

Waitangi Tribunal
COVID-19 Protection Framework Protocol
1 December 2021

1. This protocol will take effect when New Zealand moves into the Covid-19 Protection Framework system at 11:59pm on Thursday 2 December 2021.

Principles

2. Courts and Tribunals are an essential service. Under the Protection Framework the Waitangi Tribunal will carry out all normal scheduled hearings and other events.
3. I am conscious that 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 set in place 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, Tribunal members, Presiding Officers and members of the public – will have to comply with the directions set out in this protocol.

Entry to hearings and other Tribunal events

5. Anyone seeking to enter a Waitangi Tribunal hearing must present a current My Vaccine pass or provide acceptable evidence of a negative COVID-19 test administered within 72 hours prior to entry to the Tribunal. These requirements will also apply to all other Tribunal events, including judicial conferences and mediations.
6. Counsel, parties or other persons who are unable to meet the requirements set out in paragraph 5 above may participate in or observe a hearing or other Tribunal event by telephone conference, audio-visual link (AVL) or another form of videoconferencing, such as Zoom. Any person who needs to participate remotely in a hearing due to the above requirements should contact the Tribunal in advance of the hearing so that the necessary arrangements for remote participation can be made. If any party does not have access to the necessary phone or internet services to participate in a hearing by telephone or videoconferencing, they should apply to the Tribunal for directions as to how they can be heard remotely.
7. Counsel or parties who are able to meet the requirements set out in paragraph 5 above, but do not wish to participate in a Tribunal event in person, may apply to the Tribunal to participate remotely.
8. 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.
9. 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.

10. All Tribunal hearings will be open to the public, as is normal practice, subject to any memorandum-directions from the Presiding Officer. However, the social distancing requirements set out below may limit the number of public able to attend a hearing in person.
11. All Tribunal hearings will where possible be livestreamed to enable the public to observe proceedings if they are unable to attend in person.

Hearings conducted at a location within a COVID-19 Protection Framework Green level

12. Tribunal hearings at a location in a COVID-19 Protection Framework Green level will generally be conducted in person, subject to the provisions set out in paragraphs 5-11 above.

Hearings conducted at a location within a COVID-19 Protection Framework Red or Orange level

13. At a location in a COVID-19 Protection Framework Red or Orange level, the Waitangi Tribunal will continue to carry out its work, with hearings conducted in person (subject to the provisions set out in paragraphs 5-11 above), by remote technology or by a combination of both, as determined by the Presiding Officer and Tribunal panel in consultation with claimants and counsel.

Health and Safety

14. Persons present at a Tribunal hearing and other events must observe one-metre social distancing requirements at all levels of the Covid-19 Protection Framework. This may result in limits to the number of people able to attend in person.
15. At Red and Orange levels, all persons present in a Tribunal hearing and other events must wear a face mask in public areas. Those attending the hearing or event will be reminded of this by Tribunal staff upon their arrival, and attendees will be offered a mask if they do not already have one. Masks are to be worn at all times at hearings, unless permission is given by the Presiding Officer 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. Tribunal staff will wear masks when in hearings and other public spaces.
16. At Green level, wearing a face mask in hearings and public areas is encouraged.
17. The following hygiene practices can be expected in all hearings:
 - a. Those present in the hearing, including counsel, are required to maintain appropriate one-metre social distancing.
 - b. Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites).
 - c. Hand sanitiser will be readily available.
18. Any concerns about health and safety practices in the Tribunal should be raised with the Tribunal Registrar in the first instance.

Filing

19. Any filing with the 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/>.
20. Where email or postal filing is not possible, Tribunal applications and documents may be filed in person at the Tribunal offices. Anyone seeking to file documents in person or enter the Tribunal offices for any other reason must meet the same requirements for entry as are set out for Tribunal hearings and events at paragraph 5 above. 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.
21. No filing in hard copy shall be handed to staff during the course of a Tribunal hearing. All documents parties seek to produce for the Tribunal during a hearing must be filed electronically.

Media

22. Accredited news media will continue to have entry to Tribunal hearings (subject to the provisions in paragraphs 5-11 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

23. 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. Social distancing expectations in hearing venues and other Tribunal events.
 - iv. What they may expect by way of PPE and hygiene supplies in the Tribunal.
 - b. Seeking remote participation in appropriate cases, including in relation to the requirements set out in paragraphs 5-11 above
 - c. Raising any deficiencies with cleaning, the availability of cleaning supplies or social distancing with the Tribunal Registrar immediately.

Chief Judge Wilson Isaac, Chairperson

1 December 2021