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Family Law Update - 21 September 2021

Tēnā koe

Judge de Jong, in consultation with Judges Pidwell, Maude and Mahon, has prepared the following Alert Level 3 notice that takes effect on Monday 27 September.

Alert Level 3

1. While the Covid-19 Alert Level will reduce from Level 4 to 3 tonight, the situation is no less serious because there are still community cases of the Delta strain.
2. The Family Court protocol for Alert Level 3 is available [here](#). In real terms our registries and courts will continue to operate in a similar way to Alert Level 4.
3. While there is some scope under the protocol for in person attendances (see paragraphs 16 and 21 of protocol), the Waitakere and Northshore Court facilities do not comply with Alert Level 3 safety requirements. Auckland and South Auckland Family Courts will only be able to conduct face-to-face hearings or conferences in very limited circumstances. This will require the agreement of all involved, it will need to be priority protocol case, and everyone will need to strictly comply with Covid-19 safety requirements.
4. All registry counters will remain closed under Alert Level 3.
5. All applications may continue to be filed electronically.
6. As affidavits cannot be signed and sworn in the usual way, please remember there are essentially two ways to complete compliant affidavits/declarations:
 - a. parties/witnesses may sign and swear/affirm their document by using an audio visual or audio link with an administrator (someone authorised to take affidavits/declarations) and “as soon as practicable” the deponent must send their signed document (or a photograph

or scan of signed document) to the administrator for signing – see clause 4(2) of the [Epidemic Preparedness \(Oaths and Declarations Act 1957\) Immediate Modification Order 2020](#).

b. Otherwise there remains scope to file unsigned affidavits/declarations but only if the provisions of rule 162A(2)(a) and (b) and (4)(a) and (b) are satisfied unless the deponent is unrepresented and, in that case, rule 162A(5) applies. It is your obligation as a lawyer to ensure your undertaking provided in terms of rule 162A(4)(b) is satisfied. Click [here](#) for rule 162A.

7. A reminder that service by bailiffs is not available until further notice. This means service may be delayed unless electronic service can be affected in terms of rules 107A and 127A of the Family Court Rules 2002. Please ensure you take adequate instructions and file supporting evidence to satisfy the requirement that “at the time of service, the recipient regularly used that electronic address” – rules 107A(2) and 127A(b). Otherwise, your electronic service may not be compliant.

8. Direction/judicial conferences will continue to operate electronically. Priority short cause hearings may also be the subject of electronic call overs where necessary to manage risk and identify suitability for an electronic submissions hearings or limited evidential AVL hearings, if necessary and appropriate. Counsel and parties will receive further information and/or log-in details from the registry.

9. Mental Health hearings in our region will continue to operate by AVL/VMR.

10. Thank you to those who responded to your FLS representatives about the prospect of conducting judicial settlement conferences “virtually” by MSTeams. There appears to be widespread support to use MSTeams for COCA cases and mixed support for PRA cases (perhaps because of the number of documents this can involve). Some priority protocol judicial settlement conferences will therefore be arranged but can only proceed in this way if everyone is able to connect.

11. All registries will respond to urgent requests that fall within the Alert Level 3 priority protocol in terms of urgent safety, liberty, protection, national/community interest, vulnerability and public order.

Judge Lex de Jong

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