



THE HIGH COURT OF NEW ZEALAND TE KŌTI MATUA O AOTEAROA

Protocol for remote participation in High Court civil proceedings

Chief High Court Judge – 20 March 2025

Cover Notes

- 1 This protocol sets out the default modes of appearance for certain categories of hearing in civil proceedings in the High Court. While this protocol sets a default approach for each type of hearing, how a hearing proceeds is ultimately a matter for determination by the presiding judge.¹ That determination should be made having regard to the circumstances of the hearing, relevant legislation and the Objectives and Principles on the use of Remote Participation in Court Proceedings.
- 2 Where, in the second column, the protocol specifies a default of “in person”, this means that the judge, registrar and all counsel/parties will appear at the hearing in person. Where the default is “remote”, this will ordinarily mean that the judge and the registrar are in court or chambers, with some or all other participants appearing by remote means.²

¹ The term ‘presiding judge’ is used consistently throughout the protocol to refer to the judicial officer presiding over the hearing. This term is used because in most situations covered by the protocol the presiding judicial officer will be a judge. However, where another judicial officer is authorised by statute to preside over one of the types of hearing covered by the protocol, the protocol applies equally to them, and the term ‘presiding judge’ should be read to include these other judicial officers.

² The presence of the judge and registrar in court facilitates the principle of open justice, the recording of the hearing, as well as meeting the requirement that some hearings are held in “open court” (for example, liquidation applications under High Court Rules 2016 (HCR), r 31.2; summary judgment applications under r 7.36). Nevertheless, for matters to be heard in chambers (see item (6) of the protocol for the meaning of a “chambers hearing” and associated rules), or any hearing listed in s 20 of the Senior Courts Act 2016, it remains open to the presiding judge to also appear remotely, for example, from his or her chambers. In such circumstances, consideration must be given to facilitating media access to such a hearing (reflecting that media are entitled to be present at a chambers hearing), and if the hearing is not a chambers hearing, public access to the hearing. If a judge is considering presiding at a hearing by remote means, r 10.25 sets out certain pre-conditions to that mode of hearing, including that the judge is satisfied that appropriate technology is available to all parties, and that any documents necessary for the hearing can be viewed at all relevant locations.

- 3 Remote participation means participation by Audio-Visual Link (AVL), unless specified (or directed) otherwise.
- 4 Where a hearing (other than one at which evidence is to be given) is to be conducted in person by default, counsel or a self-represented litigant who is located outside of the centre in which the hearing is to take place can expect that any application by them to appear at the hearing by remote means is likely to be granted.³
- 5 The protocol does not address appearances by witnesses at a hearing, and whether the witness must give evidence in person or may do so by remote means. These matters are case and witness specific, and are governed by the Evidence Act 2006 (part 3, sub-part 5).
- 6 The protocol does not address list and similar appearances in circuit courts.⁴ The mode of hearing (including whether, for example, the judge is in the local court or presides by remote means from another court) is appropriately determined by the presiding judge. This will need to take into account a number of factors, including the availability of appropriate remote technology, and the number and nature of matters to be called in the list.

³ This is ultimately for determination by the presiding judicial officer, having regard to the interests of justice in the particular matter.

⁴ That is, courts other than Auckland, Wellington and Christchurch.

Type of hearing	Default approach for this type of hearing	Comments and explanatory notes	Legislation/Rules to be considered
1) First case management conference (if held).	Remote - Telephone.	First case management conferences are often vacated if the parties comply with all requirements of first case management memoranda. If a first case management conference is scheduled in a list, see (4) below. A first case management conference in a complex commercial matter with multiple parties will likely justify an in-person hearing.	Civil proceeding under the Courts (Remote Participation) Act 2010 (CRPA). AVL may be used in civil proceedings, applying the criteria in s 5 (CRPA, s 7(3)).
2) Subsequent case management conferences.	Remote - Telephone.	If scheduled in a list, see (4) below. See (1) above for when an in-person conference may be appropriate.	CRPA – see (1) above.
3) Issues conference.	In person.	Will involve discussion and engagement between the Judge and counsel/the parties, and between counsel/the parties, that is likely to be more productive if conducted in person.	CRPA – see (1) above.
4) List appearance (Duty Judge List; Summary Judgment and Caveats List; Civil Appeals List; Criminal Proceeds List; Judicial Review List, Chambers List (Associate Judge).	In person, but with remote participation for a participant who requests this in advance, by AVL or audio only link (AL).		CRPA – see (1) above.

Type of hearing	Default approach for this type of hearing	Comments and explanatory notes	Legislation/Rules to be considered
5) Company Liquidation List, Bankruptcy List, Statutory Demand List, Miscellaneous Companies List.	In person, but with remote participation for a participant who requests this in advance, by AVL or audio-only link (AL).	The default reflects the particular nature of these lists, including the number of matters called in them; that in the event of non-appearance by a respondent the hearing can be dispositive; and the need for documents to be provided to the presiding judge at the hearing (for example, up to date certificates).	HCR 31.2 – hearing of liquidation applications must be held in open court (unless a Judge directs otherwise). CRPA – see (1) above.
6) Hearing of interlocutory application (affidavits, no oral evidence).	<p>For dispositive applications (summary judgment, strike-out, security for costs) and liquidation applications: In person.</p> <p>For all other applications:</p> <ul style="list-style-type: none"> • Hearing of half day or less: In person or remote at presiding judge’s direction. • Hearing of more than half day: In person. 	<p>The presiding judge may determine that an in-person appearance would facilitate a party’s access to justice (for example, lack of access to suitable technology, language or communication difficulties may preclude a remote appearance).</p> <p>Where a remote appearance is appropriate, the presiding judge may permit a party to appear by AL if they do not have access to suitable AVL technology.</p> <p>If oral evidence is to be called at an interlocutory hearing, the hearing ought to proceed in person.</p>	<p>HCR, r 7.36 – hearing of applications for summary judgment must be held in open court; HCR 31.2 – hearing of liquidation applications must be held in open court (unless a Judge directs otherwise). HCR, r 7.34 (1) an interlocutory “hearing ... must be heard in chambers unless a Judge otherwise directs”; HCR r 7.34(2) “On the Judge’s own initiative or on the application of 1 or more of the parties, the Judge may conduct a hearing in chambers by telephone or video link.”</p> <p>HCR 1.3 – a “hearing in chambers” is “a hearing which takes place in</p>

Type of hearing	Default approach for this type of hearing	Comments and explanatory notes	Legislation/Rules to be considered
			<p>circumstances in which the general public is not admitted, except with the leave of the Judge". Pursuant to HCR 7.35, particulars of a hearing in chambers may be published, unless a Judge or Registrar otherwise directs.</p> <p>In practice, chambers hearings are held in court, with the Judge sitting "in court for chambers".</p> <p>Media are entitled to be present at a chambers hearing, unless a Judge orders otherwise (Thompson v Invercargill City Council [2020] NZHC 13 at [13].</p> <p>CRPA – see (1) above.</p>
7) Judicial settlement conference.	In person.	An in-person conference facilitates settlement.	HCR, r 7.79(1) — a judicial settlement conference is "in chambers". CRPA – see (1) above.
8) Pre-trial conference.	Remote - Telephone.		CRPA – see (1) above.
9) Substantive hearing without oral evidence (e.g., judicial	In person.	These are dispositive hearings.	CRPA – see (1) above.

Type of hearing	Default approach for this type of hearing	Comments and explanatory notes	Legislation/Rules to be considered
review, hearings commenced as originating application).		<p>Circumstances in which the default may be departed from include where counsel or a self-represented litigant is located in a centre other than that in which the hearing is taking place; or where a party's personal circumstances mean a remote appearance is appropriate (such as a disability makes an in-person appearance difficult).</p> <p>For Trans-Tasman competition proceedings, HCR r 28.12 provides that "if satisfied that the necessary equipment and facilities are available" the Judge may direct that counsel "may make submissions from Australia by video link or telephone conference".</p>	
10) Trial with oral evidence.	In person.	These are dispositive hearings, usually of some length, and involving oral evidence.	CRPA – see (1) above.
11) Appeal hearing.	<p>Hearing half day or less: Remote.</p> <p>Hearing of more than half day: In person.</p>		CRPA – see (1) above.
12) Application for costs	On the papers, unless otherwise directed.		CRPA — see (1) above.

**Justice Sally Fitzgerald
Chief High Court Judge**

Date	20 March 2025
Signed by	Chief High Court Judge Sally Fitzgerald
Review date	20 March 2026