views on clarifying through legislation that fully remote hearings are enabled?
2. In what circumstances, if any, do you think fully remote hearings should be used?
3. What else, if anything, should be in a fully remote hearing framework?
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## What modes of technology should be used

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| --- | --- |
| Current law | Following the enactment of the Courts (Remote Participation) Amendment Act 2024, the Act authorises remote participation by both AVL and AL. The Act prescribes the circumstances where each ‘mode’ of technology (AVL or AL) can be used. The threshold for using AL is higher than for AVL. For example, the Act authorises use of AL only in criminal proceedings that defendants do not attend, and in appropriate civil proceedings (including in the Family Court). This recognises that AL imposes constraints on a person’s ability to participate effectively in a hearing. |
| Problem or opportunity  | We have identified potential issues with prescribing separate rules for AVL and AL technology. This approach may create layers of complexity for court users, making an Act difficult to apply. It also provides less flexibility and discretion for decision-makers to determine the appropriate form of technology in the individual case. For example, it may restrict their ability to permit use of technology appropriate to the communication needs of visually-impaired or deaf users. We want to test these assumptions to determine whether a change in settings is necessary. |
| Option we are considering | **No separate rules for AVL and AL**. Instead, decision-makers would be responsible for determining the appropriate ‘mode’ of remote participation in the individual case. They would be guided by statutory criteria and what is in the interests of justice. This is discussed further at page 22.This option could remove layers of complexity, making an Act easier to apply. It could also provide more flexibility for decision-makers to determine the appropriate type of technology in the individual case. However, removing separate rules from primary legislation would – unless provided for in Court Rules or Judicial Protocols – provide less certainty for court users about the circumstances when each type of technology may be used. It does not emphasise the constraints that AL places on participants’ ability to participate effectively in proceedings to the same extent as the current Act.  |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you think separate rules for AVL and AL (as is the case currently) are necessary? Please explain why.
2. If decision-makers were responsible for determining the appropriate ‘mode’ of participation, what would be the benefits and risks of this approach?
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## Obligations for remote participants and observers

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| Current law | The Act authorises decision-makers to give directions to remote participants, who must comply. Directions could include, for instance, prohibiting the recording of court proceedings. Failure to comply is a breach of a court order, which can be prosecuted under the Contempt of Court Act 2019.  |
| Problem or opportunity  | We have identified a potential risk associated with increasing the use of remote participation and observation. Any increase in use will also increase the risk of unauthorised recordings of court proceedings. Instances of covert recordings of court proceedings sometimes occur, and advances in phone and recording technology can make instances more difficult to detect. Once taken, recordings can be posted online or shared with others. This could have adverse impacts on fair trial rights, safety, willingness of witnesses to give evidence, and public trust in the justice system.While the Contempt of Court Act 2019 applies to remote participants, and the current Act authorises directions, the Act does not itself set out express obligations for people participating remotely or include an offence for failing to comply with these obligations.  |
| Option we are considering | **Introduce a statutory prohibition** **on recording court proceedings without permission of the presiding judicial officer.** It would be a criminal offence to do so. The maximum penalty for the offence would likely be low. This would apply to remote participants and remote observers. If this option progresses, we would explore an equivalent offence applying to the physical courtroom.Introducing an offence could enable recordings to be taken down from online platforms more easily. It could also deter people from taking recordings in the first place. However, it is likely to be difficult to enforce penalties against international participants and observers.  |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. What are your views on including an offence provision?
2. Are there different ways to address the risks associated with unauthorised recordings of court proceedings?
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# Part 2: How should remote participation decisions be made?

## Who should make remote participation decisions

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| Current law | Under the Act, judicial officers (judges, community magistrates and judicial Justices of the Peace) and Registrars can make decisions. Judicial officers have wider powers than Registrars. Judicial officers can make all decisions while Registrars can only make decisions in civil proceedings (including family) and criminal procedural matters.In practice, we understand that Registrars make decisions on the high volume of applications from counsel seeking to remotely appear in criminal lists. Judicial officers decide all other criminal and all civil applications. |
| Problem or opportunity  | We have identified a gap in the definition of “judicial officer”. The current definition does not include Family Court Associates (a new type of judicial officer). Family Court Associates have the powers of Registrars under the Family Court Act 1980 and can, therefore, already make remote participation decisions. There is a need to update the Act to reflect this change.  |
| Option we are considering | **Ensure Family Court Associates** are included the definition of “judicial officer”. We are not currently considering other adjustments to decision-making powers. However, we note that Registrars’ powers are wider than in some other international jurisdictions. We are interested in your views on this, particularly whether it is causing any issues in practice. |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you agree with ensuring that the definition of “judicial officers” includes Family Court Associates?
2. Do you think any other changes should be made to the scope of judicial officers’ and Registrars’ decision-making powers?
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## What decision-makers need to consider

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| Current law | The Act requires decision-makers to consider statutory criteria when determining whether remote participation use is appropriate and in the interests of justice. Judicial officers and Registrars must consider a general set of criteria in all cases (section 5), additional criteria in criminal cases (section 6), and a third set of criteria relating to AL in civil proceedings (section 7A). |
| Problem or opportunity  | We have identified an opportunity to streamline the current criteria and remove duplication, while ensuring decisions continue to be determined by what is in the interests of justice. We recognise that the current decision-making process is complex as it requires consideration of multiple sets of criteria. We are interested in views on whether this is causing problems in practice and whether this aligns with the operational reality of decision-making in courts.  |
| Options we are considering | **Option 1: Replace multiple lists of criteria with a single requirement that decisions be determined by “the interests of justice”.**This option is simpler and less prescriptive than the current decision-making framework. It would not list or prioritise any factors, giving individual decision-makers considerable discretion. “The interests of justice” is not defined but is a well-known and established legal concept. This option would not expressly refer to relevant considerations or participant rights. However, decision-makers would still need to consider all relevant factors and make decisions consistent with rights under NZBORA and an Act’s purpose. **Option 2: Streamline and update the criteria that decision-makers must consider.**This approach would streamline the existing criteria from three sets to one. It would also update and add new criteria. The proposed new criteria recognise that increased use of remote participation will have implications for court participants, open justice, tikanga Māori, and court resourcing.Possible criteria include:* **The nature of the proceeding** (this reflects the current criteria).
* **The availability and quality of technology to be used** (this reflects the current criteria).
* **The potential impact of the use of remote participation technology on the effective maintenance of rights of parties to the proceeding, including the right of a defendant to a fair trial** (this condenses current section 5(c) and section 6 into a single criterion).
* **The ability to participate effectively in the proceeding, including enabling participants to be seen and/or heard and understood** (this recognises that remote participation may support effective participation for some, but not all court participants).
* **The views of the participant** (this enhances the ‘participant’s voice’ in the decision-making process and supports informed decisions about remote participation use. This may enable victims to have a voice when they are participants in proceedings).
* **The extent to which remote participation may affect tikanga Māori in court proceedings** (this recognises that in some circumstances, it may be appropriate to enable or prohibit remote participation to better support tikanga Māori in court proceedings).
* **The potential time- and cost-saving efficiencies that may result from the participant appearing remotely** (this enables convenience and efficiency factors to form part of decisions).
* **Complies with open justice** (this recognises the need to consider open justice implications when making decisions).
* **Whether the necessary court resources are available to facilitate remote participation** (this acknowledges that facilitating remote participation and observation requires sufficient court staff and resourcing).
* **Any other matter** (this reflects current criteria).

This list is more streamlined than the current Act but provides more legislative guidance about relevant considerations than Option 1.  |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you support revising the current criteria? Please explain why.
2. If you support streamlining the criteria, do you prefer Option 1 or Option 2? Please explain why.
3. Are there other factors you think decision-makers should consider that we have missed?
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# Part 3: When should remote participation be used?

Thisis the most technical and detailed part of the discussion document.

* First, we discuss a key policy and design question: where should detailed rules and expectations about remote participation use be set? This includes consideration of whether rules should remain in primary legislation (an Act) or whether they could be set in Court Rules or Judicial Protocols.
* Next, we discuss a range of options that could be progressed *if* detailed rules and expectations remain in an Act. Options relating to civil proceedings and criminal proceedings are set out separately.

## Preliminary question: Where should detailed rules be set?

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| Current law | The Act sets out when remote participation may, must, or must not be used. For some matters and participants, there is an initial presumption that AVL will or will not be used, and for others it is more open-ended. Judicial officers or Registrars make decisions in individual cases but must apply a general set of statutory criteria to all decisions. A second set of additional criteria applies to criminal proceedings and a third set to AL in civil proceedings. |
| Problem or opportunity  | The Ministry has heard some concerns that the current Act is unnecessarily prescriptive and complicated. Setting presumptions and criteria for different matters and participants can create unnecessary complexity and make the current Act difficult to apply. We are aware that a range of factors may require a matter to take place remotely or in-person in the courtroom. It may be difficult to provide for all situations in primary legislation. There is an opportunity to consider where the detailed rules should be set. Options include retaining them in an Act or setting them in Court Rules or in Judicial Protocols. |
| Options we are considering | We want to test our understanding of the impacts, benefits, and risks associated with progressing each of the options below. All models would need to preserve rights under NZBORA, open justice principles, and core constitutional principles of judicial independence and the separation of powers.**Option 1: Retain detailed expectations and requirements in primary legislation (an Act)**This option is the same as the current model. However, adjustments could be made to resolve known issues and ambiguities, and to strengthen expectations for use of remote participation. Retaining detailed expectations in an Act and making targeted changes to the current rules could modernise the regime, provide increased clarity and certainty for users, and support increased use. This option would retain judicial discretion. However, prescribing when remote participation should be used in an Act would provide less flexibility. This could constrain the judiciary’s ability to make decisions in the interests of justice. Amending primary legislation is time- and resource-intensive so this option may be less “future-proofed” than the other options, meaning it is less adaptable over time to changes in practice or technology.**Option 2: Place detailed rules and expectations in Court Rules rather than an Act** Under this option, an Act would provide a legislative basis for remote participation use, and set the policy direction solely through a purpose statement and decision-making criteria. It would not set out detailed expectations about remote participation use. Instead, an Act could include an empowering provision signalling an intention that Court Rules be developed. Court Rules are formal and binding rules about the practice and procedure of the courts. Most Court Rules are developed through a formal Rules Committee process. The Rules Committee membership includes members of the judiciary, members of the executive branch of government, and representatives from the legal profession. Court Rules are therefore developed jointly by the judiciary and the executive.[[11]](#footnote-12) This option would recognise the judiciary’s constitutional responsibilities in relation to conducting the business of the courts. The judiciary would play a greater role in determining the appropriate circumstances, or types of court matters that are suitable for remote participation use. Similar to primary legislation, setting detail in Court Rules provides clarity for users and supports consistency across courts. Court Rules are generally easier to amend than primary legislation, but not as easy as Judicial Protocols.**Option 3:** **Leave it to the Judiciary to develop and set detailed guidance and expectations through Judicial Protocols, if they wish**Like Option 2, an Act would provide a legislative basis for remote participation use and set the policy direction solely through a purpose statement and decision-making criteria. The judiciary may establish protocols about the use of remote participation. Judicial Protocols are not legislation. They are issued by Heads of Bench in accordance with their inherent powers. The Government has no formal role in the development of protocols, but the judiciary may consult on drafts. Like the other options, protocols would assist with consistent decision-making across the courts, and provide clarity to court users. Protocols can be kept under review by the judiciary and are quicker to amend than primary legislation or Court Rules. For example, they were used extensively during the COVID-19 pandemic to vary the usual operation of the courts. |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you think detailed rules and expectations should remain in an Act? Please explain why.
2. If you do not think detailed rules should be in an Act, do you think detailed rules on when to use remote participation should be:
	1. established through Court Rules, or
	2. left to the judiciary to issue guidance through Judicial Protocols? Please explain why.
3. If detailed rules are set in court rules or Judicial Protocols, would a purpose statement in legislation and statutory criteria provide sufficient policy direction to court participants and decision makers? Would anything else be needed?
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## When should remote participation be used in civil proceedings

If detailed rules and expectations remain in an Act, the following options could be progressed:

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| Current law | The Act governs use of remote participation in civil proceedings in any New Zealand court. Civil proceedings are defined as any proceedings other than criminal proceedings. This captures general civil proceedings, family proceedings, compulsory care proceedings, and cases in the specialist courts. The Act simply allows for remote participation in civil proceedings (i.e. AVL and AL technology *may* be used). There are no presumptions in favour or against use. A judicial officer or Registrar must consider the impacts of remote technology use on the rights and interests of participants in the proceedings and take into account whether or not the parties consent to the use of AVL for the participant.  |
| Problem or opportunity  | There is an opportunity to strengthen expectations for more use of remote participation in civil proceedings.Many civil proceedings are likely to be suitable for remote hearings because of the subject matter and nature of the evidence. Civil proceedings do not involve NZBORA fair trial considerations in the same way as criminal proceedings, nor are they dependent on AVL infrastructure across the justice sector.Most suited to remote participation might be general civil proceedings (e.g. cases involving disputes between neighbours or over business contracts or debts) and cases in the specialist courts, which all currently make use of remote technology. Family and compulsory care proceedings, and coronial inquest hearings, are less evidently suited to remote participation. This is because of the sensitive nature of the matters, complex legislative and procedural requirements, and the vulnerability of many of the participants. |
| Option we are considering | We have identified three options for adjusting policy settings ranging from small to significant changes. All options would increase expectations for use compared to current settings, but each has a different focus. The options are standalone, but Options 1 and 2 could be progressed together.**Option 1: Require decision-makers to actively consider whether a civil hearing should be held remotely**This would be more directive than the current state. Judges or Registrars would have to actively consider, case by case, whether a hearing should be held remotely or in-person. This preserves judicial independence, but signals that when remote participation could be appropriately used in civil proceedings, it should be. This option would add an extra step for courts to take in advance of all civil hearings, which would impact court resourcing and timeliness. These impacts may, however, be offset by efficiencies gained through more remote hearings.**Option 2: Introduce an entitlement for lawyers to participate remotely if requested** An entitlement would provide that if a remote appearance is requested by a lawyer, this must be approved by the court unless it is determined that doing so would be contrary to the interests of justice. Approval would depend on the necessary technology being available. This option would increase certainty and convenience for lawyers, many of whom spend significant time travelling for in-person appearances at short procedural civil hearings. An entitlement could apply to all lawyers and all civil appearances or be limited to a subset. For example, it could apply only to lawyers who are far away from the registry hearing the case, or only to certain types of appearances. Other participants could also appear remotely if the judicial officer or Registrar determines it appropriate but would not be entitled to do so. Unless all participants joined the hearing remotely, hearings would still involve some participants in a courtroom.**Option 3: Introduce a legislative presumption in favour of remote participation in some or all civil proceedings**A presumption could be applied to all civil proceedings or to a subset. Another option could be a presumption applied to particular types of civil hearings. For example, ones that are ‘procedural’ or ‘short’ or ‘non-contentious’.A presumption would function like a ‘default’ setting, signalling that most (or certain) civil hearings should be undertaken remotely. The presumption could set an expectation that the hearing will be ‘fully remote’, meaning all participants should join remotely. Judicial officers and Registrars would be able to depart from the presumption in favour of holding an in-person hearing, but the bar would be high. They would need to determine that remote participation would be contrary to the interests of justice. Key considerations would be whether appropriate technology is available to the court and all participants, and whether the rights of the parties would be maintained.Where supported by the appropriate technology and facilities, this option should result in much greater use of remote participation in civil proceedings. It could save time and money for participants and enable more efficient use of court resources, including by freeing up court rooms if all participants appear remotely.Such a presumption would represent a major shift from current practice and could change the nature of many civil proceedings. Full implementation would rely on both the courts and participants having good technological capacity and capability, appropriate facilities, and court resources to support the hearings. Investment would be needed to realise the full benefits over time. |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you support increasing expectations on the courts to make greater use of remote participation in civil proceedings?
2. What benefits and risks to court users would there be if more civil hearings occurred remotely?
3. Which of the options above for encouraging more remote participation in civil proceedings do you prefer, and why?
4. If you support a legislative presumption in favour of remote participation for civil proceedings (Option 3), do you think it should apply to:
	1. Proceedings in the Family Court?
	2. Compulsory care proceedings?
	3. Coronial inquest hearings?
	4. Specialist courts?
	5. Only certain court matters or types of matter, and if so, how should these be defined (e.g. by ‘event’ type or by characteristic)?
5. Do you have any different ideas for increasing expectations on the court to hold more remote hearings in civil proceedings?
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## When should remote participation be used in criminal proceedings

If detailed rules and expectations remain in an Act, the following options could be progressed:

#### Overview

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| Current law | The Act governs use of remote participation in criminal proceedings. This includes the general courts, as well as the Court Martial. The Act distinguishes between ‘criminal procedural matters’ and ‘criminal substantive matters’ and sets out different levels of expectations for its use. The Act defines criminal procedural matters as matters that do not involve evidence, which could include first and second appearances, case review hearings, and pre-trial call-overs. Criminal substantive matters are matters that involve evidence, such as the trial.Under the Act, there is a greater expectation that remote participation will be used in criminal procedural matters over substantive matters. Further detail is set out in the table at page 9.  |
| Problem or opportunity  | We have identified opportunities to adjust existing rules to improve clarity and/or increase use in criminal proceedings. We discuss three options below. The first two assume the existing presumption in favour of use in criminal procedural matters and higher thresholds for use in substantive matters will be carried over. These options can be progressed separately or together. The third would be progressed as a standalone option.  |

#### Issue 1: Lack of clarity about use of AVL in sentencing matters where the participant is not in custody

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| Current law | The Act expressly permits use of AVL in sentencing matters if the participant (i.e. the defendant) is in custody, provided technology is available and a judicial officer determines that use of AVL is not contrary to the interests of justice (section 8(2)).  |
| Problem or opportunity  | There is a lack of clarity about how the Act applies to the use of AVL in sentencing hearings where the participant is not in custody. The Act does not expressly address this issue and a range of statutory interpretations can be made. |
| Option we are considering | **Clarify that AVL *may* be used for the appearance of a participant in a sentencing hearing where the participant is not in custody**. This would cover defendants/offenders on bail and at large. It would also enable defence lawyers and prosecutors to appear remotely at sentencing.Judicial officers would need to consider statutory criteria before determining whether AVL use is appropriate in the particular case. When determining whether it is in the interests of justice to sentence a defendant/offender remotely, they may consider the seriousness of the offending and the need for public accountability, as well as the interests of the victim (who may wish to read their victim impact statement to the court with the defendant present). The defendant would also require access to appropriate technology.Creating a clear legislative basis for use will increase clarity for court users, support consistency across courts, and may create benefits for participants. Benefits may include greater convenience and a reduction in costs and travel time. However, there are significant practical difficulties and risks associated with sentencing defendants/offenders remotely. The following factors would need to be worked through:* **ensuring there is a robust system in place for serving the sentencing order on the defendant.** In-person service requirements are currently satisfied by providing a copy of the sentencing order at the court registry counter following sentencing. We want to explore the viability of adopting alternative approaches, such as transferring the service responsibility to lawyers or adopting electronic service methods.
* **developing processes for assessing the chance of custodial sentences (imprisonment or home detention) being imposed.** We consider that use of AVL for the defendant/offender’s attendance would not likely be appropriate in these circumstances due to the severity of the sentence and risk that defendant/offenders may attempt to avoid being taken into custody.
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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. What are your views on clarifying that AVL may be used in a sentencing hearing where the participant is not in custody?
2. What benefits and risks would there be for court users if more AVL is used in sentencing matters?
3. How might we address the practical difficulties associated with sentencing defendants/offenders remotely?
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#### Issue 2: Enabling greater use of remote participation in criminal procedural matters

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| Current law | Under the Act, participants may participate in criminal procedural matters by AVL if a judicial officer or Registrar is satisfied the statutory criteria are met (section 8(1A)). This covers defendants who are not in custody and lawyers. As noted above, criminal procedural matters could include first and second appearances, case review hearings and pre-trial call-overs.AL may be used instead of AVL in a criminal procedural matter if the judicial officer or Registrar determines that use is appropriate and not contrary to the interests of justice, and the defendant is not required to or does not wish to attend the hearing (section 8A). |
| Problem or opportunity  | We have identified an opportunity to strengthen expectations that participants (defendants who are not in custody and lawyers) may remotely attend criminal procedural matters if they wish to, and if the appropriate technology and facilities are available. Many criminal procedural hearings are relatively short and straightforward. We have heard from some legal professional groups and the New Zealand Police that enabling lawyers, including Police prosecutors, to more frequently appear remotely at such hearings could create efficiencies while still satisfying the interests of justice. |
| Option we are considering | **Entitle participants (defendants who are not in custody and lawyers) to attend criminal procedural matters remotely on request.** Judicial officers and/or Registrars could depart from this entitlement after considering statutory criteria. It would be important to consider its appropriateness for defendants, especially those with age, disability, mental health, language, or comprehension barriers. Defendants also currently need to physically attend court if they need to sign a bail variation.Where the appropriate technology and facilities are available, introducing this entitlement could provide greater convenience to participants, such as reduced travel and time savings for lawyers needing to work across courts and geographical areas. However, depending on the volume of requests, this option could fundamentally change the way the courts run (e.g. list courts could look different). There are risks this option could create additional pressure on the courts, due to increased time required to schedule, set up, and support remote participation. |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you support entitling court participants (defendants who are not in custody and lawyers) to attend criminal procedural matters remotely on request? Please explain why.
2. Do you think such an entitlement should allow participants to request participation by AL or should it be limited to AVL? Please explain why.
3. What benefits and risks would there be for court users if this entitlement was introduced?
4. Do you have any different ideas for increasing use of remote participation in criminal procedural matters?
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#### Issue 3: The criminal ‘procedural’ and ‘substantive’ matters distinction may not be fit-for-purpose

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| Current law | The Act distinguishes between criminal procedural matters (matters with no evidence) and substantive matters (matters involving evidence) and sets different expectations for use. |
| Problem or opportunity  | We have received feedback that the distinction between ‘procedural’ and ‘substantive’ matters, based on whether the matter involves evidence, may not be fit for purpose. Some ‘procedural matters’ do not involve evidence but may still be considered significant (e.g. because they determine the pathway of a case). For example, the current Act requires AVL be used for first appearances where a participant is in custody unless contrary to the interests of justice. A view could be taken, however, that first appearance is not a ‘procedural matter’ as it is the first opportunity for the courts to engage with a defendant. The NZBORA right for people who have been arrested to be brought ‘before’ a court as soon as possible is also relevant in this context.In addition, sentencing may not fall neatly within existing definitions.  |
| Option we are considering | **Redefining which criminal matters are suitable for remote participation.** We want to test whether the current distinction is sufficiently problematic that a new approach is needed, and if so, what that approach should be. We have considered a range of potential alternative approaches to redefining which criminal matters are suitable for remote participation use. These include refining the definitions of ‘procedural’ and ‘substantive’, categorising by the type of event or matter (such as first appearance), the complexity of the matter, and the significance of the matter. We consider categorising by the significance of the matter is most worthy of exploring further. This is because the alternatives are likely to be very difficult to define or identify. Categorisation by type of event or matter may also be too prescriptive for primary legislation and difficult to keep up to date.Under an approach based on ‘significance’, there would be an initial presumption in favour of in-person attendance for significant events and remote attendance for non-significant events. Significance could be linked to whether the matter determines the pathway of the case and next steps, and/or progresses the case from one stage to another. Significant matters could include entry of plea and the trial. There is a risk that this approach could create a different type of ambiguity or lack of clarity for court users.  |

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| X:\Photographs & Images\Line graphics\MOJ icons\2018_not finalised yet\Mark question_0-135-192.png | 1. Do you agree there is a problem with how the current Act defines criminal procedural matters and criminal substantive matters? Please explain why.
2. Do you think categorising by ‘significance’ of the matter could address the problem? Please explain why.
3. If so, what are your views on linking significance to whether the matter determines the pathway of the case or progresses it from one stage to another?
4. Do you have any alternative ideas for defining and/or grouping criminal matters?
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1. The Policy increases duty lawyers’ role in court so they are better placed to identify cases suitable to be dealt with immediately, rather than delaying to another hearing date. [↑](#footnote-ref-2)
2. See High Court Rules 2016, r 10.24; District Court Rules 2014, r 7.27; Family Court Rules 2002, r 181. [↑](#footnote-ref-3)
3. A decision by a judicial officer in chambers (not in court) based on written material. [↑](#footnote-ref-4)
4. All courts possess inherent or implied powers to determine their procedures and control their processes. [↑](#footnote-ref-5)
5. See pages 29-30: it is not clear how the Act applies to sentencing by AVL of defendants who are not in custody. [↑](#footnote-ref-6)
6. Audio links cannot be used for certain hearings that determine whether a person needs to be compulsorily detained and treated (section 7A(3)).

 [↑](#footnote-ref-7)
7. In the Ministry Case Management System, ‘eligible criminal events’ are list hearings, bail hearings, case reviews, jury trial call-overs, sentencing indications and sentence reviews. [↑](#footnote-ref-8)
8. This may include participants who are culturally and linguistically diverse, people who have mental health or substance abuse issues, disabled people, and victims who may be traumatised, at risk of intimidation, and/or are children. [↑](#footnote-ref-9)
9. Report: Digital inclusion and wellbeing in New Zealand: Motu Economic and Public Policy Research, October 2019; [Reports: Digital inclusion user insights — Māori, Disabled People, Pacific Peoples | NZ Digital government](https://www.digital.govt.nz/dmsdocument/177~report-digital-inclusion-user-insights-maori/html), 2021. [↑](#footnote-ref-10)
10. Where a victim is also a witness in the trial, they will be able to remotely observe after giving evidence. To avoid the risk of tainting witness evidence, victims/complainants should not hear the testimony of other witnesses before giving evidence themselves. [↑](#footnote-ref-11)
11. Formal ‘concurrence’ (agreement) is required from the Chief Justice and 2 or more members of Rules Committee (at least one of whom is a High Court Judge) before Court Rules are considered by Cabinet. [↑](#footnote-ref-12)