



# District Court Protocol – COVID-19 Alert Level 2

Current as at 31 August 2020

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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 local solutions may 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 2 protocol (this document) applies with effect from and including 31 August 2020, to any and all locations that are subject to Alert Level 2.*

*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 regularly reviewed and modified to the extent considered necessary by the Chief District Court Judge.*

## **District Court at Alert Level 2**

1. This protocol outlines how the District Court will operate at Alert Level 2. It contemplates that Level 2 restrictions may apply for an extended time.

### **Access to the Court**

2. For physical distancing reasons, entry to the court will be restricted during Alert Level 2. Entry to the court will be limited to members of the Judiciary, Ministry of Justice staff members, defendants, parties, witnesses, complainants, victims, and other stakeholders. Accredited news media will continue to have entry to the court in order to report court proceedings, and to ensure continued open and transparent justice. Remote access for accredited news media, will continue to be facilitated in accordance with current protocols.
3. 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 from 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. This restriction is necessary to protect others and allow courts to conduct business. A separate process applies for support people in the Youth Court (see Youth Court section of this protocol).
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.
6. Public counters will be open to support the daily sittings, and for filing in-person at Court.

### **Accredited News Media**

7. Accredited news media will continue to have entry to the court in order to report court proceedings, and to ensure continued open and transparent justice. Remote access for accredited news media, will continue to be facilitated in accordance with current protocols.

## Hygiene

8. The Ministry of Justice has advised it is taking steps to ensure the safety of those coming into courthouses during Alert Level 2, including:
  - a. A designated site officer to attend to hygiene, physical distancing and safe working practices.
  - b. Access will continue to be denied to those:
    - i. Who have a temperature of 38°, or higher;
    - ii. showing signs of illness such as coughing and sneezing;
    - iii. reporting feeling unwell;
    - iv. who have had close-contact with a suspected, probable or confirmed case; or
    - v. unwilling to disclose the purpose of their visit or their personal information.
  - c. Limiting entry to those with business at court, including members of the public (who are given prior permission by the presiding judge) to enter.
  - d. Maintaining an orderly queuing system at courthouse entrances, reminding people not to enter if they are symptomatic, offering wipes for items place in screening trays.
  - e. Maintaining a contact register for the purpose of contact tracing in the event of an outbreak.
  - f. Providing a supply of clean PPE for use by staff, Judges and all other people who are permitted to enter the courthouse. PPE (gloves and masks) will be available for use if people wish.
  - g. Persons in the custody of Police, Corrections or Oranga Tamariki will be provided with a facemask by those respective agencies for use if they wish.
  - h. Maintaining a cleaning regime based on the Ministry of Health recommendations, with a wide range of deeper cleaning measures in key areas throughout public and non-public areas and regular cleans – for example during lunch breaks – to ensure that areas where there is high traffic are clean and sanitised.
  - i. Monitoring the provision of cleaning supplies such as soap and towels and ensuring availability of key products such as hand sanitiser at appropriate points around the courthouse.

- j. Keeping under constant review all cleaning practices and procedures, to enable additional measures to be added if required.
  - k. Reminding those attending court of the need to take personal responsibility for their own health and wellbeing – including washing hands regularly, following hygiene practices and, if unwell, following Ministry of Health guidance.
  - l. Leaving doors open where consistent with security, fire safety, privacy and noise reduction.
9. Parties should wait outside the courthouse until their matter is scheduled and vacate the courtroom once their hearing has concluded.
10. So far as possible, counsel should take instructions and brief witnesses outside the courthouse, to minimise demand on interview rooms. Larger rooms, where possible, will be made available for interviews, and counsel may request breaks to take instructions safely using those facilities.
11. Safe distancing will be observed in the courthouse and the courtroom, and the following hygiene practices can be expected:
- a. Those present in the courthouse or the courtroom, including counsel, are required to maintain 1m physical distancing, and alternate seats in public galleries will be taped off. Everyone should maintain physical distancing of 1m unless they are in a whānau bubble.
  - b. Cleaning products are available on site to enable staff and lawyers to keep their immediate areas clean (including AVL suites).
  - c. Gloves may be worn.
  - d. Hand sanitiser will be readily available within the courtroom.
  - e. The court will not normally permit documents to be handed up. Documents that parties wish to produce should be scanned and shared by email at the appropriate time.
  - f. All those attending court are encouraged to wear face masks in public areas.
  - g. Jurors are encouraged to wear face masks at all times.
- The following provisions apply only in the Auckland region:
- h. Face masks should be worn in all public areas and courtrooms.
  - i. Face masks should be worn by jurors at all times.
12. Any concerns about health and safety practices in the court should be raised with the site manager in the first instance.

## **Expectations of Counsel and Prosecutors**

13. Counsel and prosecutors are expected to assist the court by:
  - a. Briefing clients and witnesses on public health messages:
    - i. Not to come to court if unwell.
    - ii. To advise the court as early as possible if they are unable to attend court.
    - iii. Physical distancing expectations in the courthouse and precincts.
    - iv. How exhibits will be handled in their case.
    - v. What they may expect by way of PPE and hygiene supplies in the courthouse.
    - vi. The limits on attendance by members of the public.
  - b. Reducing the need for attendance in the courthouse by counsel, their clients and witnesses by reviewing each attendance in advance and:
    - i. Seeking remote participation for appropriate cases and witnesses.
    - ii. Seeking excusals from appearances in administrative hearings.
    - iii. Limiting the number of witnesses via the use of agreed facts.
  - c. Raising any deficiencies with cleaning, the availability of cleaning supplies or physical distancing with the site manager immediately.

## **Triaging to avoid unnecessary in-person appearances**

14. Triage should be identified as a primary means to manage demand, and there should be clear expectations that counsel will co-operate and take a pro-active approach to ensure that these are minimised, and use is made of remote participation whenever appropriate.

## **Rostering and Scheduling**

15. 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.
16. During Alert Level 2, local Judicial Resource Managers, the Executive Judges (or the applicable jurisdictional Liaison Judge), Regional Scheduling Advisors and the Registry will work collaboratively to determine the priority and extent of the work to be

undertaken in each court in order to develop rosters and local schedules. The schedules will support the directions set out in the District Court Protocol.

### **Community Transmission Response**

17. At Alert Level 2, it remains possible that a new cluster of COVID-19 community transmission may be confirmed within the location served by a courthouse. In that event the court will rely on official advice. Steps may be taken to reduce in-person attendances at the court to help protect those working or appearing there. The extent of any reduction will depend on the circumstances and official advice or notices.
18. The court is now better equipped for remote participation. Where practicable and appropriate, the court could conduct additional types of work by remote participation, e.g. “submissions only” work across all jurisdictions.

### **Police Prosecutors and Court Probation Officers**

19. Police Prosecutors (which includes for the purposes of this protocol, lawyers who work for the Police Prosecution Services) and Court Probation Officers should generally appear in-person for all categories of case. Police Prosecutors and Court Probation Officers are permitted to wear PPE in court. Police Prosecutors and Court Probation Officers in the “vulnerable” category, should generally not appear, but if it is necessary to do so, they may appear by telephone link or by AVL.

### **Counsel**

20. Counsel are permitted to appear in court in-person. Counsel in the “vulnerable” category, may appear by telephone link or by AVL for all cases in all jurisdictions.
21. Counsel who are not in the “vulnerable” category must appear in-person for Judge Alone Trials in the criminal jurisdiction and for defended fixtures in the family and civil jurisdictions, unless otherwise directed by the presiding Judge. Counsel who are not in the “vulnerable” category, are otherwise permitted to appear by telephone link or by AVL provided that suitable AVL facilities or telephone links are arranged in advance. If not, counsel who are not in the “vulnerable” category must attend in-person, unless otherwise directed by the presiding Judge. Counsel are permitted to wear PPE in court.
22. Judges are expected to remain alert and responsive to representations from counsel regarding their safety and ability to prepare for court.
23. The Ministry of Justice will provide for taped floor markings spaced at 1 metre distances at counsel benches, in the public gallery and clearly demarcating where each defendant or party is to move within the court (to avoid being too close to counsel and other parties) and where he or she is to stand or sit.

## Victims

24. Victims may attend personally in the courtroom, or by telephone link, or via AVL, subject to the Evidence Act 2006.

## Criminal Jurisdiction

25. The Court will aim to hear as much scheduled criminal work in Alert Level 2 as possible, subject to workforce capacity levels, courtroom availability and the requirement to observe physical distancing.
26. All defendants on bail or at large are required to attend the District Court on their scheduled dates during Alert Level 2, unless advised otherwise by a Judge or Registrar acting on direction of a Judge, subject to the Criminal Procedure Act 2011.
27. Registrar's adjournments may be granted subject to the Criminal Procedure Act 2011. It is recognised that where appropriate, Registrar's adjournments will be utilised to avoid unnecessary appearances to the greatest extent possible.
28. Where individual Courts are unable to operate at full capacity, criminal work would generally be conducted in the following order of priority:
  - a. Priority proceedings under the Alert Level 4 protocol – this includes rescheduling and bringing forward custodial sentencing and the following:

All those involving defendants who are in custody and due to appear.

The appearance of all defendants in custody is to be via AVL if that facility is available.

Appearance 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.

Applications made under the [Returning Offenders \(Management and Information\) Act 2015](#) including:

- For new offenders arriving into the country and requiring an initial application for interim special conditions; or
- For offenders who have interim special conditions (or extensions to interim special conditions) which are about to expire; or
- For offenders who require variations to their interim or final special conditions.

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.

- b. Non-custodial lists, including callovers and conferences.
- c. Non-custodial sentencing.
- d. Non-custodial CRHs.
- e. Non-custodial JATs.

### **Defendants in Custody**

- 29. 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 2 period.
- 30. Subject to the Courts (Remote Participation) Act 2010 (“Courts (Remote Participation) Act”), all defendants in corrections custody are to appear by AVL unless a Judge otherwise directs. In a Judge Alone Trial the defendant must attend court in-person unless unable to do so for COVID-19 related reasons.
- 31. Subject to the Courts (Remote Participation) Act, all defendants in police custody are to appear in person unless a Judge otherwise directs that the appearance be by way of AVL. AVL appearances should not be directed if:
  - a. there has been inadequate ability for counsel to obtain instructions remotely; or
  - b. police or the court are unable to facilitate remote participation by the defendant.
- 32. 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**

- 33. 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 been denied same-day entry pursuant to clause 2(b) or has called the 0800 COURTS (0800 268787) number and has advised that he or she is unable to enter the courthouse because he or she is exhibiting symptoms consistent with COVID-19 infection, or is vulnerable on account of age or has a pre-existing health condition. Judicial officers will excuse the attendance of defendants in those circumstances and will grant an adjournment with attendance required at the next appearance. This information about next appearance will be communicated to defendants who call the 0800 COURTS (0800 268787) number.



## **List Courts**

34. Following consultation between Criminal Liaison Judges, local court managers, local counsel and relevant local stakeholders, list courts conducted by Registrars, Community Magistrates, and Judges, may, where necessary, be divided into two list courts to reduce the numbers in court and allow for 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.
35. In-person attendances by defendants on bail should be limited as much as possible to meaningful appearances that will substantively advance proceedings. Administrative appearances should be conducted remotely as much as possible.

## **Remote Bail Applications**

36. 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**

37. Defendants who are at large or on bail are expected to comply with Alert Level 2 physical distancing rules when they attend the court. Defendants, amongst others, will be offered Physical Protection Equipment (“PPE”) when they enter the Court. Although defendants cannot be forced to wear PPE, it is acknowledged that Duty Solicitors and Counsel may request defendants to wear PPE when obtaining instructions. If a defendant refuses to do so, it is acknowledged that Duty Solicitors and Counsel may decline to interview defendants to obtain instructions. In those circumstances it is acknowledged that a defendant may appear before the presiding Judge as a self-represented litigant.
38. Defendants who are at large or on bail are not to enter the dock but are to stand adjacent to it. This is to avoid surfaces of the dock being touched.

## **Case Review Hearings**

39. 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. A Judge may excuse the attendance of the defendant if satisfied resolution is unlikely and advice will be given to counsel for the defendant in advance of the case review hearing. The Judge at the case review hearing will discuss with the parties what is truly in issue and accurate hearing times will be allocated.

40. Best practice will be for case review hearings for defendants appearing in-person to be scheduled on a 30-minute cycle with no more than four cases in every 30-minute period.

### **Judicial Case Management Directions Conferences**

41. A case review hearing may be waived by a Judge pursuant to s 58 of the Criminal Procedure Act 2011 and conducted as a judicial case management directions conference.
42. If a defendant is represented by counsel, 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 recorded on the FTR system.

### **Sentencing**

43. 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**

44. Pre-trial conferences may be scheduled by telephone with counsel, police or prosecutor at least one day prior to trial to confirm:
  - a. Whether it is anticipated the JAT may proceed including, whether there are any relevant limitations created by COVID19 restrictions.
  - b. If it is to proceed, whether the defendant wishes to consent for the purposes of s 9 of the Courts (Remote Participation) Act.
  - c. The witnesses who may be required and, subject to Subpart 5 of the Evidence Act 2006, whether they are to be heard in-person at Court or by alternative means.
  - d. If a witness is intended to appear and give evidence remotely, whether there is a need for the sharing of documents during the trial and whether the technology is available for doing so.
  - e. The types and volume of documents or other items that may be required to be produced in evidence.
  - f. Such other matters as the Judge may consider appropriate, including pre-allocation of a start time on the hearing date.
45. Counsel and the prosecutor are to email the Registrar one day prior to the pre-trial conference, and address the above factors for purposes of that telephone pre-trial conference call. That email advice is to take into account ss 5-9 of the Courts (Remote Participation) Act.

46. It is recognised that counsel will require adequate time to brief clients and witnesses (including allowing clients and witnesses to appropriately handle documents and sign off instructions/briefs of evidence). If applicable, counsel will raise any issues with the presiding Judge during pre-trial conferences Judge Alone Trials would generally not proceed where counsel advise the Court because of limitations created by COVID19 restrictions the case is not ready to proceed (for example it has not been possible to obtain full instructions or brief necessary evidence). However, it is recognised that each decision will remain a matter for individual Judges to determine on the merits on a case by case basis.
47. At or following the pre-trial conference 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.
48. In any event, if a change of plea is anticipated at any time counsel must inform the court promptly.

### **Judge Alone Trials**

49. Judge Alone Trials days may commence with 9am call-overs, for presiding Judges to confirm arrangements with counsel and prosecutors either in-person or by remote participation. The attendance of defendants at these call-overs is excused.
50. 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.
51. Trials which are not to be the first trial to start are to be given a fixed time to commence on a staggered basis and adjourned until that time. Counsel / self-represented defendants are to provide the Registrar with email addresses and contact numbers for the purpose of informing them when their matter is ready to proceed.
52. Counsel appearing at Judge Alone Trials are to be provided with suitable facilities to obtain instructions. This will include the use of spare courtrooms or other parts of the court building that allow for physical distancing and the ability to take instructions in private. It is recognised that more adjournments than usual may be necessary, and special arrangements may need to be made (especially for those defendants in custody), during the course of a Judge Alone Trial to allow counsel to obtain instructions and maintain physical distancing.
53. Counsel and prosecutors are to “hand up” documents during a Judge Alone Trial either by emailing an electronic copy of the document to the court registrar or as directed by the presiding Judge.

### **Pre-trial Applications**

54. Subject to the Courts (Remote Participation) Act, if a defendant is represented by counsel, 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**

55. In appropriate cases, if a defendant seeks a sentencing indication, Counsel may apply to have the case rescheduled and brought on earlier for that purpose. In such a case, ss 60 – 65 of the Criminal Procedure Act 2011 apply.

### **Saturday and Public Holiday sittings**

56. Justices of the Peace will generally continue sit on Saturdays and on public holidays to conduct Arrest Courts. If Justices of the Peace are unavailable to sit, Community Magistrates will generally sit on Saturdays and public holidays to conduct Arrest Courts. If Community Magistrates are unavailable to sit, Judges will generally be rostered to sit. If a local Judge is unavailable to sit, a Judge will generally be rostered to sit by remote participation.
57. If a Judge considers it appropriate to do so, a Judge may conduct a Saturday and public holiday court whether or not a Justice of the Peace, or a Community Magistrate is available.

### **Youth Court Protocol**

58. This protocol outlines how the Youth Court will operate under Alert Level 2. This protocol needs to be read in conjunction with the District Court (Criminal) protocol under Alert Level 2.
59. Level 2 will see Family Group Conferences continue to be held.
60. The number of in-person appearances made by young people may increase for monitoring events and other substantive hearings. Under Level 2, AVL appearances are no longer the default position, unless safety concerns or other circumstances necessitate this. Appearance in-person is the default position.
61. However, the safety of young persons and their whānau (especially those aged over 70 or with pre-existing health conditions) remains of paramount concern for the court and all professionals involved in the Youth Justice process. Youth Court professionals are expected to work collaboratively to uphold the primary objective of keeping all court participants safe. This may involve measures to limit the need for travel to courts

for young persons and their whānau, and a continued reliance on remote participation of stakeholders, where this is required for safety reasons and it is practicable to do so.

62. All professionals play an equally important role in keeping everybody safe. All reasonable measures should be taken to protect all participants, including vigilant compliance with physical distancing.
63. Professionals should continue to keep the registry informed regarding their ongoing ability to operate safely within the court, so that alternative or flexible arrangements can be made as required. Where professionals wish to appear remotely, a request should be made to the registry in advance of the hearing. Written submissions should be provided to the Court in advance of the hearing wherever possible.
64. For Lay Advocates specifically, home visits are not recommended under Level 2. Lay Advocates may attend court hearings in-person where necessary to support young people and their whānau or appear remotely by AVL.
65. The Youth Court appointment system will continue to operate as under Level 3, ensuring that physical distancing measures are in place for all participants, and young persons and their whānau continue to be provided privacy. The expectation remains that parties who attend in-person are punctual and do not attend court earlier or remain at court any later than their appointment time. Specific appointment times will be allocated for each case.
66. 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 2, unless otherwise directed by the presiding Judge.
67. 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.

### **There are six categories of cases under Alert Level 2:**

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

68. Young persons who are arrested need to be brought before a Youth Court for consideration of bail. Under Level 2, first appearances of young persons may be heard by AVL from the police station where facilities exist, unless otherwise directed by the Judge. Where AVL is not available or if the Judge directs otherwise, the young person is to be brought to the nearest courthouse which is open and operating. If a Youth Advocate becomes aware of any circumstances that would make appearance by AVL inappropriate, such as cognitive impairment or communication issues, these circumstances are to be brought to the attention of the Judge by the Youth Advocate as soon as practicable.

*Young People in Oranga Tamariki Custody and Corrections Custody*

69. For those already in custody in Residences, appearances are to be in-person wherever practicable for substantive hearings affecting the young person. These include opposed bail applications, early release hearings, secure care applications, and disposition hearings of all types.
70. It remains vital to ensure that any in-person 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.
71. Moving young people and their escorts from residence to court remains risky for all. In instances where inter-regional and/or air travel would be required, case-by-case determinations will need to be made around whether appearances may be by AVL or transferred to a court nearest the residence. Appearances should be made via AVL where inter-regional or air travel would otherwise be required to an area placed under Alert Level 3 or 4.

*Criminal Procedure (Mentally Impaired persons) Act proceedings*

72. In relation to Criminal Procedure (Mentally Impaired Persons) Act proceedings decisions will need to continue to be made in each case as to how best to proceed. Special hearing arrangements will need to be considered and directions given by Judges. Youth Advocates are again 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 such as Communication Assistants involved whose input is necessary.

*The cases which have been adjourned*

73. Under Level 2, Judges will review cases where the young person is on bail or at large to identify those cases which require priority attention, including those awaiting a Family Group Conference to be reported back to the court, monitoring appearances, Judge Alone Trials, disposition hearings and CP (MIP) hearings.
74. Oranga Tamariki will continue to advise the court of progress on other active cases, for example those progressing towards agreeing FGC plans for FGCs already directed, or progress on FGC plans already under judicial monitoring.
75. 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, such as Communication Assistants involved whose input is required and provide an agreed memorandum as to any issues requiring urgent attention and the directions sought to advance matters.

76. Judges will convene pre-hearing conferences as required, 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. Youth Advocates, Police, Social Workers and other appointed 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*

77. Cross-over cases under Level 2 must continue to comply with the Family Court Protocol for Level 2 and engage in consultation with the relevant Family Court professionals.

#### *Rangatahi and Pasifika Courts*

78. Youth Court sittings on Marae and at Pasifika venues will not resume until it is considered by all participants to be safe to do so. Where cases were being heard at Te Kōti Rangatahi or Pasifika Courts but are now being heard at courthouses Youth Advocates and Lay Advocates are requested to advise the court whether the young person and whānau seek to have cultural processes such as karakia and pepeha incorporated in their hearing.

## **Family Court Protocol**

79. At Alert Level 2 the Family Court remains an essential service. Under Alert Level 2 the Court will continue to undertake priority work, such as box work and without notice applications as examples, but also intends to undertake all previously scheduled work.
80. However, the court's ability to do so will be subject to work force capacity levels and the requirement to observe physical distancing.
81. During the COVID-19 Alert Levels local Judicial Resource Managers, the Family Court Liaison Judge, Regional Scheduling Advisors and the Registry will work collaboratively to determine the priority and extent of the work to be undertaken in each court in order to develop rosters and local schedules. The schedules will support the directions set out in the District Court Protocol.
82. Where a Family Court is unable to operate at full capacity, family work would generally be conducted in the following order of priority:
- a. Those with statutory timeframes such as applications for Compulsory Treatment Orders, IDCCR, Protection Orders or interim custody/care and protection orders; those involving vulnerable parties such as welfare guardianship or property orders.

Under the [Protection of Personal and Property Rights Act](#); those arising out of social dysfunction and family harm.

Where a hearing is directed, in almost all cases conferences and hearings will be conducted remotely.

### **Triage**

83. A triage process has been operating in a number of courts (particularly metropolitan courts) to identify and progress priority cases within the following categories:
  - 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.
84. In cases where that process is incomplete, it will continue. The 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.
85. Cases identified as a priority will be scheduled for a 30-minute conference/callover.

### **Conferences / Callovers / List Courts**

86. All counsel are entitled to appear in person. However, a Judge may permit counsel to appear by telephone link or AVL provided that suitable facilities are available and a timely application has been made. Otherwise counsel must attend in person, subject to paragraph [24].
87. The parties may also appear in person but the Judge may excuse in-person attendance and direct that the conference/callover proceed by way of remote participation including AVL or telephone. Judges must have regard to the interests of vulnerable parties and those for whom remote participation is not possible.
88. All conferences/callovers are to be conducted by a Judge and recorded on the FTR system.
89. 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.
90. If there are in-person appearances, then:
  - physical distancing must be observed;
  - any person who does not have direct business with the court may not attend without prior approval of the presiding judge;
  - whānau support may only be given by a whānau member or members whose attendance has been permitted by the presiding Judge; and
  - the introduction/continuation of split lists may be necessary.



91. Cases already scheduled in list courts will remain as scheduled. No changes will be made to the event duration.

### **Memoranda**

92. 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.
93. 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**

94. The e-Duty platform is to remain 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.

### **Mental health**

95. Following consultation with the Director of Mental Health, it is expected that, under Alert Level 2, in person hearings may resume, where it is practicable and safe to do so, and all factors including, but not exclusive to, the following will need to be considered:
- Whether any participant in the hearing is in a risk group vulnerable to COVID 19.
  - Whether the venue for the hearing presents a risk to the spread of COVID 19.
  - Where a hearing will necessitate avoidable lengthy travel for anyone or might involve crossing between regions.
  - The individual rights of the patient.
96. The hearing options are – in person, AVL, telephone link or a combination of them. Decisions will need to be made on a case by case basis.

## **Lay Advocates**

97. For Lay Advocates specifically, home visits are not recommended under Alert Level 2. Lay Advocates may attend court hearings in-person where necessary to support young people and their whanau or appear remotely by AVL.

## **Hearings**

98. Hearings that do not involve viva voce evidence such as submission only hearings or Pickwick hearings may be conducted, in appropriate cases, by way of written submissions with counsel appearing by AVL or telephone link. The hearings are to be recorded on the FTR system.
99. All short cause hearings, for example family violence fixtures, and long cause hearings will be preceded by a call-over to be conducted in advance of the hearing date. The call-over will be conducted by telephone and will determine such matters as:
- The order of hearings for the day.
  - The length of the hearing.
  - Numbers of witnesses.
  - Mode of evidence.
  - Ability to observe physical distancing.
  - The production of documents/ exhibits.
100. All documents are to be filed in electronic form prior to the hearing. There are to be no hand-ups, unless a Judge otherwise directs.
101. For long cause fixtures a call-over must occur in sufficient time in advance of the hearing to enable fixtures to be allocated and to consider whether the hearing can proceed subject to Level 2 constraints.
102. It is anticipated that scheduled long cause fixtures with multiple parties and/or multiple witnesses may present challenges in terms of physical distancing and hygiene that make it impossible to safely proceed with these types of hearings. If counsel identify any such scheduled hearings, then they should file a memorandum immediately for consideration by a Judge as to whether the fixture can safely proceed or not.

## **Civil Jurisdiction**

103. Subject to workforce capacity levels and the requirement to observe physical distancing, the District Court will aim to hear as many of the civil cases that are currently scheduled during Alert Level 2 as possible.
104. Where individual courts are unable to operate at full capacity priority will be given to:

Returning Offenders applications and injunctions, or other applications that merit urgent attention

Some Harmful Digital Communication applications, and Restraining Order applications, and Tenancy Appeals may be in that category.

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**

105. 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 2 period.

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

106. 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).

### **Filing generally**

107. Any document required by the Rules to be filed, may be filed in the proper registry office of the court by –
- a. Delivering it by hand during the opening hours of that office.
  - b. Sending it by mail to a postal address published by the Registrar of the court.
108. 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 by post in accordance with 4(b);
- b. Received by the registry in the post where the document has been posted.

109. 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. 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;
- e. 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**

110. 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**

111. 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**

112. 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**

113. 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.

## **Accident Compensation Appeals**

114. Under Alert Level 2, judges will accord priority for assessment of those appeals that were scheduled for hearing and adjourned under Alert Levels 3 and 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.
115. 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. Given the restrictions under Level 2, there will be delay in responding to matters.
116. 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.