

**INTERNATIONAL ASSOCIATION OF JUDGES**  
**QUESTIONNAIRE IMPACT COVID-19 PANDEMIC ON COURTS**  
**RESPONSE FROM THE JUDGES ASSOCIATION OF NEW ZEALAND**

June 2020

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## Context

The perception is that Covid-19 was late to infiltrate New Zealand. The government knew of the threat to our island nation by late December 2019. Concerns raised about infection arriving from overseas led to the first response on 28 January 2020 when an infectious and notifiable disease order was issued requiring health practitioners to report any suspected Covid-19 cases. Shortly thereafter inbound foreign travellers from China and then Iran were denied entry. When a citizen in her 60s returned from Iran on 26 February 2020, New Zealand became the 48th country to have a confirmed case of the disease.

A four-level alert system was announced by the prime minister on Saturday, 21 March 2020. Alert Level 1 represented the least risk of disease transmission in the community and Alert Level 4 the highest. The country was placed at Alert Level 2. There were, by then, some 50 diagnosed cases of Covid-19, all related to international travel. Designed to guide public expectation and encourage compliance, each level was labelled with a simple one-word message and a description of increasingly severe restrictions on the free movement of people and the gradual closure of all but essential services.

The borders were soon shut down, except for returning citizens. Public facilities and government offices closed, as did schools and universities. All businesses were asked to have employees work from home. We were also told to prepare for, and expect, a swift move to Alert Level 4 when some 5 million people would be confined in their usual residence. Then on March 25, less than four weeks after New Zealand's first Covid-19 case was discovered, the government adopted a “go hard, go early” response. A seven-day renewable national state of emergency was declared under the Civil Defence and Emergency Act 2002. The nation then entered Alert Level 4.

The Chief Justice, the Right Honourable Dame Helen Winkelmann, communicated with the legal profession throughout this time and on 25 March 2020 sent a letter to the legal profession entitled *Covid-19—court operations at Alert Level 4*. The correspondence emphasised that “New Zealand courts must continue to uphold the rule of law and to ensure that fair trial rights, the right to natural justice and rights under the New Zealand Bill of Rights Act are upheld” and advised the following:

- Only proceedings that affect liberty or personal safety and well-being of the individual, or that are time critical, should be heard during Alert Level 4.
- Courts will use remote participation to the maximum extent possible. Where court attendance is unavoidable, the safety of the public, court staff, and members of the legal profession is paramount.
- Courts will not receive in-person filing, although for those with no access to email, filings can be by post. Courts will waive filing fees while on Alert Level 4.
- Courts will exclude from courthouse members of the public whose attendance is not required, except for accredited members of the media.

The business of the courts was curtailed. Many courts closed. Jury trials were suspended until at least 31 July 2020. While courts and judges were declared essential services for safety reasons, access to courts was restricted. Our Supreme Court and Court of Appeal, while closed, continued to hear and issue appeal decisions. Other courts heard matters on the papers or relied solely on remote participation as the predominant means of hearing, although in-person attendance was permitted in some cases. During the Covid-19 emergency the chief justice — together with the heads of bench supported closely by the Ministry of Justice — rapidly ensured proceedings that affected the liberty or safety of individuals, alongside time-critical decisions, were prioritised. At each alert level, protocols were published setting out the way in which each of the courts would operate.

Parliament passed the Covid-19 Public Health Response Act 2020 on 13 May 2020. Then at 11:59pm, after seven weeks of isolation with the rate of transmission under 0, the country very gradually re-

opened for business. By then most judges had returned to their resident courts. Court proceedings resumed on 18 May 2020 under new Alert Level 2 protocols designed for each jurisdiction. At midday on Friday, 29 May 2020 the ‘gathering’ restrictions at Alert Level 2 were relaxed, allowing for up to 100 people to safely congregate.

On Monday the 8<sup>th</sup> June 2020, the government announced it was ending all coronavirus restrictions after the last known patient recovered and the country was free of active cases. The authorities lifted the last internal containment measures at midnight. Shops, restaurants, cafés, bars and public transport resumed almost normal operations, limits on public gatherings were removed and social distancing is no longer required although it will still be encouraged.

The chief justice released a media statement confirming the Alert Level 2 protocols for all courts would be suspended from midnight. Physical distancing will not be enforced in courts. However current hygiene measures were to be maintained, as was contact tracing. Under Alert Level 1 the courts essentially return to normal operations while maintaining those safety measures.

These events are so recent that the answers we provide are, of necessity, only preliminary and brief. The High Court and District Courts and Family Courts, where most of the criminal and civil proceedings are heard, continued to safely operate, although at reduced capacity. The answers we give are most relevant to the experience of those judges who continued their essential frontline service during the crisis. However, as Covid-19 impacted all judges and all courts, a brief description of effect and future recovery plans is included.

The answers are supplemented by a hyperlinked timeline of the various legal instruments promulgated since February 2020. The various protocols for each level can be found in this link <https://www.courtsofnz.govt.nz/publications/announcements/covid-19/court-protocols/>. Sample media releases describing the Alert Level 2 protocols for court proceedings are in the appendices.

New Zealand reported its first case of Covid-19 on February 28. The country’s total number of confirmed cases stands at 1,154, with 22 deaths. A commentator used the rugby analogy of a rolling maul to describe New Zealand’s approach to eliminate community transmission of the Covid-19 virus. Like a maul, he said, the law has evolved, and been strengthened and sharpened, as the country was locked down in their household bubbles. The game of rugby relies on two things. A great captain and a dedicated team. The calm strength and leadership of our chief justice and a dedicated judicial team has ensured confidence in the rule of law during this emergency.

I am very grateful to Justices France and Miller who, together with District Court Judges Binns, Cocurullo, Layne Harvey, Goodwin, and Jeff Smith, generously contributed to this report.

**Judge Gerard Winter**

**President J.A.N.Z.**

**Te Hunga Kaiwhakawa o Aotearoa**

**Judges Association of New Zealand**

## **1. What are the main problems your Court has experienced at a general level because of any legal reforms implemented in your jurisdiction, if any, to cope with the Covid-19 pandemic?**

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### *High Court and District Court*

Individual jurisdictions developed protocols for each of the four alert levels announced by the government. These protocols clearly communicated staffing, safety, court access, and court status issues for the public. The protocols also discussed how judges would work at the level under consideration. A protocol example for Alert Level 2 can be found at Appendix 4.

At Alert Level 4, the business of the courts was curtailed. Many District Courts closed. High Court circuit work was dealt with remotely. Jury trials were suspended until at least 31 July 2020. Access to the frontline courts was restricted. Remote hearings were the predominant means of hearing, although in-person attendance was permitted in some cases.

The postponement of jury trials until at least 31 July 2020 remains the main court impact. However, as New Zealand has an established system of judge-alone trials, the chief justice has been able to use existing law to encourage that mode of hearing.

Compounding jury trial postponement and the adjournment of existing judge-alone trials for hygiene and safety reasons, particularly in the District Court, until Alert Level 2 was declared, created a significant backlog of work. Whilst additional judicial resources are being made available to cope with these backlogs, physical resources, e.g. courtrooms, prosecutors, security, and defence counsel, will continue to restrict this response.

At Alert Level 3, with slightly relaxed isolation rules, a broader range of proceedings could be considered. At Alert Level 2, the High Court and District Court conducted all scheduled work except for jury trials. Under Alert Level 1 the Courts essentially return to normal operations.

A significant reduction in administrative staff and the initial lack of resources impacted the processing of files. That issue was soon resolved. Safe sitting practices, isolation from other court users, and the development of standalone teams of judges were cooperatively developed at individual courts. Sentence hearings have continued in person where the offender is bailed. Appearances by defendants in custody have been through an audiovisual link, which has worked satisfactorily.

Community magistrates are lay judicial officers. They, together with justices of the peace, also undertake judicial duties. Their role was designed to increase community involvement in the justice system and to reduce delays by freeing up judges to deal with more complex matters. At Alert Levels 4 and 3 they could not continue their most valuable services for the District Court. Arrest courts continued before District Court judges with in-person appearances where the risk of transmission was low.

Many frontline judges commented on additional complexity factors in hearings with judges having to factor into decision making unique Covid-related considerations. In bail applications, for example, if the prisoner was granted bail, how would they be transported safely from a remand facility to a 'safe home' and what assurances were there that the home they were going to was considered 'safe'?

## *Family Court*

At Alert Level 4, all Family Court judges and registry staff left their resident court or chambers and worked remotely from home. All court matters were, at first instance, adjourned and placed in “ready lists” on hold, without re-scheduling of court hearing time. There were no ‘in-person’ hearings.

For several years, the New Zealand Family Court has used a uniquely designed communications platform called ‘E-Duty’ that allows any judge, anywhere, to log into a closed network and resolve simple or urgent applications online. As explained elsewhere in this report, in addition to this electronic medium, the Ministry of Justice quickly scaled up the use of virtual meeting rooms (VMR) allowing remote participation of parties, lawyers, witnesses, and a judge in a private virtual hearing.

In Alert Level 4, this allowed an immediate and relatively smooth transition for these judges to determine urgent matters. The principal Family Court judge, assisted by a dedicated skeleton registry staff, was able to identify priority matters against two criteria: safety and protection of rights. Local liaison judges in each court then allocated the hearings and arranged for disposition daily by E-Duty, telephone conference, or in some cases a short hearing on submissions or a pickwick hearing.

At Alert Level 3 there were generally no in-person hearings. Rather a combination of E-Duty, VMR, and predominantly teleconferencing were used to determine applications. However, as there were difficulties with VMR stability and security at varying levels across the network, some courts took the decision to preclude VMR being used for list work. In addition, at the larger courts, the judges took a decision to personally triage all the adjourned work. Any urgent matters were immediately transferred to “Covid courts” and progressed by teleconference.

At Alert Level 2, in-person appearances and hearings returned. While the machinery of justice operated more freely, continuing public health measures meant in-person participation remained constrained and varied between courts according to the facilities available. Safety, hygiene, and social distancing limited physical access to courtrooms. Judges determined on a case-by-case basis who, apart from parties and counsel, should be admitted to individual courtrooms. All matters on the ready list were called and allocated a hearing time. Because of judicial triage, a familiarity with files allowed for a finer identification of essential case issues and a more accurate assessment of hearing times, or potential for out-of-court resolution by alternate means.

### *The Maori Land Court*

A court of record, the Māori Land Court was established to recognise the significance of Māori land as a heritage of special significance to Māori. The court provides a court service for all owners of Māori land, that promotes the retention and use of Māori land and facilitates the occupation, development, and use of that land.

### *The Waitangi Tribunal*

A standing commission of inquiry, the Waitangi Tribunal makes recommendations on claims brought by Māori relating to legislation, policies, actions, or omissions of the Crown that are alleged to breach the promises made in the Treaty of Waitangi.

Tribunal hearings by their very nature have a long hearing cycle — at times stretched out over several years — with relevant parts of the case being heard in blocks of a week or more. These hearings require significant planning and preparation and usually draw large crowds. The day in court for tribal communities who have waited for many generations to have their time and press their claim is much anticipated.

Pre-Covid it would not be uncommon for 10-20 appearances in person or by counsel to be made on any matter. In-person appearances of that scale were not safe during Alert Levels 4 and 3 so both the court and tribunal adjourned all their in-person list court sittings until the end of July. This was a great disappointment to many claimants. It remains very difficult to dissuade them from some form of limited in-person hearing

There are three significant and unique challenges posed by these proceedings during a period of Covid control. Many of these tribunal and court hearings take place on tribal land and communities as opposed to formal courtrooms. Crowd control at these marae and community venues can be challenging in terms of egress and contact tracing, especially during morning and afternoon tea and lunch breaks which, in accordance with very important cultural practice, are catered for at the marae or other venue. Second, many of the usual attendees and participants are also in the at-risk category i.e. respiratory-related illnesses and over 65–70 in age. Finally, counsel has also been hampered by their more limited engagement with their clients, many of whom are also elderly and at risk. Securing instructions and confirming final briefs and submissions takes much longer than usual. This affects the carefully planned programmes of work as procedural deadlines cannot be realistically met and requests for time extensions are now common.

Judges have managed these difficult times by multi-counsel judicial conferences, where 10–20 individuals join for a judge-lead Zoom meeting. Experience has shown this to be an efficient, but much slower, way of progressing proceedings with each call adding 25–30% more hearing time than usual.

When in-person hearings recommence at Alert Level 2 or 1, sitting with safe practice and physical distancing will be important. Over a third of the current complement of judges and tribunal members are in the high-risk age category for Covid infection. While younger judges and members will preside, others will join the hearings remotely by audiovisual link, and so engage with witnesses and counsel in that fashion

The net result for both the court and tribunal will be further delays, into the foreseeable future balancing a host of overlapping, and sometimes competing, priorities and challenges.

### *Environment Court*

The Environment Court determines all contested applications for the use of land, water, and air in New Zealand.

At Alert Levels 4 and 3 most judges and registry staff left their resident courts and offices to work from home. All in-person appearances were rescheduled with documentary timetables extended.

Most work was considered on the papers with the aid of telephone conferences. The commonplace mediations of land-use disputes continued by audiovisual technology, primarily Zoom.

Several urgent cases were given priority based around criteria for potential health and environmental impact. These were case managed by a judicial telephone conference and then heard at Alert Level 3 with limited safety and social distancing allowing for two judges, 2 counsel, and one self-represented party appearing in person. Another counsel attended by audiovisual link.

The restrictions on resources of staff and venues and the requirements of each alert level have restricted available court hearing time and created a backlog from necessary adjournments and rescheduled time-tabling orders.

Alert Level 2 saw a gradual return of in-person hearings managed in accordance with safe-sitting practice and social distancing.

**2. Do these legal reforms, if any, affect rule of law or human rights principles and, if so, please enumerate them?**

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***General comment:***

The solicitor general is quoted as saying Alert Level 4 and 3 had "the most significant impact on human rights in living memory." These stricter levels raised the potential for significant and very familiar human rights' issues especially around freedom of movement, peaceful assembly, cultural, and religious freedoms. Several of the measures imposed raised potential issues for fair-hearing rights in court such as audiovisual processes where litigants, lawyers, defendants, prosecutors, and the judge were frequently subjected to unreliable or unaffordable, and often unfamiliar technology. Those issues will be resolved by our Human Rights Commission and, where necessary, by judicial review. At midday on Friday, 29 May 2020, the 'gathering' restrictions at Alert Level 2 were relaxed allowing for up to 100 people to safely congregate with exceptions, for example, no dancing in bars and clubs is permitted. This relaxation will ameliorate many concerns.

***High Court and District Court***

The concerns that primarily arose are mostly related to fair-trial rights. Delays in the justice system will inevitably impact remand time, time to trial, and time to sentence. New Zealand's existing system of judge-alone trials will usefully address some of that delay. For regionally based, self-represented, or poor parties particularly, limited internet and video-conferencing facilities affect their access to justice and their perception of the fairness of the process.

Many of these risks have been triaged by allocating priority hearing time to prisoners on remand or litigants where personal safety is at risk. In addition, the flexible use of bail pending hearing has ameliorated the harsher impacts.

Bench leaders are currently working on safe ways jury trials might restart.

### **3. Have these legal reforms, if any, had any effects on the powers of heads of courts, judges and/or court administrators?**

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#### ***High Court and District Court***

Where the rules of court did not contemplate a pandemic response to problem-solving, the courts have had to rely in some instances on its inherent jurisdiction to control practices and procedures to make directions to reduce the risk of Covid-19 transmission. The provisions of the Epidemic Preparedness Act 2006 were triggered by the giving of an epidemic notice by the prime minister. That act makes provision for prospective modification of various statutory requirements during an epidemic subject to the various process requirements in the act. Under that act, while an epidemic notice is in force, the judges specified in the act may “in any particular case modify any rule of court” as “necessary in the interests of justice to take account of the effects,” in this case, of Covid-19.

Generally, judges have not had their powers impacted by legal reforms. Although the powers have not changed, the way in which they are exercised has. However, this has been guided by a specialist “judicial steering group” that has, with agility and intelligence, developed at times innovative and always workable solutions for both the resourcing of courts and best practice. Acting upon their advice, the chief justice and heads of bench have then allowed for discretion to implement on-the-ground responses to local conditions.

**4. What has been the impact of the legal reforms, if any, on activity in your court and, if possible and appropriate, please provide information distinguishing between civil, criminal and administrative matters?**

*High Court and District Court*

The courts have run at approximately one-third of their capacity, however, judgement writing time and triage of court files were encouraged. Judges have been able to complete many reserved proceedings, especially appeals. The process of bulk triage of files by teams of judges has identified proceedings of greater need or cases where a fast and case-managed approach may lead to resolution. This has created additional capacity to address the inevitable backlog of cases in the second half of 2020.

Criminal:

All jury trials remain suspended until 31 July 2020. Apart from jury trials under the stricter Alert Levels 4 and 3, priority proceedings were triaged and continued, however, mostly by remote participation and audiovisual link. Under Alert Level 2 judge-alone trials proceeded with social distancing (at least one metre between participants) in the larger courtrooms.

Civil:

Ceremonial occasions and applications for admission of legal practitioners were suspended. They have now been rescheduled.

At Alert Level 4 the High Court was initially restricted to dealing with priority proceedings, namely proceedings involving liberty, health and safety, and time-critical events. These were heard remotely by telephone, audiovisual link, or VMR.

After approximately 10 days at Alert Level 4, and following the provision of further VMR and registry support by the Ministry, the High Court was able to resume hearing judicial reviews, civil appeals, summary judgments, statutory demands, and other interlocutory half-day or less fixtures that could be heard remotely.

During Alert Level 4 the High Court vacated all civil witness actions until 25 May 2020 to give practitioners and parties certainty. All civil witness cases that were vacated (but are now ready for hearing) have been reallocated fixtures prior to the end of August 2020.

At Alert Level 3 all scheduled civil work (apart from witness actions) were able to be dealt with either remotely or in person as appropriate. At Alert Level 2 the High Court resumed circuit work in person where required.

Regarding court registries, court front offices were closed to the public from 25 March 2020. Consistent with Alert Level 4, where possible, court staff, including research clerks, moved to work remotely. Some duties that could not be processed remotely continued. Filing of documents has predominantly been by the court's electronic document system and email. Payments for filing fees were waived in many cases. Where required they have been made by credit card using electronic forms.

**5. Do ‘urgent’ cases receive a different treatment in your court, and was a special legal definition or specification of ‘urgency’ introduced for court proceedings and trials?**

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*High Court and District Court*

All proceedings have been triaged on a priority basis. Priority has been given to persons held in custody or who are vulnerable or with special needs. For example, defendants who are in custody and applicants seeking immediate protection orders are given priority. The court has, wherever possible, endeavoured to hear these cases as a matter of urgency, mostly by remote participation or, if it could be safely arranged at controllable risk, in person. The resource allocation and technical support required to facilitate the matter, and the time-sensitive nature of the proceedings (for example, where an offender on long remand was approaching an equivalent ‘time-served’ sentence threshold) were also considerations.

*Family Court*

*See answer to question 1.*

**6. If applicable, does the amount of money and, more generally, the value at stake in the case play a role in the treatment of it?**

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*All Courts*

This is not a consideration that determines differential treatment.

**7. If applicable, in criminal cases, do those concerning arrested defendants receive a different treatment?**

*High Court and District Court*

Yes, defendants who are in custody continue to receive priority listing. Our priority has been in relation to persons held in custody or who are vulnerable or with special needs. The court has, wherever possible, endeavoured to deal with these persons.

**8. What has been the impact of such legal reforms, if any, had on legal deadlines and procedural timeframes?**

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*All courts*

Obviously timeframes have been pushed out due to the difficulty for the legal profession to comply with orders in the Covid-19 environment. At this stage, that effect is not particularly problematic, but could soon become so. Where trials or final hearings are delayed/suspended, the deadlines for complying with pre-trial requirements (for conferral, filing documents, etc.) were generally extended.

## **9. What is the role played in your court by IT, e-filing, smart and remote working in the management of cases as an effect of the legal measures, if any, implemented?**

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### *All courts*

While the use of audiovisual technology for vulnerable witnesses, distant witnesses, and remanded prisoners for remote participation in proceedings in New Zealand is common, the courts, pre-Covid, did not operate full remote-participation courts as a usual workstream. Pre-Covid the Ministry of Justice had remote participation communications technology. This was mostly used for joining participants in a virtual room for meetings. These VMR were not at scale for immediate deployment in a state of emergency.

In the lead-up to Alert Level 4 lockdown, the Ministry of Justice quickly and efficiently expanded the VMR capability to stand up a national core of remote-participation courts via VMR to ensure that essential court work continued. VMRs were combined to the audiovisual link suite, and VMR identifiers were dedicated to essential courts to ensure availability of the remote-participation process to this essential work.

Carrying out eFiling by an electronic document system and email was common pre-Covid. Any material received by the court by a means other than eFiling was additionally scanned or uploaded (depending on the format in which it is received) to our case management system. This has particularly assisted in staff working on matters from home without the need for access to physical files.

The Ministry of Justice has moved quickly to initiate significant development of a standalone, full remote-participation court, and testing is well underway. It is anticipated that by using the Microsoft Teams platform, judges might appear in court to conduct proceedings from their chambers and in some circumstances their homes. During the stricter alert levels, some judges piloted remote participation in court proceedings from their chambers using the existing VMR technology. The parole board conducted all its proceedings using existing audiovisual and VMR resources.

### *Family Courts*

The exception to this general description is that since 2012 urgent Family Court work, and since 2017 judicial decision-making in this jurisdiction, has been enabled in a fully electronic end-to-end on-screen process. Called National E-Duty it enables any judge anywhere to urgently determine applications. The pandemic notice and Alert Level 4 lockdown had, in effect, no impact on this work. To consolidate urgent Family Court work, a temporary process was implemented allowing for more regional, as opposed to national, electronic applications be considered.

### **Court of Appeal**

The Court of Appeal has for some years used electronic casebooks and permitted some remote participation by counsel over an audiovisual link, so it was able to adapt quickly to hearings by remote participation once the Ministry supplied VMRs so that judges and counsel could appear from their shelter-in-place locations and once there were enough registry staff to arrange the hearings. Hearings quickly resumed at close-to-normal volumes. The judges have now mostly returned to the courthouse, though counsel continues to appear remotely to avoid travelling to the court's locations in Wellington and Auckland, and it is also often necessary for one or two of the judges to appear by audiovisual link.

### **Supreme Court**

The Supreme Court was able to hear a substantive appeal using VMR. However, remote hearings were not suitable for other hearings on the court's programme over the lockdown period. Those cases have been able to be rescheduled promptly. While the courthouse was closed, registry staff and judges were able to deal with applications for leave electronically.

**10. What is the role played by JANZ in the drafting of such legal reforms? And 11. Was JANZ consulted by the Government before the adoption of these measures? Did the Government consult the High Council for the Judiciary and/or other judicial institutional instances or representatives before adoption of the aforesaid measures?**

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Regarding both questions, JANZ played no role and was not consulted. However, this is appropriate as JANZ is an independent association of individual judges.

The judiciary was not consulted about legal restrictions implemented to support alert levels. That was appropriate given that the judiciary may be called upon to adjudicate on the lawfulness of the restrictions. It was also strictly unnecessary to consult the judiciary because the restrictions all rested on legislation that deems courts an essential service and expressly exempts them from such restrictions. However, those drafting restrictions, and especially those offering official guidance about the restrictions, did not initially make it sufficiently clear that courts were exempt, and this led to confusion among court users. In response, the judiciary sought views of the profession about what future alert level restrictions ought to say to make it clear that courts could operate, and these views were forwarded to officials for their consideration. The judiciary was otherwise consulted in an orthodox way, through the rules committee and the chief justice's legislation committee, about some specific legislative amendments enacted in response to the pandemic. Heads of bench were also consulted by Ministry of Justice officials about pandemic contingency planning, including registry closures and staffing. Heads of bench agreed that in-person hearings would be limited to a small class of priority proceedings initially, envisaging that other business could continue remotely.

The chief justice established a judicial steering group to co-ordinate courts' responses to the pandemic and to work with the Ministry to ensure that courts and tribunals continued working safely. The establishment of this group was necessary to ensure an adept and adequately resourced governance process. That group established working relationships with senior officials to ensure that courthouses could operate in accordance with public health guidelines such as with limited foot traffic, hygiene protocols, and PPE. The group ensured remote participation capacity and processes were appropriately built and ensured that enough registry staff were working in registries or remotely to support work scheduled by the judges. It also liaised closely with leaders of the bar.

At each alert level, protocols were published setting out the way in which each of the courts would operate. The judicial steering group process worked satisfactorily, ensuring good coordination between the judiciary and officials and the legal profession. It has led to a sector-wide initiative intended to improve the operation of criminal processes so that every appearance counts. Most courts and tribunals have now resumed operations using a mix of in-person and remote participation.

The chief justice also established an Open Justice Committee reporting to her to address open justice issues arising out of the effects of Covid-19. The committee's terms of reference include consideration of the ways in which courts are operating and then identifying how, given these models, public access to hearings could be maintained.

The crisis has highlighted a need to reverse a trend toward separating registry and judicial functions, with the former controlled by officials who are not accountable to the judiciary. Under courts' legislation, the heads of bench are responsible for use of courthouses, including scheduling and rostering to ensure that the business of their courts is conducted in an orderly and efficient way. This requires close coordination between liaison judges and skilled staff working in the same locations as the judges to whom they report. It is especially important that staff responsible for scheduling have a close working relationship with the judges.

## 12. What is the attitude of bar associations and lawyers vis-à-vis such legal reforms?

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The New Zealand Law Society, our bar associations, and, anecdotally, many lawyers have been supportive of initiatives taken by the courts and were aware of the potential problems and difficulties that could arise for legal workplaces, lawyers, and their clients, and in the wider justice system, during the pandemic. Although, at times, there were tensions within the profession in local courts as teething issues around technology and hygiene were worked through. During this period the relationship between the profession, justice officials, and the Ministry was strengthened as all those within the justice system worked closely together to find practical solutions to the problems that arose. To date, the society is not aware of any practitioner or court users infected by Covid-19 because of their involvement with the courts.

Throughout the crisis, the profession, the Law Society, and the New Zealand Bar Association worked closely with other professional groups and were consulted by the judiciary and the Ministry of Justice on a wide range of matters. At both the local and national level the Law Society and the profession worked with the judiciary on court protocols and court rules for all levels and assisted with guidance and information around new electronic processes that needed to occur during Covid-19.

The Law Society also worked closely with many government departments to work through the practical implications of working remotely and the impact of Covid-19 on business, including around conveyancing, probate, immigration, and business matters (such as paying for filing fees). The Law Society has had regular liaison and made submissions to the courts and government on rule changes that were required to enable remote and technology solutions for matters that are often done in person, including service and filing of documents. The Law Society was called upon to consider several pieces of legislation before parliament under extreme urgency. One large piece of work was on the [Covid-19 Response \(Further Management Measures\) Legislation Bill \(the Bill\)](#). This submission prepared with input from many of the Law Society's law reform committees was heard in person by the Epidemic Response Select Committee. The submission focused on the following aspects of the bill:

- Remote access by audiovisual link in corrections and court hearings.
- Remote access by audiovisual link for Mental Health (Compulsory Assessment and Treatment) Act assessments and examinations.
- Insolvency “safe harbours” and the Business Debt Hibernation scheme.
- Unit Titles Act technical amendments.

Another significant piece of law reform work was the [Covid-19 Public Health Response Bill](#). This was one of the strongest submissions the Law Society had ever made. It received notification after hours and the deadline was 10am the next day. In the extremely short time available the Law Society emphasised the risk of unjustified breaches of human rights and the unnecessarily harsh offence provisions.

More than 13,000 lawyers participated in free webinars covering some of the key issues around working under Covid-19. At the society's invitation, the chief justice and five other heads of bench took part in a special webinar on 17 April 2020 and responded directly to questions from lawyers. More than 2200 members of the profession logged in on the day.

## Appendix 1: Four Level Alert System

# New Zealand COVID-19 Alert Levels



- These alert levels specify the public health and social measures to be taken.
- The measures may be updated on the basis of (i) new scientific knowledge about COVID-19 and (ii) information about the effectiveness of intervention measures in New Zealand and elsewhere.
- The alert levels may be applied at a town, city, territorial local authority, regional or national level.
- Different parts of the country may be at different alert levels. We can move up and down alert levels.
- In general, the alert levels are cumulative, e.g. Level 1 is a base-level response. Always prepare for the next level.
- At all levels, health services, emergency services, utilities and goods transport, and other essential services, operations and staff, are expected to remain up and running. Employers in those sectors must continue to meet their health and safety obligations.

LEVEL	RISK ASSESSMENT	RANGE OF MEASURES (can be applied locally or nationally)
<b>Level 4 - Eliminate</b> Likely that disease is not contained	<ul style="list-style-type: none"> <li>• Sustained and intensive transmission</li> <li>• Widespread outbreaks</li> </ul>	<ul style="list-style-type: none"> <li>• People instructed to stay at home</li> <li>• Educational facilities closed</li> <li>• Businesses closed except for essential services (e.g. supermarkets, pharmacies, clinics) and lifeline utilities</li> <li>• Rationing of supplies and requisitioning of facilities</li> <li>• Travel severely limited</li> <li>• Major reprioritisation of healthcare services</li> </ul>
<b>Level 3 - Restrict</b> Heightened risk that disease is not contained	<ul style="list-style-type: none"> <li>• Community transmission occurring OR</li> <li>• Multiple clusters break out</li> </ul>	<ul style="list-style-type: none"> <li>• Travel in areas with clusters or community transmission limited</li> <li>• Affected educational facilities closed</li> <li>• Mass gatherings cancelled</li> <li>• Public venues closed (e.g. libraries, museums, cinemas, food courts, gyms, pools, amusement parks)</li> <li>• Alternative ways of working required and some non-essential businesses should close</li> <li>• Non face-to-face primary care consultations</li> <li>• Non acute (elective) services and procedures in hospitals deferred and healthcare staff reprioritised</li> </ul>
<b>Level 2 - Reduce</b> Disease is contained, but risks of community transmission growing	<ul style="list-style-type: none"> <li>• High risk of importing COVID-19 OR</li> <li>• Uptick in imported cases OR</li> <li>• Uptick in household transmission OR</li> <li>• Single or isolated cluster outbreak</li> </ul>	<ul style="list-style-type: none"> <li>• Entry border measures maximised</li> <li>• Further restrictions on mass gatherings</li> <li>• Physical distancing on public transport (e.g. leave the seat next to you empty if you can)</li> <li>• Limit non-essential travel around New Zealand</li> <li>• Employers start alternative ways of working if possible (e.g. remote working, shift-based working, physical distancing within the workplace, staggering meal breaks, flexible leave arrangements)</li> <li>• Business continuity plans activated</li> <li>• High-risk people advised to remain at home (e.g. those over 70 or those with other existing medical conditions)</li> </ul>
<b>Level 1 - Prepare</b> Disease is contained	<ul style="list-style-type: none"> <li>• Heightened risk of importing COVID-19 OR</li> <li>• Sporadic imported cases OR</li> <li>• Isolated household transmission associated with imported cases</li> </ul>	<ul style="list-style-type: none"> <li>• Border entry measures to minimise risk of importing COVID-19 cases applied</li> <li>• Contact tracing</li> <li>• Stringent self-isolation and quarantine</li> <li>• Intensive testing for COVID-19</li> <li>• Physical distancing encouraged</li> <li>• Mass gatherings over 500 cancelled</li> <li>• Stay home if you're sick, report flu-like symptoms</li> <li>• Wash and dry hands, cough into elbow, don't touch your face</li> </ul>

## Appendix 2: Legal Instruments Created in response to Covid-19



Legal Instruments  
time-line

## Appendix 3: Chief Justice's Letter to profession 13 May 2020 Alert Level 2



CJ to Profession Alert  
2

## Appendix 4: Chief District Court Judge Media release 13 May 20 protocol for Alert Level 2



12 May - Media  
Release - CDCJ - Alert