



Operating Guidelines Senior Courts AVL Court to Custody

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1. Introduction

1.1 **Background**

Audio Visual Links (AVL) refers to technology that uses audio-visual conferencing to allow one or more people to participate remotely in a court proceeding. These guidelines have been developed for Audio Visual Links between Courts and prisons or Youth Residences or forensic/psychiatric hospitals (“AVL Court to Custody”).

AVL as discussed in this document is specific to courtrooms and technology which are designed to meet the needs of sections 5 and 6 of the Courts (Remote Participation) Act 2010. The technology facilitates a link between the courtroom and a Custody Booth in a custodial facility (either a prison or Youth Residence or forensic/psychiatric hospital with specifically designed AVL prisoner booths). Most court houses will have a dedicated AVL Court Room for AVL Court to Custody hearings. Mobile Extended Trolleys can also serve the same purpose when located in a court room.

The Courts (Remote Participation) Act 2010 came into force on 7th July 2010 and was amended on 1 March 2017 with the Courts (Remote Participation) Act 2016. The legislation establishes the presumption that AVL is to be used for criminal procedural matters where the defendant is in custody and the AVL facilities are available. The legislation also allows AVL to be used for hearings where evidence is heard if the judicial officer or Registrar deems its use appropriate for the appearance (taking into account whether the parties consent) and for sentencing matters. The Act states that AVL may not be used for the appearance of the prisoner in a trial that determines his or her guilt or innocence unless the defendant consents to that use.

Based on clinical perspectives provided by specialists of the Hospital and the Regional Forensic Psychiatry Services unit of your Regional District Health Board, the District Court judiciary support the use of mentally impaired persons appearing by AVL where appropriate safeguards are in place to ensure those that are likely to have a negative reaction to the use of this technology are excluded.

With more courts coming onto the IP network and the introduction of VMRs (virtual meeting rooms), the expectation is that we will see an increase in requests to use AVL facilities (prison booths or instructions suites). The intention is for non-AVL courts will need to request a booking through the local AVL court. This is not intended to be used externally but rather to support a consistent internal process which is effectively in existence already.

1.2 **Context**

In these guidelines the reference to the ‘Court’ is the courtroom in which the AVL hearing is scheduled. The term ‘Remote location’ refers to the place where the person appearing by AVL is located.

The term prisoner covers appearances in District Courts, Senior Courts and Special Jurisdictions where the defendant, appellant, respondent, applicant is held in a custody at a remote location.

Proceedings conducted by way of AVL will proceed as a standard court appearance with the use of standard protocols and procedures. There should not be any adverse view or conclusion drawn against a prisoner appearing by AVL. A judicial protocol (insert link here) has been developed to cover all sites and hearings.

1.3 Authority to Use

- AVL may be used under statutory authority or inherent powers where no statutory authority exists.
- Section 103 of the Evidence Act 2006 allows for applications to be made to the court (the Supreme Court, the Court of Appeal, the High Court, any District Court, Family Court or Youth Court) for witnesses to give evidence in an alternative way. Alternative ways are outlined in section 105. Those which could be facilitated by AVL include a witness giving evidence:
 - From an appropriate place outside the courtroom, either in New Zealand or elsewhere; or
 - By a video record made before the hearing of the proceeding.
- Courts (Remote Participation) Act 2010

Section 5 General criteria for allowing use of audio-visual links

A judicial officer or Registrar must consider the following criteria when he/she is making a determination under this Act, whether or not to allow the use of AVL for the appearance of any participant in a proceeding:

- (a) The nature of the proceeding;
- (b) The availability and quality of the technology that is to be used;
- (c) The potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including:
 - (i) the reliability of evidence presented to the court; and
 - (ii) the level of contact with other participants;
- (d) Any other relevant matters.

Section 6. Additional criteria for allowing use of audio-visual links in criminal proceedings

A judicial officer or Registrar must also consider, when he/she is required to determine under this Act whether or not to allow the use of AVL for the appearance of any participant in a criminal proceeding, the potential impact of the use of the technology on the

effective maintenance of the right of the defendant to a fair trial, and on his or her rights associated with the hearing, and, in particular:

- (a) The ability of the defendant-
 - (i) to comprehend the proceedings; and
 - (ii) to participate effectively in the conduct of his or her defence; and
 - (iii) to consult and instruct counsel privately; and
 - (iv) to access relevant evidence; and
 - (v) to examine the witnesses for the prosecution; and
- (b) The level of contact the defendant has with other participants;
- (c) Any adverse impression that may arise through the defendant or any other participant appearing by means of AVL,
- (d) And whether that adverse impression may be mitigated.

Section 10. Judicial officer or Registrar may vary or revoke determination

- (1) A judicial officer may at any time vary or revoke a determination to allow the use of AVL for the appearance of a participant if the judicial officer considers that any reason for the determination, with respect to the criteria in **section 5**, or **sections 5 and 6** (as the case may be), no longer applies.
- (2) A Registrar may at any time vary or revoke his/ her determination, or the determination of another Registrar, to allow the use of AVL for the appearance of a participant if the Registrar considers that any reason for the determination, with respect to the criteria in **section 5**, or **sections 5 and 6**, as the case may be, no longer applies.

Section 11. Judicial officer or Registrar may make direction

A judicial officer or Registrar who makes a determination under this Act in relation to the use of AVL for the appearance of a participant in a proceeding may make a direction in accordance with that determination.

2. General

2.1 *Emergencies*

- In Court:

In the case of an emergency at the Court, either the presiding judicial officer or the court Registrar will advise the remote location that the AVL will be terminated. When the emergency is over the court taker will contact the remote location AVL coordinator by phone and arrange the continuation of the AVL, unless the presiding judicial officer issues a direction.

- In Prison:

In the case of a lock down or an emergency at the prison, a corrections officer will advise the presiding judicial officer (by entering the booth) that they need to leave. The AVL will be terminated by the Court. When the building can be reoccupied, the prison AVL coordinator will contact the Court. The AVL may be re-established and the hearing continued, or the presiding judicial officer may give other directions.

- In Hospital:

In the case of a lock down or an emergency at the Hospital, a staff member will advise the presiding judicial officer that they need to leave. The AVL will be terminated by the Court. When the building can be reoccupied, the hospital AVL coordinator will contact the court. The AVL may be re-established and the hearing continued, or the presiding judicial officer may give other directions.

2.2 Technical Failure

In the event of technical failure while preparing for, or during, a hearing, court staff will, in **all** instances contact the service desk on ext. 50600 or 0800 425 555.

Staff must ensure that they give the service desk all the information so the correct priority can be given to the job i.e. court required that day, time before court is due to start. For the definitions around priorities see priority definitions for service desk (appendix 1).

Staff should **not** be contacting Kodum directly.

Response Times Guide	
Remote	On site
P1 resolved within 30 mins	P1 resolved within 2 hours
P2 resolved within 30 mins	P2 resolved within 4 hours
	P3 resolved within 2 business days
	P4 resolved within 4 business days or as otherwise agreed

The hearing, if commenced, may be temporarily adjourned by the presiding judicial officer.

If it is determined that the link cannot be restored within a reasonable period of time (1 to 2 hours), court staff will, after consultation with the presiding judicial officer, inform the remote location that the hearing has been adjourned / re-scheduled. The remote location AVL coordinator will then inform the prisoner/s in person of the outcome.

If there is a technical issue prior to the appearance in court or in the Instructions Suite, court staff should contact the remote location AVL coordinator by phone and any other parties to explain the situation. If the problem is not able to be resolved in time for the hearing, other arrangements are to be made for an alternative time and date (if necessary) and the prisoner, counsel, police, on-site hospital staff and victim advisers should be advised.

2.3 Appearance by person in custody

Prisoners in custody will appear by AVL in a hearing for a criminal procedural matter unless directed otherwise by a judicial officer or Registrar or after an application.

The court will liaise with, counsel and the remote location regarding the appearances scheduled for the day to ensure the smooth running of the court. This will also include liaison regarding the order of the appearances.

2.4 Additional Links

The material in this document may not answer all the practical questions which could arise regarding the use of AVL. If you have a question that is not answered by this guide please refer to:

- information provided on the Ministry of Justice website (<http://jet.justice.govt.nz/operations/performance-and-improvement/audio-visual-services>) which includes links to the following material:
 - Judicial Protocol (2012)
 - Court to court and instructions suite booth (witness appearance)
 - Video Conference Court (Non AVL) booking Prison booth.
 - AVL prison Booth Prioritisation Guide
 - VC map

3 In Court

3.1 Display screen (In Court)

At the Court the presiding judicial officer will see the prisoner at the remote location. At some remote locations there may be a requirement for the prisoner to be accompanied by officer or staff member. Please refer to judicial protocol (insert link here).

On the screens in the courtroom participants will be able to see the prisoner. These screens are able to show up to four images at the same time if needed, including documents and other forms of evidence.

3.2 Display screen (remote location)

At the remote location the monitor can display four images which are preset, these can include the following:

- The Judge or judicial officer
- The Registrar
- The Prosecutor
- Defence Counsel
- Public gallery
- Witness
- Co-accused.

The monitor can also be set up to just show one or two images if required or directed by the judicial officer or Registrar.

3.3 “Last Minute” Handset

A handset is available for counsel in the courtroom and can be used during a hearing for any last minute instructions. The handset is only to be used for unforeseen or incidental requests from the prisoner during the hearing and only after permission is given by the Judge. Once the handset is lifted

it will disable the feed (audio and visual) so privileged communications can occur between counsel and the prisoner. These communications will not be recorded or form part of the evidential transcription.

3.4 Attire

Court officials, judicial officers and counsel should wear standard court attire. The prisoner will have the option to appear in his or her own clothing or in prison or hospital issued clothing.

3.5 Testing and set up

Testing of both the equipment and the link must take place at the Court and the remote location prior to the scheduled time for the AVL hearing. Testing of the Instructions Suite should also occur on days it is being used.

This testing should be completed by the court taker and remote location AVL coordinator between 8am and 8.30am each day AVL is to be used.

Note: regular checks should be undertaken as to soundproofing quality of the seal on the bottom of the instructions suite door. If they are not dropping into place a job should be logged with property to have repaired.

3.6 Commencing hearing

The judicial officer will enter the courtroom prior to the AVL link being established. Standard court etiquette and procedures will apply, e.g. the prisoner will stand if required to do so by the court.

Judicial officers will follow the Judicial Protocol in relation to communications with the prisoner and process during the hearing.

3.7 Conclusion of hearing

At the conclusion of the hearing, the court taker will disconnect the call. This will be at the end of the hearing or at the request from judicial officer.

3.8 Court Outcome E-mail

At the end of the hearing, the Court will e-mail the Remote location AVL Coordinator with the result. The Subject line of the email should include the prisoner's

- Name
- Remand Status (using the relevant abbreviation)
- Next hearing date

EXAMPLE: Joe Bloggs - RIC - 21/08/2011

Remand status	Abbreviation
Remand in Custody	RIC
Remand on Bail	ROB
Stood down	SD
Sentenced	SENT

This email is to notify Remote location AVL coordinator for internal management purposes only. The prisoner's status should not be acted on until the official documentation has been received from the Court.

3.9 *Problematic prisoner in Booth*

If the prisoner fails to comply with any direction, or is acting inappropriately, the judicial officer can direct the court to disconnect the link. The court taker will then contact the remote location coordinator directly in the first instance and advise them of the outcome.

If the remote location has any safety concerns for the prisoner they may make application to the court to be present in the booth during the hearing. In extreme situations i.e. violence or self harm the remote location AVL coordinator may enter the booth and disconnect the link using the remote control.

3.10 *Recording*

The audio component of the hearings in the Court will be recorded for the purpose of standard evidential transcription. There will be no recording of the visual component of the hearing.

3.11 *Oaths and Affirmations*

If required an Oath or Affirmations will be administered from the Court by the court registrar (Court taker), a bible or an alternative (e.g. Koran or Talmud) will be available at the remote location.

3.12 *Interpreters*

If an AVL participant requires an interpreter, the interpreter will be located in the courtroom depending on availability of the camera they will either stand next to counsel or in the witness box. The court taker will administer the oath or affirmation to the interpreter, as per standard court protocol.

3.13 *Correspondence*

If a prisoner would like a letter or document to be given to a Judge they will need to provide this to custodial staff the day before or before 8:00am on the morning of their appearance.

The remote location AVL coordinator will then scan the letter or correspondence to the court. This should happen by 8:00am on the morning of the hearing.

The court will then pass the letter or document on to the prisoner's counsel who will, if appropriate, advise police prosecutions and give the letter or document to the Judge.

3.14 *Public access*

Unless the presiding judicial officer directs otherwise, members of the public may be present in the courtroom during the AVL appearance.

4 Media

4.1 Applying for in-court media coverage

The process for applying to access to the AVL feed of the prisoner is the same as the process for in-court media coverage. This process is set out in the Media Guide for Reporting Courts and Tribunals Edition 3.1, see: <http://www.justice.govt.nz/publications/global-publications/m/media-guide-for-reporting-the-courts-and-tribunals-edition-3.1>.

If an application is granted for access to the AVL feed of the prisoner, the media will be able to access the live feed (audio and visual) from plugs located in the courtroom.

4.2 General

- Courtroom Courtesy still applies as set out in the Media Guide for reporting the courts and tribunals edition 3.1.
- Checks should still be made on each occasion in relation to suppression
- Standard conditions for television coverage still apply as set out in schedule 2 of the media guide for reporting the courts and tribunals edition 3.1.
- The AVL feed will not be recorded by the court so the Criminal Proceedings (Access to Court Documents) Rules 2009 does not apply.
- Press sheets will be available for one month after the first appearance within the registry.
- Links can only be established and recorded if an application for in court coverage has been granted by the judicial officer.

4.3 Access to Feed

Once a media application has been granted the media will be able to set up in court prior to the judicial officer arriving.

When the case is called the court taker will enable the media feed on the touch screen. Once the case is finished the feed will be disabled again.

5 Instruction Suites

5.1 Communication with counsel

A means of communication between counsel and prisoners at the remote location will be made possible with the AVL Instructions Suite. The suite is booked through the court and usually in 15 minute slots.

The key requirement for these communications is privacy with both ends of the conversation being secure and private. As noted previously these communications are not recorded.

Due to time restraints it will be expected that parties keep to the timeslot allocated as there will be no leeway to extend links.

Preference for prisoners in Hospital is for a face to face meeting however a link through the Instruction Suite can be arranged where a face to face visit is not appropriate or possible. If counsel wish the communication with a prisoner who is in hospital to be via AVL, the prisoner's clinician must verify that the patient's mental wellness is sufficient to be left alone in the AVL booth. During an AVL link a nurse will be stationed outside the booth to ensure the AVL link proceeds safely and in the event safety is an issue, the nurse will arrange for the link to be stopped.

On the occasions that paper work is required to be seen by the prisoner in the remote location, counsel must give this to the court as soon as possible. This will be scanned to the remote location AVL coordinator and handed to the prisoner. At the end of the instructions suite session the remote location AVL coordinator will scan the signed copy and post the originals to the court.

5.2 *Other Authorised Parties*

To assist with the progression of a case there may be a requirement of other authorised parties to use the Instruction Suite to communicate with a prisoner or witness.

Authorised parties include Police officers, Community Probations Services, Restorative Justice Coordinators or other court representatives for the purpose of completing reports and assessments or taking statements. Bookings are to be made with the local court with priority being given to cases with hearings due within 24 hours of a booking.

Due to time restraints it is expected that parties keep to the timeslot allocated as there will be no leeway to extend links.

On the occasions that paper work is required to be seen by the prisoner in the remote location, the authorised party must give this to the court as soon as possible. This will be scanned to the remote location AVL coordinator and handed to the prisoner. At the end of the Instruction Suite session, the remote location AVL coordinator will scan the signed copy and post the originals to the court.

5.3 *Restrictions*

At no time is the AVL Instructions Suite to be used for personal communication.

The only persons allowed in the Instruction Suite are counsel or other authorised parties (listed above) who have booked time through the court. No family members, partners or associates of a prisoner are permitted.

To prevent unauthorised access, a PIN code or swipe card is required to enter the Instructions Suite.

5.4 Counsel obligations

It is the responsibility of counsel to notify the court if they no longer require a pre arranged timeslot in the Instructions Suite. This should be done as early as possible. If there is a technical issue with the Instructions Suite it is expected that counsel will advise the court immediately. On site managers or champions will be able to provide support and training material is located on the intranet and internet.

6 Remote Location

6.1 Contact

All communication with the prison will be done through the court taker or case manager and the prison AVL coordinator; this includes notification of problems or issues and movement of prisoners.

All communications with the Hospital will be done through the court and remote location AVL coordinator; this will include notification of problems or issues and movement of prisoners.

6.2 Security

Standard security procedures will be used for appearances by AVL. Confirmation of identification of prisoners will be carried out at the prison by checking prisoner ID cards and IOMS prisoner Details Report (process already used to ensure there are no misidentifications).

Confirmation of identification of prisoners and their movements to and from the AVL suite will be in accordance with Hospital protocols and practices to ensure there are no misidentifications.

6.3 Confirmation of Identity

The prison AVL coordinator must ensure that the movement practices and protocols are adhered to in the prison as per Prison Services Operations Manual, that is, ID must be checked before the prisoner is place in the AVL booth.

The hospital AVL coordinator must ensure that the movement practices and protocols are adhered to in the Mason Clinic, that is, ID must be checked before the prisoner is placed in the AVL booth.

7 Booking system/process

6.1 Court time slots

Court bookings can be made Monday to Friday between 9am and 4.30pm. Bookings will not be made at the prison or hospital during lock down times or movement times. It is expected that all parties keep to the booking times allocated.

6.2 *Court to court and Instructions Suite booking (Witnesses appearance)*

If a witness is required to appear in court via video conference (AVL) staff should contact the closest court with AVL (VC Map). They will allocate time to the AVL list.

The full booking process can be found [here](#).

6.3 *Video Conference Court (Non AVL) booking (Prison booth)*

If a prisoner is required to appear in court and is located at a prison with AV technology staff should contact the closest court with AVL (VC Map). They will allocated time and notify the prison of the booking.

The full booking process can be found [here](#).

Appendix 1: Priority definitions for service desk

Priority Guide	
Priority One	<p><i>Critical Impact</i></p> <p>An application, system, item of infrastructure or Service is down with critical impact on the Ministry's business. No bypass or alternative is available that is acceptable to the Ministry. This is applicable to where:</p> <ul style="list-style-type: none"> • Incident is causing an interruption or delay to a Session (in progress or impending). • The Session cannot continue until fixed.
Priority Two	<p><i>Severe Impact</i></p> <p>An application, system, item of infrastructure or Service is down, unusable or degraded with significant impact or potential critical impact on the Ministry's business. No bypass or alternative is available that is acceptable to the Ministry.</p> <ul style="list-style-type: none"> • Incident is causing an interruption or delay to a Session (in progress or impending). • The Session can continue until fixed.
Priority Three	<p><i>Some Operational Impact</i></p> <p>An application, system, item of infrastructure or Service is down, unusable or degraded which results in operational impact on one or several users, but no immediate impact on the Ministry's business.</p> <ul style="list-style-type: none"> • Incident is not causing an interruption or delay to a Session (in progress or impending). • Urgency is assessed by the Ministry as high.
Priority Four	<p><i>No Operational Impact</i></p> <p>Any Incident not covered by the other Priority Level categories, but should apply only to Incidents that have no operational or business impact and where there is a readily available bypass or alternative that is acceptable to the Ministry. Low impact single end User Incident where a Workaround is available or a scheduled activity is agreed with the end User.</p> <ul style="list-style-type: none"> • Incident is not causing an interruption or delay to a Session (in progress or impending). • Urgency is assessed by the Ministry as low.