

Without notice applications – addressing issue of service

The FLS is aware that the judiciary are encountering issues with urgent without notice applications that do not address the issue of service. The issue of service should be addressed at the time of filing the application. Counsel should provide a working phone number for the respondent and ideally an email address. The courts will attempt to contact the respondent for an email address if one is not provided. If a phone number is not available, but evidence can be supplied of an active social media account or a working email address, then lawyers may consider filing an application for substituted service.

During alert level 4, bailiffs are operating and have coverage across New Zealand serving urgent documents when all other options are unavailable. Temporary Protection Orders are being served by the Police in urgent situations. If any person requires assistance in terms of service, they can contact the court at **0800 268 787**.

Filing of non-urgent documents

Following the [letter](#) from the Chief Justice of 8 April, during Alert Level 4, we can confirm that the ability to file by email applies to **all** applications and related documents and not just to essential work. Filing is available by post for those who cannot access facilities to file by email. All courts will continue to accept filing of documents in all proceedings. The fee waiver is to apply to **all** fees payable and not just to fees payable for essential work. The filing of follow-up documentation i.e. reports, submissions, memoranda, urgent requests for referral to a judge, case management requests, etc, should continue to be filed via email to the appropriate court.

If the matter is urgent and needs to be referred to a judge urgently – please put **URGENT**

in the subject line of the email **and** also outline in the body of the email the reason why it is urgent. This will help the registry staff triage emails more efficiently.

The court does **not** need the original copies of these documents so there is no need to send these in. This is to avoid clogging up the system with duplicate copies of documentation and also to limit any contact/touching of the paper material that is placed on any court file. This is in accordance with recommendations and guidelines in dealing with paper communication during the covid-19 pandemic.

Looking ahead to courts' operations under various alert levels

The heads of bench are agreed that the courts should function to the fullest extent they safely can and ensure that the backlog of cases that accrues over this period does not overwhelm the courts, leading to delay and injustice. While courts priority proceedings will continue to be the first demand on available resources, the courts will hear cases outside those categories to the extent that capacity permits. Capacity limits relate to the reduced number of registry staff to maintain safe working conditions. It is this factor which has inhibited the processing of email filings and the conduct of on the papers work. The profession will see a progressive increase in the courts' ability to do their usual work over the coming weeks.

Family Court hearings

The Family Court will continue to hear all urgent and time-limited applications. In most cases this will be done remotely, but arrangements can be made for hearings in person for unrepresented litigants for whom this is not possible, or otherwise in circumstances where remote participation is inappropriate. The judges are continuing to process matters that can be dealt with on the papers. For that reason, if there is any application before the court with an upcoming fixture, or awaiting a fixture, and where counsel are agreed that the application can be dealt with on the papers or with a telephone or VMR hearing, they should advise the registry. The Family Court is now preparing to hear non-witness matters, using AVL technology.

Legal aid – information on eligibility

Legal Aid Services has advised that when assessing legal aid where income has changed suddenly, they may consider the current income and project it forward for the next 12 months. This means where a person has recently become unemployed or lost access to income because of the covid-19 situation, Legal Aid Services will assess eligibility on a person's current income, if it is appropriate in the circumstances.

Family Legal Advice Service

The eligibility assessment for FLAS is based on the client's income for the past three months. However, clients may be assessed on current income when their financial situation has changed suddenly, as a result of separation and/or for someone whose proof of income from the previous three months is not valid, i.e. due to covid-19. To ensure that people needing family legal advice can receive the most appropriate service during the covid-19 emergency, FLAS may now be delivered by online video chat services. Providers will continue to be responsible for establishing people's eligibility seeking the service and must continue to retain evidence for audit purposes. Providers must obtain information from the person sufficient to complete the application form, except for the person's signature. They must sight the relevant identification and eligibility documents and note appropriate information about them. For identity documents, the document name, number, date issued and expiry date should be retained. For eligibility purposes, providers should retain at least a description of the documents reviewed, their date and the 3-month income they established.

Guidance on executing wills and EPAs

The New Zealand Law Society's Property Law Section has released some [guidance](#) on executing wills and EPAs during the covid-19 lockdown.

Family Dispute Resolution services

As advised in a previous bulletin, FDR providers are still offering services. Click [here](#) for more information on the Family Court page of the Ministry of Justice website.

Law Commission survey – succession law

The Law Commission has published a [practitioner survey](#) seeking input on the issues that arise under New Zealand's succession law. This is a valuable opportunity to assist the commission to scope the issues affecting testate and intestate succession. The survey and more information is available on the Law Commission [website](#). The survey is open **until 31 May 2020**. The commission intends to consult publicly at a later date but welcomes input from the profession at this early stage of the project. In light of the covid-19 situation, practitioners are able to discuss their feedback with the Law Commission by phone instead of, or in addition to, providing written responses. If you are interested in scheduling a phone discussion, please email sul@lawcom.govt.nz

Covid-19 time capsule project

An FLS member emailed us a "[covid-19 time capsule project](#)" sent to her by some fathers in California who have 7-year old twins. This may be useful to give to your own children or your child clients who may be struggling with the current lockdown period.

Kirsty Swadling

FLS Chair