

Item of business :

Courts (Remote Participation) Amendment Bill

Submission name :

Criminal Bar Association Inc

Comments

Remote participation in courts can be convenient and cheaper but there are insidious effects of hiving off individual participation into remote locations. Particularly, witnesses and parties may not have the same sense of "ceremony" in participating. There may be less control of them and they could be reading from their statements rather than giving their recollections. They may have extraneous materials with them. Judges or juries may have difficulty assessing their credibility. Exhibits may be difficult to access and comment on. It may be easier to lie at a distance. It can be difficult to hear remote participants, especially for stenographers. Mental health issues may be more difficult to detect. There can be time zone problems and there are many technical problems which slow up the hearing.

For any serious case, with enough at stake, there is nothing like face to face, as is appreciated in the world of sales and politics. That all applies to AVL. This Bill also deals with audio links which is one more step down and where there will be more room for error.

For the Bill, there is some protection for vulnerable people in civil cases under clause 5 with the proposed new section 7A but otherwise it is for the judicial officer or Registrar to apprehend in advance whether audio links would be in the interests of justice and part of fair process. This is difficult to determine. It would be good also to include a bright line test such as that the proposed audio link evidence is expected to last no more than two hours per witness.

Clause 6 and the proposed section 8A for a participant in a criminal procedural matter is fair enough as that may save the endless callovers of counsel in the criminal lists in court where churn begets churn. As long as this does not extend to substantive hearings, it is supported. I caution, however, that it is easy to forget a defendant who is not physically or, at least, visually present.

As for clause 7 and the proposed section 9A, the difficulty may be that a victim may record or film the AVL or AL and use it to harass the defendant on social media, or otherwise, where such recording is not permitted in court. They or their support people or others present may disregard court directions to the contrary. There should be the requirement for supervision of the observation of the trial or sentencing.

Recommendations

As set out above - caution needed over AVL to start with. AL a last resort. It may well detract from quality for civil cases. For criminal process hearings, it is supported so long as there are checks to ensure that the defendant is not left as a mushroom. For observation of trials or sentencings by victims etc, there should be supervision.