



# **Environment Court of New Zealand**

## **Te Kōti Taiao o Aotearoa**

### **Practice Note: COVID-19: Protection Framework**

**Chief Environment Court Judge David Kirkpatrick**

**[5 April 2022]**

This Practice Note applies to all regions under the COVID-19 Protection Framework from 5 April 2022.

Courts are an essential service and the Environment Court will remain open at all three levels (Red, Orange and Green) under the Protection Framework.

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.

#### **All Alert Levels**

#### **For all regions under Traffic Light Red Orange or Green<sup>1</sup>**

1. If a hearing, mediation or expert witness conference takes place in-person the following applies:
  - a. All those attending courthouse or other venues are to wear a surgical mask or KN95 (or equivalent) face mask in all public and working spaces (including representatives, parties, and witnesses). Attendees will be offered a surgical face mask if they do not already have one. A mask must be worn at all times, even when speaking, unless otherwise directed by the presiding Judge or Commissioner.
  - b. Safe distancing will be observed in the courthouse and other venues,

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<sup>1</sup> Refer [www.covid19.govt.nz](http://www.covid19.govt.nz) for background on the 'traffic light system' (otherwise known as the COVID-19 Protection Framework).

and people present will be required to maintain social distancing. This may mean there will be capacity limits in some courtrooms and other venues. Hand sanitiser will be available for use in all courtrooms and other venues.

- c. The Ministry of Justice will continue to take steps to ensure the safety of those coming into courthouses and other venues during this time, as described on its website <https://www.justice.govt.nz/covid-19-information/>
  - d. No person who is unwell should enter the courthouse or other hearing/conference/mediation premises.
2. All participants attending Court hearings, mediations, or expert witness conferences for half day or longer may be asked to take a Rapid Antigen Test (RAT) on each morning. The Registry will advise counsel and any party who is not legally represented of the arrangements for testing for their case. If participants are asked to take a RAT, and any participant declines to do so, the presiding Judge or Commissioner will determine whether and how the event will proceed. If any participant tests positive, the presiding Judge or Commissioner will determine on a case-by-case basis whether and how the event may be able to continue.
  3. Access will be denied to anyone who is showing signs of illness or has a body temperature of 38 degrees or higher.
  4. Access will be denied to anyone who has tested positive for COVID-19 and is required to isolate or is a household contact of a confirmed case of COVID-19.

### **Additional arrangements for all regions under Traffic Light Red**

5. All new matters will continue to be referred to a Judge and will be prioritised in the usual way. Parties are reminded of the ability to apply for priority under [4.5] of the Environment Court Practice Note 2014. Any application should be supported by a full explanation as to why priority is sought.

### **Hearings**

6. Hearings will be conducted to the extent possible by remote participation. In-person hearings may take place if the Judge decides that it is in the interests of justice to do so.
7. Some hearings already set down may need to be rescheduled and others will be dealt with on the papers or heard remotely, for example by Virtual Meeting

Rooms (VMR).<sup>2</sup>

8. Notice of application to participate in person at hearings presumptively conducted by remote technology must be given at least five working days prior to the hearing.
9. Judges will assess all cases scheduled to take place during the continuation of traffic light red and discuss next steps with the parties, including advance registration of attendees and dealing with matters on the papers, by telephone or audio-visual link, or by adjournment. One consideration in determining whether a matter is to be dealt with in whole or in part through remote participation is the known vaccination status of participants.
10. 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/>

### **Mediation and expert conferences**

11. Mediation and expert conferences will be conducted to the extent possible by remote participation. In-person mediation and expert conferences may take place if it is decided that it is in the interests of justice to do so.
12. Some mediations/conferences may need to be rescheduled and others conducted remotely, for example by VMR.
13. At the time a matter is ready for mediation/conferencing the Judge/Commissioner will determine any advance registration of attendees and whether the mediation/conference should proceed by telephone or audio-visual link, or be adjourned. One consideration in determining whether a matter is to be dealt with in whole or in part through remote participation is the known vaccination status of participants.

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

14. Surgical masks, cleaning products and hand sanitiser will be available on site.
15. 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**

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

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2 A web-based videoconferencing system supported by the Ministry of Justice and Spark.

- a. Ensuring attendance at any arranged judicial or facilitator teleconference for the purposes of making directions on matters including advance registration of attendees and any arrangements for matters to proceed by telephone or audio-visual link, or be adjourned.
- 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. Not to come to a courtroom or other hearing/mediation/conference venue if they have been in close contact with someone with COVID-19 or if they are required to be in self isolation/quarantine.
  - iii. To advise their representatives as early as possible if they are unable to attend a courtroom or other hearing/mediation/conference venue.
  - iv. The social distancing and masking expectations for the courtroom or other hearing/mediation/conference venue and precincts.
  - v. The limits on attendance by support persons and members of the public.
- 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. This should be raised by counsel in the relevant directions conference.
- 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**

17. Matters set down for hearing in the Environment Court are closed to members of the public and restricted to parties, their representatives and witnesses (subject to any directions made by the presiding Judge or Commissioner).
18. Where the court is sitting in a non-Ministry of Justice site, access may be subject to additional safety measures the venue provider has in place for health and safety reasons.
19. 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/>
20. Participants should feel free to contact the Registrar of the Environment Court directly for further guidance or clarification.

## **Filing of documents**

21. 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.
22. 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/>

## **Filing fees**

23. 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/>. There is no ability to pay in person at the Court Registry.
24. Fee waiver applications can be made as usual via email. Please contact the Court if you have any issues regarding the payment of fees.

## **Regions under Traffic Light Orange**

The following paragraphs apply to any regions at traffic light orange.

25. The Environment Court will continue to process all new and existing proceedings and remains open to hear matters, as appropriate.
26. All new matters will continue to be referred to a Judge and are prioritised in

the usual way.

## **Hearings**

27. Judges will consider whether a particular proceeding should be dealt with on the papers, by remote participation, or by hearing in person. Some hearings may need to be vacated and set down for a later date. At traffic light orange, the Judges will set down hearings in person where (1) alternative modes of hearing (for example, on the papers or via remote participation) cannot reasonably be accommodated; and (2) a hearing in person can be conducted safely; and (3) the Judge considers it appropriate to do so.

## **Mediation and expert conferences**

28. At the time a matter is ready for mediation/conferencing the Judge/Commissioner will determine whether it should proceed in person, by telephone or audio-visual link, or be adjourned.

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

29. The Court will not normally permit documents to be handed up. Documents that parties wish to produce should be scanned and shared by email at the appropriate time.
30. 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**

31. Parties and representatives are expected to assist the Court by:
- a. Ensuring attendance at any arranged judicial or facilitator teleconference for the purposes of making directions on matters including advance registration of attendees and any arrangements for matters to proceed by telephone or audio-visual link, or be adjourned.
  - 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. Not to come to a courtroom or other hearing/mediation/conference venue if they have been in close contact with someone with COVID-19 or if they are required to be in self isolation/quarantine.
    - iii. To advise their representatives as early as possible if they are

unable to attend a hearing or mediation or conference.

- iv. The social distancing, masking expectations in the courthouse or other hearing/mediation/conference venue and precincts.
- v. The limits on attendance by support persons and members of the public.
- vi. Reducing the need for attendance in the courthouse 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. This should be raised by counsel in the relevant directions conference.
- vii. So far as possible, taking instructions and briefing witnesses outside the courthouse or other hearing/mediation/conference venue.
- viii. Endeavouring to reduce the number of witnesses via the use of agreed facts and issues.
- ix. Advising witnesses that they should not enter the courthouse until just prior to their scheduled attendance.
- x. Raising any deficiencies with cleaning, the availability of cleaning supplies or physical distancing with the site manager immediately.

## **Access**

- 32. Matters set down for hearing in the Environment Court, and to which the public would otherwise have access, will continue to be publicly notified on the Court's website.
- 33. Where the court is sitting in a non-Ministry of Justice site, access may be subject to additional safety measures the venue provider has in place for health and safety reasons.
- 34. Accredited news media will continue to be able to enter the Court or access proceedings remotely in order to report Court proceedings, and to ensure

continued open and transparent justice.

35. Participants should feel free to contact the Registrar of the Environment Court directly for further guidance or clarification.

### **Filing of documents**

36. 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 Environment Court Registries will be open to receive filing in person where that is necessary.
37. 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/>

### **Filing fees**

38. 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/>. There is no ability to pay in person at the Court Registry.

### **Regions under Traffic Light Green**

The following paragraphs apply to regions under traffic light green.

39. For regions under traffic light green the Environment Court operations will, in general, be as normal, subject to the requirements below.
40. The use of remote participation will remain available for use on application in appropriate cases
41. If parties, or other persons required or proposing to attend a hearing/mediation/conference are unwell, they should not attend. If this applies, the presiding Judge/Commissioner should be advised so that alternative arrangements for the appearance can be made.

### **Contact details**

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

42. 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**

<b>Wellington:</b>	Michael Tinkler	027 280 8135	<a href="mailto:michael.tinkler@justice.govt.nz">michael.tinkler@justice.govt.nz</a>
<b>Christchurch:</b>	Michael Tinkler	027 280 8135	<a href="mailto:michael.tinkler@justice.govt.nz">michael.tinkler@justice.govt.nz</a>
<b>Auckland:</b>	Gemma Carlyon	027 446 7193	<a href="mailto:gemma.carlyon@justice.govt.nz">gemma.carlyon@justice.govt.nz</a>