



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

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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 outlined in this document will commence on 14 February 2022. It outlines 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 document “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 document, “vulnerable” means a person who is at higher risk of severe illness, immune-compromised or has a relevant underlying health condition.

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.

Access to the District Court at Green, Orange, and Red Settings

3. Persons attending Court must:¹
 - (i) Show a vaccine pass; or
 - (ii) Provide evidence of a negative COVID-19 test administered within 48 hours of attendance; or
 - (iii) Provide evidence of a negative rapid antigen test administered within 24 hours of attendance.²

Defendants

4. Where a defendant in the criminal jurisdiction does not meet the requirements in paragraph 3:
 - a. A separate facility may be made available in another part of the courthouse to enable remote participation for all appearances other than their trial,³ or an in-person appearance will be scheduled at a time which allows additional health and safety measures to be implemented.

1 Nothing in this protocol will prevent the attendance at court of any person required to attend court, for example pursuant to a summons, legislative requirement or judicial direction, who does not meet the requirements in paragraph 3. Appropriate health and safety measures will be put in place.

2 The Ministry of Justice will meet the cost of the rapid antigen test for any person required to attend court. For example pursuant to a summons, legislative requirement or judicial direction.

3 Subject to any determination pursuant to ss 8 or 9 of the Courts (Remote Participation) Act 2010.

- b. The defendant's entitlement to be physically present in the courtroom for their trial remains unchanged. Additional health and safety measures will be implemented. All defendants will be required to comply with the health and safety requirements set out at paragraphs 12 and 14(b) below, together with any other health and safety directives that may be given by the Registrar or presiding Judge. Defendants who are not in custody must also comply with the requirements at paragraph 12 below.

Jurors

5. Those summoned for jury service who do not meet the requirements in paragraph 3 will be subject to separate arrangements with appropriate health and safety measures put in place.

Counsel and all other participants

6. If counsel, party, or other participants know they will not meet the requirements in paragraph 3, they are to advise the court at least 10 working days prior to the hearing so the means of participation can be considered and, if appropriate, arrangements will be made for remote participation. Refer to paragraph 17(c) and (d) below for the provisions regarding the attendance of witnesses.

Attending Court

7. Where participants attend Court:
 - (i) List courts will operate on a case by case call basis. Parties may be required to wait outside the courtroom until their case is called;
 - (ii) Witnesses required to attend court should not enter the courthouse until just prior to their scheduled attendance;
 - (iii) As far as possible, counsel should take instructions and brief witnesses at a different location from the courthouse. Rooms will be made available, as far as practicable, for interviews. Counsel may request breaks to take instructions safely using those rooms.

Media access

8. Accredited news media will have entry to the court in accordance with requirements in paragraph 3 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. Media representatives must introduce themselves to the judge when they are present remotely at any hearing.

Remote participation and viewing

9. The Protocol for Participation in Remote Hearings will apply to any hearings involving remote participants.

[Protocol for Participation in Remote Hearings](#)

10. The Protocol for Remote Viewing of Hearings governs media and public access to hearings.

[Protocol for Remote Viewing of Hearings](#)

Health and safety

11. Persons entering the court building must register their attendance by scanning the QR code or by entering their details on a list maintained by the Registrar (or court taker, in the case of counsel).
12. The court remains open to the public but, for public health 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. Those present in the court building must observe all physical distancing requirements. Physical distancing requirements may result in limits to the number of people permitted to enter the court building.
13. Subject to the notes set out below,⁴ and the over-riding discretion of the presiding judge:
 - a. Vaccinated court attendees and unvaccinated court attendees who have provided a negative COVID-19 test must wear a cloth mask, surgical mask or a KN95 (or equivalent) mask, at all times within the court precincts.
 - b. Unvaccinated court attendees who have not provided a negative COVID-19 test result, and all participants in jury trials and other proceedings considered by the

4 (i) People who have a mask exemption card issued by the Ministry of Health will not be required to wear a mask.
(ii) Leave may be given to court attendees to remove their mask when speaking.

presiding judge to be high risk must wear a KN95 (or equivalent) mask at all times within the court precincts. These will be provided.

14. The following health and safety measures can be expected in the courthouse:
 - a. Access will be denied to anyone who is showing signs of illness, or has a body temperature of 38 degrees or higher, or has had close-contact with a suspected, probable or confirmed case of COVID-19;
 - b. Surgical masks will be provided at the entry to the courthouse for all those who do not have their own mask.
 - c. Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites); and
 - d. Hand sanitiser will be readily available within the courtroom.
15. Any concerns about health and safety in the court should be raised with the local Court Manager in the first instance.
16. In the event of community transmission within a courthouse catchment area, public health advice will be adopted, and further directions given.

Expectations of Counsel

17. Counsel are expected to assist the court by:
 - (a) Advising the court at an early stage if they become aware that alternative measures are likely to be required for their client's attendance at trial because they do not meet the requirements set out in paragraph 3 above.
 - (b) Briefing clients and witnesses on the health and safety measures in the courthouse as outlined paragraphs 11 through 16.
 - (c) Reducing the need for attendance in the courthouse 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 through the use of agreed facts where it is proper to do so.

- (d) 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. This should include consideration of any witness unable to attend court by reason of the requirements set out in paragraph 3. 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. Counters will be open.
- 19. Public counters will be open for all normal counter business. Drop boxes for filing will also be available.
- 20. An online [“file and pay”](#) system is available.

Criminal Proceedings

- 21. All criminal proceedings, including jury trials, may be conducted at Green, Orange and Red settings.
- 22. 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.
- 23. Witnesses required to appear may be directed not to enter the courthouse until immediately prior to their scheduled attendance.

Increased Use of AVL

- 24. 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.
- 25. The increased use of AVL is encouraged and intended to assist the court to reduce the number of people required to attend the courthouse in-person and thereby reduce the risk of transmission of COVID-19 in the courthouse and surrounding precincts.

26. 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.
27. 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.
28. 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 and Orange Settings

29. 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.

Use of AVL in Criminal Proceedings at Green Settings

30. Although all cases will be determined by judicial officers on a case-by-case basis, the increased use of AVL at Green Settings may be generally appropriate in the following types of hearings:
 - a. sentencing indication hearings;
 - b. pre-trial hearings;
 - c. appeals;
 - d. trial call overs; and
 - e. unopposed bail applications.

31. AVL may be seen as less appropriate in the following types of hearing:
 - a. first and second appearances;
 - b. entry of plea;
 - c. pre-sentence monitoring;
 - d. CP(MIP) hearings; and
 - e. sentencing.

Youth Court Proceedings

32. 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. The protocol makes provision for differences in vaccination status of participants.
33. This protocol must be read in conjunction with the District Court Protocol (this document) and is subject to any restrictions and alternative processes in the District Court Protocol relating to entry into the courthouse.
34. Entry to the courthouse is set out in paragraph 3 of the District Court protocol and will apply with such modifications as are necessary to fit with Youth Court processes
35. Where any participant, other than the young person, is refused entry into the courthouse, 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.
36. [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.
37. The content of this protocol will be reviewed regularly and updated as appropriate.

Underlying principles

38. 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 neuro diversity, 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

39. 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.
40. 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.
41. Face coverings are mandatory for in-person appearances at Red and Orange settings and encouraged at Green setting. Special considerations in relation to masks may be required for some young people. Where, for example, face coverings would hinder a young person's participation and communication, alternative options, including remote appearance via AVL, may be considered.
42. 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.

43. 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.
44. 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).
45. 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 victim's access and availability to participate remotely, meaning their ability to connect to WIFI or access to technical resources. Youth Justice Co-Ordinator's 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.

46. 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

47. 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

48. 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 courthouse 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.
49. 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 provide a memorandum to the judge where that is appropriate seeking a direction.

Criminal Procedure (Mentally Impaired Persons) Act 2003 Proceedings

50. 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

51. 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.
52. Where cases were being heard at Te Kōti Rangatahi or Pasifika Courts but are now being heard at courthouses, 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

53. 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

54. 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.
55. This protocol must be read in conjunction with the District Court Protocol and is subject to any restrictions and alternative processes in the District Court Protocol relating to entry into the courthouse.
56. The Family Court will undertake priority work, such as box work and without notice applications, but also intends to undertake all previously 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.
57. However, 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.
58. During the COVID-19 Traffic Light 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.
59. Where a Family Court is unable to operate at full capacity the following priority work will be undertaken:
 - a. Applications for Compulsory Treatment Orders; 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); and Welfare Guardianship or Property Orders (under the Protection of Personal Property Rights Act 1988).

- 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

- 60. 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.
- 61. 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.
- 62. Cases identified as a priority will be scheduled for a 30-minute conference/call over.

Conferences/Call overs/List Courts

- 63. 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.
- 64. Parties may also appear in person, but the judge may excuse in-person attendance and direct that the conference/call over to 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.
- 65. All conferences/call overs are to be conducted by a judge and recorded on the FTR transcription system.

66. 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.
67. 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.
68. Cases already scheduled in list courts will remain as scheduled. No changes will be made to the event duration.

Memoranda

69. 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.
70. 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

71. 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

72. 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 spread of COVID-19;
and
 - c. the individual rights of the patient.
73. 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

74. 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

75. Subject to the following paragraphs, hearings involving viva voce evidence are expected to proceed in person.
76. 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.

77. 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.
78. 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.
79. 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 Red, Orange or Green setting.
80. It is anticipated that scheduled long cause fixtures with multiple parties and/or multiple witnesses may present challenges in terms of physical distancing and hygiene 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

81. All civil proceedings will be conducted at Red, Orange and Green settings.
82. 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.
83. 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)

84. All Accident Compensation Appeal hearings will be conducted at Red, Orange and Green settings
85. 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.
86. 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.
87. 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. No document will be received for filing in person at the Tribunals Office, Wellington or any other Tribunals Office.