

**Hon Nicole McKee**  
Minister for Courts

**Proactive release – Courts (Remote Participation) Amendment Bill**

Date of issue: 19 April 2024

The following document has been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	<b>100-Day Plan: Virtual participation in court proceedings</b>  Cabinet Paper  Ministry of Justice 13 December 2023	Redactions made under 9(2)(f)(iv)
2	<b>Virtual Participation in Court Proceedings</b>  Cabinet Minute  Ministry of Justice 13 December 2023	Redactions made under 9(2)(f)(iv)
3	<b>Courts (Remote Participation) Amendment Bill: Approval for Introduction</b>  Cabinet Paper  Ministry of Justice 29 February 2024	Redactions made under 9(2)(h)
	<b>Courts (Remote Participation) Amendment Bill: Approval for Introduction</b>  Cabinet Minute  Ministry of Justice 29 February 2024	Redactions made under 9(2)(h)

**In Confidence**

Office of the Minister for Courts

Cabinet 100-Day Plan Committee

**100-Day Plan: Virtual participation in court proceedings**

**Proposal**

- 1 This paper seeks Cabinet’s agreement to progress two initiatives to enable more virtual participation in court proceedings - namely:
  - 1.1 undertake a first principles review of the Courts (Remote Participation) Act 2010; and
  - 1.2 make two small legislative changes to the Courts (Remote Participation) Act 2010 and one to the Criminal Procedure Act 2011.

**Relation to government priorities**

- 2 These initiatives will implement the Government’s Restore Law and Order 100-Day Plan commitment to enable more virtual participation in court proceedings.

**Executive Summary**

- 3 The court system is currently experiencing delays, particularly in the criminal and family jurisdictions of the District Court. Over the past five years, the average number of days required for a criminal case to be disposed of in the District Court has increased by 62 days (from 114 days to 176 days). For jury trial cases, the average number of days has increased by 149 days (from 349 days to 498 days).
- 4 It is one of the Government’s priorities to speed up court processes so that victims of crime can achieve timely justice and so all people can move on with their lives. An efficient court system that delivers timely justice is an important part of the Government’s plan to reform law and order.
- 5 Enabling more virtual participation in court proceedings contributes to our objective of improving court performance generally. This encompasses both improved timeliness in the court system and improved access to justice. **Section 9(2)(f)(iv)**  
**[REDACTED]**  
An early focus on increasing virtual participation signals the first steps towards achieving our broader objective.
- 6 Virtual participation in court proceedings can, when used appropriately and reliable technology is available, increase access to justice and support the efficient and timely resolution of court proceedings. Care needs to be taken to ensure that virtual participation is used for suitable types of proceedings, and that parties can participate effectively.
- 7 I have identified two initiatives to enable more virtual participation in the courts. These initiatives are:

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- 7.1 a first principles review of the Courts (Remote Participation) Act 2010 to enhance access to justice and improve efficiency and timeliness within the justice sector; and
- 7.2 the following three small legislative changes that I will progress as soon as an appropriate legislative vehicle becomes available:
  - 7.2.1 create a presumption that victims may observe criminal proceedings remotely if they wish to do so, with flexibility for a judicial officer to direct otherwise (recognising this may not be appropriate in all situations such as where a victim is also giving evidence or where additional precautions need to be taken to ensure compliance with closed court arrangements or name suppression);
  - 7.2.2 re-introduce audio-links such as teleconferences that were authorised during the pandemic for criminal proceedings that defendants do not attend, such as case review events, and for civil proceedings (including the Family Court);
  - 7.2.3 make permanent the clarification of the inter-relationship between virtual participation and open justice that was made temporarily during the pandemic.
- 8 For both initiatives, amendments to legislation will be required but the timing and the extent of the amendments will be different. A first principles review will enable more substantive changes to be made but will take longer. The second initiative offers more immediate legislative changes that could be announced before the end of 2023 and would clearly signal the Government's intent to enable more virtual participation.
- 9 I consider the amendments arising from these initiatives will respect the core constitutional principles of judicial independence and the separation of powers, preserve defendants' fair trial rights and enhance access to justice for court users. Both initiatives could be implemented in this parliamentary term.
- 10 **Section 9(2)(f)(iv)** [REDACTED]

**Background**

*Increased virtual participation will contribute to broader objectives of improved court performance*

- 11 Enabling more virtual participation in court proceedings aligns with our objective to improve court performance generally. This encompasses both improved timeliness in the court system and improved access to justice. **Section 9(2)(f)(iv)** [REDACTED]  
[REDACTED] An early focus on increasing virtual participation is a first steps towards our broader goal.
- 12 The court system is currently experiencing delays, which has a significant impact on court participants, particularly those who are vulnerable. The most significant delays are being felt in the criminal and family jurisdictions of the District Court. Over the past five years, the average number of days required for a criminal case to be

disposed of in the District Court has increased by 62 days (from 114 days to 176 days). For jury trial cases, the average number of days has increased by 149 days (from 349 days to 498 days).

- 13 The drivers of delay are complex. Recognising that timeliness is impacted by the behaviours and choices of multiple participants involved in the court system, the Ministry of Justice is working alongside the judiciary and justice sector agencies to tackle delays. An integrated programme of work comprises both agency and judicially-led operational initiatives.

*Legislation enables virtual participation in court proceedings*

- 14 Virtual participation in court proceedings is primarily governed by the Courts (Remote Participation) Act 2010 and the Evidence Act 2006 (separate legislation provides for tribunals to hold hearings using audiovisual (AV) and audio technology).
- 15 The Courts (Remote Participation) Act enables judicial officers or court registrars to allow the use of AV technology in courts to enable participants to appear in a courtroom on a screen instead of in person, if the statutory criteria are met. These criteria include the availability and quality of the AV technology and the potential impact of AV technology on the defendant's fair trial rights and participants' rights to natural justice. The criteria vary depending on the type of proceeding a participant is appearing in – for example, more criteria must be satisfied before a participant can appear virtually in a criminal proceeding where evidence is being given.
- 16 There is also scope under the Evidence Act 2006 for a judge to allow witnesses, including victims who are complainant witnesses, to give evidence in alternative ways in certain circumstances.

*Judicial protocols authorised greater use of AV technology during the pandemic*

- 17 The use of AV technology was increasing prior to the COVID-19 pandemic and significantly increased during the pandemic with more procedural events being held virtually. Greater use of AV technology during various stages of the pandemic was encouraged through judicial protocols issued by Heads of Bench. Legislative changes were not required to support this increase because of the broad scope of the governing legislation.
- 18 Since COVID-19 restrictions were lifted, use of AV technology has declined (partly due to the increased number of trials and similar hearings being held – these generally need to be heard in person to protect defendants' fair trial rights). However, AV technology continues to be used at higher levels than before the pandemic.
- 19 The judiciary are developing principles and best practice guidance to better support decision-making on the use of AV technology in courts and to promote a coherent and consistent principles-based approach to the use of AV technology. These principles and guidance are expected to be finalised in the first half of 2024.

**There is significant potential for greater use of virtual participation to enhance access to justice**

- 20 When used appropriately and reliable technology is available, AV technology can achieve efficiencies through reduced travel time, and reduced costs for some participants (such as defendants, prosecutors and lawyers). Virtual participation can be more convenient for people who need to appear in court proceedings, enhancing

access to justice. Virtual participation of defendants, who are in custody, reduces the likelihood of violent incidents by high-risk defendants in court or during transport, and reduces transport and security costs for Corrections and Police.

- 21 However, these benefits depend on access to reliable technology. Technical difficulties, which can be due to the quality of either party's technology and/or network connectivity, can undermine confidence in the use of AV technology as well as cause delays and adjournments. In addition, AV technology in itself does not necessarily make cases progress faster, or contribute to reducing backlogs in the courts. For example, I am advised that 'hybrid' hearings where some participants attend virtually and others are in a courtroom generally take longer on average (around 50 percent longer for procedural matters). This is because of the effort required to manage the additional technological needs and troubleshoot any technical difficulties.
- 22 It is also important to ensure that the use of AV technology enables parties to participate appropriately without compromising their access to justice or rights under the New Zealand Bill of Rights Act 1990. Remote participation, when compared with attendance in person, does impose some constraints on a person's ability to participate fully in a hearing. The significance of those constraints will vary depending on the nature of the court proceeding,<sup>1</sup> the participants' access to AV technology, and whether they experience barriers affecting their ability to use AV technology.
- 23 For some participants, technology may improve their experience, while for others being encouraged or required to participate remotely may constrain their ability to effectively participate in or understand the proceedings.

#### **Initiatives to implement the Government's 100-Day Plan commitment**

- 24 I have identified two initiatives for implementing the Government's 100-Day Plan commitment to enable more virtual participation in court proceedings.

##### *A first principles review of the Courts (Remote Participation) Act*

- 25 The first initiative is a first principles review of the Courts (Remote Participation) Act. The objective of the review would be to enable more virtual participation in court proceedings to improve timeliness of court proceedings and access to justice.
- 26 This recognises that there have been considerable advances in technology, and the way technology is used to support court proceedings, since the Act was first developed.
- 27 I consider that any reform initiatives should:
- consider the appropriate balance between legislative presumptions regarding the use of virtual participation, and the exercise of judicial discretion (respecting the constitutional principles of judicial independence and the separation of powers);<sup>2</sup>

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<sup>1</sup> A hearing concerned with procedural matters is better suited for virtual participation than a trial at which a judicial officer needs to be able to assess the credibility of witnesses and the defendant.

<sup>2</sup> The core constitutional principles are: **judicial independence** in relation to conducting the business of the courts (including the control and supervision of the use of technology for the business of the courts); and **separation of powers** between the executive and judicial branches of government (which requires institutional independence in organising and managing the work of the courts).

**I N C O N F I D E N C E**

- ensure defendant's fair trial rights, court participants' access to justice and other rights under the New Zealand Bill of Rights Act 1990 are preserved;
- consider the potential impact on victims and on their trust in the criminal justice system; and
- maintain public confidence in the independence and integrity of the justice system.

28 If Cabinet agrees to a first principles review, the Ministry of Justice will provide advice to me in February 2024 on the scope and planning for the review.

*Targeted changes that can be progressed quickly*

29 The second initiative will entail three small legislative changes to enable more virtual participation in court proceedings. I consider these amendments will improve and clarify the law regarding virtual participation.

Amendment one: Allowing victims to remotely observe criminal trials and sentencing where appropriate

30 This amendment will add a presumption to the Courts (Remote Participation) Act that victims may observe a criminal trial and sentencing remotely if suitable technology is available and the victim wishes to observe the proceedings remotely. A presumption will need to preserve judicial flexibility regarding how proceedings are conducted, for example, to ensure compliance with closed court arrangements or name suppression, or where a victim is also a witness in the trial and it is not appropriate for them to hear the testimony of other witnesses before giving evidence themselves.

31 For victim witnesses, I consider that the statutory criteria in the Evidence Act for giving their evidence remotely should remain. These criteria achieve an appropriate balance between protecting vulnerable witnesses from further trauma and the fair trial rights of defendants.

32 The ability to remotely observe criminal trials and sentencing will also need to be conditional upon victims agreeing to comply with court requirements, such as not to share access links or record proceedings. This reflects the constitutional principle that judges control the operation of their courts.

33 Remote observation could make the court process easier and safer for some victims. They will be able to avoid the stress and the potential for revictimisation and intimidation inherent in physical attendance at court. Victims will also benefit from reduced travelling time and associated costs. However, I anticipate that some victims will still want to appear in person.

34 In addition, some victims might need to attend in person because they do not have access to the necessary technology or to appropriate facilities in which to use it.

Amendment two: Allowing use of audio links for court proceedings

- 35 This amendment will authorise the use of audio links such as teleconferences for criminal proceedings that defendants do not attend such as case review events, and for civil proceedings (including the Family Court). This will enable parties to participate in hearings by telephone, which provides more flexibility (for example when a participant or a victim does not have access to AV technology).
- 36 Temporary amendments to the Courts (Remote Participation) Act (now repealed) enabled audio links to be used in this way during the pandemic. The Family Court made extensive use of audio links. In addition, the Disputes Tribunal and the Tenancy Tribunal have been holding hearings by teleconference for many years.
- 37 I propose to exclude the use of audio links in criminal proceedings that defendants attend because judges need to be able to see criminal defendants to assess their credibility and their comprehension of the proceedings. Further, audio links could compromise the ability of defendants to participate effectively in the proceedings; they need to be able to see and hear the other participants.

Amendment three: Clarify the inter-relationship between virtual participation and open justice

- 38 This amendment will make permanent a temporary change made to the Criminal Procedure Act 2011 via the COVID-19 Response (Courts Safety) Legislation Act 2022.
- 39 This amendment clarifies that provisions requiring court proceedings to be open to the public or media do not affect or limit the ability of a court to conduct a hearing wholly or partly virtually. This reflects the underlying principle of the Courts (Remote Participation) Act that the courts are still open and transparent – that is, ‘justice is seen to be done’ - when some or all participants are appearing virtually.
- 40 The temporary change also states that the court can require the public and the media to observe proceedings remotely.
- 41 The temporary change will be repealed when the COVID-19 Public Health Response Act 2020 is repealed, currently scheduled for November 2024. It is, however, in the public interest to make permanent the statutory clarity this change provides.

*I have asked officials to identify an appropriate legislative vehicle for these amendments*

- 42 The Ministry of Justice is considering whether the three small legislative changes would be eligible for inclusion in an upcoming Statutes Amendment Bill (SAB). The SAB is currently expected to be progressed in 2024.
- 43 An alternative approach would be to include the changes in an upcoming regulatory systems bill. These bills can make small policy changes, which are beyond the scope of SABs. The Ministry is in the early stages of planning such a bill.

44 Section 9(2)(f)(iv)

*I intend to undertake targeted discussions on one of the proposed amendments*

- 45 While two of the legislative changes have already been tested through temporary COVID-19 legislation, the proposal to create a presumption that victims may observe a criminal trial and sentencing remotely is new. Given this, if Cabinet decides to progress this change, I will direct officials to discuss this change with the judiciary, key legal professional groups and the Chief Victims Advisor to determine how best to achieve the policy intent in legislation.

Section 9(2)(f)(iv)

In its 2023 Digital Strategy, the judiciary state that the most significant barrier to increasing virtual participation is the limited quantity and variable quality of available technology.

Section 9(2)(f)(iv)

### **Cost-of-living Implications**

- 49 I do not expect there to be any cost-of-living implications from either initiative. However, in future, more participants in court proceedings are expected to be able to avoid the cost of travelling to court. These benefits could be greater following a first principles review.

### **Financial Implications**

- 50 Both initiatives will enable increased use of the technology that is currently available in the courts.

Section 9(2)(f)(iv)

- 52 I am not seeking a commitment to new funding, and Cabinet decisions on the proposed initiatives will not pre-empt future Budget decisions.

### **Legislative Implications**

- 53 There are no immediate legislative implications for a first principles review of the Courts (Remote Participation) Act. Section 9(2)(f)(iv)



- 54 A suitable legislative vehicle will need to be identified to progress the three legislative changes as part of the 2024 Legislation Programme.

### **Impact Analysis**

#### *Regulatory Impact Statement*

- 55 Regulatory Impact Analysis is not required for the proposed first principles review. Instead, a regulatory impact analysis will be undertaken of proposals arising from the review.
- 56 The Treasury's Regulatory Impact Analysis team has determined that the three proposed legislative changes are 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.

#### *Climate Implications of Policy Assessment*

- 57 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as it is not expected to result in any significant, direct emissions impacts.

### **Population Implications**

- 58 The overrepresentation of Māori and Pacific Peoples as victims and defendants in the criminal justice system and low-income earners means any increased use in virtual participation is likely to impact Māori and Pacific Peoples disproportionately. This creates both opportunities and risks. If the technology is accessible and reliable, there may be potential to improve how Māori and Pacific Peoples participate in the justice system. On the other hand, the use of technology may impose additional barriers to accessing justice. Research<sup>3</sup> shows that Māori, for example, are among the population groups more likely to experience digital exclusion.
- 59 Women are over-represented among victims. Women, who are digitally included, will benefit from the new presumption that victims can observe court proceedings remotely if they wish to do so. However, women from population groups with lower levels of digital inclusion are less likely to benefit from the new presumption and the impact of their digital exclusion could deepen existing inequities.<sup>4</sup>

### **Human Rights**

- 60 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

### **Use of External Resources**

- 61 No external resources were used to develop this paper or for the supporting policy analysis.

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<sup>3</sup> Report: Digital inclusion user insights — Māori | NZ Digital government, May 2021.

<sup>4</sup> Māori, Pacific Peoples, seniors, people with disabilities, people living in rural communities, and families with children living in low socio-economic communities are at risk of not being digitally included.

## Consultation

- 62 The following agencies were consulted on this paper: Crown Law Office, the Departments of Corrections and Internal Affairs, the Ministries for Ethnic Communities, Health, Pacific Peoples, Social Development and Women, New Zealand Police, Oranga Tamariki, Te Arawhiti, Te Puni Kōkiri, The Treasury and Whaikaha. Their views have been incorporated into this paper.
- 63 The Department of Prime Minister and Cabinet and the Chief Victims Advisor have been informed.
- 64 As mentioned above, if Cabinet agrees to the proposed legislative presumption for victims to observe criminal trials and sentencing remotely, I will direct officials to discuss this change with the judiciary, key legal professional groups and the Chief Victims Advisor to determine how best to achieve the policy intent in legislation.
- 65 I have been advised that the judiciary favour a review of the Courts (Remote Participation) Act. They consider the Act is outdated, constrains the use of virtual hearings, and adds unnecessary complexity when planning virtual hearings. As noted above, I also understand the judiciary consider the most significant barrier to increasing virtual participation is the AV technology available across the justice sector.
- 66 The three small legislative changes have been developed without consultation with Treaty of Waitangi (Treaty) partners, the public or other interested parties.
- 67 Article three of the Treaty guarantees equity to Māori. Virtual participation does not allow for a physical form of interaction, engagement, and communication.<sup>5</sup> This may have consequences for bringing te ao Māori practices and processes into the courtroom and could limit the ability to enable transformative court experiences. Further work is required to consider tikanga in relation to virtual participation and ensure Māori can equitably participate in the justice system.

## Communications

- 68 I plan to announce Cabinet's decisions.

## Proactive Release

- 69 I intend to proactively release this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, subject to redaction as appropriate under the Official Information Act 1982.

## Recommendations

- 70 I recommend that the Committee:
- 1 **note** that this paper responds to the commitment in Government's 100-Day Plan to enable more virtual participation in court proceedings;

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<sup>5</sup> A foundational principle for many processes of tikanga Māori is kanohi ki te kanohi, which is defined as a "physical for of interaction, engagement and communication".

- 2 agree to:
  - 2.1 a first principles review of the Courts (Remote Participation) Act; and
  - 2.2 legislative changes to:
    - 2.2.1 enact a presumption that victims may observe a criminal trial and sentencing remotely if suitable technology is available and they wish to do so, with flexibility for a judicial officer to direct otherwise (recognising this may not be appropriate in all situations such as where a victim is also giving evidence or where additional precautions need to be taken to ensure compliance with closed court arrangements or name suppression);
    - 2.2.2 authorise the use of audio links such as teleconferences for criminal proceedings that defendants do not attend such as case review events, and for civil proceedings (including the Family Court);
    - 2.2.3 make permanent the existing temporary amendment clarifying that provisions requiring court proceedings to be open to the public or media do not affect the courts' ability to conduct hearings wholly or partly via audiovisual or audio technology;

3 if Cabinet agrees to a first principles review as set out in recommendation 2.1, Section 9(2)(f)(iv) [redacted]

[redacted]

- 5 if Cabinet agrees to the legislative changes set out in recommendation 2.2 above:
  - 5.1 **note** that the Minister for Courts will identify an appropriate legislative vehicle for these changes, Section 9(2)(f)(iv) [redacted]
  - 5.2 **invite** the Minister for Courts to issue drafting instructions to the Parliamentary Counsel Office once an appropriate legislative vehicle has been identified;

6 **note** that approval of the initiatives proposed under recommendation 2 above does not provide a commitment to any new funding and does not pre-empt future Budget decisions;

Authorised for lodgement

Hon Nicole McKee  
Minister for Courts



# Cabinet 100-Day Plan Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Virtual Participation in Court Proceedings

#### Portfolio                      Courts

On 13 December 2023, the Cabinet 100-Day Plan Committee:

- 1        **noted** that the paper under 100-23-SUB-0003 responds to the commitment in the Government's 100-Day Plan to enable more virtual participation in court proceedings;
- 2        **agreed** to:
  - 2.1      a first principles review of the Courts (Remote Participation) Act 2010;
  - 2.2      legislative changes to:
    - 2.2.1    enact a presumption that victims may observe a criminal trial and sentencing remotely if suitable technology is available and they wish to do so, with flexibility for a judicial officer to direct otherwise (recognising this may not be appropriate in all situations such as where a victim is also giving evidence or where additional precautions need to be taken to ensure compliance with closed court arrangements or name suppression);
    - 2.2.2    authorise the use of audio links such as teleconferences for criminal proceedings that defendants do not attend such as case review events, and for civil proceedings (including the Family Court);
    - 2.2.3    make permanent the existing temporary amendment clarifying that provisions requiring court proceedings to be open to the public or media do not affect the courts' ability to conduct hearings wholly or partly via audiovisual or audio technology;
- 3        Section 9(2)(f)(iv)
- 4        **noted** that the Minister will identify an appropriate legislative vehicle for the changes in the submission under 100-23-SUB-0003, or submit a bid to include a Courts (Remote Participation) Amendment Bill on the 2024 Legislation Programme;
- 5        **invited** the Minister to issue drafting instructions to the Parliamentary Counsel Office once an appropriate legislative vehicle has been identified;

6 **noted** that approval of the initiatives under paragraph 2 above does not provide a commitment to any new funding and does not pre-empt future Budget decisions.

Jenny Vickers  
Committee Secretary

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**Present:**

Rt Hon Christopher Luxon (Chair)  
Rt Hon Winston Peters  
Hon David Seymour  
Hon Chris Bishop  
Hon Dr Shane Reti  
Hon Shane Jones  
Hon Simeon Brown  
Hon Erica Stanford  
Hon Paul Goldsmith  
Hon Judith Collins  
Hon Mark Mitchell

**Officials present from:**

Office of the Prime Minister  
Department of the Prime Minister and Cabinet

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Office of the Minister for Courts  
Cabinet Legislation Committee

### Courts (Remote Participation) Amendment Bill: Approval for Introduction

#### Proposal

- 1 This paper seeks approval for the introduction of the Courts (Remote Participation) Amendment Bill.

#### Policy

- 2 This Bill contributes to the Government's objective of reducing court delays. Delays are being experienced throughout the court system, particularly in the criminal and family jurisdictions of the District Court. These delays impact on all participants in the justice system, particularly victims. Virtual or remote participation in court proceedings can, when used appropriately and all parties can participate effectively, increase access to justice and support the efficient and timely resolution of court proceedings.
- 3 This Bill implements the Government's 100-Day Plan commitment to enable more virtual participation in court proceedings. It amends the Courts (Remote Participation) Act 2010, which enables judicial officers or registrars to authorise the use of audiovisual (AV) technology in courts, allowing participants to appear in court on a screen instead of in person, if relevant statutory criteria are met. It also makes a minor amendment to the Criminal Procedure Act 2011.
- 4 The Bill makes three targeted changes that can be progressed quickly. These changes will clarify and improve the law around virtual or remote participation and introduce a new measure to make the court process easier and safer for victims. It will contribute to reducing delays in the courts and improving court performance generally, encompassing both timeliness in the court system and access to justice.
- 5 On 13 December 2023, the Cabinet 100-Day Plan Committee agreed to:
  - 5.1 enact a presumption that victims may observe a criminal trial and sentencing remotely if suitable technology is available and they wish to do so, with flexibility for a judicial officer to direct otherwise (recognising this may not be appropriate in all situations such as where a victim is also giving evidence or where additional precautions need to be taken to ensure compliance with closed court arrangements or name suppression);

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- 5.2 authorise the use of audio links such as teleconferences for criminal proceedings that defendants do not attend such as case review events, and for civil proceedings (including the Family Court);
- 5.3 make permanent the existing temporary amendment clarifying that provisions requiring court proceedings to be open to the public or media ('open justice' requirements) do not affect the courts' ability to conduct hearings wholly or partly via audiovisual or audio technology.

[CAB-23-MIN-0941 and 100-23-MIN-0003]

- 6 Two of the legislative changes – audio links and the clarification relating to open justice – have been tested through temporary COVID-19 legislation.

*Creating a presumption that victims can remotely observe criminal trials and sentencing where appropriate*

- 7 This amendment adds a presumption to the Act that victims may observe a criminal trial and sentencing remotely if the victim wishes to do so, suitable technology is available and a judicial officer or court registrar considers this to be appropriate.
- 8 Remote observation will make the court process safer and easier for some victims. They will be able to avoid the stress and the potential for revictimisation and intimidation that can be inherent in physical attendance at court. Victims may also benefit from reduced travelling time and associated costs.
- 9 The presumption preserves judicial flexibility regarding how proceedings are conducted. For example, in circumstances that require judicial monitoring or intervention, to ensure compliance with closed court arrangements or name suppression, or where a victim is also a witness in the trial and natural justice requires that they do not hear the testimony of other witnesses before giving evidence themselves.
- 10 The amendments also preserve the ability of judicial officers to impose conditions to protect the integrity of the court process. For example, victims could be asked to agree to comply with court requirements, such as not sharing access links or recording proceedings. Failure to comply will be a breach of a court order.

*Allowing use of audio links for remote court proceedings*

- 11 This amendment will authorise the use of audio links such as teleconferences for criminal proceedings that defendants do not attend, and for appropriate civil and family proceedings. This will increase the number of people able to participate remotely, given AV technology is not always available to participants and victims.
- 12 Temporary amendments to the Act (now repealed) enabled audio links to be used in this way during the COVID-19 pandemic. Further, the value of audio links is well established. For example, the Disputes Tribunal and the Tenancy

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Tribunal have been holding hearings by teleconference for many years, as has the High Court for procedural matters in civil proceedings.

- 13 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 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 engage effectively in the proceedings.
- 14 Audio links will be able to be used for civil proceedings when the judicial officer or registrar is satisfied that the parties will be able to effectively comprehend and participate in the proceeding. Audio links will not be permitted for mental health proceedings, which determine whether a person needs to be compulsorily detained and treated, if the affected person is attending. Judges need to be able to see and hear the affected person, and similarly the affected person needs to be able to see and hear the other participants to engage effectively in the proceedings.

### *Clarify the inter-relationship between virtual participation and open justice*

- 15 This amendment to the Criminal Procedure Act 2011 clarifies that provisions requiring criminal proceedings to be open to the public or media do not affect or limit the ability of a court to conduct a hearing wholly or partly virtually. This reflects the underlying principle of the Act that the courts are open and transparent – that is, justice is seen to be done – when some or all participants are appearing virtually.
- 16 The amendment also states that, when proceedings are being held remotely, the court can require the public and the media to observe proceedings remotely.

### **Impact analysis**

- 17 A Regulatory Impact Statement was not required. The Treasury's Regulatory Impact Analysis team determined that the three 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.

### **Compliance**

- 18 This Bill complies with each of the following:
  - 18.1 the principles of the Treaty of Waitangi;
  - 18.2 advice from the Treaty Provisions Officials Group on any Treaty of Waitangi provisions

The Bill does not contain any Treaty of Waitangi provisions, so advice was not sought from the Treaty Provisions Officials Group;



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- 18.3 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 18.4 the [disclosure statement](#) requirements
- A disclosure statement prepared by the Ministry of Justice is attached;
- 18.5 the principles and guidelines set out in the Privacy Act 2020;
- 18.6 relevant international standards and obligations;
- 18.7 the [Legislation Guidelines](#) (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 19 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.
- 20 The safeguards in the Bill will ensure the use of audiovisual and audio links in court proceedings is consistent with fair trial and related rights affirmed by the New Zealand Bill of Rights Act.

### Consultation

- 21 The Ministry of Justice consulted the following agencies on this paper. The Departmental Disclosure Statement and the draft Bill (v1.4): Crown Law Office, the Departments of Corrections and Internal Affairs (Government Chief Digital Officer), and the Ministries of/for Business, Innovation and Employment, Environment, Ethnic Communities, Health, Pacific Peoples, Primary Industries, Social Development, Women and Youth Development, New Zealand Defence Force, New Zealand Police, Offices of/for the Privacy Commissioner and Seniors, Oranga Tamariki, Public Defence Service; Te Arawhiti, Te Puni Kōkiri, The Treasury and Whaikaha.
- 22 Officials have discussed the practical implications of the three legislative changes with Crown Law Office, New Zealand Police and the Public Defence Service. They have 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 certain court proceedings remotely.
- 23 The Department of the Prime Minister and Cabinet has been informed.
- 24 No public consultation has been undertaken on the three legislative changes. The public will have an opportunity to make submissions during the select committee process.

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25 The Government caucuses have been consulted.

**Binding on the Crown**

26 The Act that this Bill amends binds the Crown.

**Creating new agencies or amending law relating to existing agencies**

27 Not applicable.

**Allocation of decision-making powers**

28 Not applicable.

**Associated regulations**

29 Not applicable.

**Other instruments**

30 Not applicable.

**Definition of Minister/department**

31 Not applicable.

**Commencement of legislation**

32 The new presumption that a victim may observe a criminal trial and sentencing remotely will commence six months after Royal Assent. This additional time will enable the development of new court protocols and processes, as well as supporting material for victims, and judicial and staff training.

33 The other two amendments – the use of audio links and the statutory clarification concerning open justice and virtual participation – will come into force the day after Royal Assent.

**Parliamentary stages**

34 Section 9(2)(h)  
[Redacted text]

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Section 9(2)(h)  
[Redacted text]

35 I propose the Bill be introduced in the sitting week of 5-7 March 2024, and referred to the Justice Committee. The First Reading is scheduled to be held under urgency in this sitting week.

36 I propose the Bill be passed in December 2024, subject to House time.

### Proactive Release

37 I intend to proactively release this Cabinet paper within 30 business days of decisions being confirmed by Cabinet, subject to redactions as appropriate under the Official Information Act 1982.

### Recommendations

38 I recommend that the Cabinet Legislation Committee:

1 Section 9(2)(h) [Redacted]

2 **note** that the Bill will make three legislative changes, improving and clarifying the law, to enable greater virtual or remote participation in court proceedings;

3 **approve** the Bill for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;

4 **agree** that the Bill be introduced;

5 **agree** that the Government propose that the Bill be:

5.1 referred to the Justice Committee for consideration;

5.2 enacted in December 2024.

Authorised for lodgement

Hon Nicole McKee  
Minister for Courts



# Cabinet Legislation Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Courts (Remote Participation) Amendment Bill: Approval for Introduction

**Portfolio**                      **Courts**

On 29 February 2024, the Cabinet Legislation Committee:

- 1        **Section 9(2)(h)** [REDACTED]
- 2        **noted** that the Bill makes three legislative changes to enable greater virtual or remote participation in court proceedings;
- 3        **approved** the Courts (Remote Participation) Amendment Bill [PCO 25940/2.0] for introduction, subject to the final approval of the Government caucuses and sufficient support in the House of Representatives;
- 4        **agreed** that the Bill be introduced to the House on in the week beginning 5 March 2024;
- 5        **agreed** that the Government propose that the Bill be:
  - 5.1        referred to the Justice Committee for consideration;
  - 5.2        enacted in December 2024.

Rebecca Davies  
Committee Secretary

**Present:**

Rt Hon Winston Peters  
Hon David Seymour  
Hon Brooke van Velden  
Hon Shane Jones  
Hon Chris Bishop (Chair)  
Hon Simeon Brown  
Hon Paul Goldsmith  
Hon Judith Collins  
Hon Nicole Mckee  
Hon Casey Costello  
Hon Simon Watts  
Hon Andrew Bayly  
Scott Simpson, MP  
Todd Stevenson, MP  
Jamie Arbuckle, MP

**Officials present from:**

Officials Committee for LEG  
Office of the Leader of the House