

FAQs relating to Covid-19

INFORMATION

Where can I find the latest, reliable information about what is happening about covid-19?

Below are useful links that provide reliable information on the latest developments.

[Ministry of Health](#)

[New Zealand government](#)

[World Health Organisation](#)

Where can I find the latest information about the Family Court from the Family Law Section?

We will be placing all bulletins on the home page of our website – www.familylaw.org.nz so there is no need for a username and password. This FAQ document is updated as new information comes to hand – it is also on the home page of the FLS website.

Where can I find the latest information from the Law Society?

The Law Society are monitoring developments on a daily basis in order to update the profession. Click [here](#) for updates from the New Zealand Law Society in terms of covid-19.

ESSENTIAL SERVICES

Are family lawyers defined as essential services?

The [government website](#) lists out essential services which includes courts, tribunals and the justice system.

In terms of family lawyers, a letter from the Chief District Court Judge addresses the priority of [proceedings](#) in the Family Court. (see below) The overarching principles guiding these priorities are:

- Liberty of the individual;
- protection of the at-risk or vulnerable, including children;
- the national and community safety interest;
- facilitating and promoting public order.

The view of the FLS is that family lawyers would come under essential services if the matters they are attending to fit into the priority of proceedings that are guided by the overarching principles.

COURT SERVICES

How will the courts operate over the level 4 alert period?

The Chief Justice has [outlined](#) how the courts will operate over this period. This includes:

- only priority proceedings are to be heard

- remote participation is to be used predominantly
- court attendance may sometimes be required, safety is paramount
- filing by email only
- filing fees may be waived

What matters will the District Court prioritise during alert level 4?

The selection of priority proceedings are guided by these over-arching principles:

- Liberty of the individual;
- Protection of the at-risk or vulnerable, including children;
- The national and community safety interest;
- Facilitating and promoting public order.

What are the priority proceedings in the Family Court during alert level 4?

- 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; and
- 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.

Will I have to appear in person in the Family Court for any priority proceedings?

In the Family Court, counsel are to appear by telephone or AVL, and if facilities are not available, in person.

Has this changed since alert level 4 was introduced?

Yes, on 8 April the Chief Justice [wrote](#) to the profession, outlining some changes. 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.

How will the courts operate under alert level 3?

On 23 April, the Chief Justice [wrote](#) to the profession setting out how the courts will operate under alert level 3 which begins at 11.59pm on Monday 27 April but will change the courts operation from Tuesday 28 April.

Will the types of proceedings be expanded over alert level 3?

Yes - under alert level 3, the courts will continue to expand the types and volumes of work that they do. This will involve a mixture of in-person hearings, hearings in which some participants may appear remotely, and virtual hearings in which no one (except perhaps a Registrar who is operating the recording system) will be in a courtroom.

How will the courts operate under level 2?

On 13 May, the Chief Justice provided an [update](#) to the profession and the various court [protocols](#) that will operate during alert level 2. Please note the courts will start to operate under alert level 2 **from Monday 18 May** to enable people to make necessary arrangements.

Are there regional differences in the protocol with various Family Court registries?

Yes - the protocol recognises that there are likely to be regional variations and solutions that will be necessary to best address local issues. Local registries will communicate directly with family lawyers practising in their regions.

How will the Auckland Family Courts operate under alert level 3?

Again, different registries will advise local lawyers on how matters will operate in their region under alert level 3. Below is information in respect of South Auckland, Waitakere and Auckland central:

Waitakere (as at 22 April) – click [here](#)

South Auckland (as at 24 April) – click [here](#)

Auckland central (as at 23 April)– click [here](#)

What if I am over the age of 70 or have underlying health issues?

Practitioners who are vulnerable either by age or due to health conditions should raise with the court at the earliest opportunity attendance at hearings by remote means. The courts will strive to accommodate such requests.

Will there be more registry staff at court during alert level 3?

The Ministry has been building up staffing levels over the last few weeks to the maximum consistent with physical distancing. Other staff will continue to work remotely. While there will be more court staff numbers under level 3, there will still be lesser staff numbers that would otherwise be under normal circumstances.

Will I continue to get paid if I am working on cases that have been assigned to me by the Family Court?

Yes, the ministry has confirmed it is continuing to pay court-appointed counsel invoices in the same way as normal.

SIGNING AND SWEARING AFFIDAVITS

How do I comply with the Oaths and Declarations Act in terms of the swearing of affidavits?

The Covid 19 Response Urgent Management Measures Legislation Act is now law. The bill, amongst other things, adds District Court Judges to the list of those who can alter the rules of the court.

On 31 March, the Principal Family Court Judge issued the following [guidelines](#) for family lawyers.

Has there been a change to the Oaths and Declarations?

Oaths & Declarations

Yes – a notice modifying the Oaths and Declarations Act 1957 have now been gazetted:

- [Epidemic Preparedness \(Oaths and Declarations Act 1957\) Immediate Modification Order 2020](#)

Have there been any other law changes in respect of family law?

Yes - a notice modifying the Wills Act 2007 has now been gazetted:

[Epidemic Preparedness \(Wills Act 2007—Signing and Witnessing of Wills\) Immediate Modification Order 2020](#)

Have there been proposed changes to the Family Court Rules 2002?

Yes - the Family Court (Emergency) Amendment Rules 2020 propose changes to the rules, including changes in respect of:

- Definitions of “emergency” and “electronic address”
- Electronic filing
- Service of documents in an emergency
- Unsworn affidavits

Have the proposed changes to the Family Court Rules been enacted?

No as at 24 April, the changes are still proposed amendments to the Family Court Rules.

What if I don’t have access to a printer or scanner?

If you don’t have access to a printer or scanner, [Adobe Acrobat Reader](#) may assist. It allows for an electronic signature to be affixed to a pdf document.

Should client’s take the affidavit to court so the registrar can witness it?

No - taking affidavits to courts is not an option. People will not be let into the court buildings for this purpose and many courthouses are locked as they have limited security working and are trying to comply with social distancing requirements.

How do I swear an affidavit remotely?

On 9 April, NZLS CLE Ltd provided a free webinar to the profession on “witnessing remotely under the Oaths and Declarations Act. This can be viewed [here](#).

WITNESSING WILL AND ENDURING POWERS OF ATTORNEY

Is there any guidance available on witnessing wills and enduring powers of attorney in terms of the covid-19 situation?

The New Zealand Law Society's Property Law Section has released some guidance on executing wills and EPAs during the Covid-19 lockdown. [Read more](#). A notice modifying the Wills Act 2007 has now been gazetted:

[Epidemic Preparedness \(Wills Act 2007—Signing and Witnessing of Wills\) Immediate Modification Order 2020](#)

The Property Law Section will be considering them against the guidance it has already provided, although the notices will of course take precedence in the event of any inconsistency.

FILING APPLICATIONS

Should I be continuing to file applications without notice and on notice?

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 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.

What if the matter is urgent?

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.

Do I send in the original documents following electronic filing?

No - 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.

How do I pay the filing fee?

A fee waiver is currently in place for all filing fees. The fee waiver is to apply to **all** fees payable and not just to fees payable for essential work.

What email address do I use to file electronically?

All email addresses to use for electronic filing are available from the ministry's website – click [here](#).

What are the various email addresses for filing in Auckland?

For **ALL** urgent/e-duty applications – AK-METRO@justice.govt.nz

For **ALL** other on-notice applications – ApplicationsManagement-Team@justice.govt.nz

For filing of follow-up documentation i.e. reports, submissions, memoranda, urgent requests for referral to a judge, case management requests, etc - these should continue to be filed via the relevant generic CMT email relevant for each court:

Auckland District Court Family matters - CMT-AKLD@justice.govt.nz

North Shore District Court Family matters – CMT-NS@justice.govt.nz

Manukau District Court Family matters – CMT-MAN@justice.govt.nz

Waitakere District Court Family matters – CMT-WTK@justice.govt.nz

For all queries/filing of submissions for long cause fixtures - AKMetro_LCH@justice.govt.nz

Mental Health applications/reports etc – AMMH@justice.govt.nz

For **ALL** civil applications and other documentation - Auckland_Civil_CMT@justice.govt.nz

What should be included in an affidavit accompanying a without notice application to apply for or amend or enforce parenting arrangements due to covid-19?

Judges on the e-duty platform have encountered a lack of specificity in some affidavits filed in support of without notice applications seeking orders for day-to-day care and/or the enforcement of day-to-day care orders due to covid-19.

It is imperative that affidavits contain all relevant information including, but not exclusive to, the following:

- the terms of the parenting order;
- the occupants of the property/properties;
- whether any occupants are engaged in an essential service;
- steps taken to ensure compliance with the lock down;
- comprehensive details of any health issues;
- the mode of travel between the respective homes and who will undertake that travel; and
- the distance between the homes.

Those filing without notice applications should ensure the relevant information is contained in the affidavit accompanying the application in order for these to be dealt with in a timely way.

What if my client can't sign the affidavit?

Wherever possible affidavits should be signed. While many parties may not have the ability to scan documents, some may be able to take a photo of the last page signed by them and email that to their lawyer. That could then be included as the last page of the filed document. **Please note** that the lawyer's certificate must specify whether the electronic copy was provided, or read, to the client and what process was adopted thereafter. This [memorandum](#) is an example of good practice and could be used as a precedent by members.

Also, refer above to the webinar organised by CLE on remote witnessing.

What if my client has to file themselves as I can't "act" and they don't have access to computer or the internet?

We believe that filing electronically on behalf of a client who does not have access to a computer or the internet in circumstances where lawyers are unable to act is permitted so long as you are not recorded on the application as the lawyer for record. We have asked for confirmation on this from the ministry.

Should I make more use of joint memoranda?

We encourage lawyers to talk to each other and file joint memoranda where possible so the matter is able to be dealt with either on the papers or by teleconference if necessary.

SERVICE OF DOCUMENTS

Are bailiffs still operating under alert level 4?

Yes - 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.

How do I address the issue of service in without notice applications under the alert levels?

The issue of service should continue to 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.

ORANGA TAMARIKI

Has there been any changes made to Oranga Tamariki practice in light of covid-19?

Yes - Oranga Tamariki has started putting together how it is amending its practice in light of covid-19. It is available [here](#).

Is there a change to Oranga Tamariki practices under alert level 2?

Oranga Tamarki has provided guidance for [Family Group Conferences](#) and [whanau contact arrangements](#) for tamariki in alert level 2. More guidance on alert level 2 is available from the Ministry's [website](#).

INFORMATION FOR YOUR CLIENTS

What do I tell my clients about their Family Court proceeding at this time?

The Family Court are only dealing with urgent matters during the level 4 alert period. Click [here](#) for a useful template you could adapt to send to you clients.

What do I tell my clients about their shared care arrangement?

The Principal Family Court Judge has issued [guidance](#) on shared care arrangements. A [paper](#) prepared by FLS member Prue McGuire may also be of assistance. Lawyers should remind parties that:

- These are truly exceptional times;
- The reason for the extreme restrictions is to try and preserve lives. There will be short term inconvenience and sacrifice by many;
- This situation will be finite – at the moment we are talking about 4 weeks only;
- Any self-help attempts are likely to be looked on adversely by the court in future proceedings;
- Warrant proceedings are unlikely to be of assistance. They may well not be given priority and it will be difficult to get anyone to enforce one given the likely stretched resources in the current crisis;
- Focus on practicalities and supporting children in ways that do not risk transmission of the virus e.g. regular video chats with other people who they usually spend time with.

There are also [FAQs](#) on shared parenting on the Ministry of Justice website.

How is “community” defined?

There is no legal definition of “same community” in this context at this time. We suggest lawyers follow the guidance as set out by the Principal Family Court Judge and the FLS (as above) and use common sense and their professional judgement when advising clients. Travel between homes needs to be consistent with [Ministry of Health guidance](#) (external link).

Children can continue to move between two homes, unless:

- it is more than one hour's drive between homes
- the child is unwell. In this case the child should not travel between homes until they are well
- someone in either home is unwell
- someone involved (i.e. the child or people in the home they have been in or will go to) has been overseas in the last 14 days, OR has been in close contact with someone who is currently being tested for COVID-19 OR has been in close contact with someone who has the virus or is being tested.

Will supervised access still occur?

Family lawyers need to recognise the realities of why a level 4 alert has been put in place. This is exceptional and for the short term (at this stage). The current situation may mean that some arrangements for supervised access, particularly at contact centres, may not be able to occur.

Is there any other information I can provide my clients?

Our friends and colleagues at the Australian Family Law Section are happy to share its [top 10 tips](#) with Kiwi family lawyers to pass on to their clients about managing co-parenting in a pandemic. You can also direct your clients to the [FAQs](#) on the Ministry of Justice website.

Are there resources available for children and/or young people?

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 [Siouxsie Wiles](#)

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

In addition, an FLS member as 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.

FINANCIAL ASSISTANCE

Is there any financial assistance available to me if I employ staff or I have lost income?

It may be that some practices will suffer a downturn due to the impacts of the virus. In such circumstances there is a government assistance package for businesses including those who are self-employed. The details can be found [here](#).

What if I employ staff?

Click [here](#) to access information about leave, holidays and other wage subsidies available because of covid-19. Click [here](#) to read more information about the government's support package at this time.

FAMILY DISPUTE RESOLUTION

Are FDR providers still operating during covid-19?

As far as the FLS is aware providers are still operating. We suggest you contact the FDR providers.

What matters are FDR providers mediating during covid-19?

- How can parents work together to keep children safe?
- How can parents talk about COVID-19 with their children?
- Should the parents stick to agreed care arrangements or is there a need to change existing care arrangements for a period of time?
- Is one parent an essential worker?
- Are the parents wanting to share the load more while they are both at home?
- If one parent can't physically see the children, how can they still maintain meaningful contact?
- How will parents share information about their own health - as well as the health of the children?
- If one parent can't see the children now, can they have extra time later?
- Economic realities – how will COVID-19 impact the family economically? Are parents worried about job losses or loss of income and child support?

What if a party's income has stopped due to covid-19?

There is provision within the funding form where a person's income has changed in the past three months and a text box provided to explain the circumstance. The guidelines support this with the following which details acceptable evidence:

- a declaration that the applicant has had no income and that includes the number of dependants and a statement explaining why the applicant has had no income and how they have supported themselves without any income. A declaration of this sort is suitable for applicants whose financial situation has changed suddenly and cannot provide proof of three months' income; for example, they may be in the process of applying for a welfare benefit, or may have left work to care for children.
- any other evidence deemed sufficient by the person carrying out the funding determination.

The ministry has advised that this should not be a barrier for anyone wanting to access FDR who may have lost income due to covid-19, however it will be up to FDR providers to assess these on a case by case basis.

LEGAL AID INFORMATION

Will Legal Aid Services continue operating during alert level 4?

Yes – Legal Aid Services is an essential service and they will be continuing functioning to support the essential services that have been agreed by the judiciary.

Are there any changes to how Legal Aid Services will operate during alert level 3?

Legal Aid Services has advised that under alert level 3, all legal aid policy and process changes made in respect of alert level 4 will continue to apply. Click [here](#) to view a number of FAQs for legal aid providers that are available on the Ministry's website.

Will I continue to get paid as a legal aid provider?

Yes – Legal Aid Services will continue to pay invoices as quickly as possible. However, LAS are functioning at a reduced capacity so the usual service-levels may not always be possible.

Have income level thresholds for FLAS and legal aid been changed at this time?

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.

Will I still need to get a legal aid application form signed by my client?

No - for the foreseeable future, legal aid will accept any applications that have not been signed by the client. However, providers need to sign the application on behalf of their client and state the reason on the form for not being able to obtain the signature.

My legal aid provider contract is coming up for renewal – what do I do?

All current legal aid provider contracts and any approvals due to expire within this time will be extended until June 2021.

What is happening to my application for lead provider status?

Due to our re-prioritisation of processes and resources, some of the current approvals processes will be affected. Those who have already submitted lead applications will be contacted directly to discuss the expected assessment timeframe.

What if I have not yet sent in my application for lead provider approval?

Providers who are yet to submit applications for lead approval are encouraged to delay submission until further notice.

What about an application for supervised approval?

Providers applying for supervised approval can continue to do so normally.

What if I require urgent approval?

Those providers who required urgent approval to act in a specific case can still apply for a limited approval. Limited approvals are available in proceedings where:

- You are acting (or have acted) in a related proceeding, and/or;
- You have relevant specialist knowledge and skills, and/or;
- There is a shortage of existing providers in the region with the necessary skills and experience to act in the proceeding.

More detailed information about limited applications can be found on the ministry [website](#).

What if I am due for an audit by Legal Aid Services?

These are not essential services at the current time. All provider audits will be paused until further notice. If Legal Aid Services require any information from you regarding audits that are already underway, they will contact you directly.

What if I am the subject of a Legal Aid Services complaint?

Legal Aid Services is pausing all activity surrounding complaints investigations that are currently underway and no further action is required by those providers affected by this notice.

Who do I contact if I have questions?

If you have questions regarding approvals, audits or complaints please direct them to legalaidthe@justice.govt.nz

If you have any other queries please contact lsc@justice.govt.nz.