



The Right Honourable Dame Helen Winkelmann
Chief Justice of New Zealand
Te Tumu Whakawā o Aotearoa

8 April 2020

Dear practitioners

Operation of the courts under COVID-19 alert levels

I write to clarify aspects of the operation of the courts, now that we have been operating under alert level 4 since 26 March. I also look ahead as to how the courts will operate in the short and medium term under alert restrictions.

Review of courts' operations since 26 March

When I wrote to you on 25 March I said that courts are essential services. I also reassured you, and the public, that throughout the level 4 alert, and any alert level that follows, the courts would continue to operate to fulfil their constitutional role of upholding the rule of law. At that time, I said that during the level 4 alert, only priority proceedings would be heard. Priority proceedings were identified as those affecting the liberty of the individual, or their personal safety and wellbeing, or proceedings which are time critical. The High Court and District Court have continued to hear proceedings that fall within those categories unless they involve witnesses.

I have previously referred the profession to the [protocols](#) governing the operation of each court at alert level 4. In its protocol the District Court confirmed that it would continue to deal with proceedings affecting the liberty of the subject except to the extent any issue arising in those proceedings required the calling of evidence. The Chief District Court Judge confirmed that proceedings where the defendant is in custody would be called on the existing allotted court date. However, where the matter before the court required the calling of evidence, the proceeding would be called but witnesses' attendance would be excused.

As the necessary new processes were adopted in the week following 25 March, there were some instances in which court events for proceedings where the defendant was in custody that were administratively adjourned. The District Court has now changed those processes to ensure this won't happen again, and the Chief District Court Judge has taken steps to have those court events dealt with in accordance with the District Court protocol.

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The protocols for each court also provide for electronic filing of documents. While the courts issued guidance that the hearing of proceedings would be restricted to priority proceedings under level 4, no restriction was placed upon the filing of documents. But again, as the new processes were being introduced, in some instances, registries in the District Court and High Court did not accept filing of documents which did not relate to priority proceedings. This should not have happened and has now been rectified. The registries of all courts remain open for the filing of documents in accordance with their rules of court. The level 4 restrictions operate only to close the public counter of the court registry (instead allowing electronic and postal filing) and to limit the proceedings that can be heard, but not the documents that can be filed or processed.

Looking ahead to courts' operations under various alert levels

The judiciary, the Ministry of Justice and the profession must plan for the possibility that courts will continue to operate in a restricted environment past the 23rd of April, whether at level 4 or some lesser or different level of restriction. Against that background the heads of bench are agreed that the courts should function to the fullest extent they safely can, in performance of their constitutional role. We must also ensure that the backlog of cases that accrues over this period of limited operation does not overwhelm the courts, leading to delay and injustice. We expect that the profession will play its part to the fullest by co-operating with each other and the courts to progress proceedings so far as possible in a restricted environment.

We are working with the Ministry on the processes needed for proceedings that require oral evidence to be heard. In crime, the courts are working toward the reinstatement of judge alone trials as soon as possible. We are developing processes which will allow use of remote participation whenever feasible. We will consult the profession about this as soon as we can.

As described in more detail below, the heads of bench have also agreed that while courts priority proceedings will continue to be the first demand on available resources, the courts will hear cases outside those categories to the extent that capacity permits.

These capacity limits relate to registry staffing, as the registry are working with reduced numbers to maintain safe working conditions. It is this factor which has inhibited the processing of email filings and the conduct of on the papers work. Nevertheless the profession will see a progressive increase in the courts' ability to do their usual work over the coming weeks.

Criminal first instance work (District Court and High Court)

Jury trials

On 18 March I announced the suspension of jury trials for two months. In light of the present situation and the need to summons jurors well in advance of the trial date, it is necessary to extend that suspension until Friday 31 July 2020.

Hearing of priority proceedings

The District Court will continue to hear matters affecting defendants who are in custody on the scheduled hearing date and will conduct the hearings that are scheduled to the extent that the taking of oral evidence is not required. For example, this will include the taking of pleas, bail applications, call-overs and case review hearings in jury and judge alone trials, as well as sentencing of those in custody. The District Court will shortly add suitable pre-trial applications to this work.

Police bail procedures will be modified for the alert level 4 period to avoid the need for defendants to appear within the statutory time-frames that would otherwise apply. When Police bail is granted, defendants will be provided with a duty lawyer list. On or before the scheduled court date, proceedings will be adjourned and the attendance of defendants will be excused, with bail conditions to continue. Registrars will advise defendants of their right to apply for variation of conditions of bail.

The High Court will also continue to hear all custodial remands, criminal appeals and pre-trial applications (including sentence indications). Judges will review adjourned jury trials to address matters which can be progressed. All sentencing will take place except those of significant public interest which will require arrangements to ensure that victims and the community are able to engage with the sentencing process.

Hearings using virtual meeting rooms (VMRs)

Last week the Ministry of Justice set up VMR capability in 31 District and Family Court courtrooms, to enable participants in hearings to attend by AVL. Courtrooms were also provisioned in the High Court at Auckland, Wellington and Christchurch. Other courtrooms are being connected to that system as needed. These will be available initially for priority or time-sensitive proceedings.

Counsel with a camera-enabled laptop or phone will be able to access hearings in VMR-enabled courtrooms remotely. Quick reference guides will be made available to counsel in advance of the hearing.

Youth Court work

The Youth Court continues to operate in accordance with its [protocol](#).

Family first instance work

The Family Court will continue to hear all urgent and time-limited applications. In most cases this will be done remotely, but arrangements can be made for hearings in person for unrepresented litigants for whom this is not possible, or otherwise in circumstances where remote participation is inappropriate.

The judges are continuing to process matters that can be dealt with on the papers. For that reason, if there is any application before the court with an upcoming fixture, or awaiting a

fixture, and where counsel are agreed that the application can be dealt with on the papers or with a telephone or VMR hearing, they should advise the registry.

The Family Court is now preparing to hear non-witness matters, using VMR technology.

Civil first instance work

Both the District and High Court will continue to hear all civil priority proceedings although there is currently very limited capability to take oral evidence in either court.

The High Court is considering which hearings scheduled in the weeks beginning 20 April and following can proceed on the allocated date, using remote technology as appropriate. This includes all work presently scheduled, other than civil trials, and liquidation or bankruptcy lists.

To be clear, this is not limited by the pre-existing criteria for priority proceedings but will be limited by the need to ensure that the risks to all participants are kept to a minimum.

Court of Appeal

The Court of Appeal can hear all criminal appeals now. Hearings recommenced on Wednesday, 2 April. Counsel will be able to attend those hearings remotely, from home or chambers, as the Court of Appeal has been supplied with VMR technology.

The court expects to resume hearing civil appeals of one day or less after Easter. It is conferring with counsel as to arrangements for hearing longer appeals.

Supreme Court

The Supreme Court is now supported by VMR technology. It will work with counsel as to how appeals scheduled in the future will be heard.

Special jurisdictions courts

The Māori Land Court, Waitangi Tribunal, Employment Court, Environment Court and Coroners' Court continue to operate in accordance with their respective alert level 4 [protocols](#).

New filings

All courts will continue to accept filing of documents in all proceedings.

Open justice and access to courts

Operating safely in the present circumstances has required restricted public access to courts. At this time, access to the courts by the media is more important than ever and arrangements are being made to ensure media know of hearings in all courts and can attend

hearings, even if they do so remotely. Last Friday several heads of bench and I, along with the Secretary for Justice, held a media briefing at the Auckland High Court to explain these arrangements. The transcript of this briefing is posted on the [Courts of NZ website](#).

After COVID-19

Administering justice during alert level 4 has required that the judges and the Ministry of Justice make changes to the model of operation for the courts. New Zealand's court system usually operates through courthouses, and predominantly on a face-to-face basis. Over the last two weeks this has had to change to a model which makes far greater use of technology to reduce in-person attendance at courthouses and in hearings. Remote technology gives the system flexibility to deal with distance, and as recent events have shown, disruption. However, my expectation is that once we are through the challenges that COVID-19 has presented, we will return to justice that is administered predominantly in-person and from courthouses. The courthouses in the cities and towns of New Zealand are and will remain important places of justice for our communities.

Thanks

On behalf of the judiciary, I thank the profession for the support it has provided in effecting these changes. I encourage the profession to continue working with the judiciary and the Ministry to address any difficulty that arises in connection with these temporary arrangements. The work of the profession to date in this regard, the New Zealand Law Society, the New Zealand Bar Association, Auckland District Law Society and the Criminal Bar Association, has been of great value. In the future we will be seeking the profession's cooperation as we take steps to minimise the delay caused by the COVID-19 emergency.

Hei konā mai i roto i aku mihi,



Helen Winkelmann
Chief Justice/Te Tumu Whakawā

Cc Secretary for Justice