

**Waitangi Tribunal**  
**COVID-19 Protection Framework Protocol**  
**1 December 2021**  
**(Revised 31 January 2022, 9 February 2022, 5 April 2022)**

1. The COVID-19 Protection Framework (the **Protection Framework**) provides protection from COVID-19 through three settings – Red, Orange and Green. This protocol applies while the Protection Framework is in place.

**Principles**

2. Courts and Tribunals are an essential service. Under the Protection Framework the Waitangi Tribunal will carry out scheduled hearings and other events at the Red, Orange and Green settings. 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. 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 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 with the directions set out in this protocol.

**Hearings in Green level**

5. Tribunal hearings at a location in Green level will generally be conducted in person, subject to the provisions set out in paragraphs 10-15 below.

**Hearings in Orange level**

6. Tribunal hearings at a location in Orange level will be conducted in person (subject to the provisions set out in paragraphs 10-15 below), by remote technology or by a combination of both, as determined by the Presiding Officer and Tribunal panel in consultation with claimants and counsel.
7. Remote hearings will be conducted using telephone conferencing, audio-visual link (AVL) or another form of videoconferencing, such as Zoom.

**Hearings in Red level**

8. Tribunal hearings at a location in Red level will be conducted using remote technology. This will also apply to all other Tribunal-run events, such as judicial conferences and mediations.
9. As at Orange level, remote hearings may be conducted using telephone conferencing, audio-visual link or another form of videoconferencing, such as Zoom.

## **Entry to hearings and other Tribunal events**

10. All participants attending an in-person Tribunal hearing at the Orange level of the Protection Framework will be asked to take a Rapid Antigen Test (RAT) each day before the hearing commences. Tribunal staff will advise counsel and any party who is not legally represented of the arrangements for testing, and sufficient 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. These requirements will also apply to all other Tribunal events, including judicial conferences and mediations, at the Orange level of the Protection Framework.
11. Counsel, parties or other persons may seek leave to participate in or observe a hearing or other Tribunal event by telephone conference or videoconferencing. Any person who wishes to participate remotely in a hearing 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.
12. 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.
13. 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.
14. At any in-person hearing at the Orange level, for the safety of participants attendance in person will generally be limited to claimants, their counsel, people giving evidence, Tribunal staff and the Tribunal panel, except where leave has been given by the presiding officer for another person to attend.
15. 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**

16. Persons present at a Tribunal hearing and other events must observe one-metre social distancing requirements at all levels of the Protection Framework. This may result in limits to the number of people able to attend in person.
17. At Orange level, all persons present in a Tribunal hearing and other events must wear a surgical mask or a KN95 (or equivalent) 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 provided with 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.

18. At Green level, wearing a face mask in hearings and public areas is encouraged.
19. 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.
20. 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](mailto:WT.Registrar@justice.govt.nz).

### **Filing**

21. 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/>.
22. Where email or postal filing is not possible, at Green and Orange levels Tribunal applications and documents may be filed in person at the Tribunal offices. 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.
23. At the Red level of the Protection Framework, the Waitangi Tribunal public counter will be closed. A drop box will be available at the counter entrance for Tribunal documents to be filed in person, where parties are unable to file by email or post.
24. At Orange and Green levels, 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, unless the Presiding Officer directs otherwise.

### **Media**

25. Accredited news media will continue to have entry to Tribunal hearings (subject to the requirements in paragraphs 10-15 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**

26. 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 10-15 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](mailto:WT.Registrar@justice.govt.nz).

**Chief Judge Wilson Isaac, Chairperson**

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