

Legislative Statement
Courts (Remote Participation) Amendment Bill

First Reading

Presented to the House of Representatives
In accordance with Standing Order 272

Introduction

1. The Courts (Remote Participation) Amendment Bill (the Bill) is an omnibus Bill that will make small, targeted amendments to the Courts (Remote Participation) Act 2010 and Criminal Procedure Act 2011 to enable more virtual or remote participation in court proceedings.

Background and objective of the Bill

2. 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 of the justice system, particularly victims.
3. Enabling more remote participation in court proceedings contributes to the Government's objective of improving court performance generally. Remote participation in court proceedings can, when used appropriately, increase access to justice and support the efficient and timely resolution of court proceedings. It can reduce travel time and costs for participants (such as prosecutors and lawyers) and is a safer and more efficient option for court appearances for defendants who are in custody.
4. The Bill will enact three small legislative changes that can be progressed quickly to improve and clarify the law around virtual or remote participation.

Amendments to the Courts (Remote Participation) Act 2010

5. To achieve the objectives above, the Bill will make two amendments to the Courts (Remote Participation) Act 2010.

Amendment one: Creating a presumption that victims can remotely observe criminal trials and sentencing where appropriate

6. The Bill will add a presumption to the Courts (Remote Participation) 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.
7. The presumption preserves judicial flexibility regarding how proceedings are conducted, for example, to ensure compliance with closed court arrangements or name suppression. Conditions will be able to be imposed to protect the integrity of the court process. For example, victims will need to comply with court requirements, such as not sharing access links or recording proceedings.
8. Remote observation will make the court processes safer and easier for some victims. They may also benefit from reduced travelling time and associated costs

Amendment two: Allowing use of audio links for remote court proceedings

9. This amendment to the Courts (Remote Participation) Act 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. Where appropriate, this will enable participants, who do not have access to audiovisual technology, to participate in, or listen to, hearings remotely using audio technology.

10. 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 participate effectively in proceedings.
11. In addition, audio links will only be able to be used for civil proceedings if the judicial officer or Registrar is satisfied that the parties will be able to effectively participate in the proceeding.
12. Further, hearings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, Mental Health Compulsory Assessment and Treatment) Act 1992 and the Substance Addition (Compulsory Assessment and Treatment) Act 2017 will not be able to be heard by audio link if the affected person is attending. These hearings determine whether the person needs to be compulsorily detained and treated.
13. The use of audio links for court proceedings was tested during the pandemic. In addition, the Disputes Tribunal and Tenancy Tribunal have been holding hearings by teleconference for many years, as have the senior courts for civil procedural matters.

Amendment to the Criminal Procedure Act 2011

14. The Bill also amends the Criminal Procedure Act 2011.

Amendment three: Clarifying the inter-relationship between virtual or remote participation and open justice

15. The amendment to the Criminal Procedure Act will make permanent a temporary change enacted 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.
16. 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 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.
17. The amendment also states that the court can require the public and the media to observe proceedings remotely.

Transitional matters

18. The presumption (amendment one) will come into effect six months after enactment. This will allow time for development of new court protocols and processes in

consultation with the judiciary and other stakeholders, judicial training, development of communication products such as factsheets for the public and victims, and staff training.

19. The other two amendments will come into effect on the day after Royal Assent.