

Guide to Court Use of Audio Visual Links (AVL)

Contents

This document is a guide to court use of AVL for the assistance of:

- all participants in a proceeding. A participant is defined in the Courts (Remote Participation) Act 2010 (the Act) as:
 - a party
 - the defendant
 - counsel
 - a witness
 - a member of the jury
 - a judicial officer who is presiding over the proceeding
 - a Registrar who is presiding over the proceeding
 - any other person directly involved in the proceeding whom the presiding judicial officer or Registrar considers appropriate.
- court staff, and technical support (whether or not employed by the Ministry of Justice).

Subjects include:

- the authority to use AVL in court proceedings.
- technical and other activities that occur in advance of, and during, a link.
- court and registry processes which support the use of AVL technology.
- responsibility for the costs of using AVL.

Guidance for court staff on the processing of applications to use AVL is set out in a court circular.

A protocol with ESR witnesses is set out in a separate document.

Judicial protocols can be found on the Courts of New Zealand website see: <http://www.courtsofnz.govt.nz>

Essential phone numbers (for court staff)

Ministry of Justice IT Service Desk: 50600 or 0800 425 555.
Calls for assistance with AVL links for court hearings which are about to begin or are in process are reported as priority one calls.

Evidence Technology (formerly Tranzscript): 0800 872 694.

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Additional questions and feedback

The material in this document may not answer all the practical questions which could arise regarding court use of AVL. If you have a question that is not answered by this guide, or any other feedback, please contact your local court. Court staff should contact National Office.

Part 1 / General

Authority to use AVL The Act enables AVL to be potentially used in all court proceedings. AVL can be used in any proceedings where a judicial officer or Registrar considers it suitable after considering a number of criteria (set out in sections 5 and 6 of the Act).

In criminal matters there is a presumption in favour of the use of AVL in criminal procedural matters (those where no evidence will be produced) unless a judicial officer or Registrar is satisfied that the criteria would not be satisfied.

In criminal substantive matters (those where evidence will be presented), AVL cannot be used unless the judicial officer decides to allow its use. Only a judicial officer, not a Registrar, can determine that AVL may or should be used in criminal substantive matters.

AVL cannot be used for the appearance of a defendant in a trial to determine his or her guilt or innocence, without the defendant's consent.

In civil proceedings (this includes family proceedings) AVL may be used for the appearance of any participant if all the parties consent to its use. A judicial officer or Registrar may direct that AVL be used if he or she considers that the criteria can be met, even if there is disagreement between the parties.

A determination made under the Act does not impact on any other application made under section 103 of the Evidence Act 2006 which allows witnesses to give evidence in an alternative way in the Supreme Court, Court of Appeal, High Court, District Court, Family Court or Youth Court.

Part 1 / General

Place of hearing and remote site This guide covers the linking of one or more participants in a courtroom or conference room with one or more participants in a remote site for a hearing or conference.

There are two locations involved in the link:

- a) the place of hearing;
- b) the remote site.

The **place of hearing** is where one or more participants appears by the use of AVL. It is the same place as if none of the participants in that proceeding were to appear by the use of AVL.

For example, if a participant is being linked for a Wellington High Court case from the Auckland District Court, even if the person being linked is the judicial officer, the place of hearing is Wellington High Court and the Auckland District Court is the remote site.

The **remote site** is where the person directed to use AVL is located. The remote site may include a courtroom or an interview room, conference room, secure room at a prison or a commercially-provided facility.

Part 1 / General

Judicial procedure

The use of AVL and the way in which the AVL is conducted is at the discretion of the presiding judicial officer or Registrar. The presiding judicial officer or Registrar may:

1. state the specific purpose of the hearing.
2. require confirmation from participants at the remote site that they can hear and see all speakers at the place of hearing.
The proceedings should not commence until this has been confirmed.
3. advise participants to indicate, at any point during the AVL, if they cannot hear or see participants at the place of hearing or other remote site (if any).
4. give directions as to appropriate seating arrangements (this is generally likely to only affect the place of hearing).
5. direct that the camera be panned about the remote site to show that no unauthorised person is present.
6. state that the defendant may, if necessary, speak with defence counsel in a private communication.
7. check that participants at both locations are aware that there may be a very brief delay between the receipt of the picture and the accompanying sound. This means that, if due allowance is not made, there will be a tendency for participants to "speak over" one another.
8. inform participants that picture quality is enhanced when movement is kept to a minimum.

The presiding judicial officer or Registrar should follow any judicial protocol issued by the heads of bench.

Display screens at the place of hearing

At the place of hearing those present will see a participant at the remote site with other parts of the room in the background.

Display screens at the remote site

At the remote site the number of participants seen on the monitor(s) will depend on the participant being linked. This can include a head-and-shoulders shot of any participant. Some currently-installed equipment allows the screen to be split so that up to four participants can be viewed at the same time.

In Court of Appeal hearings, a more general shot of the Judges sitting is usual.

Part 1 / General

Communication with counsel A means of communication between counsel and their clients (if at separate locations) must be made possible before the commencement of the AVL and, if necessary, where permitted by the presiding judicial officer or Registrar during a break in proceedings.¹

The simplest way to facilitate this will be by telephone in an adjacent room. Video is not normally required for these communications. Court staff at the place of hearing and court or technical staff at the remote site are responsible for organising communications in an adjacent room subject to any direction of the presiding judicial officer or Registrar.

The key requirement for these communications is privacy. Both ends of the conversation must be secure and private to the parties involved in the conversation. The court staff and technical staff at the place of hearing and remote site should ensure that the communication is not heard by other participants.

¹ For the testing in the Auckland District Court a handset has been installed in both the courtroom and the AVL booth at the prison to allow counsel to take last minute instructions from their client. Lifting the handset temporarily disables the audio and video feed of the defendant.

Part 1 / General

Recording The visual component of the hearing is not normally recorded (and never without the relevant court's permission). The audio component is recorded only if this is necessary for standard evidence transcription.

Costs² The court will meet the costs if the person appearing remotely is:

- the presiding judicial officer or Registrar; or
- a prisoner appearing from a remand centre or prison; or
- a member of a jury; or
- any other person directly involved in the proceeding whom the presiding judicial officer or Registrar considers appropriate.

If a judicial officer or Registrar makes a direction for AVL to be used in a hearing (whether in response to an application or on his or her own motion) but makes no direction on the payment of costs of AVL, those costs will fall on the court.

In all other cases, costs should lie with the party applying for the appearance of a participant via AVL.

² Includes line charges and leasing of equipment (if applicable)

Part 2 / Procedures prior to establishing a link

Timeframes The timeframes in this guide are indicative and may need to be adapted to meet specific circumstances (particularly an AVL with a participant overseas). However, on all occasions testing of both the equipment and the AVL must take place prior to the scheduled time for the AVL hearing.

Equipment bookings Court staff make all AVL bookings where the participants are to appear from New Zealand courtrooms. The procedures are set out on the Ministry of Justice intranet.

Participants may appear from a venue which is not a New Zealand court venue. In that case, the participants proposing to appear from the non-court venue should liaise with court staff at least 5 working days prior to the hearing in order to confirm the arrangements. Court staff need to be satisfied that external providers can meet the technical specifications required.

Bookings for equipment at any remote site need to extend:

- at least 90 minutes before the scheduled hearing time and
- at least 60 minutes after the expected end of the AVL link.

Equipment testing For a remote site that is not a court venue, initial tests should be conducted up to 5 working days prior to the hearing if possible and, at least, the day before.

For a remote site that is a court venue, testing should take place the day before and again at least 90 minutes prior to the hearing.

Tests of the equipment must confirm that all technical requirements can be met, including (but not exclusively):

- any special requirements (such as the need to disguise the voice of a witness);
- audio quality;
- video quality; and
- the speed of transmission.

The test should simulate the real situation as much as possible. For example, if a female voice is to be disguised a female voice should be used in the test.

The proceedings should not commence until all technical requirements have been met.

Part 2 / Procedures prior to establishing a link

Transmitting documents

Participants at the remote site must have access to documents physically present at the place of hearing and vice versa.

Documents, including submissions, provided to the court by parties will need to be provided at least 24 hours prior to the hearing so that arrangements can be made for them to be transmitted to the remote site.

Special care is to be taken by court staff to ensure that all relevant documents are available to participants appearing at the remote site.

Additional documents are sometimes introduced during the course of a hearing. To cater for this, either a fax machine, scanner or document camera ought to be available at both locations.

Documents are treated as produced to the court only when received by the presiding judicial officer or Registrar.

Where the document is to be faxed, parties or their counsel must ensure that relevant documents are in a form that is suitable for faxing. For example documents must be in A4 format, in black and white, and not bound.

Where the document is to be scanned and emailed, it must be emailed in a secure format eg pdf format.

Part 2 / Procedures prior to establishing a link

+ 90 minutes At least 90 minutes before the start of the hearing:

Contact details of the place of hearing and remote site are exchanged. The details include:

- ISDN numbers for the AVL itself
- fax numbers, telephone numbers and email addresses

Court staff at either location should identify if documents need to be sent by fax or scanned and sent by email to the other location. If there are documents that need to be produced, the method and timing of the production is arranged between the two locations. Court staff will check that all documents held at the place of hearing and remote site are complete.

Technical or support staff at both locations will test equipment by initiating a test link. (Refer to instructions under “Equipment testing” on page 8.)

If there are technical difficulties with the test AVL, a court official will contact Ministry of Justice IT Service Desk. If the remote site is not a court, technical staff at that location will be responsible for remedying the problem.

+ 15 minutes At least 15 minutes before the hearing is scheduled to start:

Participants, excluding the presiding judicial officer or Registrar, should assemble.

If the remote site is a court, an official such as a deputy Registrar should be present.

Staff at both locations should inform participants where cameras, display screens and microphones are located, and of any requirements as to where they should stand or sit.

Part 3 / Establishing the link

+5 minutes

**Initiating
The link**

At least 5 minutes before the hearing both locations confirm they are ready to proceed via email or telephone.

The link is initiated by staff at the **place of hearing** who dial the other location's ISDN telephone number/ IP address.

An on-screen directory is provided for Ministry of Justice (including court) numbers.

The presiding judicial officer or Registrar will ordinarily not enter the courtroom or conference room until the link has been initiated.

Normal court etiquette and procedures then apply, for example, participants should stand until the presiding judicial officer or Registrar is seated.

Part 4 / Hearing procedures

Attire

Court officials, Judges, Registrars and counsel wear normal court attire. Other participants should wear suitable attire as they would if they were appearing in court in person.

Commencing the hearing

An opening statement is made by the presiding judicial officer or Registrar. This will normally start by the presiding judicial officer or Registrar introducing himself or herself and any other members of the court. The presiding judicial officer or Registrar will also cover the judicial procedure identified in Part 1 of this guide.

Administration of the oath or affirmation

All witnesses giving evidence by AVL must swear an oath or make an affirmation that the evidence they are about to give is truthful. Options for taking the oath or affirmation include the court Registrar or court crier administering the oath or affirmation at the place of hearing or from the remote site using the AVL, or a court official or other official authorised to take oaths, administering the oath or affirmation at the remote site. The presiding judicial officer or Registrar will give a direction on this matter.

A copy of the Bible, Koran, Torah or other holy books should be available at the remote site for the administration of the oath where necessary.

Interpreters

If an AVL participant requires an interpreter, the interpreter can be located at the same location as the participant or in the place of hearing.

If the interpreter for the AVL participant is in the place of hearing, he or she can stand by counsel for the participant or in a witness box. The participant will need to see and hear the interpreter at all times.

If the interpreter needs to be at the remote site the presiding judicial officer or Registrar will need to direct this.

The presiding judicial officer or Registrar will give directions as to the oath or affirmation the interpreter is required to swear or make.

Public access

Unless the presiding judicial officer or Registrar directs otherwise, members of the public may be present in any courtroom being used for the AVL, whether at the place of hearing or the remote site.

Where the remote site is not a courtroom, only persons authorised by the presiding judicial officer or Registrar may be present.

Part 4 / Hearing procedures

The conclusion of the hearing At the conclusion of the hearing, the presiding judicial officer or Registrar and any other members of the court will ordinarily leave the location while the transmission remains active.

Part 5 / Video record and later playback

Recording in advance for later playback

Section 103 Evidence Act 2006 allows applications to be made to the court for witnesses to give evidence by alternative means. One means is a video record made before the trial (s105(1)(a)(iii)). On occasion it may be desirable to make a video record of a witness' evidence.

If an application under s103 is granted allowing a witness to give evidence via video record, the procedures for establishing an evidential AVL set out in this Protocol are to be followed.

The court will make the necessary arrangements for the evidence given to be recorded on suitable media for later playback at trial.

What a video record might contain

A video record of a witness' evidence may contain either:

- the witness' evidence-in-chief; or
- the witness' evidence-in-chief, cross-examination and re-examination.

Later cross-examination on a video record

Where the witness has given only evidence-in-chief by video record, the video record will be played before any supplementary evidence-in-chief, cross-examination and re-examination occurs at trial. The witness may be present either in the place of hearing or in the remote site for this supplementary evidence-in-chief, cross-examination or re-examination.

The presiding judicial officer or Registrar must give directions under s105(2) Evidence Act as to the manner in which cross-examination and re-examination of the witness is to be conducted.

Part 6 / In the event of problems

- Emergencies** In the case of an emergency at the place of hearing, either the presiding judicial officer or Registrar or a court staff will advise the remote site that the AVL will be terminated. When the emergency is over court staff will contact the remote site and arrange the continuation of the AVL, unless the presiding judicial officer or Registrar gives other directions.
- In the case of an emergency at the remote site that requires the evacuation of the building, the participant being linked or court staff will advise that they need to leave. The AVL will be terminated by the court staff at the place of hearing. When the building can be reoccupied, the technical staff at the remote site will make contact with the court staff at the place of hearing. The AVL may be re-established and the hearing continued, or the presiding judicial officer or Registrar may give other directions.
- Technical failure** In the event of technical failure while preparing for, or during, a hearing, court staff at the place of hearing or remote site (if a courtroom) will contact Ministry of Justice IT Service Desk.
- If the failure involves permanently installed equipment, Ministry of Justice IT Service Desk will direct the call to Evidence Technology for resolution. For locally installed equipment the local provider should carry out the initial diagnosis and, if the issue cannot be resolved, a call should be logged with Ministry of Justice IT Service Desk. The hearing, if begun, may be temporarily adjourned by the presiding judicial officer or Registrar.
- If it is determined that the link cannot be restored within a reasonable time, court staff will, after consultation with the presiding judicial officer or Registrar, inform participants at both locations that the hearing has been adjourned / re-scheduled.