

Questions put to Senior Ministry of Justice officials by the legal profession at operational meetings in February 2022.

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1. What are the special arrangements for unvaccinated defendants?

There are some situations where a participant may be unvaccinated and required to participate in-person. Criminal defendants and jurors cannot be denied entry under current legislation.

We recognise this poses a risk to other participants, including counsel, and to the participant themselves. While we cannot prevent their entry, we are taking steps to mitigate these risks. These include:

- *Utilising separate AVL rooms for participation where these are possible*
- *Working with counsel to explore alternative remote participation options*
- *Enhanced social distancing on the day, wherever possible*

These are in addition to the standard Health Safety and Security measures already in place which include:

- *Using thermal temperature at the entry court, and standard questions at entry to prevent symptomatic people entering courts.*
- *Requiring participants to wear high grade PPE (KN95 masks)*
- *Rescheduling matters to a time when less people in the building (i.e. late in the day)*
- *Seeking judicial direction where no options exist on the day*

We will not always know that a participant is, or is not, vaccinated until their appearance. Where the opportunity allows, we may look to reschedule their appearance.

2. Is remote participation encouraged by the court – particularly for counsel?

Where possible we are working with the judiciary to schedule appearances remotely, reducing the number of people appearing in person. This also includes time blocking, to further reduce the number of people attending at one time.

Each individual court may have slightly different approaches to supporting remote appearances given their AVL capability, but all will be following the protocols preference for remote appearances.

The court protocols create a preference for remote appearances where possible and it is the courts discretion to do this. Counsel will be notified by the court where an appearance is set for remote participation and counsel can also apply for a remote appearance. The more notice is given, the more likely it is that this can be done in time for the hearing.

3. What PPE is available to lawyers, in particular duty lawyers and defence lawyers

As per the COVID-19 Protection Framework court protocols, surgical masks (blue ones) will be provided upon entry to the court to those who do not have their own mask.

KN95 masks and face shields have already been made available to Duty Lawyers and we can confirm that these masks will be made available to defence counsel if requested.

Factsheets for how to wear and use KN95 masks are currently being developed.

4. What is the process for eligible participants to obtain a free RAT test?

Any person required to attend court and unable to meet entry requirements, will be encouraged to undertake a RAT test for free, either upon arrival at the court or if making contact with 0800 COURTS. This has been extended to include victims.

If a participant agrees to undertake a RAT test, they will be supplied with a letter to take to their local pharmacy. To further assist participants with this process, Court Security Officers have now been supplied with maps to the nearest participating pharmacies and easy-to-read factsheets about the process. We will update you as further resources are developed.

The agreement with the Ministry of Health (MoH) was finalised on late Friday 28 January 2022. Messaging was added to the MoH website on 31 January 2022. MoH communicated with participating pharmacies as soon as they were able to. We are still working on alternative arrangements where there are no participating pharmacies. Information about which pharmacies complete RAT testing are detailed on the MoH website at healthpoint.co.nz/covid-19/?covidTesting=antigen

5. Is the court accepting unsworn affidavits, particularly in the Family Court?

The COVID-19 Protection Framework court protocols do not allow for unsworn affidavits to be submitted, unlike the Transitional protocols. However, the Epidemic Preparedness (Oaths and Declarations Act 1957) Immediate Modification Order 2020 is still in place. Therefore, should an individual not meet the entry requirements to enter the court and have a document sworn by a Deputy Registrar (or at another location that requires a vaccine pass), they have the ability to have the document sworn electronically.

Due to the pressure that courts are currently under, we encourage participants to seek this service from a lawyer or JP first before requesting an appointment with their local court. Should an individual be unable to have a document sworn electronically, the matter may be referred to a Judge to consider alternative arrangements.

6. Are vaccine passes being scanned or just viewed when entering the court?

All persons entering a courthouse will be asked to show their My Vaccine Pass to Court Security Officers in order to enter.

Court Security Officers are not equipped with Ministry issued smart phones, so are unable to scan passes using the NZ pass verifier application.

This decision may be revisited in the future as the situation with the current COVID-19 outbreak develops.

The feedback regarding staff not asking to sight vaccine passes in Wellington will be followed up with the Site Manager. We appreciate that the new court protocols have only been in place for a short period, and it is to be expected that there will be some initial teething problems as we adjust to the new protocols and entry requirements.

7. What is the plan for duty lawyer rostering with Omicron?

We will continue to manage any lawyer shortages as we have during previous lockdown and alert level changes. We will also continue to review our business continuity plan as numbers escalate.

8. There needs to be communication to lawyers of what limits will be put on people entering the court building once case numbers start to escalate. There is a high level of anxiety for lawyers about wanting to know future plans for when cases start to rise.

We are currently looking into the capacity for each of the court buildings. This has been raised with the Chief District Court Judge, and all Heads of Bench are currently looking at their protocols.

9. Information is coming to lawyers too late; they need communication as soon as possible

We acknowledge that communications for the profession last week went out later than we had hoped, and that the timing of this was less than ideal. We will endeavour to communicate new information and any protocol changes as soon as possible.

10. What is the situation with PPE for Duty Lawyers in Taupo?

We have confirmed with the Taupo District Court that face shields, KN95 masks, and surgical masks are available for duty lawyers there to use. Duty Lawyers have the option of whether they wish to use these.

11. There are too many matters being scheduled for a given day, and courts are sitting late into the night. Are registries in Auckland region able to consider changes so that counsel are not being scheduled for too many matters on a given day?

Scheduling of court events is done based on established judicial caps to manage the amount of work scheduled into a court day. Where courts are finishing after 5pm, the national scheduling team can review information to identify the causes for that, and address issues, for example one case taking longer than its scheduled duration, or that too many cases were scheduled, or that a non-vaccinated person presented at the court and arrangements had to be made.

The national scheduling team are working with Manukau to review future scheduled courts to identify any courts which have too many cases scheduled. The registry will identify the priority cases and be supported with triage by a Duty Judge if required.

Additional list time has been added to the court scheduled in Manukau (where hearing time is available or additional judicial resource provided), and this will help prevent over-capping as hearing dates will be available earlier.

12. What is being done to address issues with how staggered appearances are being managed in Manukau?

We understand from feedback that there continue to be issues with how the staggered appearance scheduling approach is working in Manukau District Court. With Manukau being the largest District Court in the country changing the scheduling approach there may be posing additional difficulties. We will investigate this further and get back to you.

Scheduling of events using staggered appearance times is a health and safety measure introduced to minimise the number of people in the court building.

Happy for specific issues to be directed to Richard Williams.

13. Are memorandums needed when counsel want to appear via VMR?

Requests for VMR are generally facilitated by email with the lawyer contacting the Registry to arrange this, however it is open to the judge to direct that a memorandum be filed. Sometimes a Judge may want to see counsel in person and that will be communicated. The Ministry has made enquiries with courts in the Auckland region on the process. Generally, it appears that these requests are being facilitated by email without a memo being directed by a judge.