



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

Protocol for remote participation by the defendant in custody in High Court criminal proceedings

Chief High Court Judge – 18 July 2025

A: Introduction and overview

1. Significant use is already made of remote participation technology in the courts. The Judiciary supports enabling greater use of remote participation in appropriate cases across the civil, family and criminal jurisdictions. Remote technology, used well, has the potential to enhance access to justice, and to support the efficient and timely determination of court proceedings.
2. The *Digital Strategy for Courts and Tribunals* published by the Chief Justice in March 2023 identifies implementation of a high quality, reliable, and flexible system for remote participation as one of the Judiciary's four highest priority digital initiatives.
3. The better the available technology, facilities and processes, the wider the circumstances in which remote participation will be an available option consistent with the interests of justice.
4. Considering remote participation by the defendant in custody involves addressing two questions:
 - a. What is necessary to achieve fair and effective remote participation by the defendant in custody? Providing for fair and effective remote participation requires more than good quality, dependable technology. It also requires facilities (such as the room used by the defendant) and processes (such as access to a lawyer before, during and after the appearance) to be at an appropriate standard. Part D of this protocol specifies the key features of fair and effective remote participation by the defendant in custody.

- b. Assuming those requirements are met, when is it appropriate for the defendant to participate in the hearing remotely? Part E of this protocol identifies the types of appearances where registries, Police and Corrections can proceed on the basis that the default setting is remote participation. These default settings are subject to the key features of fair and effective remote participation described in Part D being provided, and the judgment of the judicial officer as to the interests of justice in each case.¹
5. This protocol operates within the statutory framework of the Courts (Remote Participation) Act 2010. This protocol does not constrain the exercise of judicial discretion to ensure a fair hearing in each case that is contemplated by that Act. However, this protocol responds to the practical need for greater guidance for all court participants about the way in which different types of hearing are likely to be conducted, in the interests of justice and in light of the various factors identified in the Act, other things being equal. Where in a particular case a judicial officer reaches a different view, having regard to all relevant factors in that case, that view must and will prevail over the generic default outcomes described in the protocols.

B: General context

6. A defendant to category 4 criminal charges which must be heard in the High Court will usually make their first appearance in the High Court within about three weeks from their first appearance in the District Court. In these circumstances, the defendant will usually be in Corrections custody (with any questions as to bail to be determined in the High Court). Sometimes the defendant may be held in a secure mental health facility.
7. For protocol offences where it is determined that the trial court will be the High Court (pursuant to s 68 of the Criminal Procedure Act 2011), the trial may have progressed through some administrative stages in the District Court before it is transferred to the High Court. Some defendants to these proceedings may also be in Corrections custody.
8. For all these defendants, there is the potential to appear remotely when in the custody of Corrections.
9. Hearings from Corrections custody are scheduled events where participants should have the ability to prepare. Corrections will also have prior notice of such events (often several weeks in advance).
10. Facilitating remote participation requires adequate resourcing at the Corrections custody facility. When a change is made from in-person appearance to remote participation the operational complexity that is normally handled solely at the courthouse needs to also be supported at the custody facility (facilitating access to a lawyer, access to documents and

¹ An example that arises regularly is health and wellbeing concerns. Where Corrections staff believe that arranging for a defendant to appear in person would entail demonstrable safety risks this can be, and regularly is, raised with the judicial officer.

initial disclosure, legal aid arrangements, facilitating calls needed to settle bail arrangements, bail bonds, standing the matter down and resuming, and so on). This is illustrated in the key features of remote participation described in Part D.

11. There are limits to the appropriate use of remote participation, even with a high-quality system, as core standards of justice are in play:
 - a. Some kinds of hearing require the defendant to be present in person, to enable the court to conduct a fair and effective hearing;
 - b. Some people need to appear in person to get a fair hearing – for example because they need an interpreter or communication assistant or are young or vulnerable.
12. Given the imperfect state of the available information on the needs of vulnerable defendants and their ability to participate in a hearing by remote participation or in person, a precautionary approach is required. The current way in which that uncertainty is managed is by preferring that the judicial officer meet the defendant in person in court, and that is carried through into this protocol. However that general default of an in-person appearance will not be optimal for every person with a vulnerability who is being held in custody, and over time with better information and resourcing a more sophisticated approach needs to be developed.
13. Further practical constraints are the challenges in precisely defining the vulnerabilities that impact on a defendant's ability to participate fairly and effectively in a hearing by remote participation, and identifying who makes that assessment. The assessment needs to be purposive, not technical – the question is whether there is confidence that an individual can fairly and effectively participate in the hearing that is about them, remotely.
14. As a matter of practice, this assessment of the defendant will be made face to face by the Corrections officer facilitating an AVL appearance, with input from the defendant's lawyer who will have engaged with the defendant over AVL or audio. Concerns have been expressed about this, and we invite Corrections to give greater visibility to sector participants of the training their staff receive in this area.
15. More work needs to be done on the interests of vulnerable defendants in this area. What we do know is that it is important to have in mind the sequence of discussions and interactions with a vulnerable defendant, before, during and after an appearance, and the defendant's lawyer plays an important role here.

C: Implementation

16. A significant volume of appearances from Corrections custody are currently done over AVL. The default settings for the use of remote participation described in section E of this protocol are not expected to materially alter the volume of AVL appearances from Corrections custody, at least initially. The principal change will be the introduction of

more detailed expectations as to the standard of processes, facilities and technology that Corrections provide.

17. Appearances from Corrections custody are scheduled events. The defaults in this protocol will be implemented by court staff when scheduling the defendant's next required appearance. Requests by the defendant or defence counsel for a departure from the default can be made orally when the next appearance is being scheduled, or by communication with the registry. Formalities can be kept to a minimum, the objective is to draw the attention of the judicial officer to the particular circumstances of the defendant, the nature of the next hearing, and relevant statutory considerations.
18. Concerns have been expressed as to the consistency of the current processes, facilities and technology provided by Corrections with the standards set in this protocol. The implementation of this protocol will be monitored by a group chaired by a judge and comprising of senior Police, Corrections, Ministry of Justice, and legal profession representatives. Information on performance against standards will be gathered, and shortcomings identified and corrected. If performance by Corrections in a particular area is consistently short of the protective standards described in this protocol then the judicial officers in that area will need to consider whether use of remote participation remains in the interests of justice.
19. The Judiciary will keep this this protocol under active review. Some areas in particular are worth highlighting.
20. First, as noted above, more work needs to be done on the interests of vulnerable defendants in this area.
21. Second, it is important that a defendant in custody be seen, heard, and understood throughout the criminal justice process. Focusing on the quality of the defendant's participation, given the nature of the hearing in question and the defendant's individual characteristics, is consistent with that objective. There is also a need to consider how the court interacts with the defendant over AVL and other technology.
22. Third, the context for protocol includes current constraints experienced by Corrections, Police and the courts. In the current environment there is a value in setting clear expectations and monitoring performance over time. The judiciary expects that processes, facilities and technology will improve over time and will work with agencies to achieve that.
23. This is an area that must continue to develop, and will do so. Throughout, judges will continue to exercise their judgment to ensure a fair hearing in each case.

D: Key features of fair and effective remote participation by the defendant in custody

Process – Corrections custody	
Objective	Specifications
<p>A defendant in relation to whom remote participation is being considered while in Corrections custody may have been through a screening assessment at earlier stages in the criminal process (namely their first appearance in the District Court, or in relation to protocol offences where the trial court has been determined to be the High Court, at earlier stages of the proceedings in the District Court).</p> <p>There remains a need to check the condition of the defendant has not deteriorated while in custody such that they can no longer fairly participate by remote participation.</p>	<p>Where a defendant has been identified as being in one of the categories where remote participation is inappropriate then all appearances will be in person.²</p> <p>Where a defendant has been assessed as capable of participating in hearings remotely, the Corrections officer is to alert the court if there is something about the defendant's presentation or behaviour to suggest they cannot fairly and affectively participate by remote participation.</p> <p>Defence counsel to meet the defendant in person or by remote participation prior to every court event at which the defendant is to appear (bearing in mind that following a defendant's first appearance in the High Court, the defendant's appearance at subsequent administrative events is often excused) and bring any concerns to the attention of the court.</p>
<p>Where a defendant is to appear at a court event in the High Court by remote means, the defendant must have the ability to talk to a lawyer before that event.</p>	<p>Where the defendant or their lawyer gives 3 days' notice, Corrections to provide for a minimum of 15 minutes discussion between defendant and lawyer after all necessary documentation has been received and prior to the appearance. This discussion can be by AVL or audio (i.e. telephone). Where less than 3 days' notice is given, Corrections to accommodate the request where possible.</p>
<p>Where a defendant is to appear at a court event in the High Court by remote means, the defendant must be able to look at documents when necessary and discuss them with their lawyer, as they would when appearing in person (for</p>	<p>Corrections to provide documents to the defendant and their lawyer at the same time as would occur for in-person appearances.</p> <p>Corrections to facilitate defence counsel getting other documents to the defendant prior to the pre-hearing discussion with their lawyer.</p> <p>Corrections to provide a process to confirm defendant and their lawyer have the same document, and the</p>

² This will have happened while the defendant's proceeding was in the District Court. The categories are youth, requires an interpreter, or may be suffering from mental illness, intellectually disabled, affected by a neuro-disability that inhibits participation over video link, or in need of a communication assistant. See the [District Court criminal protocol](#) for process requirements in that court. Conversely, some of these categories may mean a remote appearance is more appropriate. This must be determined by a judicial officer on a case-by-case basis.

example, disclosure, bail material, evidence).	<p>same version.</p> <p>Corrections to provide a process for assessing that the defendant has the ability to read and understand documents (checking for dyslexia , literacy, vision disability etc).</p> <p>Corrections to provide a process for the defendant to sign documents they would otherwise sign at the court.</p>
The defendant must understand the nature of what is happening, and their rights during the hearing.	<p>The defendant must be told before every appearance by them:</p> <ul style="list-style-type: none"> • that they are entering the custody of the court • they will be visible in the courtroom • what to do if they experience technical difficulties • that they are able to talk to their lawyer in private during proceedings, and how they go about alerting their lawyer and the judge if they wish to do so
The judge must have the ability to pause the hearing of a matter and “stand it down” for further discussions between the defendant, their lawyer, and where appropriate the prosecutor, and return to the hearing the same day.	<p>The defendant must have the means to effectively alert their lawyer that they want to talk to them.</p> <p>Where the defendant wishes to talk to their lawyer, or their lawyer wishes to talk to them:</p> <ul style="list-style-type: none"> • Corrections provide for a minimum of 15 minutes discussion between defendant and lawyer by AVL or audio • The appearance resumes later the same day
The defendant must have the ability to talk to a lawyer after the hearing, the same day.	<p>Where the defendant or their lawyer gives 3 days’ notice, Corrections provide for a minimum of 15 minutes discussion between defendant and lawyer. This discussion can be by AVL or audio. Where less than 3 days’ notice is given, Corrections to accommodate the request where possible.</p>
Facilities	
Objective	Specifications
The room used by the defendant to participate remotely is part of the courtroom, and when the defendant appears remotely they are in the custody of the court. This needs to be clear to the defendant.	<p>The design of the room used for remote participation must provide a clear visual distinction from the facility within which the defendant is based, which makes it clear that the defendant is transitioning into the courtroom.</p> <p>Remote appearance rooms located within prisons should include design cues of the courtroom, for example, a sign on the door as they come in.</p>
The hearing can be conducted free of distraction, and the	The room must be soundproof.

judge has control over who is able to hear the proceedings.	
Technology	
The defendant must be able to see everything in the courtroom clearly.	The hardware and the connection are of high quality and the defendant can clearly see the judge, the prosecutor, their lawyer, any co-defendants, the body of the court, and the public gallery.
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The judge must be able to see the defendant clearly.	The camera should be placed so that it gives a fair impression of the defendant, at a face-on angle with the defendant being the focal point of the image. The combination of the installations in the courtroom and the remote participation site should substantially replicate eye contact between the judicial officer and the defendant.
The judge must be able to pick up on body language and non-verbal communication.	Camera angles should frame the head to mid-torso of the defendant to enable non-verbal gestures to be visible from the courtroom.
All hearings are recorded.	The technology used must connect to the court's audio recording system, or to another high quality audio recording system acceptable to the court.

E: Default settings for remote participation by the defendant in custody

Default settings

24. Where remote participation as described in Part D is available, the following hearings can be planned on the basis that, where the defendant's appearance at the hearing has not been excused (or if their appearance has been excused, but the defendant wishes to appear at the hearing), by default the defendant in Corrections custody will appear remotely:
- a. Name suppression hearing
 - b. Case review hearing
 - c. Trial callover
 - d. List hearing of a case management or non-substantive nature
 - e. Bail hearing (or appeal, where leave has been granted to appear)
 - f. Pretrial hearing where no evidence from the defendant is to be called
 - g. Disclosure conference
 - h. Application for ISO

- i. CP(MIP) fitness hearing not disputed
25. The following hearings can be planned on the basis that by default the defendant in Corrections custody will appear in person:
- a. The defendant's first appearance in the High Court
 - b. Entry of not guilty plea (if not entered at first appearance in the High Court)
 - c. Entry of guilty plea
 - d. Pretrial hearing where evidence from the defendant is to be called
 - e. Any hearing at which the allegation of guilt or involvement is determined
 - f. Disputed facts hearing
 - g. Sentence indication
 - h. Sentence
 - i. Application for ESO
 - j. CP(MIP) disputed fitness hearing
 - k. CP(MIP) pretrial hearing on availability of insanity defence
 - l. CP(MIP) disposition hearing
26. Where a hearing is for multiple purposes, if one of those purposes is in person by default, then the default for that hearing is in person.

Commentary

27. These defaults reflect the fact that even with a fully healthy defendant and a well-designed, well-functioning remote participation system, there will be some kinds of hearings where it is inappropriate for the defendant to participate remotely. Reasons for this include:
- a. constitutional / public interest considerations: it is important that some things are done face to face, in public, and there is a value in justice being seen to be done in the community, at the local level
 - b. dignity: for the purposes of individual dignity – the dignity of the complainant, the complainant or a deceased's family, and the dignity of the defendant
 - c. limitations on the ability to engage remotely
 - d. the importance of the court setting in conveying gravity, for example when the court is hearing evidence or imposing a sentence
 - e. the present reality that there is reduced scope for engagement and resolution when the defendant is appearing remotely

- f. the desirability in some instances of connecting the defendant to others at the courtroom
- 28. The opportunities and limits of remote participation more broadly are discussed in [Objectives, principles and protocols on the use of remote participation in court proceedings](#).
- 29. The defaults specified in this protocol depend on Corrections delivering the key features of remote participation, including facilitating access to the defendant by their lawyer so that the lawyer can be fully briefed ahead of any hearing. This is particularly critical for contested matters such as bail and name suppression.

Appendix: default settings

Corrections custody	
In-person	Remote
Vulnerable defendants	Name suppression hearing
First appearance in the High Court	Case review hearing
Entry of plea (if not done on the first appearance in the High Court)	Trial callover
Pretrial hearing where evidence from the defendant is to be called	List hearing of a case management or non-substantive nature
Any hearing at which the allegation of guilt or involvement is determined	Bail hearing (or appeal where leave has been granted to appear)
Disputed facts hearing	Pretrial hearing where no evidence from the defendant is to be called
Sentence indication	Disclosure conference
Sentencing	Application for ISO
Application for ESO	CP(MIP) fitness hearing not disputed
CP(MIP)s disputed fitness hearing	
CP(MIP)s pretrial hearing on the availability of insanity defence	
CP(MIP)s disposition hearing	