



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

13 May 2020

Dear practitioners

COVID-19 – the operation of the courts under Alert Level 2

Over the past few weeks, the Chief District Court Judge and I visited the Auckland metropolitan courts to observe how they were operating under Alert Levels 4 and 3. During those visits we had the opportunity to speak directly with practitioners, registry personnel and security staff, and to observe the enhanced security and cleaning regimes.

As we look forward to Alert Level 2, I write to confirm measures put in place by heads of bench, in conjunction with the Ministry of Justice, so that the courts are safe for you and your clients to attend. I also outline the arrangements heads of bench have made so that courts can transition to doing more of their usual work.

Hygiene

The Ministry of Justice has put in place nationwide health and safety protocols based on Ministry of Health guidance. Each courthouse is regularly assessed against these. These measures have been summarised in a public information sheet:

- [Ministry of Justice information on alert level 2 health and safety measures.](#)

The Ministry has also developed a protocol to deal with suspected or confirmed cases of COVID-19 in any of the buildings for which it is responsible.

Courthouse managers are working with the judiciary and with Police and Corrections at a local level to ensure hygiene and social distancing measures are applied effectively for each courthouse, with the overriding principle that the health and safety of every person who works in or comes to court must be protected. The Ministry asks that any concerns are raised in the first instance with the appropriate site manager. I expect most of you will know the site managers for the courts you work in, but if you are not sure, check with the registry.

Physical distancing

The numbers permitted to enter court buildings will continue to be limited, to avoid overcrowding in public areas and courtrooms. While judges recognise that it is important for many defendants to bring a supporter, in the interests of safety for all, the protocols require that members of the public (including whānau support persons) obtain permission from a judge to enter the building. There are special arrangements for support people in the Youth Court because of the centrality of whānau support to that jurisdiction.¹

Courtrooms will be marked out or set up so that counsel and others attending court are at least one metre from each other. Counsel, parties and witnesses may wear PPE in the courtroom.

Start date for Alert Level 2 protocols

Level 2 protocols were provided to the profession for consideration last week and now reflect the feedback received.² The protocols will be posted on the Courts of New Zealand website today.

- [COVID-19 court-protocols](#)

To allow time for people to make any necessary arrangements, the courts will not begin to operate under Alert Level 2 protocols until **Monday 18 May**.

Phased increase in work and working with the professional associations

Courts are an essential service. Through the period of Alert Level 3 the courts have carried out an increasing amount of work. Most hearings have had one or more of the participants joining the hearing using remote technology, with only a small volume of fully in-person hearings.

Under Alert Level 2, the courts will continue to increase the range and number of cases that are heard, whether in-person or remotely. The protocols describe the range of activities that *may* be carried out. As has been signalled, change will happen in a phased manner to ensure that courthouses remain safe and that those present feel secure. At Alert Level 2, the hearing of witness actions will recommence in all courts and, in the District Court, judge-alone criminal trials will resume.

The number of judge-alone trials will be small to begin with, because the Court recognises that counsel have had difficulty briefing clients and witnesses over recent weeks. Trials will require in-person attendance at court by counsel and witnesses in most cases, but the courts will facilitate remote participation by witnesses where appropriate.

¹ Paragraph 70 **District Court Protocol – COVID-19 Alert Level 2** current as at 13 May 2020 - [District Court protocol](#)

² Feedback was received from the New Zealand Law Society, the Auckland District Law Society, the New Zealand Bar Association, the Criminal Bar Association and the Defence Lawyers Association NZ.

Jury trials remain postponed until 3 August at the earliest. We expect that at that time physical distancing will continue to be required. Planning is underway for the conduct of jury trials in accordance with required physical distancing. I will shortly provide more information about this to the profession.

Role of profession

You will see reflected in the protocols judges' expectation that counsel will play their part in keeping courthouses safe. Counsel can do this by ensuring that clients do not come to court if they are unwell, advising clients that permission is required for whānau/support people, and outlining what will be expected of them in the courthouse.

The last seven weeks have also highlighted the need to make every appearance in court a meaningful appearance. The judiciary has formed a committee with representatives of the profession, registry and departmental officials to identify concrete steps that can be taken to reduce unnecessary appearances and unnecessary adjournments, and facilitate case progression in criminal cases.

While that committee prepares its plans, there are positive steps the profession can take now toward this goal. Reviewing cases, addressing how an appearance can be used to progress the case toward resolution, and seeking adjournment by agreement where that is appropriate, are all steps that counsel can take to avoid delay.

Open justice

It is vitally important that the courts remain accessible to the media at this time to promote both transparency and public understanding. The Open Justice Committee/Huakina kia Tika chaired by Justice Cooper will continue to monitor and support this objective.

In closing

We do not know how long restrictions arising from the COVID-19 pandemic will affect the courts and society at large. But we do know that pre-existing backlogs, and those which have arisen during the shutdown, are of tremendous importance to people affected by delayed hearings. This is why each court will continue, in a measured way, to increase the amount of work it carries out during this phase of the pandemic. Undertaking that work safely will continue to be the guiding principle for the judiciary, as it works with the Ministry of Justice, to increase access to justice in our courts.

Finally, I thank the profession for the commitment it has shown to working with the courts as we have adapted and evolved over the last two months. I thank you all for your continued commitment to the administration of justice.

Hei konā mai i roto i aku mihi,

[signed]

Helen Winkelmann
Chief Justice/Te Tumu Whakawā

Cc Secretary for Justice