

Departmental Disclosure Statement

Courts (Remote Participation) Amendment Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

20 February 2024

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Part One: General Policy Statement

The Courts (Remote Participation) Amendment Bill is an omnibus Bill introduced under Standing Order 267(1)(a). That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the amendments deal with an interrelated topic that can be regarded as implementing a single broad policy. The single broad policy implemented by the amendments in this Bill is increasing remote participation in court proceedings.

The Courts (Remote Participation) Amendment Bill contributes to one of the Government's "restore law and order" commitments in the 100-Day Plan: enable more virtual participation in court proceedings.

The court system is currently experiencing delays, particularly in the criminal and family jurisdictions of the District Court. These delays are felt by all participants in the justice system, particularly victims.

Enabling more virtual participation in court proceedings contributes to the Government's objective of improving court performance generally. Virtual or remote participation in court proceedings can, when used appropriately, increase access to justice and support the efficient and timely resolution of court proceedings. It reduces travel time and costs for participants (such as prosecutors and lawyers) and is a safer and more efficient option for court appearances of defendants who are in custody.

The Courts (Remote Participation) Amendment Bill will enact 3 small legislative changes that can be progressed quickly to improve and clarify the law regarding remote participation in court proceedings.

Amendment 1: creating a presumption that victims can remotely observe criminal trials and sentencing where appropriate

This amendment adds a presumption to the Courts (Remote Participation) Act 2010 that a victim may observe a criminal trial and sentencing remotely if the victim wishes to do so and certain criteria are met (including that suitable technology is available and that a judicial officer or court registrar does not determine that it is contrary to the interests of justice).

Remote observation will make the court process safer and easier for some victims. They may also benefit from reduced travelling time and associated costs.

The presumption preserves judicial flexibility regarding how proceedings are conducted—so, for example, the judiciary can decide how to ensure compliance with closed court arrangements or name suppression. Courts will be able to impose conditions to protect the integrity of the court process. For example, victims could be required to comply with court requirements such as not sharing access links or recording proceedings.

Amendment 2: allowing use of audio links for remote court proceedings

This amendment authorises the use of audio links such as teleconferences for criminal proceedings that defendants are not required to, and do not wish to, attend and for appropriate civil and family proceedings. This will enable participants and victims who do not have access to audiovisual technology to participate in hearings remotely.

Audio links will be used in criminal proceedings only when the defendant is not attending because, among other things, judges need to be able to see criminal defendants to assess their credibility and their comprehension of the proceedings. Similarly, defendants need to be able to see and hear the other participants to participate in proceedings effectively.

In addition, audio links will be able to be used for civil proceedings only if the judicial officer or Registrar considers the potential impact of the use of AL on the parties' abilities to comprehend and effectively take part in the proceeding. Further, hearings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, Mental Health (Compulsory Assessment and Treatment) Act 1992, and the Substance Addiction (Compulsory Assessment and Treatment) Act 2017, which determine whether a person needs to be compulsorily detained and treated, will not be able to be heard by audio link if the affected person is required by the legislation to be present throughout the hearing.

The use of audio links for court proceedings was tested during the pandemic.

Amendment 3: clarifying the interrelationship between virtual participation and open justice

This amendment makes permanent a temporary change made during the pandemic that will be repealed when the COVID-19 Public Health Response Act 2020 is repealed. It is in the public interest to make permanent the statutory clarity this change provides.

This amendment clarifies that provisions requiring criminal proceedings to be open to the public or media do not affect the ability of a court to conduct a hearing remotely or virtually. This reflects the underlying principle of the Criminal Procedure Act 2011 that the courts are open and transparent—that is, justice is seen to be done—when some or all participants are appearing remotely or virtually.

The amendment also states that the court can require the public and the media to observe proceedings remotely.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>An independent survey in 2023 found that 25 percent of court users would prefer a video call instead of attending court in person.¹ This Bill will benefit victims who share this preference, Victims will still be able to attend court in person if they wish. (Around half of court users (56 percent) prefer to attend court in person, and the remainder expressed no preference.)</p> <p>Government research published in 2021 estimated that around 20 percent of people lack at least one of the four elements needed to be digitally included – motivation, access, skills, or trust.² Seniors, Pacific peoples, people with disabilities, people living in rural communities, and families with children living in low socio-economic communities were most at risk of not being digitally included. This research also showed that Māori were more likely to experience digital exclusion than the wider population. Enabling the use of audio links in court instead of AV technology will to some extent mitigate these inequities. In addition, people will still be able to attend court in person.</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO
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Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	NO
<p>The Treasury's Regulatory Impact Analysis team determined that these legislative changes were exempt from the requirement to provide a Regulatory Impact Statement on the grounds that these have no or only minor impacts on businesses, individuals, and not-for-profit entities.</p>	

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
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¹ Kantar Public, an independent company, undertook the Court Users Survey 2023. Kantar held 2,143 face-to-face interviews with members of the general public aged 16+ who visited one of fifteen courts from 8 to 21 June 2023. Only one victim was interviewed.

² Report: Digital inclusion user insights — Māori | NZ Digital government, May 2021

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
The Ministry of Justice has not undertaken a detailed analysis of the size of the potential costs and benefits, as the amendments in the Bill are exempt from the requirement to provide a Regulatory Impact Statement (on the grounds they have no or only minor impacts on businesses, individuals, and not-for-profit entities).	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Ministry of Justice has not identified any obligations that conflict with the policies contained in the Bill.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Justice considers the policy is consistent with the principles Treaty of Waitangi te Tiriti o Waitangi. However, the Ministry acknowledges that these legislative changes have been developed without consultation with the Crown's Treaty of Waitangi te Tiriti o Waitangi partner, the public or other interested parties.
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The changes the Bill makes clarify the inter-relationship between open justice and the use of technology in the courts and extends the remote participation options available for use in certain circumstances, where appropriate. While virtual or remote participation does not allow for physical interaction, or in-person engagement and communication, which may affect the ability to bring te ao Māori practices and processes into the courtroom, the changes in the Bill do not remove the ability of victims to physically attend court. Further, they limit the use of audio link to hearings that defendants do not attend. For civil proceedings, the judicial officer or registrar must consider the impact of audio links on parties' ability to participate effectively.

Further, the Bill limits the use of audio link to criminal hearings that defendants do not attend. For civil proceedings, the judicial officer or registrar is required to consider the impact of audio links on the parties' ability to participate effectively before approving the use of audio links.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	NO
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Crown Law has been provided with a draft of the Bill and will provide advice to the Attorney-General on consistency with the New Zealand Bill of Rights Act 1990.

A copy of their advice will made be available at:

https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
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External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	NO
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Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Two of the legislative changes have already been tested through temporary COVID-19 legislation.</p> <p>The Ministry of Justice has discussed the practical implications of the legislative changes with Crown Law Office, New Zealand Police and the Public Defence Service.</p> <p>The Ministry has also discussed with the judiciary and the Chief Victims Advisor how best to achieve the policy intent in legislation of the presumption that victims may observe court proceedings remotely.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
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Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO
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Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO
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Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO
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4.8. Does this Bill create or amend any other powers to make delegated legislation?	NO
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Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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