



DISTRICT COURT OF NEW ZEALAND TE KŌTI-Ā-ROHE O AOTEAROA

COVID-19 IN THE COMMUNITY PROTOCOL

Acting Chief District Court Judge John Walker

Effective from 13 September 2022

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Nothing in this protocol is intended to reduce fair trial rights, the right to natural justice, or rights under the New Zealand Bill of Rights Act 1990.

This Protocol recognises that local solutions may be necessary to best address local issues. Any variations must be approved by the Chief District Court Judge.

In this Protocol, “AVL” means any platform which allows for audio and visual remote participation. Without limitation, this includes VMR, MS Teams and any other electronic remote participation platform approved by the presiding judge.

In this Protocol, “vulnerable” means a person who is at higher risk of severe illness, immunocompromised or has a relevant underlying health condition.

In this Protocol, “participant” includes parties to proceedings, victims, complainants, lawyers, witnesses and representatives of agencies providing services to the court.

This Protocol will be reviewed and modified as necessary by the Chief District Court Judge.

Introduction

1. Courts are an essential service. The District Court will remain open despite the presence of COVID-19 in the community to ensure access to justice.
2. This protocol sets out a framework for ensuring that everyone who needs to participate in proceedings is able to do so. The primary considerations that underpin this protocol, and decisions under it, are the interests of justice and the protection of the health and safety of everyone accessing courts.

3. This protocol applies subject to any directions given by the presiding judge in a particular case. The presiding judge may direct that requirements set out in this protocol do not apply in a particular case if the judge is satisfied that it is in the interests of justice to do so.

MEASURES APPLIED

Entering Court buildings

4. The Courts remain open to the public, but for health and safety reasons there may be limits on the number of people who are not directly involved in proceedings who are physically present in courtrooms and court buildings.
5. The following requirements apply to entry into court buildings:
 - a. A person may not enter the court building if they are showing signs of illness;
 - b. A person who has tested positive for COVID-19 within the last seven days may not enter the court building.
6. A defendant in criminal proceedings who is required to attend court, but who is unwell or has tested positive for COVID-19 within the last 7 days, should contact the Court (in person or through their lawyer) as early as possible in advance of the date on which they are due to appear. The matter will be referred to a judge. The defendant will then be advised by the registry whether they are required to attend court on that date, or on an alternative date.

Masks and Distancing

7. All persons entering the court building may wear a surgical mask or a KN95 mask and are encouraged to do so when moving around the court building (including court

rooms).¹ Masks will be provided at the entry to the court building for all those who do not have their own mask.

8. A KN95 mask must be worn by all participants in hearings, or by specified participants, if the presiding judge so directs.

Rapid Antigen Testing (RAT)

9. A participant who has any symptoms of Covid-19, however minor, must take a RAT before attending court:

- a. If they test negative, and the symptoms are very minor (eg a scratchy throat), they may attend court but must wear a mask at all times.
- b. If they test negative and the symptoms are more severe (eg runny nose, coughing) they must not attend court unless a judge so directs. If they are permitted to attend court they must wear a mask at all times.
- c. If they test positive they must not attend court: see para 12 below.

10. The presiding judge may require that some or all participants in a hearing longer than one day take a RAT in the morning before attending court, on such days as the judge directs, if the judge is satisfied that it is reasonably necessary to do so in the interests of justice and to protect health and safety in the courts.

11. The Registry will advise counsel and any party who is not legally represented of the arrangements for obtaining RATs from the court.

12. If a participant receives a positive COVID-19 test result, they must not attend court (and if present at court, must promptly leave). Whether and how the hearing may be

¹ (i) All references to KN95 masks include references to masks of an equivalent standard such as P2 masks.
(ii) People who have a mask exemption issued by the Ministry of Health will not be required to wear a mask.
(iii) A Judge may permit a participant in a hearing to remove their mask when speaking.

able to continue will be a matter for the presiding Judge to determine on a case-by-case basis.

13. If a participant is required to take a RAT, and declines to do so, the presiding judge will determine whether and how the hearing will proceed.

Jury Trials

14. The [Jury Trial Guidelines](#) will apply to all jury trials. The Guidelines set out additional requirements concerning use of masks and RAT testing for participants in jury trials.

Media access and remote viewing of hearings

15. Accredited news media will have entry to the court in order to report court proceedings, and to ensure continued open and transparent justice. Remote access for accredited news media will continue to be facilitated in accordance with current protocols.

16. The [Protocol for Remote Viewing of Hearings](#) governs media and public remote access to hearings:

Health and Safety

17. The following health and safety measures can be expected in the court building:
 - a. Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites);
 - b. Hand sanitiser will be readily available within the courtroom;
 - c. Face masks will be readily available in court buildings;
 - d. RAT kits will be available in court buildings.

18. Any concerns about health and safety in the court should be raised with the Court Manager or the Manager Justice Services (combined court) in the first instance.
19. Counsel are expected to assist the court by briefing clients and witnesses on the court building entry requirements and RAT testing requirements set out in this protocol.
20. Counsel should consider and endeavour to agree whether it is appropriate for any witness to participate remotely and advise the court of any such proposals well in advance of the hearing date. The relevant provisions of the Evidence Act 2006, and the Courts (Remote Participation) Act 2010, will govern whether and how any witness may give evidence remotely. Also refer to the [Guidelines for Remote Participation by Witnesses in Criminal Hearings](#).

Filing and filing fees

21. Documents may be filed electronically, by post, courier or in person. Public counters will be open for all normal counter business. Drop boxes for filing may also be available. An online [“file and pay”](#) system is available.

Conduct of Hearings

22. All criminal matters listed for hearing will be conducted in person, unless a judge directs otherwise. Directions may be given for some types of hearing to be conducted by AVL and counsel or participants may apply to participate in a hearing by AVL.²
23. A party may seek a direction that a matter should be conducted with all participants appearing remotely.³ A request for a matter to be conducted remotely should be made with as much notice as possible, and where practicable five working days in advance, by filing a memorandum or by sending an email to the relevant registry.

² For relevant factors see the Courts (Remote Participation) Act 2010, ss 5 and 6.

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24. A request for any participant to appear by AVL should be made with as much notice as possible, and where practicable five working days in advance, by filing a memorandum or by sending an email to the relevant registry.
25. Whether AVL is used for the appearance of a particular defendant will be determined on a case-by-case basis and will depend on the applicable law and an assessment of the interests of justice. Particular consideration will be given to any health vulnerabilities of the participant, any relevant difficulties in travelling to court, the distance that would otherwise have to be travelled and the likely length and complexity of the hearing.
26. Judicial officers will continue to apply the relevant provisions of the Courts (Remote Participation) Act 2010 on a case-by-case basis.

Youth Court Proceedings

27. This protocol outlines how the Youth Court will operate with COVID-19 in the community
28. Where any participant, other than the young person, is refused entry into the court building, their attendance may be facilitated, to the extent possible, by remote participation. Where it is anticipated that a person will be refused entry, it is expected that arrangements will be made for their remote participation in advance or that an application will be made to the court for directions to be made to facilitate their attendance where necessary.

Underlying principles

29. The operation of the Youth Court shall be guided by the following underlying principles:
- a. **Safety:** The safety and wellbeing of young persons and their whānau, and all who participate in Youth Court proceedings, remains of paramount concern for the court and all professionals involved in the youth justice process. Youth

Court professionals are expected to work collaboratively to uphold the primary objective of keeping all participants safe.

- b. **Timeliness:** Any need to delay proceedings to ensure the safety of participants must be balanced against the need to uphold the principle that decisions should be made and implemented promptly and in a time frame appropriate to the age and development of the child or young person. All alternative means of progressing a case, consistent with safety, must be explored.
- c. **Remote participation:** Remote participation is generally inappropriate for young people. The high prevalence of neurodiversity, cognitive impairment, disability, intellectual disability and mental illness in the Youth Court cohort makes remote participation generally inappropriate. The Youth Court has a statutory duty to enable participation by young people and this is difficult to achieve remotely.

Operating Protocol

General Work

- 30. The requirements of paragraph 7 and 8 above, relating to the wearing of masks, will apply. Special considerations in relation to masks may be required for some young people. Where, for example, a mask would hinder a young person's participation and communication, encouragement of mask wearing may not be appropriate. Masks will be provided in the Youth Court for participants who do not have their own mask.
- 31. The Youth Court appointment system will assist with physical distancing and ensuring that young persons and their whānau are provided privacy. The expectation is that where actual attendance is required, those who attend in person are punctual and do not attend court earlier or remain at court any later than their appointment time.
- 32. In order to avoid unnecessary appearances in court the early identification of those young people whose attendance can be excused is encouraged particularly where there is nothing substantive to happen at the next appearance.

33. Lay Advocates should ensure that no members of the household are isolating before conducting home visits. Mask wearing is strongly encouraged during home visits.

Arrests

34. Young persons who are arrested are to be brought before a Youth Court in person for consideration of bail. Where there are COVID-19 related safety issues, or the conditions for entry into the court building cannot be satisfied, young persons who are arrested may appear by AVL from a police station or other location such as a Youth Residence or Corrections facility, if this is directed by a judge.

Oranga Tamariki or Corrections Custody

35. For those in custody in Youth Justice Residences or in Corrections custody, any appearance is to be in person.

Rangatahi and Pasifika Courts

36. Youth Court sittings on Marae and at Pasifika venues may resume when it is considered by all participants to be safe to do so. Where any safety requirements are not able to be met, the default position is to return to the Youth Court.

37. Where cases were being heard at Te Kōti Rangatahi or Pasifika Courts but are now being heard at court buildings, Youth Advocates and Lay Advocates are requested to advise the court whether the young person and their whānau seek to have cultural processes such as karakia and pepeha incorporated into their hearing.

Cross-Over Courts

38. It must be recognised that cross-over hearings engage the processes of the Family Court and the Youth Court, and compliance with the Family Court Protocol must be taken into account. The expectation is that there will be involvement of and consultation with the relevant Family Court professionals in the Youth Court process outlined in this protocol.

Family Court Proceedings

39. The Family Court will undertake priority work, such as box work and without notice applications, but also intends to undertake all scheduled work. All matters listed for hearing will be conducted in person, unless a judge directs otherwise.
40. The Family Court's ability to do so may be subject to several factors including Registry staff capacity and the availability of technology for remote participation where directed.
41. Where a Family Court is unable to operate at full capacity, the following types of proceedings would be given priority:
 - a. Applications for Compulsory Treatment Orders and s 16 Reviews under the Mental Health (Compulsory Assessment and Treatment) Act; applications under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003; Protection Orders; Without Notice Interim Parenting Orders including enforcement; Guardianship disputes (under the Care of Children Act 2004); Without Notice Custody Orders or Place of Safety warrants (Oranga Tamariki); Welfare Guardianship, Personal or Property Orders (under the Protection of Personal Property Rights Act 1988), and the Substance Addiction (Compulsory Assessment and Treatment) Act 2017.
 - b. Any other application considered by a judge to warrant an urgent hearing or judicial conference.
 - c. Other urgent applications normally considered on the eDuty platform.
 - d. While dealing with court backlogs in priority order, the court will consider any memoranda or representations of counsel regarding realistically achievable timetabling directions and scheduling.

Conferences/Call overs/List Courts

42. All matters will be heard in person, and counsel and parties should appear in person, unless a judge directs otherwise. Directions may be given for some types of hearing to be conducted by AVL.
43. A party may seek a direction that a matter should be conducted with all participants appearing remotely. Counsel or participants may apply to participate in a hearing by AVL. The process for applying for a direction that a hearing be conducted remotely, or for a participant to appear remotely, is set out in paras 23 to 25 above. Judges will have particular regard to the interests of vulnerable parties and those for whom remote participation is not possible.
44. All conferences/call overs will be conducted by a judge and recorded on the FTR transcription system.

Mental Health

45. In-person hearings will resume, where it is practicable to do so.

Hearings

46. Hearings involving oral evidence are expected to proceed in-person.

Civil Proceedings

47. All civil proceedings will be conducted in person unless a judge directs otherwise. Directions may be given for some types of hearing to be conducted by AVL and counsel or participants may apply to participate in a hearing by AVL.⁴ In this regard the process that will apply is that set out in paras 23 to 25 above.
48. Filing fees may be paid by alternative means, including at the Registrar's discretion by credit card, electronic banking or solicitor's undertaking.

⁴ For relevant factors see the Courts (Remote Participation) Act 2010, ss 5 and 6.

Accident Compensation Appeals (District Court Registry)

49. The Guidelines to Practice and Procedure for Accident Compensation Appeals in the District Court (ACA Practice Guidelines) set out clear guidelines for practice in this jurisdiction and provide explanation of how the accident compensation appeal process works.⁵

Conduct of Hearings

50. Substantive appeals set down for hearing will be conducted in person, unless a judge directs otherwise.

51. A party, counsel or other participant may apply to participate in a hearing by remote technology.

52. The process for applying for an appeal to be conducted remotely, or for a participant to appear remotely, is that set out in paras 23 to 25 above.

Filing and Communication

53. Accident Compensation Appeals, District Court Registry, is managed by Tribunals, Wellington.

54. Documents may be filed electronically at AppealsACR@justice.govt.nz or by post to DX number: SX1159 Wellington, or by courier to or in person at: Tribunals Wellington, Level 1-86 Customhouse Quay, Wellington, 6011.

55. If any party wishes to contact the court regarding any matter, use the above Registry email address.

⁵ Guidelines-to-Practice-and-Procedure-for-Accident-Compensation-Appeals-2017-3.pdf (justice.govt.nz).