

# Departmental Disclosure Statement

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Courts Remote Participation Bill
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The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Justice.

The Ministry of Justice certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

June 2026

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## Part One: General Policy Statement

The Courts Remote Participation Bill (the Bill) is an omnibus Bill introduced under Standing Order 267(1)(c) that amends legislation administered by the Ministry of Justice. That Standing Order provides that an omnibus Bill to amend more than 1 Act may be introduced if the Business Committee has agreed to the Bill's introduction as an omnibus Bill.

### **Repeal and replacement of the Courts (Remote Participation) Act 2010**

The Bill repeals and replaces the Courts (Remote Participation) Act 2010 (the Act) to reform the legislative framework governing the use of remote participation and to enable increased remote participation in New Zealand's courts. The Act has been in place since 2010, and a review found that it is not supporting the efficient and consistent use of remote participation in courts.

The Bill introduces a new legislative framework, involving a new high-level enabling Act and new court rules, with the aim of –

- providing increased clarity and certainty about when remote participation should be used; and
- supporting more consistent remote participation use across courts.

The Bill facilitates the use of remote participation in all court proceedings and by all persons participating in, or observing, proceedings.

Judicial officers and Registrars may make decisions about remote participation use in all court proceedings. However, court rules and regulations can prescribe the circumstances in which Registrars may not make certain decisions. Registrars can also refer a decision to a judicial officer if necessary.

High-level policy direction is recognised via a purpose statement, which provides that the purpose of the Act is to facilitate increased use of remote participation in a way that protects the rights of all people who engage with the court system to just, fair, and safe court processes.

The Bill includes an updated set of criteria to guide decision-making about whether remote participation is not contrary to the interests of justice. It requires judicial officers and Registrars to consider factors such as fair trial rights, a person's ability to effectively participate in the proceeding, time and cost saving efficiencies, and any relevant health and safety considerations before making a determination.

Under the Bill, victims and their support people are entitled to remotely observe criminal trials and sentencing, where appropriate. This carries through the changes made via the Courts (Remote Participation) Amendment Act 2024. This will make the court process safer and easier for some victims.

The Bill empowers the development of supporting court rules or regulations, which may prescribe how remote technology is presumed to be used for specific court proceedings and participants. The Bill refers to this as the standard approach. Judicial officers and Registrars can depart from the standard approach after considering the criteria in the Bill. Setting defaults or presumptions in secondary legislation, rather than the Bill, will make it easier to amend and update settings over time. The regulation-making power enables the executive to set court procedure when court rules relating to the use of remote technology have not been made or kept up to date.

## **Amendments to the Contempt of Court Act 2019**

The Bill amends the Contempt of Court Act 2019. It introduces offences for making and publishing recordings (sound and visual) of in-person and remote court proceedings without the permission of the court. Once made or shared these recordings could have adverse impacts on fair trial rights, safety, and public trust. The offence provisions are intended to deter people from making or publishing recordings in the absence of permission and to incentivise the deletion and taking down of any such recordings.

## Part Two: Background Material and Policy Information

### Published reviews or evaluations

<b>2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?</b>	<b>YES</b>
<i>Digital inclusion and wellbeing in New Zealand, Motu Economic and Public Policy Research, October 2019</i> (Accessible at: <a href="https://motu-www.motu.org.nz/wpapers/19_17.pdf">https://motu-www.motu.org.nz/wpapers/19_17.pdf</a> ).	

### Relevant international treaties

<b>2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?</b>	<b>NO</b>
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### Regulatory impact analysis

<b>2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?</b>	<b>NO</b>
The Ministry for Regulation determined that this proposal is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor economic, social, or environmental impacts.	

### Extent of impact analysis available

<b>2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?</b>	<b>NO</b>
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<b>2.5. For the policy to be given effect by this Bill, is there analysis available on:</b>	
<b>(a) the size of the potential costs and benefits?</b>	<b>NO</b>
<b>(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?</b>	<b>NO</b>
<p>Setting defaults or presumptions in secondary legislation will provide greater certainty about when remote participation should be used and support more consistent use. This brings potential benefits to the courts, to justice sector agencies considering investment and resourcing options, and to court users, who should be able to better plan for appearances.</p> <p>However, to fully achieve the Government's objective of increasing use, legislative change will need to be supported by further investment in technology, infrastructure and people and processes.</p> <p>It has not been possible to precisely model expected impacts of this proposal. This is due to limited data on current remote participation use, uncertainty about potential future investment and the discretion that remains for decision makers to determine whether remote participation use is or is not contrary to the interests of justice in each individual case.</p>	

<b>2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:</b>	
<b>(a) the level of effective compliance or non-compliance with applicable obligations or standards?</b>	<b>NO</b>
<b>(b) the nature and level of regulator effort put into encouraging or securing compliance?</b>	<b>NO</b>

## Part Three: Testing of Legislative Content

### Consistency with New Zealand's international obligations

<b>3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?</b>
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The Ministry of Justice has not identified any international obligations that conflict with the policies in the Bill.
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### Consistency with the government's Treaty of Waitangi obligations

<b>3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?</b>
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The Ministry of Justice has considered the impact of increased use of remote participation on the key te Ao Māori practice of kanohi ki te kanohi (face to face) engagement. The Ministry is aware of the cultural importance of kanohi ke te kanohi interactions for some participants, and that the extent to which tikanga Māori translates in a court setting using remote participation may depend on the circumstances of the case. Before making a determination about the use of remote participation, the Bill requires judicial officers and Registrars to consider whether the use of technology engages any cultural considerations or practices.
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Access to technology will also affect who can take advantage of the proposed changes. 2019 research into digital inclusion in New Zealand noted that Māori, among others, are one of the groups most at risk of being digitally excluded. Before making a determination about the use of remote participation, the Bill requires judicial officers and Registrars to consider whether the relevant technology, and the infrastructure to support its use, is available. Where it is not available, participants should remain able to attend court in person.
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### Consistency with the New Zealand Bill of Rights Act 1990

<b>3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?</b>	<b>YES</b>
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Crown Law will provide advice to the Attorney-General on the Bill's consistency with the New Zealand Bill of Rights Act 1990.
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Advice provided to the Attorney-General by the Crown Law Office, or a section 7 report of the Attorney-General, is generally expected to be available on the Ministry of Justice's website upon introduction of a Bill. Such advice, or reports, will be accessible on the Ministry's website at <a href="https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/">https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/the-bill-of-rights-act/advice/</a>
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## Offences, penalties and court jurisdictions

<b>3.4. Does this Bill create, amend, or remove:</b>	
<b>(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?</b>	<b>YES</b>
<b>(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?</b>	<b>NO</b>
<p>To deter people from making and publishing unauthorised court proceedings, clause 28 of the Bill inserts new sections 24A-F into the Contempt of Court Act 2019, which provide that:</p> <ul style="list-style-type: none"> <li>- it is an offence to knowingly or recklessly make a recording of a court proceeding without leave of the court. The penalty is a fine not exceeding \$5,000 for an individual, and a fine not exceeding \$20,000 for a body corporate.</li> <li>- it is an offence to knowingly or recklessly publish the recording of a court proceeding without leave of the court. The penalty is either imprisonment for a term not exceeding three months or a fine not exceeding \$12,000 for an individual, and a fine not exceeding \$50,000 for a body corporate.</li> <li>- it is a strict liability offence to make or publish a recording without leave of the court. For making a recording, the penalty is a fine not exceeding \$1,500 for an individual, and \$7,500 for a body corporate. For publishing the recording, the penalty is a fine of \$3,000 for an individual and \$15,000 for a body corporate. Defences are available (see section 4.4 below).</li> </ul>	

<b>3.4.1. Was the Ministry of Justice consulted about these provisions?</b>	<b>YES</b>
<p>The Bill has been prepared by the Ministry of Justice. Internal discussion with the Offences and Penalty Vetting team have been undertaken on these provisions as appropriate to inform the policy and drafting.</p>	

## Privacy issues

<b>3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?</b>	<b>NO</b>
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## External consultation

<b>3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?</b>	<b>YES</b>
<p>The Ministry of Justice undertook public consultation on policy options for changing the Courts (Remote Participation) Act over October to December 2024. A discussion document was released to support the consultation process. 32 submissions were received, largely from legal representatives, victims' groups, and a handful of individuals. Feedback noted that:</p> <ul style="list-style-type: none"> <li>- remote participation has potential to reduce costs, support access to justice and create some efficiencies, but not always.</li> <li>- effective participation in remote hearings depends on the availability of quality and accessible technology and infrastructure.</li> <li>- remote participation is not appropriate for all participants and any rules should reflect the needs and experiences of a range of court users.</li> <li>- remote participation is generally more appropriate for procedural hearings rather than substantive ones.</li> </ul> <p>The discussion document is accessible at:  <a href="https://www.justice.govt.nz/assets/Documents/Publications/Discussion-Documents/Review-of-the-Courts-Remote-Participation-Act-2010.pdf">https://www.justice.govt.nz/assets/Documents/Publications/Discussion-Documents/Review-of-the-Courts-Remote-Participation-Act-2010.pdf</a></p>	

## Other testing of proposals

<b>3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?</b>	<b>YES</b>
The Ministry of Justice has consulted key government agencies and prosecuting agencies on the policy and the draft Bill.	

## Part Four: Significant Legislative Features

### Compulsory acquisition of private property

<b>4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?</b>	<b>NO</b>
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### Charges in the nature of a tax

<b>4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?</b>	<b>NO</b>
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### Retrospective effect

<b>4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?</b>	<b>NO</b>
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### Strict liability or reversal of the usual burden of proof for offences

<b>4.4. Does this Bill:</b>	
<b>(a) create or amend a strict or absolute liability offence?</b>	<b>YES</b>
<b>(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?</b>	<b>YES</b>
<p>Clause 28 inserts new sections 24E and 24F into the Contempt of Court Act 2019. These new sections create strict liability offences for making and publishing recordings of court proceedings without leave of the court. The defendant has a defence if the defendant:</p> <ul style="list-style-type: none"><li>- proves they believed on reasonable grounds that they had the leave of the court to make the recording (new s 24E(3)(a)) or to publish the recording (new s 24F(3)(a)); and</li><li>- deletes, or withdraws the publication of, the recording as soon as practicable after becoming aware that they did not have leave of the court (new ss 24E(3)(b) and 24F(3)(b)).</li></ul> <p>The Bill addresses situations where recordings are made and/or published without leave of the court, without a person knowingly and recklessly doing so. This recognises that the act of making and/or recording a court proceeding could cause harm, regardless of a person's mens rea in doing so. The Bill provides defences in these scenarios, and a defendant can avoid liability if they can prove they believed on reasonable grounds that they had the leave of the court to make and/or publish the recording; and the person deletes, or withdraws the publication of, the recording as soon as practicable after becoming aware that they did not have leave of the court.</p>	

### Civil or criminal immunity

<b>4.5. Does this Bill create or amend a civil or criminal immunity for any person?</b>	<b>NO</b>
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### Significant decision-making powers

<b>4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?</b>	<b>NO</b>
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## Powers to make delegated legislation

<b>4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?</b>	<b>NO</b>
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<b>4.8. Does this Bill create or amend any other powers to make delegated legislation?</b>	<b>YES</b>
<p>The Bill empowers the development of Court Rules that prescribe how remote participation is presumed to be used in relation to any category of proceeding, appearance or hearing, and participant or observer. The Bill refers to this as the 'standard approach.' The procedure for making the Court Rules is set out at clauses 20-22 and schedule 1 of the Bill. Court Rules will be made following judicial concurrence of the Chief Justice and relevant head of Bench, or concurrence following consideration by the Rules Committee (as applicable).</p> <p>The Bill also empowers the development of regulations that prescribe how remote participation is presumed to be used in relation to any category of proceeding, appearance or hearing, and participant or observer. The procedure for making the regulations is set out at clause 23 of the Bill. The regulations will be made by the Governor-General, by Order in Council.</p> <p>Clause 24 of the Bill clarifies the relationship between the Court Rules and regulations. It provides that no rule of court may be made under the Act that is inconsistent with any regulation made under the Act. It also provides that where there is a conflict between a rule and a regulation, the regulation prevails. This does not apply to any rule of court made in relation to the High Court, under section 148 of the Senior Courts Act 2016. This reflects that the High Court Rules 2016 are deemed to be primary legislation.</p>	

## Any other unusual provisions or features

<b>4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?</b>	<b>NO</b>
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