



The Right Honourable Dame Helen Winkelmann

CHIEF JUSTICE OF NEW ZEALAND | TE TUMU WHAKAWĀ O AOTEAROA

2 March 2022

Members of the legal profession

Tēnā koutou

OPERATION OF THE COURTS DURING THE OMICRON OUTBREAK

I write to tell you about how the courts will operate at phase 3 of the Red setting of the COVID-19 Protection Framework.

With Omicron well established we expect courts to continue to be disrupted through illness and the impact of isolation periods. In the coming weeks, there will be occasions on which matters will have to be adjourned, and even on which courthouses will have to remain closed. The courts have planned for these eventualities. We have also taken workplace safety advice as to how to minimise the risk of transmission of COVID in the very particular circumstances of a court during the Omicron phase, however long that lasts. I set out below the basic operating model that will apply.

The courts will continue to deal with such work as they are able:

Scheduled work will occur to the extent possible, but within the limitations the pandemic imposes. The primary limitations are now absences amongst the courts' workforce and other court participants, caused by illness and requirements to isolate, and the need to maintain public health protective measures.

The courts will continue to hear matters using remote technology where that is possible (and subject to judicial direction), and subject to legislative constraints.

Local responses are necessary to address the different conditions that apply in each area. Decisions as to the work courts will be able to do will be made with reference to the local conditions that affect each courthouse. Counsel are likely to see different levels of work being undertaken in different regions.

Where there are insufficient judges, registry and court security staff to undertake the full range of scheduled work, the courts will attend to priority work first – priority work is work affecting liberty, personal safety or time critical matters. In the most extreme circumstances some courthouses may need to close from time to time.

It is possible that the burden of infection in a region will be such that it is not feasible to conduct jury trials, but again those decisions will be made courthouse by courthouse.

Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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The conditions for entry into courts remain the same:

As set out in the court protocols, all those entering the court must either have a vaccine pass or recent negative test (either a PCR test or Rapid Antigen Test). Those people who are required to attend court (in particular, defendants, summonsed jurors and summonsed witnesses) may enter the court even though these requirements are not met.

In these cases, additional measures will be put in place wherever practicable to ensure the health and safety of other court users. These include appearance by remote access or scheduling the matter for a time when fewer people are present in the courthouse.

The requirement for vaccine passes for entry will be kept under review as Omicron, and the pandemic, develop.

Rapid Antigen Testing

The courts are currently using Rapid Antigen Testing in three ways:

- For unvaccinated participants legally required to attend court to meet entry requirements to court.
Those participants are referred to the pharmacy network to take a test.
- For surveillance testing of jurors in *jury* trials.
Tests are generally undertaken by an onsite provider.
- To support the return to work pathway for “household contact” critical workers (judges, registry staff, court security officers, jurors and lawyers) under the Close Contact Exemption Scheme.

All courts are regarded as “critical workplaces” and counsel are included as “critical workers” under this registration.

In order to use the return to work pathway, lawyers will require a letter from the relevant registry confirming that they are a critical worker and that the hearing must be conducted in person.¹ If you do return to work on this basis you will be required to obtain a negative Rapid Antigen Test daily. Rapid Antigen Tests are available from District Health Board collection hubs (<https://www.healthpoint.co.nz/covid-19/?covidTesting=rats>). Alternatively, if a collection hub is not accessible in your area, you can contact your local registry to check whether Ministry of Justice stock is available.

Developing a more extensive surveillance testing regime

The judiciary and the Ministry of Justice are currently trialling expanding the use of surveillance testing in jury trials by increasing the frequency of testing and expanding the group that is tested to include other participants in jury trials. The High Court at Auckland is trialling surveillance testing of everybody involved in jury trials (judge, registrar, jury,

¹ Some lawyers have obtained “critical workplace/critical worker” approval separately from the Ministry of Justice. The same rules apply – counsel must obtain a letter from the relevant registry confirming attendance at court in person is necessary.

counsel and witnesses). We are also looking at whether we can expand surveillance testing to other types of hearings.

In the near term, once Rapid Antigen Tests are more readily available, it will become common place for people across the community to obtain and use their own tests before coming to court.

Public health measures continue:

Public health measures in courthouses such as enhanced cleaning; the ready availability of soap, water, sanitiser and wipes; mask wearing; and social distancing are proven measures to allow courts (indeed the country) to continue to operate. Vaccination is also key, and I encourage counsel to obtain their booster shot as soon as they are eligible.

Mask wearing

Our independent advisor on health and safety in the workplace is Dr Geraint Emrys. His advice is that mask wearing is one of the most effective means of avoiding infection. With Omicron, a person is typically infectious for 2 to 3 days before they become symptomatic – many people who are infected do not become symptomatic at all. If the mask is properly fitted, it will prevent inhalation or distribution of larger droplets (which can spread up to 2 metres), and finer aerosols (which can spread over a much greater distance). If someone is infectious near you, or you are infectious, mask wearing will have a significant impact on whether you are infected or infect others. KN95 masks are (roughly) 95% effective in protecting against infection.

Masks are an essential line of defence. Everyone must wear them in the public areas of the courthouse. For your safety and the safety of others, I recommend that you wear them in the courtroom, including when speaking. Many hearings have now been conducted on this basis, and the experience has been if KN95 masks are worn, this does not significantly muffle sound.

For jury trials we are working with the Ministry of Justice to optimise the use of Rapid Antigen Tests for court participants. With enhanced surveillance testing it may be possible for counsel to remove their masks for opening and closing remarks, and at the discretion of the presiding judge, witnesses may be permitted to remove their masks when giving evidence.

For useful information on checking that your mask is well fitting see the appendix to this letter.

Ventilation

Ventilation is key factor in managing the spread of infectious diseases. The Ministry of Justice is undertaking an audit of ventilation across court buildings and will assess what short- and long-term measures can be put in place to mitigate any areas of concern. In addition, the Ministry is working with its Facilities Management provider to ensure that building air flows are working as designed and continuing with the air-conditioning filter changes and cleans. Dr Emrys is assisting the Ministry with its audit.

In the interim, arrangements are in place to have juries deliberate in rooms that are larger than normal jury deliberation rooms and/or in rooms where air purifiers have been

installed. Air purifiers have also been installed in secure witness rooms. Other small and not well-ventilated spaces, such as interview rooms are also being assessed.

In closing:

I thank you for the profession's continued cooperation as we work through what is a complex situation. Throughout the pandemic we have worked with leaders of the profession to design our response, and it has been the better for their contribution. Judges also appreciate the commitment shown by those who practice before the courts to finding ways enable the work of the courts to continue.

You will all be aware of the efforts of registry, court security and IT support staff to adapt to the changing environment at the courthouse level and to manage entry to our buildings. The Ministry of Justice national office has also played a major role in keeping the courts running such as developing national health and safety systems, operational support for heads of bench, policy advice and improving the technology environment. Air purifiers, Rapid Antigen Tests and equipment to support remote working and participation are some of the items procured to run the courts safely and effectively during the pandemic. All these staff have been called upon to work in increasingly challenging circumstances and I think it is important that I publicly recognise the dedication and commitment of those who work to support the courts in this way.

Although this is a difficult time, it helps to remember that our courts are well placed to operate in a COVID environment. We have had almost two years of changing our operations to meet the needs of the moment. Most who are in our courthouses are fully vaccinated. We have access to good quality masks and improvements are being made to ventilation. Our ability to run remote courts and work remotely is well advanced.

On Friday 11 March, the New Zealand Law Society is hosting a webinar with me, the Chief Judges of the High and District Courts, the Secretary for Justice and the Courts Chief Operating Officer. If there are any points in this letter that need further clarification, I recommend you pass those queries to the Law Society via covid-19@lawsociety.org.nz so they can be collected.

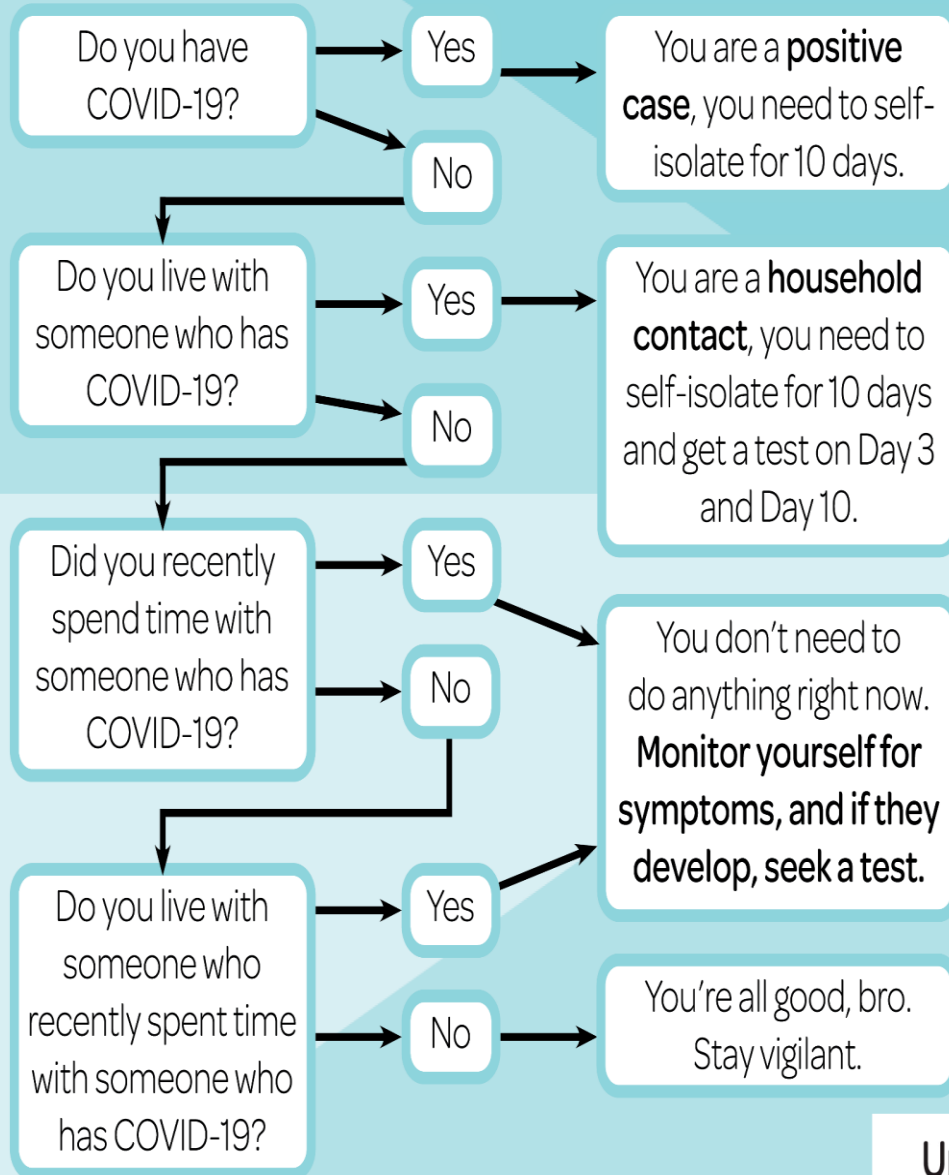
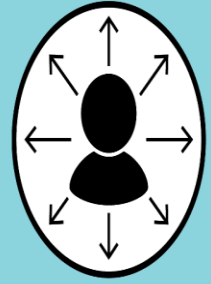
Hei konā mai i roto i āku mihi,



Helen Winkelmann
Chief Justice | Te Tumu Whakawā

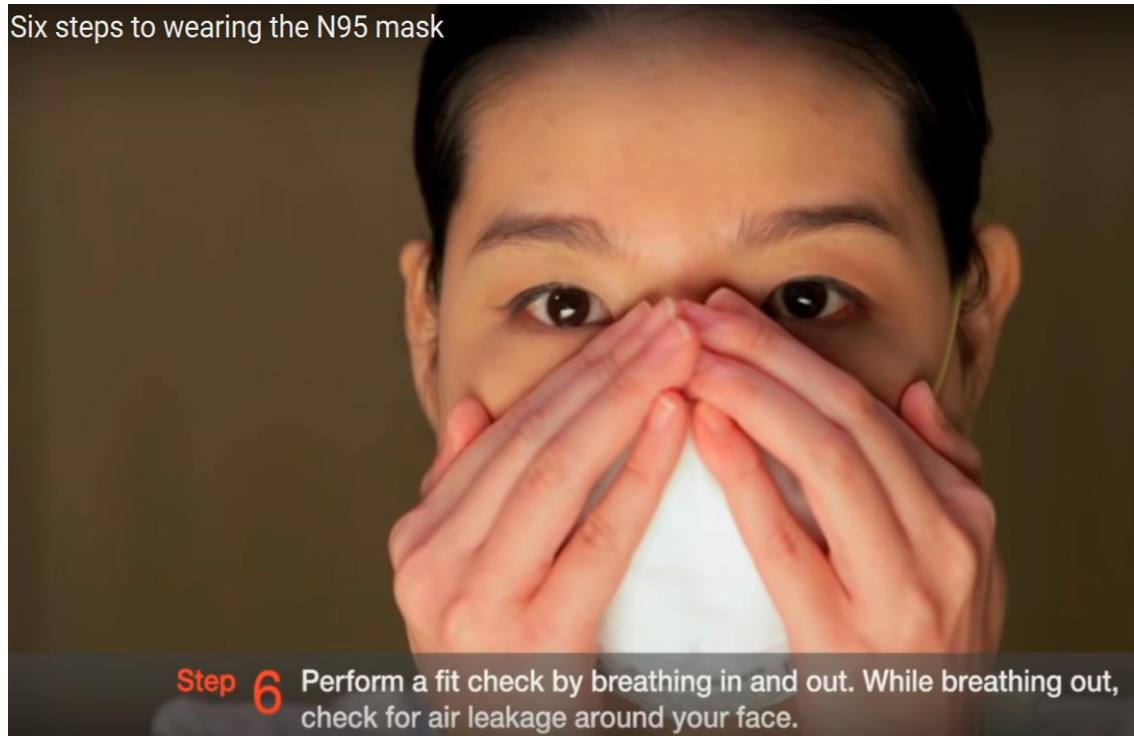
Cc Heads of bench
Secretary for Justice

What type of contact are you?



Mask fitting advice

Do a fit check like this



The full video comes from the Singapore Ministry of Health and Health Promotion Board

- <https://www.youtube.com/watch?v=bo-PEzHE7iw>

CHECK IF YOUR MASK FITS BEFORE GOING OUTSIDE! IT'S **REALLY SIMPLE!**

Step 1: Inhale



Your mask should pull on your face

Step 2: Exhale



Your mask should expand

Step 3: Check Leaks



There should be no major leaks

READJUST YOUR MASK IF THERE ARE LEAKS
FOR BEST PROTECTION, YOUR MASK SHOULD FIT WELL

<https://www.cdc.gov/niosh/docs/2018-130/pdfs/2018-130.pdf?id=10.26616/NIOSH-PUB2018130>

WearingPPEIsCaring.org



THERE ARE **MANY EASY WAYS** TO IMPROVE YOUR MASK'S FIT!

Problems



- Gaps around nose
- Glasses fogging up

Solutions



or



Tape mask to nose

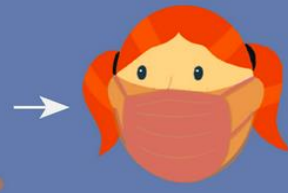
Attach wire to nose bridge



Loose mask



Tie mask straps



Pantyhose around mask

<https://doi.org/10.1101/2020.04.17.20069567>

WearingPPEIsCaring.org



Source - <https://www.wearingppeiscaring.org/fit-check-your-mask.html>