



The Right Honourable Dame Helen Winkelmann

CHIEF JUSTICE OF NEW ZEALAND | TE TUMU WHAKAWĀ O AOTEAROA

**CROSS-ALERT LEVEL BOUNDARY TRAVEL
(INFORMATION FOR PARTICIPANTS)**

15 October 2021

Heads of Bench have provided guidance to Judges to be used when considering whether to grant permission for participants in a hearing to travel into a different alert level region to enable an in-person appearance. It applies to our current circumstances, that is while New Zealand is still undertaking the vaccine rollout and policies which will govern how the courts will operate with COVID-19 in the community have not yet been finalised.

A precautionary approach continues to be taken by the courts. Where one or more participants in litigation would have to cross an alert level boundary to appear in person at a hearing:

- (a) The Judge will consider whether the hearing can take place with appearances using remote technology. This involves both legal and practical considerations. If so, this option will likely be adopted. If not:
- (b) The hearing should only proceed if the Judge decides that it is in the public interest to do so. This will involve balancing public health considerations against the disadvantages of the hearing being adjourned.

The Attendance Protocol, attached as Appendix 1, sets out the conditions Judges expect all participants who cross an alert level boundary to comply with.

Any person who believes they need to travel across the boundary for court purposes should seek the direction of the presiding judge and decisions will be made on a case-by-case basis. Relevant considerations as to the public interest include:

Criminal matters

- The nature and seriousness of the charge
- The vulnerability of the complainant or the defendant
- Criminal offending relating to the pandemic
- Length of time the defendant has been in custody, particularly if the defendant has spent longer on remand than would have been the case were it not for the pandemic
- Period of delay before the hearing could otherwise proceed

- The likelihood that the proceeding will be of wide public concern
- The interests of justice generally

Defendant

- The defendant's custodial status
- If the defendant is on bail, whether appropriate measures can be put in place to ensure compliance with the Attendance Protocol

Civil matters

- The nature of the dispute and whether it concerns purely private interests or incorporates considerations of public interest
- The level of private or public importance involved in the proceedings
- Period of delay before the hearing could otherwise proceed and the public interest in the timely administration of justice
- Where the outcome would significantly affect the health, safety or economic wellbeing of one of the parties
- Implications for the parties of delay
- Applications for interim relief or COVID-19 related challenges
- Cases where rights pursuant to the New Zealand Bill of Rights Act 1990 are at stake
- Urgent family proceedings (for example guardianship, minors at risk, family violence)

Public health considerations

The general welfare and safety of the public and the avoidance of public harm are relevant to any consideration of the public interest.

Personal considerations

Judges are likely to seek information from participants (counsel, witnesses, defendants and parties) as to:

- Their vaccination status
- Their willingness to comply with the Attendance Protocol
- Proposed travel arrangements from their accommodation in the higher alert level region to the courthouse. The Ministry of Justice will be consulted to ensure that the proposed travel arrangements comply with public health requirements.

Site-specific considerations

Judges will also consider matters specific to the location of the proposed hearing, for example:

- Size and layout of the courthouse
- Facilities available to accommodate the Attendance Protocol
- Advice from the Ministry of Justice as to whether the hearing can be safely supported by the Registry
- The COVID-19 status of the region where the hearing will take place
- Nature of the courthouse or other hearing venue. For example, a smaller stand-alone court will involve potential exposure to fewer people than a multi-jurisdictional courthouse, eg the Christchurch Precinct.

APPENDIX 1

ATTENDANCE PROTOCOL (CROSS-ALERT LEVEL BOUNDARY TRAVEL)

15 October 2021

- Participants must receive a negative test within 72 hours prior to leaving the higher alert level region
- All other mandated Public Health order requirements must be met (ie the existence of an essential services letter and approved exemption, QR scanning/tracking)
- Those who are staying out of the higher alert level region for an extended period (eg for a hearing over a number of days) will be strongly encouraged to have a test at regular intervals. The Ministry of Justice will provide detailed advice
- Those who are staying out of the higher alert level region for an extended period are not to return to the higher alert level region until the hearing has concluded
- The participants' alert level travels with them (ie the requirements of the higher alert level area should be complied with)
- A face mask is to be worn at all times, including in public and office spaces
- A face mask is to be worn in the courtroom unless a judge directs otherwise
- The entry of visiting counsel and court participants to the courthouse (other than a defendant in custody) is to be via the front door so appropriate screening/thermal imaging can occur
- Counsel and court participants are to use designated spaces where possible and minimise interaction with other court users (for example a separate room will be provided for visiting counsel where practicable)
- Movement should be restricted within the courthouse (the registry will provide tea/coffee facilities and lunch arrangements will be subject to direction of the registry).
- Movement in the community should be restricted and masks worn at all times when in public. Participants should minimise use of cafes and restaurants.