



COURTS OF NEW ZEALAND | NGĀ KŌTI O AOTEAROA

Objectives and principles for the use of remote participation in court proceedings

In the [Digital Strategy for Courts and Tribunals of Aotearoa New Zealand](#), published in 2023, the judiciary identified objectives and principles to guide all decisions about digital technology that is used in the court system.

These objectives and principles underpin the *Protocols for Remote Participation* released by the judiciary for the civil jurisdiction of the High Court and District Court, and for the Family Court. This document is designed to be read as a companion to those protocols. It sets out the key objectives and principles that guide judicial decision-making around remote participation in court proceedings.

How the objectives and principles interact with the Protocols for Remote Participation

The Protocols for Remote Participation provide guidance on when use of remote participation is likely to be appropriate. They include default settings for the use of remote participation in certain types of hearing. Providing default settings, and guidance about when a departure from those defaults is likely to be considered, will support a more consistent and predictable approach to the use of remote participation.

Although the protocols establish default approaches, it is – and must always be – for the presiding judicial officer to decide whether to proceed in person or remotely. Judicial officers are ultimately responsible for making decisions about the conduct of hearings, including the use of remote participation technology. This is because it is the duty of judicial officers to ensure procedural fairness and to ensure that every person who comes before the court, in whatever capacity, is seen, heard and understood. The objectives and relevant principles that the judicial officer will consider when making that decision reflect this fundamental premise.

Objectives

The objectives from the *Digital Strategy* are a judicial officer's starting point when considering the use of remote participation in a court proceeding. These state that:

- The court system should deploy digital technology to promote the rule of law and to meet the needs of all the different groups of people involved in the court system:
 - people who interact with the court system including parties, victims, witnesses, jurors, lawyers, justice sector agencies, the media and members of the public;

- people who are not currently accessing courts and tribunals because existing processes are too complex, costly, slow or difficult to use; and
- people within the court system including judicial officers and court staff.
- The administration of justice is first and foremost a human process. But that human process can be supported and enhanced by appropriate use of digital technology to:
 - facilitate and expand access to justice by reducing complexity, cost, delay and barriers to justice;
 - support informed and effective participation in the court system;
 - maintain and enhance public confidence in the court system; and
 - enhance resilience and sustainability of the court system.

Principles

The *Digital Strategy* identifies 13 core principles that are relevant to developing and implementing digital technology in the court system and to specific technology initiatives. Every initiative should be assessed against these principles.

All of the 13 core principles are relevant when considering the choices to be made about the use of remote participation, but some are of particular relevance in the context of remote participation. The following principles will guide judicial decision-making relating to remote participation.

Principle 1. Consistent with core values

Consistency with New Zealand Bill of Rights Act (NZBORA) 1990

The use of remote participation in a hearing must be consistent with the requirements of ss 22–27 of NZBORA.

Interests of justice

Whether remote participation is used in a hearing is guided by what the interests of justice require in that case.

- The judiciary is responsible for ensuring that court hearings are fair for all participants and that justice is both done and seen to be done.
- The Protocols identify where the default expectation is that remote participation will be used and where the default expectation is that appearances will be in person.
- For each hearing the presiding judicial officer remains responsible for determining whether remote participation is in the interests of justice in light of all the relevant circumstances in that case.
- In making that determination the judicial officer will take into account relevant legislative provisions and these objectives and principles.

Kanohi ki te kanohi (Face-to-face)

The administration of justice is first and foremost a human process.

- Experience confirms there is often an inherent benefit in hearings being held in person with all participants, and the presiding judicial officer, present in the courtroom.
- Experience also confirms this human process can be supported and enhanced by appropriate use of digital technology.
- In-person hearings promote participants' engagement in, and understanding of, the court proceeding in which they are involved.
- In-person hearings provide opportunities for engagement between the various participants in the hearing, formal and informal.

- In-person hearings are consistent with the courthouse's place in the community and bringing the community into the court.

Efficiency and timeliness of court hearings

Remote participation should be actively considered where it will support the efficient, effective, and timely resolution of court proceedings while also being consistent with the interests of justice.

- Remote participation can sometimes improve the timeliness with which proceedings can be conducted (for example, a bail or sentencing hearing being able to proceed despite a judge being away in the relevant centre for some time).
- Remote participation can also reduce travel time and costs for some participants (for example, lawyers or parties located outside of the centre at which a hearing is to be held).

Principle 2. Consistent with constitutional responsibilities

Consistent protections and obligations

There should be no lesser protections for, and obligations on, participants appearing remotely at a hearing than apply to participants appearing in person at a hearing.

Protections include, for example:

- Fundamental rights (such as the right of an arrested or detained person to be brought before a court as soon as possible; the right to consult and instruct a lawyer without delay; the right to a fair and public trial; and the right to natural justice).
- Ensuring participants can effectively participate in a hearing and access necessary support prior to or during the hearing (such as bail support services and mental health screening).
- Ensuring the presiding judicial officer has sufficient opportunities to address and identify any barriers to a participant's meaningful engagement in the court process.

Obligations include compliance with any suppression or similar orders of the court.

Media and public observation of court hearings

The rights of the media and the public to observe the business of the courts should not be undermined, and in many cases can be enhanced, through the use of remote participation technology.

- Wherever practicable, a hearing should be able to be observed by the media and public to the same extent irrespective of whether it is conducted in person or remotely.
- Permitting hearings to be observed using digital technology (such as live streaming), enhances the principle of open justice as well as the public's understanding of court processes and their outcomes.

Control over hearing

Participants over whom the court must have particular oversight and/or control should ordinarily participate in a hearing in person, unless the presiding judicial officer is satisfied that oversight and/or control can be adequately maintained using remote participation.

- The presiding judicial officer must always be able to maintain sufficient oversight of, and control over, participants in any hearing to effectively conduct the hearing.
- The presiding judicial officer must be reasonably satisfied that participants appearing remotely will comply with the court's directions and any applicable protocol(s) governing that participant's remote participation.

Principle 3. People-centred

Accommodate participant preferences

A request by a participant to appear remotely or in person should ordinarily be accommodated whenever it is reasonably practicable and in the interests of justice to do so, even if this departs from a default mode of appearance in a protocol. For example:

- A participant may request to appear remotely because the time involved, the cost of travel, or a disability make it difficult for that participant to attend a hearing in person, or they consider that they would better participate remotely.
- A participant may request to appear in person because they do not have access to the appropriate remote technology, cannot afford the cost of data, cannot access appropriate facilities for a remote appearance, lack the skills with technology to appear remotely, or have a disability that impacts on their ability to participate remotely.

Wellbeing and / or safety

Remote participation should be considered if requiring or permitting a participant to attend a hearing in person would risk endangering the wellbeing and/or safety of that person or any other person, or expose any person to the risk of unreasonable pressure or stress.

- A remote appearance may be appropriate in circumstances where bringing a defendant from custody to court would put some other person unreasonably at risk.
- A person (for example a complainant/victim) may be exposed to the risk of unreasonable pressure or psychological harm by attending a hearing in person.

Principle 4. Inclusive

Access to appropriate technology

Remote participation should not be required if it would create barriers to participation in court hearings. It should only be used when the court and participants have access to technology which is appropriate for the relevant type of hearing.

- There are at present significant variations in the ability of participants in court proceedings to access and use the technology that is required to support remote participation. Any constraints on access to technology must be taken into account when determining whether to require or permit remote participation in a hearing.
- Technology also needs to be of sufficient audio (and normally visual) quality to enable the hearing to be conducted effectively and efficiently, and for a remote participant to meaningfully participate in the hearing.
- Technology may, depending on the nature of the hearing, need to enable documents to be viewed by participants at different locations.

Victim and whānau participation and support

Remote participation should support and not undermine the opportunity for complainants and victims to participate in or observe a hearing, and for parties to have whānau/family or other appropriate support at a hearing.

- Remote participation by a complainant or victim may reduce stress, alleviate concerns as to safety or intimidation, and thus enhance participation in the hearing (including as a witness).
- Complainants and victims are entitled to observe criminal trials and sentencings remotely, where that technology is available, unless this would be contrary to the interests of justice.

- Travel and cost can be barriers to whānau/family or other support persons participating in or observing a hearing in person.

Interpreter and communication assistance

A participant who requires assistance from an interpreter or a communication assistant should not ordinarily participate in a hearing remotely unless the interpreter or communication assistant is in the same location as the participant.

- Participants who require an interpreter or communication assistance generally need to be in the same location as the interpreter or communication assistant, to ensure they are provided with effective communication support, consistent with their statutory rights.
- Working fairly and effectively with remotely based interpreters may be more possible with New Zealand Sign Language interpreters, where facilities support this and the participant has confidence in the arrangements.

Principle 5. Reliable

The ability to use remote participation depends on the reliability of the technology available to the court and to participants. If there are reliability concerns, that may require the hearing to be held in person to avoid the disruptions caused by unreliable technology.

Principle 6. Secure

The technology must be sufficiently secure for the hearing in question.

Principle 11. Properly supported

The use of remote participation technology may depend on the availability of support for use of that technology by the court and by participants. A participant who requires technical support to be able to use remote participation technology is responsible for ensuring that technical support is available to them. If it is not, then in-person appearance may be necessary.

Glossary of terms

Hearing

The term “hearing” is used broadly and covers all court events during any civil or criminal proceeding which are presided over by a judicial officer and attended or participated in by a participant.

Participant

The term “participant” is used to mean a person who is, in the proceedings that are the subject of the hearing, any of the following: a party, a defendant, a complainant/victim, counsel, a witness, or any other person directly involved in the proceeding whom the presiding judicial officer considers appropriate.¹

Judicial officer

The term is used to mean a Judge of any court, a Community Magistrate, any registrar presiding over a hearing, or a Justice (as defined in s 2 of the Justices of the Peace Act 1957).

Remote participation

The term “remote participation” describes where one or more participants participate in a hearing using audio-visual or audio technology, or the matter is decided on the papers, rather than a hearing being held with all participants appearing in person.

Remote participant

The term “remote participant” is used to describe any participant who participates in a hearing using AV or audio technology or on the papers, rather than by attending the hearing in person.

¹ This might include, for example, a person speaking to the court pursuant to s 27 of the Sentencing Act 2002; a support person pursuant to s 79 of the Evidence Act 2006; an interpreter or communication assistant pursuant to s 80 of the Evidence Act 2006.