



**DISTRICT COURT OF NEW ZEALAND TE KŌTI-Ā-ROHE O AOTEAROA**  
**COVID-19 PROTECTION FRAMEWORK**  
**GREEN, ORANGE AND RED PROTOCOL**

**Chief District Court Judge Heemi Taumaunu**

Effective from 26 April 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.***

*The protocols in this document outline the practices to be applied in the Criminal, Youth, Family, and Civil divisions of the District Court where hearings are conducted at locations that are within Red, Orange, or Green settings under the COVID-19 Protection Framework.*

*The courts provide an essential service and the District Court will remain open at all three levels under the Protection Framework.*

*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, immuno-compromised 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.*

## District Court at Green, Orange, And Red Settings

1. This protocol sets out practices to be applied by the District Court under the [COVID-19 Protection Framework \(Protection Framework\) Red, Orange or Green settings](#).
2. Courts provide an essential service. The District Court will remain open at all three settings under the Protection Framework, to ensure access to justice. 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 court.

## MEASURES APPLYING AT ALL PROTECTION FRAMEWORK LEVELS

### Entering the court building

3. 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, or have a body temperature of 38 degrees or higher;
  - b. A person who has tested positive for COVID-19 and is required to isolate may not enter the court building;
  - c. A person who is a household contact of a confirmed case of COVID-19 may not enter the court building unless they are authorised to do so as a critical worker;
  - d. A person may not enter the court building unless they are wearing a surgical mask or a KN95 mask.<sup>[1]</sup> Masks will be provided at the entry to the court building for all those who do not have their own mask.

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[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.

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. Every person in the public areas of a court building must wear a surgical mask or a KN95 mask at all times. A KN95 mask must be worn by all participants in jury trials, and by participants in any other hearings if the presiding judge so directs.
6. All physical distancing requirements must be observed.

### **Attending Court**

7. Where participants attend Court:
  - a. List Courts may operate on a case-by-case call basis. Parties may be required to wait outside the courtroom until their case is called;
  - b. Witnesses required to attend Court may be requested to remain outside the court building until just prior to their scheduled attendance;
  - c. So far as possible, counsel should take instructions and brief witnesses at a different location from the court building. Rooms will be made available as far as practicable for interviews, and counsel may request breaks to take instructions safely using those facilities.
8. All participants attending Court for hearings longer than one day may be asked to take a Rapid Antigen Test (RAT), or confirm that they have taken a RAT on each morning before the Court hearing commences. This requirement may also apply to participants attending court for hearings of half a day or longer, if the presiding judge so directs. The Registry will advise counsel and any party who is not legally represented of the arrangements for testing for their particular case. If the hearing extends beyond one week, the presiding judge may direct that in the second and subsequent weeks, RAT testing is only required on the Monday and then on every second sitting day.
9. If participants are asked to take a RAT, and any participant declines to do so, the presiding Judge will determine whether and how the hearing will proceed. If any participant tests positive, the presiding Judge will determine on a case-by-case basis whether and how the hearing may be able to continue.

## **Jury trials**

10. The [Jury Trial Bubble 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**

11. 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.

## **Remote participation and viewing**

12. The [Protocol for Participation in Remote Hearings](#) will apply to any hearings involving remote participants.
13. The [Protocol for Remote Viewings of Hearings](#) governs media and public access to hearings.

## **Health and safety**

14. 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.
15. 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.

## **Expectations of Counsel**

16. Counsel are expected to assist the Court by:
  - a. Briefing clients and witnesses on the court building entry requirements and RAT testing requirements set out in paragraphs 3-6 and 8-9.
  - b. Reducing unnecessary attendance in the court building by counsel, their clients and witnesses by reviewing each attendance in advance and:
    - i. Seeking remote participation in appropriate cases;

- ii. Seeking excusals from appearances in administrative hearings; and
  - iii. Limiting the number of witnesses via the use of agreed facts.
17. 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**

18. 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.
19. An online [“file and pay”](#) system is available.

### **Criminal Proceedings**

20. All criminal proceedings, including jury trials, may be conducted at Green, Orange and Red settings.
21. To the extent practicable, schedulers are encouraged to increase the scheduling of appointment times to ensure those people who must appear in-person do so at a time when there are reduced numbers of people in court.
22. Witnesses required to appear may be requested not to enter the court building until immediately prior to their scheduled attendance time.

### **Increased Use of AVL**

23. While the [Epidemic Preparedness \(COVID-19\) Notice 2020](#) is in force, the health and safety impact of COVID-19 may be considered a “relevant matter” under s 5(d) of the Courts (Remote Participation) Act 2010.
24. The increased use of AVL is encouraged and intended to assist the court to reduce the number of people required to attend the court building in person and thereby reduce the risk of transmission of COVID-19 in the court building and surrounding precincts.
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. This will be determined by the presiding judicial officer taking into

account the age, cognitive ability, language ability, and any known intellectual disabilities or mental health issues and any other matter the judicial officer considers relevant.

26. Counsel and parties may apply to participate in a hearing by AVL. 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. To the extent that it is reasonably practicable, a notice of application to participate by AVL should be given at least 5 working days prior to the hearing.
27. If counsel, defendants, victims, parties and witnesses are unable to attend court, to the extent that it is reasonably practicable, they should advise the court at least 5 working days prior to the hearing and arrangements may be made for appearance by AVL.

#### ***Use of AVL in Criminal Proceedings at Red, Orange and Green Settings***

28. Judicial officers will continue to apply the relevant provisions of the Courts (Remote Participation) Act 2010 on a case-by-case basis. Participation by remote technology at Red and Orange settings will be encouraged for all criminal proceedings provided that the particular proceeding can lawfully and appropriately be conducted in such a manner. In-person appearances would need to continue where remote technology is unavailable or where the particular circumstances of an individual case would require an in-person hearing to be conducted in the interests of justice.

### **Youth Court Proceedings**

29. This protocol outlines how the Youth Court will operate under the New Zealand COVID-19 Protection Framework and under each of the Red, Orange and Green settings.
30. 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.
31. [The Youth Court process notified on 3 April 2020](#) for the attendance of support persons for young persons will apply at Red and Orange settings, unless otherwise directed by the presiding judge.

## Underlying principles

32. The operation of the Youth Court at Red, Orange and Green settings 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 court participants safe.
  - b. **Timeliness:** Any need to delay proceedings to ensure the safety of court 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*

33. So far as possible all scheduled Youth Court work will proceed in areas at Red, Orange and Green settings, with appropriate public health measures in place and in accordance with the District Court protocols.
34. At Red and Orange settings, the Youth Court is subject to the requirement to observe physical distancing so there will continue to be restrictions on the number of support people allowed in court.
35. The requirements of paragraph 3(d) and 5 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, alternative options, including remote appearance via AVL, may be considered.

36. While the work of the court will gradually transition to full capacity, in some instances there may still be a need to limit travel to courts for young persons and their whānau to keep them and others safe. This consideration also applies to Youth Advocates, Lay Advocates, Police, Oranga Tamariki, and other agencies such as Health and Education in providing services to the Court. Appearance by professionals via remote participation may be used where it is considered necessary and appropriate.
37. The Youth Court appointment system will operate at all settings, which will assist with the necessary 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.
38. In order to reduce the number of young people required to attend court in person, the following triaging process will take place:
  - a. Judges will review the list at least two days prior to the hearing day to determine which cases are likely to be able to be dealt with remotely. Where the young person is in the community these will be cases where attendance by the young person could be excused. The Registry will advise the Youth Advocate and other stakeholders of this assessment by the judge. If there is some reason why this assessment is not accepted, then the contrary view is to be communicated to the judge for further direction.
  - b. The first part of Youth Court sitting days will be devoted to remote hearings, including those in custody of Oranga Tamariki or Corrections.
  - c. Matters that do require an in-person hearing are to be allocated well spaced-out time slots with the option for any participant to appear remotely at their election where this is practicable (notice of this election to be given to the court on the day prior to the hearing to enable arrangements to be made).
39. Family Group Conferences directed by a Youth Court Judge will continue to be held either remotely and/or in person. The manner of participation will depend on the following factors:
  - a. Safety of rangatahi, whānau, victims, support person(s) and other entitled persons to meet in person;
  - b. Rangatahi, whānau and victims' access and availability to participate remotely, meaning their ability to connect to WIFI or access to technical resources. Youth



Justice Co-Ordinators will make this decision whilst convening (after consulting with all entitled participants) with the support of their Family Group Conference Team Leader; and

- c. Any barriers to participation, including neurodiversity, affecting the young person.
40. For Lay Advocates specifically, home visits are not recommended under Orange and Red settings. Lay Advocates may attend court hearings in person where necessary to support young people and their whānau. Lay Advocates may also appear remotely by AVL.

### ***Arrests***

41. 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***

42. For those in custody in Youth Justice Residences, any appearance is to be by AVL. This is to include all hearings affecting them, including bail applications, early release hearings, secure care applications, and disposition hearings of all types. Moving young people and their escorts from Residence to the court building is too risky for all. In many instances the Residence will be distant from courts and air travel would be required. Note: this will include young people held in a Department of Corrections Facility.
43. This will place an added burden on District Court and Residence AVL resources and so it is necessary to ensure that all appearances for those in custody are in fact necessary. Youth Advocates are requested to consider whether an application should be made for attendance to be excused where nothing substantive is to be decided, and where appropriate to provide a memorandum to the judge, seeking a direction.

### ***Criminal Procedure (Mentally Impaired Persons) Act 2003 Proceedings***

44. In relation to Criminal Procedure (Mentally Impaired Persons) Act 2003 proceedings, decisions will need to be made on a case-by-case basis as to how best to proceed, taking into account the underlying principles of this protocol.

### ***Rangatahi and Pasifika Courts***

45. 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.
46. 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***

47. 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**

48. This protocol outlines how the Family Court will operate under the New Zealand COVID-19 Protection Framework and under each of the Red, Orange and Green settings.
49. The Family Court will undertake priority work, such as box work and without notice applications, but also intends to undertake all scheduled work. However, that work must have regard to safety, with an increased emphasis on the use of remote participation to reduce in-person appearances to the extent practicable.
50. The Family Court's ability to do so will be subject to several factors including Registry staff capacity, the availability of technology for remote participation and the need to observe physical distancing for in-person appearances.
51. Under the COVID-19 Protection Framework settings, local Judicial Resource Managers, the Family Court Liaison Judge (or in regional localities the resident judge(s)), Regional Scheduling Advisors and the Registry will work collaboratively to determine the priority and extent of the work to be undertaken in each court in order to develop rosters and local schedules. The schedules will support the directions set out in the District Court Protocol.
52. 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.

### **Triage**

- 53. A triage process has been operating in a number of courts (particularly metropolitan courts) to identify and progress priority cases within the following categories:
  - a. matters adjourned during previous COVID-19 emergency settings;
  - b. matters dealt with on eDuty;
  - c. work identified as urgent from triaging box work files; and
  - d. matters already scheduled to be heard.
- 54. In cases where that process is incomplete, it will continue. The files will be provided to judges in accordance with local arrangements. There is no requirement for the Registry to prepare memoranda or use the E-Box process other than for actual box work.
- 55. Cases identified as a priority will be scheduled for a 30-minute conference/call over.

### **Conferences/Call overs/List Courts**

- 56. All counsel are entitled to appear in person. However, a judge may permit counsel to appear by telephone link or AVL provided that suitable facilities are available, and a timely application has been made (at least 5 working days prior to the hearing).

57. Parties may also appear in person, but the judge may excuse in-person attendance and direct that the conference/call over proceed by way of remote participation including AVL or telephone. Judges must have regard to the interests of vulnerable parties and those for whom remote participation is not possible.
58. All conferences/call overs are to be conducted by a judge and recorded on the FTR transcription system.
59. All conferences/call overs lists will require further time to be scheduled, with best practice requiring 30 minutes to be allocated rather than 15 minutes.
60. If there are in-person appearances, then:
  - a. physical distancing must be observed;
  - b. any person who does not have direct business with the court may not attend without prior approval of the presiding judge;
  - c. whānau support may only be given by a whānau member or members whose attendance has been permitted by the presiding judge; and
  - d. the introduction/continuation of split lists may be necessary.
61. Cases already scheduled in list courts will remain as scheduled. No changes will be made to the event duration.

## **Memoranda**

62. No less than 5 working days before any conference/call over or fixture, counsel must file memoranda detailing the following:
  - a. whether they have current instructions;
  - b. whether the conference/fixture is still required; and
  - c. if not, what directions/orders are sought.
63. If a fixture is still required:
  - a. advise whether the case should be afforded priority and why;
  - b. identify the issues in dispute;

- c. identify the directions sought including the number of witnesses and the mode of evidence; and
- d. provide an accurate estimate of time.

### **eDuty**

64. The eDuty platform will be regionally based to the extent practicable. However, if on any day there is no judge in the region rostered for e-Duty, then the e-Duty auditor will allocate cases to the judges who are rostered for e-Duty. This process is to be reviewed at regular intervals by the Principal Family Court Judge in consultation with the Ministry of Justice, and this process will have particular regard to factors such as regions of New Zealand being under different Traffic Light settings.

### **Mental health**

65. In-person hearings may resume, where it is practicable and safe to do so. The following non-exhaustive factors will need to be considered:
- a. whether any participant in the hearing is in a risk group vulnerable to COVID-19;
  - b. whether the venue for the hearing presents a risk to the spreading of COVID-19; and
  - c. the individual rights of the patient.
66. Decisions for hearings are made on a case-by-case basis. The hearing options are:
- a. In-person;
  - b. AVL;
  - c. telephone link; or
  - d. a combination of the above.

### **Lay Advocates**

67. For Lay Advocates specifically, home visits are not recommended under Orange and Red settings. Lay Advocates may attend court hearings in person where necessary to support young people and their whānau. Lay Advocates may also appear remotely by AVL.

## Hearings

68. Subject to the following paragraphs, hearings involving viva voce evidence are expected to proceed in-person.
69. Hearings that do not involve viva voce evidence, such as submission only hearings or Pickwick hearings, may be conducted, in appropriate cases, by way of written submissions with counsel appearing by AVL or telephone link. These hearings are to be recorded on the FTR transcription system.
70. All short cause and long cause hearings will be preceded by a call-over to be conducted in advance of the hearing date. The call-over will be conducted by telephone and will determine such matters as:
  - a. the order of hearings for the day;
  - b. the length of the hearing;
  - c. numbers of witnesses;
  - d. mode of evidence;
  - e. ability to observe physical distancing; and
  - f. the production of documents/ exhibits.
71. All documents are to be filed in electronic form prior to the hearing. There are to be no hand-ups, unless a judge directs otherwise.
72. For long cause fixtures, a call-over must occur in sufficient time in advance of the hearing to enable fixtures to be allocated and to consider whether the hearing can proceed subject to the constraints of the Red, Orange or Green setting.
73. It is anticipated that scheduled long cause fixtures with multiple parties and/or multiple witnesses may present challenges in terms of physical distancing and maintaining hygiene standards that make it impossible to safely proceed with these types of hearings. If counsel identify any such scheduled hearings, then they should file a memorandum immediately for consideration by a judge as to whether the fixture can safely proceed or not.

## **Civil Proceedings**

74. All civil proceedings will be conducted at Red, Orange and Green settings.
75. Although all cases will be considered by a judge on a case-by-case basis, the increased use of AVL appearances or appearances via telephone at Red, Orange or Green settings should be encouraged for all civil proceedings unless a judge considers that an in-person appearance is necessary.
76. Filing Fees may be paid by alternative means, including at the Registrar's discretion, and via credit card, electronic banking or solicitor's undertaking.

## **Accident Compensation Appeals (District Court Registry)**

77. All Accident Compensation Appeal hearings will be conducted at Red, Orange and Green settings.
78. Judges will work with the Registrar to assess and determine whether hearings may be conducted by AVL, in person, on the papers or other form of remote technology.
79. Accident Compensation Appeals jurisdiction in the District Court, managed by Tribunals, Wellington will receive new matters and existing matters will be reviewed regularly by email. All communications including queries on any matter and filing of all documents are to be by email to: [AppealsACR@justice.govt.nz](mailto:AppealsACR@justice.govt.nz).
80. If a party does not have the ability to file documents electronically, they may be mailed to DX number: SX11159, Wellington Tribunals; or to: Wellington Tribunals, Level 1 - 86 Customhouse Quay, Wellington, 6011.