December 2024

**To Ministry of Justice**

Please find attached our submission on the Courts (Remote Participation) Act 2010 Review

For any further inquiries, please contact:

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**Introducing Disabled Persons Assembly NZ**

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

**We recognise:**

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/%24file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

**Rangatiratanga / Leadership**: reflecting the collective voice of disabled people, locally, nationally and internationally.

**Pārongo me te tohutohu / Information and advice**: informing and advising on policies impacting on the lives of disabled people.

**Kōkiri / Advocacy**: supporting disabled people to have a voice, including a collective voice, in society.

**Aroturuki / Monitoring**: monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

## United Nations Convention on the Rights of Persons with Disabilities

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),[[1]](#footnote-2) a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else. All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention.

The following UNCRPD articles are particularly relevant to this submission:

* **Article 8 – Awareness raising**
* **Article 9 – Accessibility**
* **Article 12 – Equal recognition before the law**
* **Article 13 – Access to justice**

## New Zealand Disability Strategy 2016-2026

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy[[2]](#footnote-3) to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision.

The following outcomes are particularly relevant to this submission:

* **Outcome 4 – Rights protection and justice**

# The Submission

**1. Introduction**

DPA welcomes the opportunity to engage with New Zealand Courts (Remote Participation) Act 2010 review.

Covid has highlighted the importance of remote participation for disabled people in several submissions ranging from telehealth appointments in our hospitals through to allowing employees to work from home. Remote participation also allows disabled people to participate more effectively in multiple avenues that may have previously been inaccessible to them.

With the increased availability of remote participation, it is vital that the Ministry of Justice and the courts ensure that they provide equity of service for disabled people in all courts and that all information be provided in accessible formats on the Courts website[[3]](#footnote-4).

**a) Remote Participation**

DPA supports remote participation for disabled people as physical court environments can be inaccessible. For example, we are aware of a Deaf person waiting for a court case who could not hear their name being called over the sound system. Wheelchair and mobility device users are also often not considered in the design of physical spaces within courts.

An example about how the inaccessibility of our courts can affect the participation of disabled people within them comes from the experience of one of our members who was summoned for jury service but was advised by court staff (on what was supposed to be his first morning) that their power wheelchair could not be accommodated in the jurors’ box, meaning that he opted out of undertaking service.

This member raised with us the issue that disabled people charged with criminal offences or as witnesses may not be able to physically attend court in circumstances where courtrooms and spaces are inaccessible either.

DPA recommends that alongside the ability for victims and witnesses to attend hearings remotely (something that will benefit disabled victims immensely) that disabled defendants charged with offences (especially those remanded into the community) can attend hearings remotely, particularly if accessing a courtroom will be an issue.

For remote participation to be accessible to disabled people it is essential that information on remote participation be made available in all accessible formats and this information be kept updated on the Ministry of Justice Courts website.

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| **Recommendation 1:** that information on remote participation be made available in all accessible formats on the Ministry of Justice Courts website |

**b) Equity for Māori disabled**

Māori make up 37 percent of people proceeded against by Police, 45 percent of people convicted, and 52 percent of people in prison[[4]](#footnote-5). The “Ara Poutama Aotearoa Disability Action Plan 2023-2027", highlighted that Māori are overrepresented among the disabled population, both in prison and within the general population[[5]](#footnote-6). Māori disabled often have specific requirements, for example, trilingual interpreters and te reo Māori communication devices for those who are non-verbal.

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| **Recommendation 2:** that Māori disabled are supported to have access to te reo Māori in the courts in a way that meets their accessibility requirements including using assistive technology. |

DPA now answers the most relevant questions contained in the discussion document from our perspective and make further recommendations.

1. **What are your views on including a purpose statement?**

DPA supports the inclusion of a purpose statement within any new legislation. We agree with the recommended purpose statement outlined which aims to promote the use of remote participation in court proceedings to:

* enhance access to justice;
* support the just, effective, efficient, and timely resolution of court proceedings; and
* comply with open justice principles.

DPA endorses the first of the principles as enhancing access to justice is important for everyone, including disabled people.

1. **What else, if anything, should be included in the purpose statement?**

Nothing else.

1. **What are your views on including the Coroners Court within an Act? Do you have any other comments to make?**

DPA supports the idea of making the Coroners Court one of the courts covered by remote participation legislation.

However, we recommend that this should be done on the proviso that any remote participants who are members of the public and/or the media are able to be excluded from parts of any hearing when sensitive, confidential information is being shared with the court. This should only happen if a judge orders that the actual court be cleared of public and media representatives.

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| **Recommendation 3:** that any remote participants who are members of the public and/or the media can be excluded from parts of any hearing where sensitive, confidential information is being shared with the court. |

1. **Do you think it is necessary to clarify that legislation governing remote participation covers remote observers, including victims, the media, and the public?**

DPA supports this clarification being added to legislation.

This would enable disabled people whether they are victims, defendants/plaintiffs, media or members of the public being able to access court proceedings more freely.

1. **If we formalise a remote observation framework in an Act, what else, if anything, should be included in the framework?**

DPA recommends that through the Ministry of Justice working alongside other relevant stakeholders including disabled people and other digitally disadvantaged population groups that remote hearing accessibility guidelines are developed to enable remote access to court processes for these groups.

These plans to enable remote participation should be based on the Ministry of Social Development’s (MSD’s) Government Accessibility Charter which outlines how government agencies should make their information and communications accessible to disabled and D/deaf people.[[6]](#footnote-7)

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| **Recommendation 4:** that remote hearing accessibility guidelines are developed by the Ministry of Justice, based on MSD’s Government Accessibility Charter, in partnership with disabled people and other digitally disadvantaged population groups to facilitate disabled people’s participation in remote hearings. |

1. **What are your views on clarifying that members of the jury may only participate remotely together as a group?**

DPA acknowledges that jurors may only participate remotely together as a group, in exceptional circumstances to avoid the possibility of interference with jurors and for other reasons which may impact fair trial outcomes.

However, we recounted earlier examples disabled people who have been unable to serve on juries when called up due to the inaccessibility of court premises.

DPA recommends that, provided that any disabled and/or D/deaf juror who is chosen can notify the court in a timely manner that they have an accessibility need, that courts be given the flexibility to allow disabled jurors to participate remotely and separately, especially if it is ascertained beforehand that a courtroom may be inaccessible for a disabled juror to sit in or if an NZ Sign Language (NZSL) interpreter can only be accessed online.

While standard selection processes mean that not all people chosen for jury service will be chosen to sit on trials, there is still the need for the court system to have flexible, accessible processes to enable remote participation by disabled people as jurors both in terms of viewing proceedings and then being able to deliberate with fellow jurors through audio visual link (AVL) to the jury room.

DPA appreciates that stringent rules will have to be adopted around remote juror participation, and this includes for any disabled juror who is granted a reasonable accommodation by the court to attend proceedings and deliberations remotely.

This brings us to our next set of recommendations:

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| **Recommendation 5:** that remote participation legislation and remote hearing accessibility guidelines give courts the ability to allow disabled jurors the ability to participate on juries from selection through to deliberation remotely via AVL. |

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| **Recommendation 6:** that the Ministry of Justice in the remote hearing accessibility guidelines and any legislation stipulates how disabled people can participate remotely on juries, if this is necessary to enable participation. |

The need for any court to do this should be mitigated through making all courtrooms accessible to disabled people. This includes, for example, having jury boxes and witness stands which people using wheelchairs and mobility devices can easily access, hearing loops for D/deaf people, suitable lighting which can accommodate the needs of both blind/low vision and neurodiverse people and step free, smooth access.

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| **Recommendation 7:** that any new or re-designed court buildings are designed and constructed to Universal Design (UD) standards. |

1. **What are your views on clarifying through legislation that fully remote hearings are enabled?**

Yes, we agree with the need to legislate that fully remote hearings can be enabled.

This would enable disabled people and D/deaf people, whether as defendants/accused, survivors/victims, lawyers, court officials, witnesses, judges and members of the public to easily access proceedings, on the proviso that digital access is available to them.

1. **In what circumstances, if any, do you think fully remote hearings should be used?**

Remote hearings could be used for routine criminal cases, especially those where non-custodial sentences are more likely to be imposed.

Remote hearings would also suit civil court cases, Family Court proceedings (particularly when applicant parties live in different locations), Disputes Tribunal and Tenancy Tribunal hearings, amongst others.

However, it would be important to ensure that all participants, especially plaintiffs/defendants and complainants/survivors have digital access or can be supported to acquire this capacity, even if temporarily for the purposes of the hearing by the Ministry of Justice for the purposes of attending remote hearings.

1. **What else, if anything, should be in a fully remote hearing framework?**

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| **Recommendation 8:** that the needs of disabled people, D/deaf people, older people and those in remote rural locations are fully integrated into the remote hearing framework, which would specify the need to have remote proceedings accessibility guidelines as part of it. |

1. **Do you think separate rules for AVL and AL (as is the case currently) are necessary? Please explain why.**

DPA agrees with the preferred option that decision makers have flexibility around determining the mode of participation, thereby doing away with the separate rules for AVL and AL use in court cases.

However, DPA recommends that this flexibility is exercised on the basis that disabled, and D/deaf people have the right to attend all open court proceedings, even as members of the public, and that full digital accessibility to any hearings should be the highest priority when making decisions around which system(s) to use.

This brings us to our next set of recommendations:

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| **Recommendation 9:** that remote hearing accessibility guidelines contain guidance on how AVL or AL can be used in remote proceedings to facilitate the participation of disabled and D/deaf people. |

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| **Recommendation 10:** that all decision makers undergo disability responsiveness and awareness training with a specific focus on applying the UNCRPD within justice system settings. |

1. **If decision-makers were responsible for determining the appropriate ‘mode’ of participation, what would be the benefits and risks of this approach?**

If decision-makers, be they judges or court officials were responsible for determining the appropriate ‘mode’ of participation, the need to consider the fact that disabled people can and will be present, even as members of the public, will have to be prioritised by them.

As noted above, while we support having as much flexibility as possible for decision makers to determine whether AL or AVL is used, this must be balanced with the need to uphold and protect the human rights of disabled people to participate in judicial proceedings as outlined in Article 13 of the UNCRPD.[[7]](#footnote-8)

Hopefully, given our recommendation that decision makers are trained in disability responsiveness and awareness, we ask that these decisions are made in an inclusive way which respects the human and civil rights of disabled people.

1. **What are your views on including an offence provision?**

Yes, we absolutely support the proposal to make it an offence to record court proceedings without permission of the presiding judicial officer.

1. **Are there different ways to address the risks associated with unauthorised recordings of court proceedings?**

We are aware that some platforms have AI features that can record or make automatic notes of sessions so ways of mitigating these risks need to be addressed.

1. **Do you agree with ensuring that the definition of “judicial officers” includes Family Court associates?**

Yes, DPA agrees that Family Court associates should be added to the definition of judicial officers, provided that they undergo disability responsiveness and awareness training.

1. **Do you think any other changes should be made to the scope of judicial officers’ and Registrars’ decision-making powers?**

We have no view on this question.

1. **Do you support revising the current criteria? Please explain why.**

DPA favours updating the criteria that decision-makers must consider when deciding whether to hold a legal proceeding remotely so as to ensure additional references around the needs of disabled and older people having access to remote hearings are added:

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| **Recommendation 12:** that the updated criteria cover the needs of disabled and older people to have access via remote participation to legal proceedings and that decision makers decisions are guided by the remote hearings’ accessibility guidelines. |

1. **If you support streamlining the criteria, do you prefer Option 1 or Option 2? Please explain why?**

DPA favours Option 2 of streamlining and updating the criteria that decision-makers must consider.

This would include the need to incorporate additional criteria outlined in the previous question around needing to meet the needs of disabled and older people when considering whether to conduct legal proceedings remotely or not.

1. **Do you think detailed rules and expectations should remain in an Act? Please explain why.**

DPA supports the retention of detailed rules and expectations in an Act on the basis that the needs and rights of disabled people and other groups, including Māori, Pacific, and older people, are recognised when it comes to requesting the option of participating in legal proceedings remotely.

Leaving such expectations to be set down through court rules or judicial discretion would mean that the rights, needs and interests of disabled people and other groups who would benefit from remote participation could be minimised or overlooked.

1. **If detailed rules are set in court rules or Judicial Protocols, would a purpose statement in legislation and statutory criteria provide sufficient policy direction to court participants and decision makers? Would anything else be needed?**

DPA recommends that in the event that government decides to give the judiciary and courts more say over whether remote proceedings are held, that a purpose statement in legislation specifically outlining that disabled and older people, amongst others, could request remote proceedings would be an important safeguard in protecting people’s rights to request and have this granted.

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| **Recommendation 13:** that the right of disabled people and older people to request legal proceedings be held remotely is protected through the inclusion of this right within the purpose statement of any enabling legislation. |

1. **Do you support increasing expectations on the courts to make greater use of remote participation in civil proceedings?**

Yes, we do on the basis that it would provide another option for accessibility for disabled and older people who may not readily be able to attend hearings in person.

However, this should be done on the proviso that certain courts, such as the Youth Court and Family Court would not be able to offer remote access to members of the public or media (given that they are closed courts), except in limited circumstances.

1. **What benefits and risks to court users would there be if more court hearings occurred remotely?**

The benefits to court users would be the ability to participate in civil proceedings more easily and at less cost. It would also mean no need to travel, especially for people living in remote areas.

The downsides of doing so would be the potential for technical issues to interrupt proceedings, requiring them to be delayed meaning more stress for all parties involved.

Also, as noted earlier in this submission, some people (especially those living in remote areas) may not have ready access to digital technologies, meaning that their ability to fully participate in remote proceedings may be limited meaning that they may need to go through the expense and time involved in personally travelling to attend them.

As suggested earlier, the best way to minimise these risks would be through the Ministry of Justice arranging digital access (even temporarily) in accessible locations for people who don’t have direct access to it for the purposes of attending remote proceedings.

1. **Which of the options above for encouraging more remote participation in civil proceedings do you prefer, and why?**

DPA favours Option 3 of introducing a legislative presumption in favour of remote participation in some or all civil proceedings.

This would enable disabled people who have access to digital technology or who don’t live in the area where the hearing is being held the opportunity to easily participate whether they as plaintiffs, defendants, lawyers, court officials or judges.

1. **If you support a legislative presumption in favour of remote participation for civil proceedings (Option 3), do you think it should apply to (list follows):**

DPA believes that remote participation should be available for proceedings in all the courts and scenarios outlined:

* Proceedings in the Family Court
* Compulsory care proceedings
* Coronial inquest hearings
* Specialist courts

However, as we have reiterated previously, this should be done on the proviso that remote access to these types of courts (given their relatively closed nature) is granted only to judges, court officials, lawyers and parties to the proceedings and not to ordinary members of the public.

DPA recommends that an exception should be made in these types of courts for members of the public who have been identified by parties to the proceedings as people they would like to have present online to support them in court being granted the ability to attend remotely.

This would enable the family/whānau and friends of people involved in civil proceedings, including disabled and older people who may not be able to readily access courts, to be present online.

1. **Do you have any different ideas for increasing expectations on the court to hold more remote hearings in civil proceedings?**

No

1. **What are your views on clarifying that AVL may be used in a sentencing hearing where the participant is not in custody?**

DPA agrees that this option would be more practicable in cases where it is unlikely that a sentence of imprisonment or home detention would be imposed.

This would benefit disabled and older defendants appearing before the courts, if they have access to appropriate digital technology. Again, if people don’t have access to relevant technology, then the Ministry of Justice should do everything practicable to arrange digital access, especially if people can’t make it to court for sentencing due to accessibility issues.

1. **What benefits and risks would there be for court users if more AVL is used in sentencing matters?**

DPA believes that there will be benefits for disabled people to participate in sentencing remotely either as defendants or complainants.

However, we acknowledge that one of the few drawbacks will be for survivors who wish to face defendants in person at court who may be restricted in doing so, particularly if the offender is a disabled person and requests remote sentencing.

This factor brings us to our next recommendation:

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| **Recommendation 14:** that if a complainant wishes to face a disabled offender in person at court and the offender wishes to appear remotely that courts shall take all relevant factors into account before deciding whether the disabled offender should appear in person or remotely. |

1. **How might we address the practical difficulties associated with sentencing defendants/offenders remotely?**

DPA agrees that there are significant practical difficulties and risks associated with sentencing defendants/offenders remotely and supports the options outlined for dealing with this which include ensuring that robust systems are in place for serving sentencing orders on defendants and developing processes for assessing the chance that custodial sentences will be imposed.

DPA recommends that the needs, rights and interests of disabled people, D/deaf people and people with mental distress should be prioritised when doing so.

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| **Recommendation 15:** that the needs, rights and interests of disabled people, D/deaf people and people with mental distress are prioritised when developing systems for serving sentencing orders and developing processes around the possibility of custodial sentences being imposed in remote proceedings. |

1. **Do you support entitling court participants (defendants who are not in custody and lawyers) to attend criminal procedural matters remotely on request? Please explain why.**

DPA believes that the potential for AVL to be used in some sentencing matters where the offender is not in custody would provide another accessibility option for disabled and older people in this situation.

DPA acknowledges that there are greater risks involved around sentencing in remote proceedings, especially of people who are on bail who could be sentenced to either imprisonment or home detention given the practicalities and safety issues involved.

However, that is why in the previous recommendation as well as in recommendations 10 and 11 that the right of disabled and D/deaf people to access all legal proceedings, including remotely, should inform all decisions around whether AL or AVL is used in all cases.

1. **Do you think such an entitlement should allow participants to request participation by AL or should it be limited to AVL? Please explain why.**

As mentioned earlier in this submission, DPA favours the right of participants to request participation by either AL or AVL, a move that would benefit many disabled and D/deaf people.

In circumstances involving D/deaf people who need NZSL interpreter support, it is likely that AVL will likely be favoured over AL given the need for NZSL users to visually see interpreters during proceedings.

1. **What benefits and risks would there be for court users if this entitlement was introduced?**

As we have stated throughout this submission, there will be benefits for disabled and older people in terms of being able to easily access proceedings, time saved in terms of travel and lower costs for all parties involved, including for disabled and older people who are predominantly low-income earners.

1. **Do you have any different ideas for increasing use of remote participation in criminal procedural matters?**

No, not that we can think of at this time.

## Do you agree there is a problem with how the current Act defines criminal procedural matters and criminal substantive matters? Please explain why.

DPA agrees that there are immense difficulties involved in determining the difference between what constitutes criminal procedural matters and criminal substantive matters for the purposes of deciding whether it is appropriate to hold a legal proceeding either remotely or in person.

We agree with the calls made in the consultation paper for further discussion on whether the significance of the matter(s) before the court should determine whether a remote or an in-person hearing is most appropriate.

1. **Do you think categorising by ‘significance’ of the matter could address the problem? Please explain why.**

This question and the previous one bring us to our next recommendations:

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| **Recommendation 16:** that the needs, rights and interests of disabled people, D/deaf people and people with mental distress are the forefront of any decisions around what constitute criminal procedural matters and criminal substantive matters. |

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| **Recommendation 17:** that the Ministry of Justice involve disabled and older people in discussions around what should constitute criminal procedural matters and criminal substantive matters. |

1. **If so, what are your views on linking significance to whether the matter determines the pathway of the case or progresses it from one stage to another?**

DPA has no views on this.

1. **Do you have any alternative ideas for defining and/or grouping criminal matters?**

DPA has no views on this.

1. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> [↑](#footnote-ref-2)
2. <https://www.odi.govt.nz/nz-disability-strategy/> [↑](#footnote-ref-3)
3. Ministry of Justice website. (n.d.) *Interpreters, language & disability access* <https://www.justice.govt.nz/courts/going-to-court/pre/interpreters-language-and-disability-access/> [↑](#footnote-ref-4)
4. Ministry of Justice. (n.d). *Hāpaitia te Oranga Tangata* <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata/> [↑](#footnote-ref-5)
5. Ara Poutama Aotearoa Department of Corrections. (n.d.) *Disability Action Plan 2023 – 2027* <https://www.corrections.govt.nz/resources/strategic_reports/disability_action_plan_2023_2027> [↑](#footnote-ref-6)
6. <https://www.msd.govt.nz/about-msd-and-our-work/work-programmes/accessibility/index.html> [↑](#footnote-ref-7)
7. [↑](#footnote-ref-8)