



# District Court Protocol – COVID-19 Alert Level 3

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*Nothing in this document is intended to reduce fair trial rights, the right to natural justice, or rights under the New Zealand Bill of Rights Act 1990.*

*This protocol recognises that there are likely to be regional variations and that local solutions will be necessary to best address local issues.*

*The previously issued District Court Alert Level 4 protocol will continue to apply to all areas that are subject to Alert Level 4 (if any). The District Court Alert Level 3 protocol (contained in this document) will apply to all locations that are subject to Alert Level 3.*

1. At Alert Level 3 the District Court will continue to provide an essential service and intends to resume undertaking as much of its usual business as possible in the criminal and civil jurisdiction (apart from Jury Trials which have been suspended until 31 July 2020) subject to workforce capacity levels and the requirement to observe physical distancing. Heightened hygiene practices will need to be observed.

### **Access to the Court**

2. For physical distancing reasons, entry to the court will generally be limited to members of the Judiciary, Ministry of Justice staff members, defendants, one support person for each defendant, parties, witnesses, victims, and other stakeholders. Public counters remain closed, and to maintain social distancing, there may be restrictions on maximum numbers of people permitted in a courthouse at one time. For this reason members of the public whose presence is not required at court must seek permission to enter.

3. Accredited news media will continue to have access to the court in order to report court proceedings, and to ensure continued open and transparent justice. Remote access will continue to be facilitated in accordance with current protocols.
4. Identification for contact tracing purposes may be required to be produced in order to gain entry to the court.
5. Any person who is unwell, experiencing COVID-19 symptoms, or required to be either in quarantine or self-isolation, is expected to remain at home and will be refused entry to the court.

### **Counsel**

6. All counsel are permitted to appear in Court in person. Except for Judge Alone Trials where counsel must appear in person, counsel are permitted to appear by telephone link or by AVL provided that suitable AVL facilities or telephone links are arranged in advance. If not, counsel must attend in person. All counsel are permitted to wear PPE in court.

### **Victims**

7. Victims will be permitted to attend personally in the courtroom or via AVL.

## **Criminal Jurisdiction**

8. So far as possible all scheduled criminal work in Alert Level 3 will proceed, subject to workforce capacity levels and the requirement to observe physical distancing.
9. All defendants on bail or at large are required to attend the District Court on their scheduled dates during Alert Level 3, unless advised otherwise by a Judge or Registrar (as directed by a Judge).
10. Registrar adjournments may be granted where approved by a Judge.
11. Where individual Courts are unable to operate at full capacity, criminal work would generally be conducted in the following order of priority:
  - a) All priority proceedings under the Level 4 protocol – (this includes rescheduling and bringing forward custodial sentencing)
  - b) Non-custodial lists
  - c) Non-custodial sentencing
  - d) CRHs
  - e) JATs

12. The criminal cases that were administratively adjourned during Alert Level 4 are to be reviewed by Criminal Liaison Judges. The objective will be to prioritise and, if necessary or possible, allocate call-over dates or earlier hearing dates for those priority cases. Any defendant who wishes to have a sentencing indication is encouraged to apply to the Registrar.

### **Defendants in Custody**

13. All defendants who are in Police custody or Corrections custody will continue to appear before a Judge for all scheduled appearances during the Alert Level 3 period.
14. Subject to the Courts (Remote Participation) Act 2010 (“Courts (Remote Participation) Act”), all defendants in Corrections custody are to appear by AVL except for those appearing for Judge Alone Trials where an appearance in person will be required unless otherwise directed.
15. Subject to the Courts (Remote Participation) Act, all defendants in Police custody are to appear by AVL unless:
  - a) There has been insufficient time for instructions to be taken remotely; or
  - b) Police or the court are unable to facilitate remote participation by the defendant.
16. Where a defendant requests to appear in person the criteria in s 8 of the Courts Remote Participation Act must be observed.

### **Warrants to Arrest**

17. Warrants to arrest will continue to be issued on a case by case basis. However, as a general approach, warrants to arrest would not be issued by presiding Judicial Officers if they have been informed that the defendant has called the MOJ 0800 number and has advised that he or she is unable to enter the courthouse because he or she is exhibiting symptoms consistent with COVID19 infection. Judicial officers will excuse the attendance of defendants in those circumstances and will grant an adjournment for 3 weeks (21 days) with attendance required at the next appearance. This information about next appearance will be communicated to defendants who call the 0800 MOJ number.

### **List Courts**

18. Following consultation between Criminal Liaison Judges, court managers, counsel and relevant stakeholders list courts conducted by Registrars, Community Magistrates, and Judges, may as necessary be split to observe physical distancing. This may result

in Judges presiding over matters that would usually be dealt with by Community Magistrates. List Courts may need to be spread over 2 or more days.

### **Remote Bail Applications**

19. If a local Judge is unavailable to hear a bail application, any other Judge will, where practicable, in appropriate cases, be allocated to hear the application by remote participation. Counsel should apply to the Registry in these cases.

### **Defendants at large or on bail**

20. Defendants who are at large or on bail will appear near the dock, as directed by the Judge, and are not to enter the dock when they appear so as to avoid touching surfaces in the court.
21. Before a defendant is remanded to another date in any Court the Judge, Community Magistrate, Justice of the Peace or Registrar will require that counsel has two means of contacting the defendant (which are provided to the Court). Self-represented defendants are to provide such to the court taker.

### **Case Review Hearings**

22. Counsel are to advise in case management memoranda whether they are in good contact with the defendant and whether there is any utility in the defendant appearing at the case review hearing. In those circumstances a Judge may excuse the attendance of the defendant if satisfied resolution is unlikely. The Judge at the case review hearing will discuss with the parties what is truly in issue and accurate hearing times will be allocated.
23. Best practice will be for case review hearings to be scheduled on a 30-minute cycle with no more than four cases in every 30-minute period.

### **Judicial Case Management Conferences**

24. A case review hearing may be waived by a Judge pursuant to s 58 Criminal Procedure Act 2011 and conducted as a judicial case management directions conference.
25. A Judge may excuse the in-person attendance of the parties and direct that the conference proceed by telephone conference. All such hearings are to be conducted by a Judge from the courtroom, and recorded on the FTR system.

## **Sentencing**

26. Sentencing is to be timetabled for specific appointment times and if more practicable in blocks of time. Judges may direct that submissions be filed for non-Crown sentencing matters, to ensure best use of scheduled hearing time.

## **Judge Alone Trials - Pre-trial Conferences**

27. Pre-trial conferences will be scheduled by telephone with counsel, police or prosecutor where possible prior to trial to confirm:

- a) Whether it is anticipated the JAT may proceed;
- b) If it is to proceed and the defendant wishes to consent for purposes of s9 C(RP) Act;
- c) The witnesses who may be required and whether to be heard in person at court or by alternative means;
- d) The documents or other items that may be required to be produced in evidence;
- e) Such other matters as the Judge may have required.

28. Counsel and the police are to file one day prior to the pre-trial conference, a memorandum addressing the above factors for purposes of that telephone pre-trial conference call. The memorandum is to take into account ss5-9 of the Courts (Remote Participation) Act.

29. At or following the pre-trial conference call the Judge will issue directions regarding the matter, including as to remand to future date if plea to be changed, or plea of guilty entered; as to the trial (including in relation to evidence and exhibits) and any other matters.

30. In any event, if a change of plea is anticipated at any time counsel must inform the court.

## **Judge Alone Trials**

31. On day of trial there may be a 9am callover, for each particular Court with counsel, police or prosecutor only, not defendants.

32. The police or prosecutor should not bring their relevant witnesses to the courthouse but to the extent practicable have them nearby and available to come at reasonable notice if they are in fact required.

33. Trials which are not to be the first trial to start are to be stood down during the day on a staggered basis. Greater use is to be made of CCTV facilities for witnesses.

### **Pre-trial Applications**

34. Subject to the Courts Remote Participation Act, hearings of all pre-trial applications that do not involve viva voce evidence may be conducted, in appropriate cases, by way of written submissions with counsel appearing by either telephone link or by AVL. The hearing is to be recorded on the FTR system.

### **Sentencing indications**

35. A defendant seeking a sentencing indication should be in a position to indicate whether or not a guilty plea is to follow on the day the indication is given if the indication accords with the sentence submitted by the defendant as the appropriate sentence.

### **Saturday Courts**

36. Justices of the Peace will sit on Saturdays to conduct Arrest Courts. If Justices of the Peace are unavailable to sit, Community Magistrates will sit on Saturdays to conduct Arrest Courts. If Community Magistrates are unavailable to sit, Judges will be rostered to sit. If a local Judge is unavailable to sit, a Judge will be rostered to sit by remote participation.

## **Youth Court Protocol**

37. This protocol deals with how the Youth Court will operate under Alert Level 3. While there will be increased ability to conduct the work of the court there will continue to be constraints in terms of courtroom availability, registry capacity, the number of persons who can attend a court in person, and the ability of key agencies to provide services to the court.
38. In addition, it will remain important to limit the need for travel to courts for young persons and their whanau to keep them and others safe. This consideration also applies to Youth Advocates, Lay Advocates, Police, Oranga Tamariki, and other agencies such as Health and Education providing services to the Court.
39. The Youth Court appointment system, in place to provide privacy for young persons and their whanau has additional importance now in limiting physical contact and keeping people safe. The expectation is that where actual attendance is required, those involved will not attend earlier than the appointment time for the case.
40. The Youth Court process notified on 3 April 2020 for the attendance of support persons for young people remains in force during Level 3.

41. The work will need to be prioritised. The Youth Court will continue to prioritise those cases affecting the liberty of young people and where decisions need to be made affecting those who are already in custody.
42. In addition, attention needs to be paid to those cases which have been administratively adjourned during Alert Level 4 and to identify which of those cases need priority attention.
43. This protocol needs to be read in conjunction with the District Court Criminal Protocol for Level 3.

There are five categories of cases:

*Young People who have been arrested and are in Police Custody*

44. Young persons who are arrested need to be brought before a Youth Court for consideration of bail. Where facilities exist for the first appearance to be by AVL from the police station this is to be the default position. Where AVL is not available the young person is to be brought to the nearest courthouse which is open and operating.

*Young People in Oranga Tamariki Custody*

45. For those already in custody in Residences any appearance is to be by AVL. This is to include all hearings affecting them including bail applications, early release hearings, secure care applications, and disposition hearings of all types. Moving young people and their escorts from Residence to Court is too risky for all. In many instances the Residence will be distant from courts and air travel would be required.

45. This will place an added burden on Court and Residence AVL resources and so it is necessary to ensure that all appearances for those in custody are in fact necessary. Youth Advocates are requested to consider whether application should be made for attendance to be excused where nothing substantive is to be decided and provide a memorandum to the Judge where that is appropriate seeking a direction.

*Criminal Procedure (Mentally Impaired Persons) Act proceedings*

46. In relation to Criminal Procedure (Mentally Impaired Persons) Act proceedings decisions will need to be made in each case as to how best to proceed. Some young people may be in mental health facilities and need to have decisions made as to where they are to be cared for. Special hearing arrangements will need to be considered and directions given by Judges. Youth Advocates are requested to consider any of these cases which they have and to seek directions from a Judge after consulting with the Police, Oranga Tamariki, forensic services and any other agency or professional involved whose input is necessary.

*The cases which have been adjourned*

47. These are the cases where the young person is on bail or at large. The cases include those awaiting a Family Group Conference to be reported back to the Court, the monitoring appearances, the Judge Alone Trials, disposition hearings and CP (MIP) hearings.
48. Judges will be conducting a review of these cases in each court to identify, from the information on file, those cases which require priority attention and ensuring that those cases are listed before the Youth Court as soon as possible.
49. Where cases are not prioritised for a hearing as above, Oranga Tamariki will advise the court of progress on other active cases, for example progress towards agreeing FGC plans for FGCs already directed or progress of FGC plans already under judicial monitoring.
50. In some cases, the information currently on file might not reflect the need for urgent attention due to a change in circumstances or other issues that have arisen since the adjournment. For those cases Youth Advocates are to confer with the Police, Oranga Tamariki, Lay Advocate and other agencies or professionals involved whose input is required and provide an agreed memorandum as to any issues requiring urgent attention and the directions sought to advance matters.
51. Judges may convene pre – hearing conferences, with remote participation by Youth Advocates, Youth Aid, Oranga Tamariki and other professionals as appropriate. It is not expected that young people will attend these conferences.
52. Youth Advocates, Police, Social Workers and other professionals must discuss the issues for consideration at the conference in advance so that wherever possible an agreed position can be put before the Judge.

**Cross Over Cases**

53. It must be recognised that cross- over hearings engage the processes of the Family Court and the Youth Court and compliance with the Family Court Protocol for Level 3 must be taken into account. The expectation is that there will be involvement of and consultation with the relevant Family Court professionals in the Youth Court process outlined in this protocol.

## **Family Court Protocol**

54. At Alert Level 3 the Family Court will continue to provide an essential service by undertaking all priority work including box work and, where possible, extending it to scheduled work. However, the court's ability to do so will be subject to several factors including registry staff capacity, the availability of technology for remote participation and the need to observe physical distancing for in person appearances.
55. As there are significant regional differences the Liaison Judges and Principal Family Court Judges Advisory Board members (all reporting to the Principal Family Court Judge) will consult with JRMs, schedulers, Registrars, stakeholders and Judges in relation to the manner and extent of the work to be undertaken in each court.

### **Triage**

56. For courts, particularly metropolitan courts, that were unable to adjourn all matters to a fixed date, a triage process will be undertaken by Judges to progress the work flowing from the following:
- matters adjourned during alert level 4;
  - matters dealt with on e-duty during alert level 4;
  - an anticipated post Covid-19 surge in applications;
  - work identified as urgent from triaging box work files, and
  - matters already scheduled to be heard.
57. The process will aid the identification of priority cases.
58. Files will be provided to Judges in accordance with local arrangements. There is no requirement for the registry to prepare memoranda or use the E-Box process other than for actual box work.
59. Cases identified as a priority will be scheduled for a 30 minute conference/callover.

### **Priority block period**

60. As part of the consultative process, courts will determine whether a defined block period is necessary in each region to progress/hear priority cases. The length of a block period allocated will be assessed for each region.
61. It may be necessary for the court's scheduled business to be vacated to accommodate the Priority Block Period. If so, the matters vacated will be placed in a callover to assess their priority and for the Judge to give any directions that may be necessary.
62. The Priority Block Period will operate on the same basis as Judge Directed Days and will be scheduled accordingly.

### **Conferences/ Callovers**

63. The Judge may excuse the in-person attendance of parties and direct the conference/callover proceed by way of remote participation including AVL or telephone. Consideration must be given to the in-person attendance of vulnerable parties and/or those unable to participate remotely.
64. All hearings are to be conducted by a Judge and recorded on the FTR system.
65. All conferences/callover's lists will require further time to be scheduled with best practice requiring 30 minutes to be allocated rather than 15 minutes.

### **List Courts**

66. The Judge may excuse the in-person attendance of parties and direct the case proceed by remote participation.
67. If there are in-person appearances, then:
- physical distancing must be observed;
  - no person who does not have direct business with the court is permitted to attend without prior approval of the presiding judge;
  - a whanau spokesperson is to be identified, and
  - the introduction of split lists may be necessary.
68. Cases already scheduled in list courts will remain as scheduled. No changes will be made to the event duration.

### **Memoranda**

69. No less than 5 working days before any conference/callover or fixture, counsel must file memoranda detailing the following:
- whether they have current instructions;
  - whether the conference/fixture is still required, and
  - if not, what directions/orders are sought.
70. If a fixture is still required:
1. Advise whether the case should be afforded priority and why.
  2. Identify the issues in dispute.
  3. Identify the directions sought including the number of witnesses and the mode of evidence.
  4. Provide an accurate estimate of time.

## **E-Duty**

71. The e-Duty platform is to remain regionally based to the extent practicable. It is to be reviewed by the Principal Family Court Judge in consultation with the Ministry of Justice at regular intervals.

## **Mental health**

72. All mental health hearings will continue to be undertaken by remote participation by way of AVL/ telephone. The hearings are to be recorded on the FTR system where ever possible.

## **Hearings**

73. Hearings that do not involve Viva voce evidence such as the submission only hearings or Pickwick hearings may be conducted, in appropriate cases, by way of written submissions with counsel appearing by either AVL or telephone link. The hearings are to be recorded on the FTR system.
74. Whether hearings involving witnesses can proceed will be determined on a case by case basis taking into account all relevant factors including, but not exclusive to the:
- numbers of witnesses;
  - mode of evidence;
  - ability to observe physical distancing;
  - whether bundles of documents/ exhibits are to be produced, and
  - the level of priority of the issues involved.

## **Civil Jurisdiction**

### **Administrative Adjournments**

75. Subject to workforce capacity levels and the requirement to observe physical distancing, the District Court will conduct all civil cases that are currently scheduled during Alert Level 3. The civil cases that were administratively adjourned during Alert Level 4 are to be reviewed by Civil Liaison Judges to prioritise and, if possible, allocate earlier hearing dates for those priority cases.

### **Civil Pre-trial Call-overs**

76. Civil Liaison Judges are to conduct pre-trial call-overs of defended civil trials that are scheduled to be heard during the Alert Level 3 period.
77. A District Court Civil Practice Note will be issued at the same time as this protocol.

## Accident Compensation Appeals

78. Under Level 3, judges will accord priority for assessment of those appeals that were scheduled for hearing in April 2020 and adjourned under Level 4. Such assessment will determine the next steps ahead, including dealing with them on the papers, by telephone conference, use of remote technology or by adjournment as agreed by the parties.
79. Accident Compensation Appeals jurisdiction in the District Court, managed by Tribunals, Wellington will receive new matters and existing matters will be reviewed regularly by email. All communications including queries on any matter and filing of all documents are to be by email to email address [AppealsACR@justice.govt.nz](mailto:AppealsACR@justice.govt.nz). Given the restrictions under Level 3, there will be delay in responding to matters.
80. If a party does not have the ability to file documents electronically, they may be mailed to DX number: SX11159, Wellington Tribunals; or to: Wellington Tribunals, Level 1 - 86 Customhouse Quay, Wellington, 6011. No document will be received for filing in person at the Tribunals Office, Wellington or any other Tribunals Office.