

# Practice Note DC (Civil) No. 1C

## Attendance at Civil Proceedings by Audio Visual Link (AVL)

This Practice Note is issued under sections 56 and 57 of the *Civil Procedure Act 2005* and is intended to facilitate the just, quick and cheap resolution of the real issues in all proceedings before the Court. It applies to all matters in the civil jurisdiction of the District Court commencing 29 January 2024.

### 1. Applications

- 1.1 If it is intended that any witness (including expert witnesses), party or legal representative attend Court remotely by audio visual link (AVL) then an application must be made under section 5B of *Evidence (Audio and Audio Visual Links) Act 1998* (AVL Act) and in accordance with this Practice Note.
- 1.2 At the time of being allocated a hearing date, the parties are to inform the Court whether it is anticipated that an application for attendance by audio visual link (AVL) will be made. The Court will then make orders as to the timing of the application.
- 1.3 In every case, applications must be made at least four business days before any listing or hearing unless special circumstances exist. If the application is made late, then evidence as to the special circumstance must be provided.
- 1.4 The Court of its own motion may also make an order under section 5B of the AVL Act for any witness, party, or legal representative to attend and/or give evidence at any hearing or any other listing of proceedings.

- 1.5 Prior to making an application under paragraph 1.2 the party seeking an order must request in writing the consent of all other active parties. If consent is withheld, then that party or parties must notify the applicant of the reason(s) in writing for its position.
- 1.6 If the application under section 5B is made by consent then the applicant can request that the matter be referred to the List Judge by contacting the Registry: [sydneycivilregistry@justice.nsw.gov.au](mailto:sydneycivilregistry@justice.nsw.gov.au). The application must provide the court with evidence in compliance with the AVL Protocol, below.
- 1.7 Any application for attendance by AVL which arises after the commencement of a hearing must be made to the presiding judge. This practice is not encouraged as late applications may impact upon the progress of a hearing and may result in adverse cost orders. In these circumstances the applicant must provide an explanation as to why the order was not sought in advance of the listing.
- 1.8 All applications must be accompanied by a statement by the party's legal representative as to the following:
- (a) the name of any person proposed to attend by AVL;
  - (b) the role of that person in the hearing;
  - (c) the date upon which the person is expected to attend;
  - (d) the reason the witness cannot attend Court in person;
  - (e) compliance with the protocol for a person attending by AVL.

- 1.9 If the application is not made jointly or with the consent of all other parties, then the applicant must file and serve a Notice of Motion and supporting affidavit at the earliest opportunity. The affidavit is to demonstrate the way in which the parties intend to comply with the AVL protocol.

## **2. AVL Protocol**

- 2.1 If an order is made for attendance by AVL it is to be facilitated via the Court's Audio Visual Link(AVL) System, unless the Court otherwise orders.
- 2.2 Once a judge has been allocated to hear the proceedings, the judge's associate will upon request provide the parties with the relevant details for attendance via the Court's AVL System.
- 2.3 It is the responsibility of the legal representatives of the party utilising the system to comply with the following protocol:
- (a) access details to the Court's AVL system are to be used for the purposes of the hearing or listing only and are not to be published by the parties or the person attending by AVL for any other purpose;
  - (b) court etiquette and standards are to be adhered to during the attendance of any person by AVL;
  - (c) any person attending by AVL must be located in a quiet and private location to limit interference from background noise;
  - (d) any device, software, cameras, communication service and internet coverage or connection being used to facilitate the attendance by

AVL must be sufficient to provide adequate broadcast quality (picture and sound) and uninterrupted service during the attendance;

- (e) internet connection should be secured by devices being connected by cable directly to a network that is connected to the internet;
- (f) using tablets and mobile phones with mobile coverage must only be used as a last resort or in extenuating circumstances where devices with cable/network connections are not available;
- (g) the person attending remotely must be capable of operating any device being used to attend by AVL and/or have sufficient support to operate any such device;
- (h) legal representatives must ensure all relevant materials to be relied upon have been made available to the Court beforehand. Any documents to which a witness may be referred must be available to the witness at the location from where they are giving evidence by AVL or in a format that may be displayed on the document sharing device in the Court;
- (i) generally, documents should be:
  - (i) prepared in hard copy and paginated;
  - (ii) paginated copies must be provided to the Court and Counsel;
  - (iii) alternatively, with leave, digital paginated copies of those documents may be used if the witness has proficiency in using the technology to enable efficient access to digital paginated documents;

(j) attendees must observe normal court practices, including:

- (i) refraining from speaking over each other;
- (ii) ensuring witnesses do not communicate with each other at the location of the remote attendance or be present when another witnesses' evidence is being given by AVL.

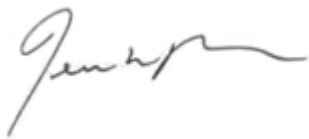
2.4 The presiding Judge will retain the discretion to manage the way the hearing is conducted.

2.5 Persons accessing the system for inappropriate purposes or in a way that interferes with the proper administration of justice may be dealt with for contempt of court.

### **3. Media Attendance by AVL**

3.1 Members of the media are to request the dial in details by contacting the District Court Media Co-ordinator:

[mediadistrictcourt@dcj.nsw.gov.au](mailto:mediadistrictcourt@dcj.nsw.gov.au).



The Hon. Justice D Price AO

Chief Judge

22 November 2023