



FAMILY LAW
SECTION
NEW ZEALAND LAW SOCIETY

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Urgent proposed amendment to Family Court Rules and legislation

Yesterday, Principal Family Court Judge Jackie Moran wrote to the FLS setting out proposed amendments to the Family Court Rules 2002, the Oaths and Declarations Act 1952 and the Mental Health (Compulsory Assessment and Treatment) Act 1992.

The amendments to the Family Court Rules are in terms of:

- Rule 75 – when documents are filed
- Rule 76 – to allow for electronic filing
- Rule 107 – providing for electronic service
- Rule 162 – reliance on unsworn affidavits
- Rule 168 – authority to take affidavits
- Rule 416U – streamlining urgent hearings

The proposed amendments to section 9(1) of the Oaths and Declarations Act 1952 are in respect of the requirement to swear affidavits. The proposed amendment to sections 16(3) and 18(3) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 are in respect of the requirement of a judge to examine a patient.

A working group of the FLS executive met remotely yesterday and prepared a [response](#) to Judge Moran on the proposed amendments. We will keep members updated on any rule or law changes as they develop.

Signing and witnessing of section 21 agreements – Relationship (Property) Act 1976

We have received a number of inquiries from members as to whether the remote witnessing and certification of section 21 agreements is acceptable during alert level 4. For many years there have been divergent views and opinions amongst the profession as to whether or not the use of AVL is acceptable in terms of compliance with the PRA. We are also aware that a significant number of family lawyers are prepared to witness and certify section 21 agreements remotely, whilst others are not. This is not a new issue. The FLS agrees the issue may be problematic, however, the decision as to whether to witness and certify on a remote basis is an individual choice that each practitioner needs to make on a case by case basis. An [article](#) published in the *Family Advocate* (Vol 15 Issue 3, Autumn 2014) discusses the issue and sets out a number of safeguards lawyers may choose to adopt if they decide to witness and certify remotely. These include, but are not limited to:

- addressing issues of duress by either requiring the client to confirm there was no one else present in the room at the time of execution of the document;
- containing a clause(s) in the agreement stating the nature of the attendance; that both parties agree to the agreement being executed in this way; and neither party will challenge the validity of the agreement based on the nature of the execution of the document; and
- including in the certification that both parties confirm that they accept the agreement is valid taking into account the execution of the agreement by AVL.

The Law Commission has also considered this issue in chapter 8 of its November 2018 [Preferred Approach Paper](#) following an evaluation of the PRA.

We have raised the issue in our response to Judge Moran (above) on the urgent proposed changes to the rules and legislation and suggested that serious consideration be given to amending the PRA in this respect during the period when an epidemic notice is in force under section 5 of the Epidemic Preparedness Act 2006.

Reminder - filing of unsworn affidavits

Since the [guidelines](#) for filing unsworn affidavits were issued by the Principal Family Court Judge, there have been instances where applications have been filed with unsigned and

unsworn affidavits with no explanation given. Pending any changes, the affidavit should be at least signed if possible. If the affidavit is unsworn and/or unsigned we suggest you provide a certificate in place of the signature and jurat as set out in the guidelines. Counsel might also consider filing a memorandum with the affidavit setting out the circumstances as to why a sworn and/or unsigned affidavit is not able to be filed and requesting the document filed be accepted. We have raised the difficulties of providing an undertaking in the form requested by the guidelines in our submission on the amendments to the rules.

Information for clients

We realise this is a particularly stressful and difficult time for parents, particularly those in a shared parenting arrangement. The Office of the Children's Commissioner website contains resources that are written specifically with children and young people about how to cope during this time. These resources may be of assistance to many of your clients.

[Helping kids with anxiety and to stay calm amidst COVID-19](#)

[COVID-19 and kids: How to talk to children about the coronavirus](#) by [Siouxie Wiles](#)

[Nanogirl and Moe from 'The Moe Show' talking about the national lockdown](#)

FLS regional representatives

A huge thank you to our regional representatives around the country who are doing a fantastic job keeping local members informed of matters in their areas. Many of the task forces they have established have already communicated directly with the local judges and registry and have kept members updated with matters as they evolve. Some have set up lists of local lawyers available to take urgent instructions and have provided useful IT instructions for setting up zoom meetings and electronic signatures for members who need assistance with that. Some have even set up remote "get togethers" and "Friday 5's" for members to connect with their colleagues. I want to personally thank our regional reps for the work they are doing at this difficult time. The executive are hugely grateful for your assistance.

Kirsty Swadling

FLS Chair