



CHIEF DISTRICT COURT JUDGE FOR NEW ZEALAND
TE KAIWHAKAWĀ MATUA O TE KŌTI-Ā-ROHE

Judge Jan-Marie Doogue

Judicial Protocol

Audio Visual Links Procedure for Prisoner Appearances in Courts

Background

1. The purpose of this Judicial Protocol is to provide guidance to judicial officers and Registrars when determining whether court to custody Audio Visual Links (AVL) should be used for the purpose of a prisoner appearance. The Protocol has been developed for AVL prisoner appearances between the District Court or Senior Courts and remote locations including Corrections facilities and forensic and psychiatric units. The prisoner will hereafter be referred to as the participant for the purposes of this protocol.
2. The protocol should be read in conjunction with the Courts (Remote Participation) Act 2010. The revised Protocol came into force in June 2012 and applies until superseded by any subsequent protocol.

Protocol

3. This Protocol applies to any judicial officer or Registrar making a determination for a criminal appearance.
4. When a determination is made that AVL be used for the appearance of a participant the judicial officer or Registrar should state the following:
”You are remanded in custody and directed to appear by audio-visual link at (time) on (date)”
5. The judicial officer or Registrar should note the particulars of the direction on the court file.
6. When the judicial officer or Registrar presides over a hearing where AVL is used for an appearance of a participant he or she should:
 - a. Introduce themselves to the participant
 - b. Satisfy themselves that the person appearing by AVL is the person directed by an earlier judicial officer
 - c. Confirm either:
 - i. no-one else is present within the remote facility (this is the expectation for all criminal appearances held in adult prison facilities unless an application has been made due to safety concerns and approved by a judicial officer); or

- ii. where the remote facility has staff present, for example during Mason Clinic appearances or following an approved application as above, they are not permitted to coerce or influence the participant during the hearing and must be in view of the camera at all times.
 - d. Satisfy themselves that the participant is able to see required parties to comply with legislation, such as:
 - i. the judicial officer / Registrar
 - ii. the prosecutor
 - iii. defence counsel
 - iv. co-accused where the co-accused appears in the dock / witness / allocated seating in the public gallery and that they can hear all the participants
 - e. And that they can hear all the participants
 - f. State the specific purpose of the hearing, for example, bail application
 - g. State that the participant may if necessary speak with defence counsel in a private communication
- 7. At the conclusion of the hearing ensure that the participant has understood what has occurred by requesting verbal confirmation of understanding from the participant, or by direction to defence counsel to do so after the conclusion of the hearing.



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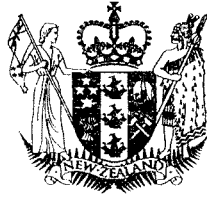
Technological Failure Protocol

1. There may be technological faults that arise in the course of hearings of the distributed courtroom. For example:
 - a. The audio-link may fail;
 - b. The visual-link may fail;
 - c. Either the audio or visual elements of the link, or both, may experience drops in quality for reasons such as the fidelity of the internet connection faltering.
2. Where this occurs, there are grounds to consider a substantial change in the quality of the technology for the purposes of the s 5(b) criteria of the Courts (Remote Participation) Act 2010 has occurred, such that it will be appropriate for the presiding judicial officer to invoke s 10 to vary or revoke a determination in respect of the use of AVL for the defendant's appearance.
3. In the first instance, the determination may be varied to allow for the recommencement of proceedings within an appropriate period of time should the technological fault be remedied. Standard practice may be to stand down the matter for one hour (subject to scheduling considerations). If the fault has not been corrected in that time the determination may be revoked, for the matter to be reconvened at a later time either in person or via AVL, at the judicial officer's discretion.
4. Given the possibility of such faults occurring, and their impact on defendants, defendants should be informed about what to do in circumstances where there are technological faults. This may include judicial officers providing the following directions [which practice ought to in turn reflect]:
 - a. If you [the remote defendant] cannot see / hear proceedings due to a technical fault then bring this to the courts attention by:
 - i. Use of [the solution arising from clause 9 of the Architectural and Courtroom Transition Protocol] so that you can inform defence counsel;
 - ii. Verbally addressing the court;
 - iii. Raising your hand; or
 - iv. If the above steps fail, inform the remote location AVL coordinator [such a practice may need to be permitted, given the above options will not always be suitable].

- b. If the court cannot see / hear you due to a technical fault this will be brought to your attention by the remote location AVL coordinator.
- c. Where a technical fault does occur, the court will inform you (through the remote location AVL coordinator) the status of the fault, whether it is anticipated it will be fixed in an adequate time frame such that the matter may be reconvened, or whether the matter has been stood down until a later time (and if so, when).

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Architectural and Courtroom Transition Protocol

Camera Views

1. The remote defendant should have a similar sensory experience of the courtroom that they otherwise would have in person.
2. AVL installations / trolley units should be employed / implemented to facilitate the remote defendant's ability to see and hear the:
 - a. judicial officer;
 - b. bar table;
 - c. other participants; and
 - d. public gallery.
3. The booth camera should be placed in a manner that fosters a fair impression of the remote defendant, at a face-on angle with the defendant being the focal point of the image.
4. AVL installations in booths ought to substantially replicate eye contact with the presiding judicial officer to the greatest extent practicable.
5. AVL installations in courtrooms and trolley placement in courtrooms ought to substantially replicate eye contact with the remote defendant to the greatest extent practicable.
6. Camera angles should frame the head to mid-torso of the remote participant to enable non-verbal gestures to be visible from the courtroom.
7. If, in accordance with the Judicial Protocol, another person is in the booth with the defendant (e.g. an interpreter), that person **MUST** be situated in the line of sight of the camera at all times.

Ability to Provide Instructions

8. If the defendant expresses a desire to speak to their defence counsel during proceedings, defence counsel should be able to take instructions from the defendant in a setting that ensures the discussion remains confidential.
9. During proceedings, defendants must have the means to effectively alert their defence counsel of their desire for consultation that they feel comfortable using in addition to gesture or verbalisation by the defendant to indicate that desire.
10. AVL booths should be soundproofed at a level that:
 - a. prevents someone outside the booth hearing the defendant inside speak; and

- b. prevents sound from outside the booth disrupting proceedings occurring or instructions being communicated within the booth.

Access to Evidence

11. Appropriate provision should be made to facilitate the remote defendant's access to evidence (if this is not adequately done then defendants ought to be required to appear in person for judge-alone trials, jury trials, or any other matter where evidence is called).
12. Adequate provision should be made to facilitate the remote defendant's understanding of documents that they may be required by a judicial officer to acknowledge, including by way of signing those documents, on a case-by-case basis.
 - a. Documents dealt with under this clause must, at the end of a proceeding, be returned to the Court and thereafter dealt with in accordance with the District Court (Access to Court Documents) Rules 2017 unless a Judge directs otherwise.

Booth Design and Transition

13. The design of the booth must provide a clear visual distinction from the facility within which the defendant is based which makes it clear that the defendant is transitioning into the courtroom.
14. Where practical, AVL booths located within Prisons and Police Cells ought to include design cues of the courtroom, including:
 - a. A removable sign on the door to the booth itself that reads "Courtroom", as a cue to the defendant that they are crossing the threshold from Corrections or Police custody, to the custody of the court.
15. Prior to the defendant entering the AVL booth for a court appearance, the remote defendant must be briefed by booth end staff on the following:
 - a. That they are entering the custody of the court;
 - b. What to do if they experience a technical fault, including that they may raise their hand or use other means to bring this to the attention of the court; and
 - c. That they are able to talk to their counsel during proceedings, and how they might go about alerting their counsel of their desire to do so, including that they may raise their hand or use the solution arising from clause 9.
16. To ensure that it is clear the defendant that the AVL booth is a part of the distributed courtroom, processes of entering and removing a defendant from a booth should replicate those in a courtroom, where possible.



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