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New Zealand Law Society
New Zealand Bar Association
Criminal Bar Association

Auckland District Law Society
Te Hunga Rōia Māori o Aotearoa
Pacific Lawyers Association

South Auckland Bar Association
The Defence Lawyers Association NZ

Tēnā koutou,

Implementing the COVID-19 Protection Framework in the courts and tribunals

Following discussions earlier this year and most recently with Andrew and I on Thursday morning, I've summarised below the key measures that are being taken to manage health and safety in courts and tribunals when the judiciary's COVID-19 Protection Framework Protocols take effect next week, and what this means for lawyers and their clients. I encourage you to share this with your members.

We understand that there is concern about having people in courts or tribunals who are unvaccinated or have not recently had a negative COVID test. The fact is that the Courts must operate according to the legislation that governs access to courts and the right to be present at hearings. Under that legislation some people cannot be excluded from the courthouse. In particular, there are certain categories of hearing that defendants are entitled to be present at in person. However, the effect of the entry requirements and the judicial protocols is that we would expect this to be only a very small number of people.

There will be extensive use of remote hearings, where that is permitted by law, to reduce the need for defendants to attend court. Also, all defendants' vaccination status will be checked before entry to the courthouse. If they are unvaccinated there will be arrangements for COVID testing. Rapid antigen testing will be available, but defendants cannot be compelled to take a COVID test. If a defendant is unvaccinated and does not take a COVID test, and the hearing is one that they are entitled to attend in person, a Judge may adjourn the hearing or special procedures will be put in place to manage that defendant on a case-by-case basis.

Defendants who have COVID symptoms or who are required to isolate for any reason (such as having been in contact with another COVID-19 case) will not be allowed to be present in a court and the hearing will need to be adjourned.

The judiciary has advised me, although in each case it is a matter for individual judges to decide, it is highly unlikely that there will be circumstances where an unvaccinated, untested, witness will give evidence in person. The law permits most witnesses to give evidence remotely from another location, and that is likely to be what happens in such cases.

The health and safety of everyone who comes to or works in a courthouse or hearing venue is the Ministry's top priority.

The Ministry is building on existing COVID-19 protocols and processes, including a requirement for all Ministry staff working on site to be vaccinated from 1 February 2022.

In the first few weeks of implementation, we ask for patience and tolerance while everyone adjusts to the new processes. We are assessing the impacts of these changes, including where and how we could use additional staff and courtrooms to reduce wait times and maintain safety.

Entry requirements

In consultation with the judiciary and based on Ministry of Health advice, the Ministry of Justice has developed requirements for people to safely enter court and tribunal buildings. These will be effective from 31 January 2022. This means that every person entering a court building will require a My Vaccine Pass or evidence of a recent negative COVID-19 test to enter, unless they are exempt as below.

People who are required to attend court in person (e.g. pursuant to a summons, legislative requirement or judicial direction) will be allowed to enter the building even if they do not show a My Vaccine Pass or provide evidence of a negative test. There will be processes in place to manage cases where people are unable to show a vaccination certificate or a recent negative test.

Our Security team will administer the entry requirements at courts and tribunal buildings where there are hearings taking place.

It is important that you familiarise yourself with these entry requirements. Further details are set out in appendix 1, and on the Ministry of Justice website. <https://www.justice.govt.nz/covid-19-information/news-holder/latest-updates/>

Testing

The tests currently accepted by the Ministry of Health are PCR tests and rapid antigen tests; these must be undertaken by a health worker, for example at a pharmacy or doctor's surgery.

<https://covid19.govt.nz/testing-and-tracing/covid-19-testing/types-of-covid-19-tests/>

If an attendee does not have a My Vaccine Pass, and they need to be tested to enter a court or tribunal, they can now go to a pharmacy to get one. It has been confirmed this week that these people can go to a pharmacy and explain that they need to get a rapid antigen test to attend court. Currently a rapid antigen test at a pharmacy is free, if undertaken for this reason. Pharmacies offering this service can be located on the Healthpoint website - <https://www.healthpoint.co.nz/covid-19/?covidTesting=antigen>. There are, however, a number of Ministry of Justice locations that currently do not have rapid antigen testing in the same town. These are:

- District Courts: Taupo, Wairoa, Westport, Ashburton, Taumaranui, Morrinsville.
- Hearing Centres: Dargaville, Ruatoria, Waipukurau, Marton, Chatham Islands, Oamaru.

Where an attendee who is required to attend a court or tribunal in person has already undertaken a COVID test at their own cost, the Ministry will reimburse the COVID test costs. The Ministry of Justice COVID test reimbursement form can be obtained from the court or tribunal.

The Ministry will not cover costs for COVID tests for anyone who is not required to attend a court or tribunal in person (e.g. not pursuant to a summons, legislative requirement or judicial direction).

Jury trials

Jury trials are scheduled to begin in the District Court on 31 January and in the High Court on 8 February 2022.

It is recognised that jury trials involve a significant number of participants, some of whom must be allowed to be present regardless of whether they have been vaccinated or recently tested - as said previously, it remains the right of a defendant to be present at their own trial. Therefore, trials present a degree of risk. The Ministry is taking steps to address this throughout the jury process and reduce the number of people appearing at court.

All initial juror summonses are now accompanied with an information sheet explaining the new measures to jurors and asking for confirmation that they can meet the entry requirements. Where a juror indicates that they may not be able to meet them, they may ask for their service to be excused or deferred.

It is possible that an unvaccinated juror may be balloted and selected for a panel. In this circumstance a direction will be sought from the presiding judge on how this can be managed. Although in each case it is a matter for individual judges to decide, the judiciary has advised me that it is highly unlikely that there will be circumstances where an unvaccinated, untested, person will serve on a jury.

Pre-balloting may also be used, where appropriate, to reduce the need for jurors to attend court in person. Where this is used it will be notified on the Ministry's website and participants will be able to contact the registry for a link to view the balloting.

Jurys will be provided with the higher quality KN95 masks, as a priority, with other participants also able to request them. In trials scheduled to last for more than one week, jurors may be given rapid antigen tests during the trial. Testing will be conducted on site and costs will be covered by the Ministry. To minimise adjournments and the impact on scheduling we are providing this information to potential jurors in the summons letters and increasing the number of jurors that are summonsed.

A fact sheet for jurors about the health and safety measures that will be in place is attached in "Health and Safety information for Jurors during COVID-19".

Staggered appearances – District Court

In response to the COVID-19 Protection Framework and judicial protocols, the Ministry of Justice is making national scheduling changes on behalf of the Chief District Court Judge to minimise the potential spread of COVID-19 by reducing the number of people in court buildings at any given time.

From 31 January, a 'staggered appearance' scheduling approach (also known as time-blocking) will be adopted under the COVID-19 Protection Framework protocols for all settings (Red, Orange and Green) for high-volume criminal court events in medium and large District Courts. This involves scheduling participants into appointment slots, rather than scheduling all participants to appear at the same time, i.e. 10am.

This means participants will be required to attend court at their designated time only, which will reduce the number of participants in court buildings at any given time. Many of you should have already started to receive a specific time that your case/your client's case has been scheduled for, along with the date.

All changes will come into effect on or before 31 January 2022. Any cases currently scheduled for after that date that are impacted by these operational changes will be rescheduled into a staggered appearance timeslot on the existing hearing date and all parties will be notified accordingly. Notice of hearing forms, summons, and court and police bail bonds will be updated to reflect the staggered appearance times.

Remote appearances

To the extent possible, court business will be conducted by remote participation. In addition to remote appearances by audio-visual links, courts are also investigating whether more matters could be dealt with on the papers where appropriate (e.g. entering a plea and requesting adjournments).

This will provide the participants with alternative ways to engage in the court process, rather than appearing in person.

Remote filing

File and Pay provides an online alternative to filing documents and paying fees in person at a courthouse or by post. Under the COVID-19 Protection Framework protocols, all parties and counsel can file court documents and pay fees online for a range of jurisdictions. The Courts of New Zealand website provides further information (<https://www.courtsofnz.govt.nz/file-and-pay/>).

Drop boxes for physical documents are available at most courts and tribunal sites.

Other health and safety measures

We will continue to support contact tracing, either by scanning the QR code at entrances or by using the manual sign-in sheet. We will continue to use thermal imaging at court buildings where we have already been using it, and Court Security will continue to ask the now standard questions, such whether the person has any COVID symptoms.

Masks will still need to be worn in all courts and tribunals. Surgical masks are available at the entrance for those who do not have them – these are the masks recommended by the Ministry of Health. These are available on request, but any actual mask that is attached to the head by loops around the ears or head can be used in our sites.

In addition, standard surgical and KN95 masks are available at all courts and tribunals. Jurors will be provided with the higher quality KN95 masks as a priority, with other participants at jury trials also able to request them. Face shields have been sent to courts for duty lawyers to use, and KN95 masks will also be available.

We are continuing to maintain the highest standard of cleanliness and hygiene throughout all of our buildings. The cleaning regime is based on the Ministry of Health recommendations and is in addition to our regular cleaning regime for each site.

The Ministry has engaged contractors to undertake air testing assessments of the ventilation systems in all areas of courts, including interview rooms, to ensure they are minimising COVID-19 transmission risks as effectively as practicable.

In addition to this, air purifiers have been installed in all the jury retiring rooms. These portable air purifiers will help reduce airborne viral loads to prevent the spread of COVID-19.

Further information and updates

As you will be aware, the Ministry of Health guidelines are likely to change over time, as circumstances change, and in light of public health advice which continues to evolve. We will continue to provide updates as changes happen.

Details of the requirements at each traffic light setting can be found on the Ministry of Justice website at:

<https://www.justice.govt.nz/covid-19-information/>

<https://www.justice.govt.nz/about/news-and-media/covid-19-news/>

Protocols can be found on the Courts of New Zealand website:

<https://www.courtsofnz.govt.nz/assets/media-releases/2021/20211221-CJ-Media-release-Framework-protocols.pdf>

Ngā mihi



Carl Crafar
Chief Operating Officer

Encl: Appendix 1 and attached: Health and Safety information for Jurors during COVID-19.

Appendix 1: Court and Tribunal entry requirements

- Every person entering a court building will be asked to show their My Vaccine Pass, or evidence of a recent negative COVID-19 test.
- A person who shows their My Vaccine Pass or provides evidence of a recent negative test will be able to enter the building.
- People who are required to attend court in person (e.g. pursuant to a summons, legislative requirement or judicial direction) will be allowed to enter the building even if they do not show a My Vaccine Pass or provide evidence of a negative test. However, their entry may be subject to special measures to manage health and safety risks.

1. Participants required to attend court in person pursuant to a **summons, legislative requirement or judicial direction** will be allowed to enter the building even if they do not meet the court entry requirements. However, their entry will be subject to special measures to manage health and safety risks, determined on a sit by site basis. We expect this will be a small number of people. These participants include:

- Criminal defendants
- Lawyers for criminal defendants (including duty lawyers)
- Summoned witnesses
- Summoned jurors
- Prosecutors
- Applicants for habeas corpus.

In addition, victims are included in this category.

2. All other participants must meet entry requirements to enter the court **unless directed by prior approval of a judicial officer**. For example:

- Parties to civil proceedings (including tribunal and Māori Land Court parties)
- Lawyers for civil parties
- Other lawyers or advocates
- Mackenzie Friends, Lay Assistants
- Third party providers including interpreters, Communication Assistants, specialist report writers, Family Court Counsellors, Supervised Contact Providers, Victim Support
- Psychologists, psychiatrists and forensic nurses
- Pathologists
- Social workers
- Other stakeholders.

3. People who will **not be allowed to enter because they do not meet entry requirements** may be able to attend remotely. For example:

- Support persons such as family, friends and whānau (subject to any legislative requirements)
- Members of the public
- Accredited news media.