



District Court Protocol – COVID-19 Alert Level 3

Current as at 1 September 2021

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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. Any such variations or solutions must be approved by the Chief District Court Judge.

The District Court Alert Level 3 protocol (this document) applies to any and all locations that are subject to Alert Level 3).

In this document “AVL” means any platform which allows for audio and visual remote participation. Without limitation, this includes VMR, MS Teams and any other electronic platform approved by the presiding Judge.

In this document, “vulnerable” means a person at higher risk of severe illness, immune-compromised or with a relevant underlying health condition.

This protocol will be reviewed and modified to the extent considered necessary by the Chief District Court Judge.

DISTRICT COURT AT ALERT LEVEL 3

1. This protocol outlines how the District Court will operate at Alert Level 3. During Alert Level 3 the District Court will continue to provide an essential service subject to workforce capacity levels and the requirement to observe requisite physical distancing and heightened hygiene practices including that masks are to be worn at all times within the courthouse, unless permission is given by a judge or a medical exemption applies.

Manner of Hearing all Cases in all Jurisdictions of the District Court

2. The District Court will conduct priority proceedings at Alert Level 3. To the extent practicable all priority proceedings at Alert Level 3 will be conducted remotely in the Criminal, Family, Youth, and Civil jurisdictions of the District Court.
3. If facilities for the defendant to appear by AVL are not available, the defendant will appear in person.
4. All counsel and other stakeholders are permitted and expected to appear by AVL or telephone if such facilities are available and to the extent that it is practicable to do so. If such facilities are not available or are not practicable, counsel are expected to appear in person (this includes Duty Solicitors in the District Court, and Duty Youth Advocates and Assigned Youth Advocates in the Youth Court).

Priority Proceedings at Alert Level 3

5. Priority proceedings will include matters considered to be of such significant national or community importance that the immediate attention of a Judge of the District Court is warranted. This category may include proceedings taken by or that arise out of actions taken by public officials.
6. The selection of priority proceedings is guided by these over-arching principles:
 - Liberty of the individual;
 - Protection of the at-risk or vulnerable, including children;
 - The national and community safety interest;
 - Facilitating and promoting public order.

FAMILY COURT PROTOCOL

7. 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.
8. Family 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.
9. So far as possible all scheduled Family Court work in Alert Level 3 will proceed, subject to workforce capacity levels and the requirement to observe physical distancing. Where a Family Court is unable to operate at full capacity, family work would generally be conducted in the following order of priority:
 - a. Applications for Compulsory Treatment Orders, IDCCR, Protection Orders, Without Notice Interim Parenting Orders including enforcement, guardianship disputes (COCA), Without Notice Custody Orders or Place of Safety warrants (Oranga Tamariki); Welfare Guardianship or Property Orders (PPPR).
 - b. Any other application considered by a judge to warrant an urgent hearing or judicial conference.
 - c. Other urgent applications normally considered on the eDuty platform

Triage

10. 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.
11. Cases identified as a priority will be scheduled for a 30-minute conference/callover.

Conferences/ Callovers

12. Unless directed by the judge, conferences/callovers will proceed by remote participation including AVL or telephone. In determining whether to direct in-person attendance consideration must be given to vulnerable parties and/or those unable to participate remotely.
13. All hearings are to be conducted by a Judge and recorded on the FTR system.
14. 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

15. Unless directed by the Judge the case will proceed by remote participation.
16. If there are in-person appearances, then:
 - a. physical distancing must be observed and masks are to be worn at all times unless a judge permits masks to be removed or medical exemptions apply;
 - b. a whānau spokesperson/support person is to be identified; and
 - c. the introduction of split lists may be necessary.
17. Cases already scheduled in list courts will remain as scheduled. No changes will be made to the event duration.

E-Duty

18. The e-Duty platform will be regionally based to the extent practicable. However, if on any day there is no Judge in the region rostered for e-Duty, then the e-Duty auditor will allocate cases to the judges who are rostered for e-duty. This process is to be reviewed at regular intervals by the Principal Family Court Judge in consultation with the Ministry of Justice and will have particular regard to factors such as regions of NZ being under different Alert levels.

Mental health

19. 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 wherever possible.

Hearings

20. 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.
21. 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:
 - a. numbers of witnesses;
 - b. mode of evidence;
 - c. ability to observe physical distancing;
 - d. whether bundles of documents/ exhibits are to be produced, and
 - e. the level of priority of the issues involved.

Filing of documents

22. Public counters will be closed, and all documents can be filed by email to the Registrar

CRIMINAL JURISDICTION PROTOCOL

23. During Alert Level 3 the District Court will conduct all priority proceedings in the criminal jurisdiction. No Jury Trials or in-person Judge-Alone Trials will commence at Alert Level 3 until further notice. The District Court recognises that the conduct of additional proceedings in the criminal jurisdiction should be subject to ongoing consultation with leaders of the profession.
24. The priority proceedings are:
 - a. All those involving defendants who are in custody and due to appear during the Alert Level 3 period, including those involving defendants who are in custody for a scheduled appearance during Alert Level 3.
 - b. Sentencing of defendants who are in custody where sentencing can be brought forward and rescheduled by arrangement with the relevant stakeholders to a sentencing date agreed to by counsel.
 - c. Urgent applications (heard by AVL unless directed otherwise by the presiding Judge) for variation of conditions of Bail including EM Bail on a hearing date agreed to by counsel.
 - d. Section 147 applications (heard by AVL unless directed otherwise by the presiding Judge) that may be determinative in relation to a particular proceeding, and other pre-trial applications, where counsel consent but that do not require evidence or the presence of a defendant or where a judge decides that the presence of the defendant is not necessary for the fair disposition of the application.
 - e. Appearances at an Alcohol and Other Drug Treatment Court which will be by way of telephone or AVL, subject to availability. Where a participant is in custody awaiting entry into treatment any further remand in custody by consent is to be dealt with by telephone or AVL subject to availability. In any other case the matter is to be listed before a Judge dealing with custody hearings.
 - f. Applications made under the [Returning Offenders \(Management and Information\) Act 2015](#) including:
 - i. For new offenders arriving into the country and requiring an

initial application for interim special conditions; or

- ii. For offenders who have interim special conditions (or extensions to interim special conditions) which are about to expire; or
 - iii. For offenders who require variations to their interim or final special conditions
25. Priority proceedings will also include any other matter considered by a Judge to warrant urgent judicial consideration or determination in accordance with the principles referred to at paragraphs 5 and 6. Any person may apply to the Registrar for reference of a particular matter to the consideration of a Judge for a determination of urgency under this provision.
26. Following on from consultation with the leaders of the profession and other relevant stakeholders, the Chief District Court Judge may, from time to time, vary this protocol by, amongst other things, adding additional proceedings that can be conducted during Alert Level 3.
27. Courts that are conducted on Saturdays and Public Holidays will be presided over by Justices of the Peace, or Community Magistrates, or Judges.

Filing of documents

28. Public counters will be closed, and all documents can be filed by email to the Registrar

YOUTH COURT PROTOCOL

29. This protocol deals with how the Youth Court will operate under Alert Level 3.
30. It is important to limit the need for travel to courts for young persons and their whānau 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.
31. So far as possible all scheduled Youth Court work in Alert Level 3 will proceed, subject to workforce capacity levels and the requirement to observe physical distancing.
32. The Youth Court appointment system, in place to provide privacy for young persons and their whānau 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.

33. The [Youth Court process notified on 3 April 2020](#) for the attendance of support persons for young people applies and remains in force during Level 3. 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.
34. This protocol needs to be read in conjunction with the District Court Criminal Protocol for Level 3 (see above).

There are **six categories** of cases:

Young People who have been arrested and are in Police Custody

35. 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

36. 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. Note: This will also include young people held in a Department of Corrections Facility.
37. 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

38. 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

39. 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.
40. 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.
41. 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.
42. 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.
43. 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.

44. 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.

Rangatahi and Pasifika Courts

45. Youth Court sittings on Marae and at Pasifika venues will not be convened or proceed under Alert Level 3.

Cross-Over Courts

46. 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 Alert 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.

CIVIL JURISDICTION PROTOCOL

47. Where any court is unable to operate at full capacity priority will be given to:
 - a. Returning Offenders applications and injunctions, or other applications that merit urgent attention.
 - b. Harmful Digital Communication applications, Restraining Order applications, and Tenancy Appeals that merit urgent attention.
 - c. Generally, matters considered to be of such significant national or community importance that the immediate attention of the District Court is warranted. This category may include proceedings taken by or that arise out of actions taken by public officials.

Civil Pre-trial Call-overs

48. Civil Liaison Judges will conduct pre-trial call-overs and give directions in respect of all defended civil trials that are scheduled to be heard during the Alert Level 3 period.

Modification and application of the District Court Rules 2014

49. The Chief District Court Judge expects that judges will:

- a. Use their powers under s 24 of the Epidemic Preparedness Act 2006, where necessary and appropriate, to modify the requirements and restrictions imposed by the District Court Rules 2014 in accordance with the following.
- b. Exercise their existing discretion under the rules, where the Covid-19 emergency is relevant to their doing so, in accordance with the following.

Judges may direct the form of participation in hearings and at trials

50. A Judge may make a direction as to the form of participation by counsel, parties, witnesses and other persons at any hearing or trial conducted pursuant to the Rules by –

- a. Dispensing with any requirement for a person to be physically present in the court and make provision for alternative means of complying with any such requirement;
- b. Directing methods of attendance at, and participation in, a hearing or trial (for example, in person, by telephone, by audio-visual link);
- c. Directing where and how any person attending or participating in a hearing or trial in person must conduct themselves in respect of their physical proximity to other persons in attendance (for example, to maintain ‘social distancing’);
- d. Requiring any person attending or participating in a hearing or trial in person to be attired in a particular manner (for example, by wearing Personal Protective Equipment).

51. A Judge may have regard to the existence of the Covid-19 emergency in New Zealand and the likely impact of the New Zealand Covid-19 alert levels on the operation of the court as matters relevant to deciding the appropriate mode of trial in a proceeding pursuant to rule 10.1(2)(g).

Filing generally

52. Any document required by the Rules to be filed, may be filed in the proper registry office of the court by –

- a. Preferably, filing it electronically to an email address published by the Registrar of the court or via [File and Pay](#); or
- b. Delivering it by hand during the gazetted opening hours of that office; or
- c. Sending it by mail to a postal address published by the Registrar of the court.

53. A document is filed when it is –

- a. Accepted for filing by the registry where a document is delivered by hand provided that a judge may direct that documents only be filed either by post in accordance with 4(b) or electronically in accordance with 4 (c);
- b. Received by the registry in the post where the document has been posted;
- c. Received by the registry electronically via an email address published by the Registrar of the Court or via [File and Pay](#).

54. A document is not filed until the earlier of –

- a. Payment of the fee prescribed under the District Court Fees Regulations;
- b. Payment with a credit card payment authority for the prescribed fee provided that the Registrar has the facility to accept payment in that manner;
- c. Payment of the prescribed fee by means of electronic bank transfer into an account identified by the Registrar for that purpose provided that the Registrar has the facility to accept payment in that manner;
- d. Payment of the prescribed fee electronically through File and Pay;
- e. The solicitor on the record or a barrister sole who may represent the person filing the document without the intervention of an instructing lawyer provides the Registrar with an unconditional undertaking to pay the prescribed fee within three working days of the document being filed;
- f. The Registrar determines that the document is to be treated as having been filed despite the non-payment of the fee provided that the Registrar may do so where it is necessary in the interests of justice.

Power to limit acceptable methods of service

55. A Judge or Registrar may direct that any document required to be served must be served by posting the document to a Postal Box or transmitting the document electronically to a specified fax or email address and by no other means.

Signatures

56. If satisfied that doing so is in the interests of justice, having regard in particular to the existence of the Covid-19 emergency and any delays that would be associated with requiring an original signature be obtained, a Judge or Registrar, as the case may be, may order or direct that:
- a. A document that does not contain an original signature may be accepted for filing and may be relied on and used in a proceeding.
 - b. Any document required by the Rules to be signed not be required to be signed, or order that the document be authenticated in another more practicable manner in lieu of being signed.

Reliance on unsworn affidavits

57. A Judge or Registrar may direct that an affidavit that is not sworn or affirmed in accordance with the Oaths and Declarations Act 1957 be accepted for filing and read in the proceeding only where –
- a. The Judge or Registrar is satisfied that requiring compliance with the Oaths and Declarations Act 1957 would cause unacceptable delay; or endanger the health and well-being of any person; or
 - b. The affidavit is presented for filing with a memorandum of the solicitor or counsel for the party that confirms the document contains the same evidentiary matter as the intending deponent would have sworn or affirmed and undertakes to file the sworn or affirmed affidavit as soon as the circumstances permit.

Briefs of evidence

58. A Judge may order that a brief of evidence or other written statement of a witness or intending witness is not required to be signed by the witness or intending witness by whom the brief or other written statement is provided if satisfied that doing so is in the

interests of justice, having regard in particular to the existence of the Covid-19 emergency and any delays that would be associated with requiring an original signature be obtained.

OTHER PROCEEDINGS AT ALERT LEVEL 3

59. To the extent practicable, and subject to workforce capacity levels, the District Court may conduct other proceedings in all jurisdictions by AVL or by telephone link involving a judge and counsel, provided that;
 - a. the use of AVL or telephone link is lawful in the particular proceeding; and
 - b. counsel consents; and
 - c. it is determined by the judge to be otherwise appropriate for the matter to proceed in that manner, including for the attendance of parties (including the attendance of a defendant in a criminal proceeding) to be excused.

60. Remote access to the particular proceeding would be available pursuant to paragraphs 65 and 66.

Access to the Court

61. Physical entry to the court is restricted during Alert Level 3 and will be limited to members of the Judiciary, Ministry of Justice staff members, counsel, accredited news media and other permitted or required defendants, parties, stakeholders or other persons. Any person who enters the court must observe all Ministry of Health distancing, hygiene and other relevant health requirements and any additional requirements imposed by the Ministry of Justice and any relevant conditions imposed by a judge.

62. Defendants on bail, victims and members of the public (including a whānau support person or persons for a defendant) whose presence is not required at court will not be permitted to enter unless granted permission by the presiding Judge. Such permission should be sought in the first instance by email to the Registrar in advance (if granted this must be supplied to the Court Security Officer at the front entrance), or alternatively, on the day of the hearing by requesting a Court Security Officer at the front entrance to convey an application via the registrar to the Presiding Judge. All such applications will need to identify the reason or reasons why permission is sought and will be determined on a case-by-case basis by a judge who may impose conditions in relation to any permission which is granted.

63. Public counters will be closed, and all documents can be filed by email to the Registrar. Provisions for filing civil documents are referred to at paragraph 50.
64. Identification for contact tracing purposes is required to be produced in order to gain entry to the court.
65. Masks are to be worn at all times within the courthouse, unless permission is given by a judge for the removal of a mask or a medical exemption applies.
66. Any person who is unwell, experiencing COVID-19 symptoms, or required to be either in isolation or quarantine will be refused entry to the court.

Virtual Courtrooms

67. A number of courtrooms now have a virtual hearing facility for all counsel, court participants, defendants on bail, victims and accredited media to participate in priority proceedings by AVL from their homes or offices. A Judge and Registrar would generally be in the courtroom, except in situations where the judge determines it to be inappropriate. Counsel are encouraged to appear by AVL where practicable. Registries will advise when these facilities are available.

Accredited news media

68. Accredited news media will be afforded remote access to the court in order to report court proceedings, and to ensure continued open and transparent justice. Media representatives should introduce themselves to the judge when present remotely at any hearing.

Remote Bail Applications

69. 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 AVL. Counsel should apply to the Registry in these cases.

Rostering and Scheduling

70. The statutory function of the Chief District Court Judge is to determine the rostering of judges and scheduling of work. Rostering and scheduling will continue to be determined by the Chief District Court Judge in consultation with the National Judicial Resource Manager and the National Scheduler.