

Waitangi Tribunal COVID-19 Delta Level 2 protocol 29 October 2021

1. This protocol will take effect when New Zealand, or any region of New Zealand, moves to Level 2 of the Covid-19 Alert System. It should be read in conjunction with the Government's Covid-19 Alert System Level 2 restrictions, including the additional measures put in place to address the Delta variant of the Covid-19 virus.
2. Courts and Tribunals are an essential service. At Alert Level 2, and subject to the restrictions noted below, the Waitangi Tribunal will carry out all usual scheduled work that can be safely supported. This requires the co-operation of all parties to ensure the Tribunal functions at the fullest extent that it safely can in performance of its constitutional role.
3. Under Level 2, the Waitangi Tribunal may hold some in-person hearings. However, for the safety of Tribunal parties and staff, the majority of Tribunal events will continue to be undertaken on the papers or via phone- and video-conferencing.

Considerations

4. Waitangi Tribunal proceedings, particularly hearings held on marae, often have high attendance from members of the public in addition to claimants, counsel, Tribunal members and Tribunal staff. A large number of claimants and members of the public who commonly attend Tribunal hearings are people over 70, are immunocompromised, or have certain pre-existing conditions, for whom the current government advice is that they should remain at home while there is a risk of Covid-19 transmission.
5. It is important that the Tribunal take account of this, and set in place guidelines to ensure the safety of all who normally attend Tribunal events – particularly our pakeke (elderly), but also all claimants, counsel, Tribunal staff and Tribunal members.
6. The principal considerations that have guided this protocol are as follows:
 - a. Government advice regarding public events and appropriate social distancing at all times;
 - b. Ensuring the safety of all claimants, counsel, staff, Tribunal members, and members of the public that normally attend Waitangi Tribunal hearings; and
 - c. The desirability of limiting the need for claimants, counsel, Tribunal members and staff to attend Tribunal events in person, where participation can be arranged remotely.

General Principles

7. The Waitangi Tribunal will continue to operate, but will do so in a manner which safeguards claimants, counsel, Tribunal members, Tribunal staff and members of the public.
8. In scheduling hearings, judicial conferences and panel meetings, Presiding Officers should ensure that where an event can be held remotely (eg by all parties using audio-visual link conferencing

(AVL), another form of videoconferencing such as Zoom, or by teleconference), that method should be preferred while this protocol is in place.

9. Where a Tribunal event cannot practically be held remotely, Tribunal claimants, counsel, witnesses, members and staff may be asked to travel to attend an in-person hearing or other event. The scheduling of such events will be made by the Presiding Officer for the relevant inquiry in consultation with the Chairperson.
10. No person should travel from a region that is at Level 3 or 4 of the Covid-19 Alert Level System in order to attend an in-person Tribunal hearing being held in a Level 2 region, unless they have sought and been granted permission by the Presiding Officer to do so.
11. Receiving notification of an in-person hearing that will be heard in a Level 2 region does not convey authority on any party to leave an Alert Level 3 or 4 region for the purposes of attending that hearing. Advice to this effect will be included in all notices of hearings and memorandums-direction setting down hearings issued by the Tribunal while different regions of the country are at Level 2 and Levels 3 or 4 of the Covid-19 Alert System.
12. Where any person residing in a region at Level 3 or 4, or who has recently travelled (for purposes other than transiting between regions) to an area at Level 3 or 4, is notified of an in-person hearing that will be held in a Level 2 region and seeks to attend they should advise Tribunal staff of this and discuss attendance using telephone- or video-conferencing instead of attending in person.
13. If any party (or their counsel) residing in a region at Level 3 or 4 seeks to travel to a Level 2 region in order to appear in person at a hearing rather than via telephone- or video-conferencing, they must file a memorandum with the Presiding Officer seeking leave to do so. Any such application will be assessed and (if granted) managed in compliance with the cross-bench protocol on Cross-Alert Boundary Travel, which can be found on the Courts of NZ website at <https://www.courtsof.nz.govt.nz/publications/announcements/covid-19/cross-alert-level-boundary-travel/>. Leave will only be granted to cross Alert Level boundaries in exceptional circumstances, where the Presiding Officer is satisfied that (a) the party's participation in the hearing cannot be effectively achieved via telephone- or video-conferencing; and (b) that all of the public health requirements set out in the Cross-Alert Boundary Travel protocol can and will be met.
14. All those attending an in-person Waitangi Tribunal event should wear a face mask while inside the hearing venue and any other associated public spaces. Those attending the event will be reminded of this by Tribunal staff upon their arrival at the venue. Attendees will be offered a mask if they do not already have one.
15. Masks are to be worn at all times at in-person hearings, unless permission is given by the Tribunal to remove a mask or if a medical exemption applies. Where a medical exemption applies, attendees will be required to present proof of the exemption, such as a doctor's certificate, to Tribunal staff.
16. Tribunal staff will wear masks when in the hearing venue and any other associated public spaces.

17. All public Waitangi Tribunal events will be livestreamed where possible, with a link made available to all parties and members of the public who wish to view proceedings. Transcripts of all Tribunal hearings will be made publicly available, as is currently the case. Translation services for submissions made in te reo Māori will be made available through simultaneous translation where possible, and through the published transcript where simultaneous translation is not possible.

Filing

18. Any filing with the Waitangi Tribunal should be done, where possible, by email or post. 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/>.

19. Where email or postal filing is not possible, Tribunal applications and documents may be filed in person at the Waitangi Tribunal. Measures will be put in place at the Tribunal's reception to ensure appropriate social distancing between all Tribunal visitors. No one who is feeling unwell should file any Tribunal documents in person.

20. No filing in hard copy shall be handed to staff during the course of a hearing. All documents parties seek to produce for the Tribunal during a hearing must be filed electronically.

Hearings

21. For all currently scheduled Waitangi Tribunal hearings, and in setting down any new hearings, Presiding Officers must first consider whether the hearing can be conducted while ensuring appropriate social distancing, and all other health and safety considerations, for attendees.

22. Where the Presiding Officer is confident that a Tribunal hearing can be undertaken safely, they should next consult with all parties to ascertain whether there are any concerns from claimants, counsel or other parties with attending the hearing in person, whether alternative arrangements should be made for some parties (especially any in high-risk groups) to attend remotely, or whether any parties seek a postponement of their hearing in light of the current alert level.

23. Under the COVID-19 Alert Level 2 Guidelines, the Tribunal can only permit a limited number of individuals to be able to safely distance within a hearing. Therefore, parties intending to attend an in-person hearing of the Waitangi Tribunal will be required to RSVP in advance to the Waitangi Tribunal Registrar at WT.Registrar@justice.govt.nz.

24. Before hearing, the Tribunal will notify all parties who are set to appear advising them that:

- a. If they are unwell, over the age of 70, immunocompromised, or have an underlying respiratory condition, they should not attend the hearing in person. Arrangements can be made for evidence to be given by telephone- or video-conferencing, where appropriate.
- b. That the hearing will be livestreamed, and a link provided to all participants and interested parties on the Tribunal's inquiry distribution list to view proceedings remotely.
- c. A transcript of the hearing will be made available to all on the distribution list following the hearing, and will be publicly available.

25. While Tribunal hearings are normally open to the public, at Level 2 public attendance will be limited to only those people who can safely attend a hearing in a manner that ensures appropriate social distancing and meets all other Government requirements. As noted above, all Tribunal events will where possible be livestreamed to enable the public to observe proceedings while minimising the need for in-person attendance.

Judicial Conferences

26. Judicial conferences are public events held between the Tribunal panel and counsel to address interlocutory or procedural matters. The numbers in attendance at such conferences are generally more limited than at Tribunal hearings.

27. In keeping with the General Principles outlined above, whenever a judicial conference can be held by AVL, Zoom or teleconference, this method should be preferred while this protocol is in place.

28. While normal Tribunal practice is to allow claimants and members of the public who wish to attend judicial conferences to do so, while there are ongoing concerns around the possible community transmission of Covid-19 it is appropriate that in-person attendance be limited to counsel, Tribunal members and Tribunal staff. Claimants and members of the public may join a Judicial Conference by AVL, Zoom, teleconference or by viewing the conference via livestream.

Panel Meetings

29. Waitangi Tribunal Panel Meetings are the meetings held by Tribunal panel members to deliberate on and discuss matters before them. These are not public events, but often require Tribunal panel members to travel in order to attend in person.

30. To avoid any requirement for Tribunal members to travel, and having regard to the fact that many Waitangi Tribunal members are in the groups that have been identified as being at high risk to Covid-19, all Panel Meetings should be held remotely (via AVL, Zoom or teleconferencing) while this protocol is in place.

Hygiene

31. The Ministry of Justice has advised that it continues to take a number of steps to ensure the safety of those attending Tribunal events during Alert Level 2, including:

- a. A designated hygiene officer to attend to hygiene, physical distancing and safe working practices.
- b. Access will be denied to those
 - i. showing signs of illness such as coughing or sneezing;
 - ii. reporting feeling unwell;
 - iii. who have had close contact with a suspected, probable or confirmed case of Covid-19; or
 - iv. who are unwilling to disclose the purpose of their visit or their contact information.

- c. Limiting entry to Tribunal parties and members of the public who are given permission to enter, in accordance with paragraphs 23-25 above.
 - d. Maintaining an orderly queuing system to enter Tribunal events, reminding people not to enter if they are symptomatic, and offering wipes for items placed in screening trays.
 - e. Maintaining a contact register.
 - f. Providing a daily supply of clean PPE for use by Tribunal staff, Presiding Officers and Members.
 - g. Maintaining a cleaning regime based on the Ministry of Health recommendations, with a wide range of deeper cleaning measures in key areas throughout public and non-public areas and regular cleans – for example during lunch breaks – to ensure that areas where there is high traffic are clean and sanitised.
 - h. Monitoring the provision of cleaning supplies such as soap and towels and ensuring availability of key products such as hand sanitiser at appropriate points around the Tribunal hearing venue.
 - i. Keeping under constant review all cleaning practices and procedures, to enable additional measures to be added if required.
 - j. Reminding those attending Tribunal events of the need to take personal responsibility for their own health and wellbeing – including washing hands regularly, following hygiene practices and, if unwell, following Ministry of Health guidance.
 - k. Leaving doors open where consistent with security, fire safety, privacy and noise reduction.
32. Safe distancing will be observed in Tribunal hearing venues, and the following hygiene practices can be expected:
- a. Those working in the venue, including counsel, are required to maintain appropriate physical distancing, in line with [the relevant Public Health Orders](#). Seats in public galleries will be taped off to ensure this.
 - b. Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites).
 - c. Face masks should be worn in all public spaces, in accordance with paragraphs 14-16 above. Gloves may also be worn.
 - d. Hand sanitiser will be readily available within the hearing venue.
 - e. The Tribunal will not normally permit documents to be handed up to the panel. Documents that parties wish to produce should be scanned and shared by email at the appropriate time.
33. Any concerns about health and safety practices should be raised with the Tribunal Registrar in the first instance.

Media

34. Accredited news media will continue to have entry to the Waitangi Tribunal in order to report on proceedings, and to ensure open and transparent justice. Remote access for accredited news media will continue to be facilitated in accordance with current protocols.

Expectations of counsel

35. Counsel are expected to assist the Tribunal by:

- a. Briefing clients and witnesses on public health messages:
 - i. Not to come to any Tribunal event if unwell.
 - ii. To advise counsel as early as possible if they are unable to attend.
 - iii. Social distancing expectations in hearing venues and Tribunal offices.
 - iv. What they may expect by way of PPE and hygiene supplies in the Tribunal.
 - v. The limits on attendance by members of the public, as set out at paragraphs 23-25 above.
- b. Reducing the need for attendance in the Tribunal by counsel, claimants and witnesses by reviewing each attendance in advance and:
 - i. Seeking remote participation where appropriate.
 - ii. Limiting the number of witnesses via the use of agreed facts.
- c. Raising any deficiencies with cleaning, the availability of cleaning supplies or physical distancing with the site manager immediately.

Community transmission response

36. At Alert Level 2, it remains possible that a new cluster of Covid-19 community transmission may be confirmed within a location served by the Tribunal. In that event the Tribunal will rely on official advice. Steps may be taken to reduce in-person attendances at Tribunal events to help protect those working or appearing there. The extent of any reduction will depend on the circumstances and official advice or notices.

37. If a location is required to return to Alert Level 3 or 4, the Tribunal is now better equipped for remote participation. Where practicable and appropriate, the Tribunal may conduct additional types of work by remote participation.

Variation to protocol

38. Any variation to this protocol, to address the circumstances of a particular case, must be approved by the Presiding Officer in consultation with the Tribunal Chairperson.

Chairperson Wilson Isaac

29 October 2021