



# **Environment Court of New Zealand**

## **Te Kōti Taiao o Aotearoa**

### **Practice Note**

#### **Environment Court operations with COVID-19 in the community**

**Chief Environment Court Judge David Kirkpatrick**

**[effective 13 September 2022]**

This Practice Note applies to the Environment Court and its operations with COVID-19 in the community from 13 September 2022.

Courts are an essential service and the Environment Court will remain open despite the presence of COVID-19 in the community.

The Court appreciates the significant challenges that the pandemic presents to everyone. Counsel and representatives are encouraged to be proactive in their communications with the Court when required. For registry enquiries, contact details are set out below. Communication by email or telephone can also occur with the responsible Hearing Manager or Case Manager. Communications with the presiding judicial officer should be by memorandum.

#### **Entry to Court Buildings**

1. The following requirements apply to entry into court buildings and premises used for hearings/mediations/expert conferences:
  - a. A person may not enter if they are showing signs of illness;
  - b. A person who has tested positive for COVID-19 within the last 7 days may not enter.
2. Court Buildings 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 permitted to be physically present in courtrooms and premises used for hearings/mediations/expert conferencing.

## **Masks**

3. All persons entering court buildings may wear a surgical mask or a KN95 mask, and are encouraged to do so when moving around the court building (including courtrooms).<sup>1</sup> Masks will be provided at the entry to the court building for all those who do not have their own mask.
4. A surgical mask or KN95 mask must be worn by all persons present in a courtroom, or by specified persons in a courtroom, if the presiding judge so directs.
5. A surgical mask or KN95 mask must be worn by all persons present in a mediation or expert conference, or by specified persons in a mediation or expert conference, if the presiding commissioner so directs.

## **Hearings**

6. Hearings will be conducted in person unless a judge directs otherwise (AVL or other hearing models may still be directed).
7. A party may seek a direction that a matter should be conducted with all participants appearing remotely.<sup>2</sup> A request for a matter to be conducted remotely should be made five working days in advance of a hearing.
8. A party may apply to participate in a hearing by remote technology.<sup>3</sup> A request for a participant to appear remotely should be made five working days in advance of a hearing.
9. The Protocol for Participation in Remote Hearings is available here: <https://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-notes/all-benches/protocol-for-participation-in-virtual-hearings/>

## **Rapid Antigen Tests (RATS)**

10. A participant who has any symptoms of Covid-19, however minor must take a RAT before attending a hearing/mediation/expert conference.
  - a. If they test negative, and the symptoms are very minor (eg a scratchy throat), they may attend but must wear a mask at all times.

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<sup>1</sup> All references to KN95 masks include references to masks of an equivalent standard such as P2 masks.

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

<sup>3</sup> For relevant factors see the Courts (Remote Participation) Act 2010, ss 5 and 6.

- 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 they must wear a mask at all times.
  - c. If they test positive they must not attend: see para **Error! Reference source not found.**<sup>3</sup> below.
11. The presiding judge/presiding commissioner may require that some or all participants (in a hearing/mediation/expert conference longer than one day) must take a RAT in the morning before attending, on such days as the judge/commissioner directs, if they are satisfied that it is reasonable necessary to do so in the interests of justice and to protect participants' health and safety.
12. The Registry will advise counsel and parties of the arrangements for obtaining RATs from the court.
13. Subject to directions by the presiding judge, if a participant receives a positive COVID-19 test result, they must not attend a hearing/mediation/expert conference (and if present, must promptly leave). Whether and how the hearing/mediation/expert conference may be able to continue will be a matter for the presiding judge/commissioner to determine on a case-by-case basis.
14. If a participant is required to take a RAT, and declines to do so, the presiding judge/commissioner will determine whether and how the hearing/mediation/expert conference will proceed.

### **Mediation and expert conferences**

15. Mediation and expert conferences may be conducted in person or by AVL or other remote means (as directed).
16. A party may seek a direction that a mediation / expert conference be conducted with all participants appearing remotely.<sup>4</sup> A request for a matter to be conducted remotely should be made five working days in advance of a mediation/expert conference.
17. A party may apply to participate in a mediation / expert conference by remote technology.<sup>5</sup> A request for a participant to appear remotely should be made five working days in advance of a mediation / expert conference.

### **Hygiene at hearings, mediations and expert conferences**

18. Cleaning products will be available on site to enable staff and participants to

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

<sup>5</sup> For relevant factors see the Courts (Remote Participation) Act 2010, ss 5 and 6.

keep their immediate areas clean (including AVL suites);

- (a) Hand sanitiser will be readily available;
- (b) Face masks will be readily available in court buildings;
- (c) RAT kits will be available in court buildings.

19. Any concerns about health and safety practices in the Court should be raised with the Registrar in the first instance.

### **Expectations of parties and representatives**

20. Parties and representatives are expected to assist the Court by:

- a. Seeking remote participation in appropriate cases.
- b. Briefing clients and witnesses on public health messages, including:
  - i. Not to come to a courtroom or other hearing/mediation/conference venue if unwell.
  - ii. To advise their representatives as early as possible if they are unable to attend a courtroom or other hearing/mediation/conference venue
- c. Reducing the need for attendance in the courtroom or other hearing/mediation/conference venue by representatives, their clients and witnesses by reviewing each attendance in advance and seeking remote participation for appropriate cases and witnesses. The Court may be able to accommodate witnesses giving evidence remotely where a good reason exists.
- d. So far as possible, taking instructions and briefing witnesses outside the courthouse or other hearing/mediation/conference venue.
- e. Endeavouring to reduce the number of witnesses via the use of agreed facts and issues.
- f. Advising witnesses that they should not enter the courthouse until just prior to their scheduled attendance.
- g. Raising any deficiencies with cleaning, the availability of cleaning supplies or physical distancing with the site manager immediately.

## **Access and remote viewing of hearings**

21. Matters set down for hearing in the Environment Court are open to members of the public.
22. The Protocol for remote viewing of hearings governing media and public access to hearings is available here: <https://www.courtsofnz.govt.nz/going-to-court/practice-directions/practice-notes/all-benches/protocol-for-remote-viewing-of-hearings/>
23. Participants should feel free to contact the Registrar of the Environment Court directly for further guidance or clarification.

## **Filing of documents**

24. All filing of Court documents should be by email, or by File and Pay, if possible at <https://www.courtsofnz.govt.nz/file-and-pay/>. However, documents can also be filed by post and received over the counter in Environment Court registries.
25. The Court will not generally accept unsworn affidavits, but may, in appropriate circumstances, direct that an affidavit that does not comply be accepted for filing and be read and used in a proceeding. Practitioners may find it helpful to refer to guidance issued by the New Zealand Law Society. <https://www.lawsociety.org.nz/professional-practice/covid-19-information/>
26. There is no blanket waiver of the requirement to file hard copies of documents. Please contact the Court for further guidance or clarification.

## **Filing fees**

27. The payment of fees can be made by direct debit or via the File & Pay link at: <https://www.courtsofnz.govt.nz/file-and-pay/>. Parties can also pay in person over the counter in the Environment Court Registries.
28. Fee waiver applications can be made as usual via email. Please contact the Court if you have any issues regarding the payment of fees.

## **Contact details**

### **Addresses for electronic filing of documents**

29. All electronic filing should be sent to the relevant case or hearing manager or the Court's email address at [environment.court@justice.govt.nz](mailto:environment.court@justice.govt.nz)

### **Contact details for Deputy Registrars**

**Wellington:** Michael Tinkler    027 280 8135    [michael.tinkler@justice.govt.nz](mailto:michael.tinkler@justice.govt.nz)

**Christchurch:** Michael Tinkler 027 280 8135 [michael.tinkler@justice.govt.nz](mailto:michael.tinkler@justice.govt.nz)  
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