



PARLIAMENTARY LIBRARY

Te Pātaka Rangahau a Te Whare Pāremata

BILLS DIGEST

Digest No. 1732

Courts (Remote Participation) Bill 2009

Date of Introduction:	08 December 2009
Portfolio:	Justice
Select Committee:	As at 14 December, 1st Reading not held.
Published: 14 December 2009 Prepared by John McSoriley BA LL.B, Barrister Legislative Analyst P: (04) 471-9626 (Ext. 9626) F: (04) 471-1250	Caution: This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status. Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Purpose

The purpose of this Bill is to enable greater use of audio-visual links (AVL) in New Zealand courts.

Background

"The Courts (Remote Participation) Bill is an overarching piece of legislation that applies to every enactment that is part of New Zealand law. It:

- sets out criteria for consideration in decisions on the use of AVL;
- provides a presumption in favour of the use of AVL in criminal procedural matters (ie, those where no evidence is being presented), unless the judicial officer is satisfied on his or her own motion or on the objection of any party that the criteria would not be satisfied;
- allows for the use of AVL in criminal substantive matters (ie, those where evidence is being presented) on the application of any party or on the judicial officer's own motion where the judicial officer considers that the criteria would be satisfied;

- allows for the use of AVL in civil matters where the parties consent, or (where there is disagreement between the parties) on the application of any participant or on the judicial officer's own motion where the judicial officer considers that the criteria can be met".

"The ordinary rules of court procedure (with any necessary modifications) apply to any proceeding in which a participant is appearing by AVL. This legislation is one of the first steps to be taken in the reform of criminal procedure. The Bill will ensure that as AVL facilities are installed in courts, they can be used to their full potential. Future legislative and operational reforms will modernise and simplify criminal procedure to improve timeframes and promote efficiency in the courts"¹.

Main Provisions

Use of audio-visual links in proceedings

Clause 5 sets out the general criteria a judicial officer or Registrar must consider when determining whether or not to allow the use of AVL for the appearance of a "participant" in a proceeding. These criteria are:

- the nature of the proceeding;
- the availability and quality of the technology that is to be used;
- the potential impact of the use of the technology on the effective maintenance of the rights of other parties to the proceeding, including the ability to assess the credibility of witnesses and the reliability of evidence presented to the court and the level of contact with other participants;
- any other relevant matters (*Part 2, Clause 5*).

Who is a "participant"

The Bill provides that a participant, in relation to a proceeding, is a person who is, in that proceeding, any of the following: a party; the defendant; counsel; a witness; a member of the jury; a judicial officer who is presiding over the proceedings; and "any other person directly involved in the proceeding whom the judicial officer considers appropriate" (*Part 1, Clause 3, definition of "participant"*).

Other criteria to be considered

The Bill provides that, in addition to the criteria in clause 5, a judicial officer or a Registrar, in relation to criminal matters, must also consider, when he or she is required to determine 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:

- the ability of the defendant: to comprehend the proceedings; to participate effectively in the conduct of his or her defence; to consult and instruct counsel privately; to access relevant evidence; and to examine the witnesses for the prosecution; and
- the level of contact the defendant has with other participants; and
- any adverse impression that may arise through the defendant or any other participant appearing by means of AVL, and whether that adverse impression may be mitigated (*Part 2, Clause 6*).

¹ Courts (Remote Participation) Bill, 2009 No 107-1, Explanatory note, General policy statement, pp. 1 and 2.

When AVL may be used

The Bill provides that AVL may be used in civil proceedings for the appearance of a participant with the consent of all parties, or without their consent, if the judicial officer allows the use (*Part 2, Clause 7*). AVL may be also used for the appearance of a participant in a criminal procedural matter where a judicial officer or Registrar requires the participant to appear by the use of AVL, unless a judicial officer determines, in accordance with the criteria in Clauses 5 and 6 (described above), not to allow that use (*Part 2, Clause 8*). The Bill provides that AVL must not be used for the appearance of a participant in a criminal substantive matter unless its use is allowed by a judicial officer (*Part 2, Clause 9*).

No adverse inference to be drawn

The Bill provides that the Judge in a proceeding may direct a jury not to draw an adverse inference because of the use of AVL (*Part 2, Clause 11*).

Copyright: © NZ Parliamentary Library, 2009

Except for educational purposes permitted under the Copyright Act 1994, no part of this document may be reproduced or transmitted in any form or by any means, including information storage and retrieval systems, other than by Members of Parliament in the course of their official duties, without the consent of the Parliamentary Librarian, Parliament Buildings, Wellington, New Zealand.

This document may also be available through commercial online services and may be viewed and reproduced in accordance with the conditions applicable to those services.