

Waitangi Tribunal COVID-19 Protocol 13 September 2022

Principles

1. Courts and Tribunals are an essential service. Under the current government guidelines relating to management of Covid-19 the Waitangi Tribunal will carry out scheduled hearings and other events.
2. This protocol sets out a framework to ensure that everyone who needs to participate in Tribunal 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 all who participate in Tribunal proceedings.
3. A significant number of claimants and members of the public who attend Tribunal hearings are people who are over 70, are immunocompromised, or who are otherwise particularly vulnerable to the effects of the COVID-19 virus. It is important that the Tribunal take account of this, and establish guidelines to ensure the safety of all who normally attend Tribunal events – particularly our pakeke (elderly), but also all parties, counsel, Tribunal staff, Tribunal members, Presiding Officers and members of the public.
4. With this in mind, all persons entering the Waitangi Tribunal for inquiry hearings or other Tribunal events – namely, all parties, counsel, Tribunal staff, contractors, Tribunal members, Presiding Officers and members of the public – must comply this protocol.
5. This protocol applies subject to any directions given by the Presiding Officer in a particular inquiry. The Presiding Officer may direct that requirements set out in this protocol do not apply in a particular case if they are satisfied that it is in the interests of justice, and the protection of the health and safety of parties, to do so.

Hearings

6. The following requirements apply to entry into a Tribunal hearing:
 - a. A person must not enter an in-person hearing at any time if they are showing signs of illness or are unwell;
 - b. Any person who has tested positive for Covid-19 within the last 7 days must not enter the hearing.
7. Tribunal hearings may be conducted in person or remotely, at the discretion of the Presiding Officer.
8. Remote hearings may utilise telephone conferencing, audio-visual link (AVL) or another form of videoconferencing, such as Zoom.
9. A party may seek a direction that a hearing should be conducted with all participants appearing remotely. A request for a hearing to be conducted remotely should be made with as much notice as possible, and where practicable 10 days in advance.

10. 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 10 days in advance.
11. These requirements, and those set out below, will also apply to all other Tribunal events, including judicial conferences and mediations.
12. Hearings 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 permitted to be physically present in courtrooms and court buildings.

Masks

13. For the reasons set out paragraph 3 above, a surgical mask or KN95 mask must be worn by all persons present at an in-person Tribunal hearing, unless the Presiding Officer so directs. Masks will be provided at the entry to a Tribunal hearing for all those who do not have their own mask.

Rapid Antigen Tests

14. Any participant in an in-person Tribunal hearing who has any symptoms of Covid-19 must take a Rapid Antigen Test (RAT) before attending the hearing.
15. The Presiding Officer may direct that some or all participants in an in-person hearing must take a RAT before attending a Tribunal hearing.
16. Where a Presiding Officer directs that Tribunal parties are required to take a RAT prior to attending a hearing, Tribunal staff will advise counsel and any party who is not legally represented of the arrangements for testing, and time will be allowed for parties to arrive at the hearing venue, take a test and confirm the result before the hearing commences. If participants are asked to take a RAT, and any participant declines to do so, the Presiding Officer will determine whether and how the hearing will proceed. If any participant tests positive, the Presiding Officer will determine on a case-by-case basis whether and how the hearing may be able to continue.

Other requirements

17. Everyone who attends a Tribunal event in person must comply with the health and safety requirements set out below, together with any other health and safety directives that may be given by the Presiding Officer. No person who is unwell should attend a Tribunal event at any time.
18. Where a Tribunal hearing is to be held at a marae, Tribunal staff will liaise with marae representatives to discuss these requirements and ensure that there are no concerns with them being in place during the hearing. Tribunal hearings will only take place at marae when the marae committee and representatives are comfortable with these requirements, and that their own marae health and safety requirements will be met by all attendees.
19. All Tribunal hearings will where possible be livestreamed to enable the public to observe proceedings if they are unable to attend in person.

Health and Safety

20. The following hygiene practices can be expected in all hearings:

- a. Cleaning products are available on site to enable parties, counsel and staff to keep their immediate areas clean (including AVL suites);
 - b. Hand sanitiser will be readily available;
 - c. Face masks will be readily available;
 - d. RAT kits will be available.
21. Any concerns about health and safety practices in the Tribunal should be raised with the Tribunal Registrar in the first instance at WT.Registrar@justice.govt.nz.

Filing

22. Any filing with the Tribunal may be done by email, post or in person at the Tribunal reception counter. The email and postal addresses for all Waitangi Tribunal filing can be found on the Tribunal's website at <https://waitangitribunal.govt.nz/contact-us/>.
23. The same measures set out above for Tribunal hearings will apply to in-person filing at the Tribunal reception. No one who is feeling unwell should file any Tribunal documents in person.

Media

24. Accredited news media will continue to have entry to Tribunal hearings (subject to the requirements in paragraphs 6-18 above) in order to report on proceedings, and to ensure open and transparent justice. Remote access for accredited news media will also continue to be facilitated. All access by media must be approved by the Presiding Officer of the relevant inquiry through a media application, available on the Tribunal's website.

Expectations of counsel

25. Counsel are expected to assist the Tribunal by:
- a. Briefing clients and witnesses on public health message and the requirements of this protocol, including:
 - i. Not to come to any Tribunal event if unwell.
 - ii. To advise counsel as early as possible if they are unable to attend a Tribunal event.
 - iii. What they may expect by way of PPE and hygiene supplies in the Tribunal.
 - b. Seeking remote participation in appropriate cases, as set out in paragraphs 8-10 above.
 - c. Raising any deficiencies with cleaning, the availability of cleaning supplies or social distancing with the Tribunal Registrar immediately at WT.Registrar@justice.govt.nz.

Chief Judge Wilson Isaac, Chairperson

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