



# **Environment Court of New Zealand**

## **Te Kōti Taiao o Aotearoa**

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

**Chief Environment Court Judge David Kirkpatrick**

**[6 December 2021]**

This Practice Note applies to all regions under the COVID-19 Traffic Light System from 6 December 2021. It replaces all previous COVID-19 protocols.

#### **Court operations from 6 December 2021 – 31 January 2022**

From 6 December 2021 to 31 January 2022 transitional operating protocols will be in place for all Courts.

The Environment Court will operate in the following way during this period:

- In red areas, the Court will operate largely in line with the systems in place under Alert Level 3.
- In orange areas, the Court will operate largely in line with the systems that were in place under Alert Level 2.

#### **All Alert Levels**

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

1. Access to courthouses and other premises is at the Court's discretion and limited to people who provide a current MyVaccine Pass, or evidence of a negative COVID-19 test obtained within the 72 hours preceding entry to the courthouse or hearing/conference/mediation premises.
2. If a hearing, mediation or expert witness conference takes place in-person the following applies:
  - a. All courthouses and other venues have posters displaying the applicable

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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).

NZ COVID Tracer QR code and paper records in place at the entranceway for attendees to record their attendance. People attending at Court or other venues are required to use them.

- b. All those attending the courthouse or other venues are to wear face masks in all public and working spaces (including representatives, parties and witnesses). Attendees will be offered a face mask if they do not already have one. A Judge/Commissioner may ask participants to remove masks when speaking.
  - c. Safe distancing will be observed in the courthouse and other venues, and people present will be required to maintain one metre social distancing, with alternate seats in public galleries taped off. 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.
  - d. 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/>
  - e. Any concerns about health and safety practices in the Court should be raised with the Registrar in the first instance.
  - f. No person who is unwell should enter the courthouse or other hearing/conference/mediation premises.
3. It remains possible that the Court will receive advice regarding one or more courthouses or other hearing/mediation/conference venues. In that event, the Court will rely on official advice. Steps may be taken to reduce in-person attendances to help protect those working or appearing there. The extent of any restriction will depend on the circumstances and official advice or notices.
  4. Fee waiver applications can be made as usual via email. Please contact the Court if you have any issues regarding the payment of fees.

### **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. Although the Courts remain open, some hearings will need to be rescheduled

and others will be dealt with on the papers or heard remotely, for example by Virtual Meeting Rooms (VMR), a web-based videoconferencing system supported by the Ministry of Justice and Spark.

7. 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.

### **Mediation and expert conferences**

8. Although the Courts remain open, some mediations/conferences will need to be rescheduled and others conducted remotely, for example by Virtual Meeting Rooms (VMR), a web-based videoconferencing system supported by the Ministry of Justice and Spark.
9. 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**

10. 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.

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

11. 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. Not to come to a courtroom or other hearing/mediation/conference venue unless a current MyVaccine Pass is provided, or evidence of a negative COVID-19 test obtained within the 72 hours preceding entry.
  - iv. To advise their representatives as early as possible if they are unable to attend a courtroom or other hearing/mediation/conference venue
  - v. The social distancing, masking and attendance recording expectations for the courtroom or other hearing/mediation/conference venue and precincts
  - vi. How exhibits will be handled in their case
  - vii. 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. Raising any deficiencies with cleaning, the availability of cleaning supplies or physical distancing with the site manager immediately.

### **Filing of documents**

- 12. 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.
- 13. 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**

14. 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 Orange**

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

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

### **Hearings**

17. 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**

18. 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**

19. 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.

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

20. 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 Not to come to a courtroom or other hearing/mediation/conference venue unless a current MyVaccine Pass is provided, or evidence of a negative COVID-19 test obtained within the 72 hours preceding entry.
  - iv To advise their representatives as early as possible if they are unable to attend a hearing or mediation or conference
  - v The social distancing, masking and attendance recording expectations in the courthouse or other hearing/mediation/conference venue and precincts
  - vi How exhibits will be handled in their case
  - vii The limits on attendance by support persons and members of the public.
  - viii 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.
  - ix. So far as possible, taking instructions and briefing witnesses outside the courthouse or other hearing/mediation/conference venue.
  - x. Raising any deficiencies with cleaning, the availability of cleaning supplies or physical distancing with the site manager immediately.

## **Access**

21. 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.
22. 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.
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 Environment Court Registries will be open to receive filing in person where that is necessary.
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/>

## **Filing fees**

26. 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.

27. For regions under traffic light green the Environment Court operations will, in general, be as normal, subject to the requirements below.
28. The use of remote participation will remain available for use on application in appropriate cases
29. 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

30. 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)

**Auckland:** Gemma Carlyon 027 446 7193 [gemma.carlyon@justice.govt.nz](mailto:gemma.carlyon@justice.govt.nz)