



LORD CHIEF JUSTICE OF THE KINGDOM OF TONGA

OPERATIONAL PROTOCOL FOR THE COURTS OF TONGA DURING THE PRESENCE OF THE COVID-19 CORONAVIRUS

Issued by Lord Chief Justice Michael Whitten QC on 23 February 2022

Introduction

Tonga is currently in a State of Emergency following the Hunga-Tonga-Hunga-Ha'apai volcanic eruption and tsunami on 15 January 2022 with resulting widespread loss of telephone and internet connectivity, and the detection, on 1 February 2022, of the Covid-19 coronavirus within the community.

On 2 February 2022, a Lockdown Restriction Direction ("LRD") was issued, which has since been extended, with varying conditions.

Under the terms of the LDR, essential services are exempted from the restrictions. Essential services are defined to include court staff, lawyers and all persons required to attend court.

The administration of justice and preservation of the rule of law require that the courts continue to serve the people of Tonga to the best of their respective abilities despite the current restrictive and challenging circumstances.

To that end, and in order to minimise any risks to the health and safety of all persons required to attend any of the courts of the Kingdom, the following operational measures are to be implemented during the presence of the Covid-19 coronavirus in Tonga, or further order:

Application

This protocol:

- (a) applies to all persons required to attend the courts, including judicial officers, registry staff, lawyers, parties, witnesses, members of the media and the public (if exempted under the applicable LDR);

- (b) supersedes all previous directions relevant to the operation of the courts during the current state of emergency;
- (c) comes into force on the date of issue;
- (d) shall continue to apply while Covid-19 remains detected in Tonga;
- (e) may be subject to review during the current and any further lockdown/s, once internet and other communication capabilities have been reliably restored, and to accord with any further Government announcements or directions; and
- (f) has been submitted for approval by the Ministry of Health.

Within Registries

1. Where possible, all documents should be filed by email or facsimile transmission. Filing fees on such documents shall be invoiced.
2. Where such electronic filing services are not available, so that physical attendance at registries is necessary:
 - (a) only persons who have been at least double vaccinated shall be permitted to enter any of the court registries. Official proof of vaccination is to be shown upon entry;
 - (b) court staff, lawyers and regular attendees may register their vaccination status by providing to the relevant registry a copy of their proof of vaccination. Thereupon, they will be issued with identification which is to be worn at all times while within the court precincts and which will permit entry throughout;
 - (c) any unvaccinated person will only be permitted entry upon provision of a negative result from a PCR test administered within 72 hours of the date of their proposed attendance or a rapid antigen test taken immediately prior to entering the registry; and
 - (d) any person who is experiencing Covid-19 symptoms is not to attend a registry until they can produce a negative result from a PCR test administered within 72 hours of the date of their proposed attendance.
3. All persons within registries are to:
 - (a) wear an approved form of mask at all times other than when they are eating or drinking;
 - (b) ensure regular hand hygiene by use of disinfectant to be provided at each registry counter, in offices and throughout the respective registries; and
 - (c) observe social distancing to the greatest extent practicable by maintaining at least two metres between themselves and other persons.

4. Staff handling documents at registry counters are to also wear latex gloves and disinfect between each interaction with any person filing documents. Those gloves are to be safely disposed of at the end of each day.
5. At the end of each working day, all counters, desks, telephones, computers and printers are to be disinfected.

Court proceedings

6. Where possible, the hearing of all interlocutory applications, directions hearings or mentions should be conducted remotely by AVL videoconferencing or, with the consent of all parties, by telephone conference.
7. Where possible, any final hearing or trial may be conducted remotely by AVL videoconferencing, subject to the discretion of the presiding judicial officer.
8. In criminal proceedings, where an accused has been remanded in custody, arraignments, applications, any pre-trial conferences and any sentence should be conducted remotely by AVL videoconferencing or, with the consent of all parties, by telephone, from the relevant prison or police station.
9. Where remote hearings are not available or not permitted, all physical hearings shall be conducted in accordance with the following:
 - (a) chambers hearings are to be conducted in open court;
 - (b) only persons who have been at least double vaccinated shall be permitted to enter any courtroom. Official proof of vaccination (or identification as referred to in paragraph 2(b) above) is to be shown upon entry;
 - (c) any unvaccinated person will only be permitted entry upon provision of a negative result from a PCR test administered within 72 hours of the date of their proposed attendance or a rapid antigen test taken immediately prior to entering the courtroom;
 - (d) subject to (a) or (b) above, as the case may be:
 - (i) the only persons permitted within a courtroom, as of right, shall be the presiding judicial officer, court staff, any lawyer appearing in the relevant case, any party to the proceeding and any media representatives;
 - (ii) witnesses shall be permitted entry as and when they are called to give evidence; and
 - (iii) any other persons may be permitted entry depending on the size of the room and the ability to maintain social distancing which is to be determined by the relevant court usher and always subject to the discretion of the presiding judicial officer;

- (e) all persons within a courtroom shall:
 - (i) wear an approved form of mask at all times other than when they are speaking;¹
 - (ii) ensure regular hand hygiene when entering and leaving any courtroom by use of disinfectant to be provided in each courtroom; and
 - (iii) observe social distancing to the greatest extent possible by maintaining a distance of at least two metres between themselves and other persons;
- (f) all persons waiting outside a courtroom shall:
 - (i) wear an approved form of mask at all times other than when they are speaking; and
 - (ii) observe social distancing to the greatest extent possible by maintaining a distance of at least two metres between themselves and other persons;
- (g) where required, the Ministry of Justice will arrange and provide temporary shelters and seating outside each courthouse to enable persons who are required to attend court to observe social distancing while waiting to be called;
- (h) no jury trials are to be conducted. Any listed jury trials may proceed as trials by judge alone if consented to by the accused/s. If not, any listed jury trials are to be deferred to the earliest available date once lockdown restrictions have been lifted or varied to permit close contact between prospective and selected jurors;
- (i) between the hearing of each proceeding on a given day, court staff shall clean the surfaces of the bar table and witness box (if used) with disinfectant;
- (j) at the end of each day's proceedings, surfaces of the bench, clerical desks, bar tables and all public seating are to be disinfected.



Michael Whitten QC

Lord Chief Justice of the Kingdom of Tonga

23 February 2022

¹ Judicial officers may remove their masks upon coming onto the bench and for the duration of the court session each day.