



# **Court Martial of New Zealand - Te Kōti Whakawā Kaimahi o Te Ope Kātua o Aotearoa**

## **Summary Appeal Court of New Zealand - Te Kōti Whakawā Pīra Whakaraupapa Taua o Aotearoa**

# **Protocol for Court Proceedings with COVID-19 in the Community**

**Chief Judge Kevin Riordan, ONZM - Judge Advocate General**

**Current as at 13 September 2022 and remains in force until further notice**

1. This Protocol governs all proceedings of:

- the Court Martial of New Zealand - Te Kōti Whakawā Kaimahi o Te Ope Kātua o Aotearoa,
- the Summary Appeal Court of New Zealand - Te Kōti Whakawā Pīra Whakaraupapa Taua o Aotearoa.

The Protocol also applies, with all necessary modifications, to the functions of the Office of the Judge Advocate General and the Reconsidering Authority.

Nothing in this Protocol reduces fair trial rights, the right to natural justice, or rights under the New Zealand Bill of Rights Act 1990.

2. This Protocol will be reviewed and modified as necessary by the Chief Judge.

### **Introduction**

3. The courts are an essential service, and the Court Martial of New Zealand and Summary Appeal Court will remain open despite the presence of COVID-19 in the community, to ensure access to justice and the administration of service discipline.

4. 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 discipline and the protection of the health and safety of everyone in the courtroom.

5. This Protocol applies subject to any directions given by the assigned Judge in a particular trial. The Judge may direct that requirements set out in this Protocol do not apply if the Judge is satisfied that it is in the interests of justice and discipline to do so.

### **Access to the Court**

6. The following requirements apply to entry into the courtroom:

- (a) A person may not enter the courtroom if they are showing signs of illness;
- (b) A person who has tested positive for COVID-19 within the last 7 days may not enter the courtroom.

7. The accused in any trial, if feeling unwell or having recently tested positive for COVID-19, must contact the Registrar (in person or through their lawyer) as early as possible in advance of the date on which they are to appear. If this is not done earlier, these matters should be raised with the medical officer conducting the medical examination on the first day of trial. The Registrar, having consulted with the Judge, will advise the accused whether they are required to attend court on that day. The accused's commanding officer will be advised of the decision.

8. The Court Martial remains open to the public, but for health and safety reasons there may be limits on the number of people who are not directly involved in proceedings who are permitted to be physically present in the courtroom.

9. Because proceedings are held in courtrooms within Defence Areas, persons seeking access to the courtroom must first gain access to the camp, base or ship within which the trial is to be held. The Chief of Defence Force, or the officer in command of the Defence Area, may lawfully order that persons seeking to enter the area may do so only if they satisfy the relevant Defence Force COVID-19 requirements. It is expected that such orders will, to a large extent, be to the same effect as set out in this Protocol. This Protocol does not override any such order.

10. The application of any such order must not be allowed to adversely affect the fair trial rights of the accused, the principle of open justice, or the interests of discipline and justice. Special measures to ensure participation are within the discretion of the Judge. If such measures cannot be arranged satisfactorily it may be necessary for the judge to delay the trial.

### **Masks**

11. All persons entering the courtroom may wear a surgical mask or a KN95 mask, and are encouraged to do so when moving around the courtroom and its environs. Masks will be provided at the entry to the courtroom for all those who do not have their own mask.

12. A surgical mask or KN95 mask must be worn by all persons present in a courtroom, or by specified persons in a courtroom, if the Judge so directs.

## Conduct of proceedings

13. Trials will be conducted in person, unless the Judge directs otherwise. Directions may be given for some proceedings to be conducted remotely.
14. The Judge may give direction as to the management and layout of the courtroom and other measures deemed necessary to ensure the health and safety of the military members, officers of the Court, counsel and participants.
15. A party may seek a direction that a matter should be conducted with all participants appearing remotely. A request for a matter to be conducted remotely should be made with as much notice as possible, and where practicable five working days in advance.
16. A party, counsel or other participant may apply to participate in a hearing by remote technology. A request for a participant to appear remotely should be made with as much notice as possible, and where practicable five working days in advance.

## Rapid Antigen Tests (RATS)

17. A court participant who has any symptoms of COVID-19, however minor, must take a RAT before attending court:
  - (a) If they test **negative**, and the symptom are very minor (e.g. scratchy throat) they may attend court but must wear a mask at all times
  - (b) If they test **negative** and the symptoms are more severe (e.g. runny nose, coughing) they must not attend court unless the Judge so directs. If they are permitted to attend court, they must wear a mask at all times.
  - (c) If they test **positive**, they must not attend court see para 20 below.
18. The Judge may direct that some or all participants in a hearing longer than one day must take a RAT in the morning before attending court, on such days as the Judge directs, if the Judge is satisfied that it is reasonably necessary to do so in the interests of justice and discipline and to protect health and safety in the courtroom.
19. The Registrar will advise counsel, and any party who is not legally represented, of the arrangements for obtaining RATs from the Court.
20. If a participant receives a positive COVID-19 test result, they must not attend Court. If not at Court when the result is received, they must advise their commanding officer and advise the Registrar by e-mail. If present at Court, the Registrar or Clerk of the Court must be advised, and the participant will promptly be directed leave. Whether and how the hearing may be able to continue will be a matter for the Judge to determine on a case-by-case basis.
21. If a participant is required to take a RAT, and declines to do so, the Judge will determine whether and how the hearing will proceed. The person's commanding officer, if applicable, will be advised.

## **Other measures**

22. To the extent practicable:
- a. witnesses will not be called into the courtroom until just prior to their scheduled attendance; and
  - b. counsel should take instructions and brief witnesses at a location other than the courtroom. Rooms will be made available within in the Defence Area for interviews and counsel may request breaks to take instructions safely using those facilities.

## **Media access**

23. Subject to paragraph 6, accredited news media will have entry to the Courtroom in order to report on proceedings and to ensure continued open and transparent justice. Remote access for accredited news media will be facilitated in accordance with current protocols. A media room may be provided within the Defence Area.

## **Remote participation and viewing**

24. The [Protocol for Participation in Remote Hearings](#), will apply to any hearings involving remote participants.

25. The [Protocol for Remote Viewing of Hearings](#) governs media and public access to hearings.

## **Health and safety**

26. The following health and safety measures apply in the Courtroom and in its environs:
- (a) Cleaning products will be available on site to enable support personnel and lawyers to keep their immediate areas clean (including AVL suites);
  - (b) Hand sanitiser will be readily available within the courtroom;
  - (c) Face masks will be readily available in the courtroom;
  - (d) RAT kits will be available in the courtroom.
27. Any concerns about health and safety in the Court should be raised with the Clerk of the Court or the Registrar in the first instance.

## **Expectations of Counsel**

28. Counsel are expected to assist the Court by:
- (a) Briefing clients and witnesses on the courtroom entry requirements and RAT testing requirements set out in paragraphs 17 -22 above.

(b) Reducing unnecessary attendance in the courtroom 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 where this is allowed by the Armed Forces Discipline Rules of Procedure; and

(iii) Limiting the number of witnesses via the use of agreed facts.

(c) Considering and endeavouring 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 Courts (Remote Participation) Act 2010 will govern whether and how any witness may give evidence remotely.

## **Filing**

29. Documents may be filed electronically.

Questions about this Protocol should be directed to the Registrar - [alec.shariff@nzdf.mil.nz](mailto:alec.shariff@nzdf.mil.nz)