

How essential is justice? An overview of the availability of courts and tribunals during Alert Level 4

Courts and tribunals are responding to the Alert Level 4 in different ways. This article explains which services are considered "essential" and the latest measures in place to ensure our justice system adapts and complies with new requirements.

Following the Government's decision to place New Zealand into Alert Level 4 on 25 March 2020, many of our courts and tribunals have issued guidance on what functions they are able to perform, and how they will ensure they can provide these services safely.

General health and safety

Attendance at a court or tribunal¹

In almost every case, courts and tribunals will be using teleconference or Audio-Visual Link (**AVL**) services to hear matters, so fewer people will be required to attend proceedings in person. Attendance in person may sometimes be required.

Support people will not be permitted in the courts without advance permission from the presiding judge.

Administering oaths for affidavits²

The Law Society has published guidance on the remote administration of oaths and declarations. This guidance has been referred to the Ministry of Justice and the Rules Committee for further consideration. Where an affidavit is required in proceedings, it may be possible

for a lawyer to take an oath via AVL i.e. Zoom, Skype or FaceTime.

A sample certificate is provided for lawyers to complete after administering the oath or declaration.

Filing claims and documents

All public counters are now closed and the courts have expressed a preference for the filing of documents by email during Alert Levels 3 and 4. If individuals cannot access email, most courts will accept documents filed by post, however this may result in processing delays.

Most courts have also announced that they will be waiving filing fees until further notice.

Tribunals

Building Disputes, Disputes, Earthquake, and Tenancy Tribunals³

The Building Disputes Tribunal operates as an online forum for the adjudication of building disputes and its operations are largely unaffected by Alert Level 4.

The Disputes Tribunal is currently closed and all hearings have been adjourned until further notice. Claims may still be filed online but may not be processed until the lockdown period concludes.

We understand that the Canterbury Earthquakes and Insurance Tribunal is operating, and while hearings have been adjourned, the Tribunal is expecting compliance with all other timetabling directions (except inspections).

The Tenancy Tribunal has announced that during Alert Level 4, the Tribunal has the power to hold hearings without the parties present, by teleconference, or by AVL. Applications can be made online.

¹ <https://www.courtsofnz.govt.nz/assets/20-03-25-CJ-to-profession-operating-at-alert-level-4.pdf>

² <https://www.lawsociety.org.nz/practice-resources/the-business-of-law/legal-practice/opinion-administration-of-oaths-and-declarations-in-circumstances-of-mandatory-self-isolation>

³ <https://www.buildingdisputetribunal.co.nz/>;
<https://disputetribunal.govt.nz/how-to-make-a-claim/>;
<https://www.tenancy.govt.nz/disputes/tribunal/making-an-application/>;

The Justice System as an Essential Service (Continued)

Courts

Environment Court⁴

The Environment Court has not been categorized as an essential service court and will not be sitting during Alert Level 4. Urgent cases may be the subject of remote conferencing via telephone. The majority of cases will remain adjourned during Alert Level 4.

Employment Court⁵

The Employment Court is contacting representatives of scheduled cases to discuss next steps during Alert Level 4.

Individual judges will determine how cases will proceed, or a case will need to be deferred. During this time, new matters will be accepted, and prioritized in the usual way.

Family Court⁶

The Family Court will be available (with restricted access) to hear a range of urgent applications, including (but not limited to):

- protection and care of children applications, relating to family violence;
- hearings relating to mental health matters; and
- Hague Convention hearings.

District Court⁷

The District Court will be available (with restricted access) to deal with priority justice services, including criminal matters affecting the liberty of the individual.

⁴ <https://environmentcourt.govt.nz/assets/Documents/Publications/20-03-25-Environment-Court-protocol2.pdf>

⁵ <https://www.employmentcourt.govt.nz/assets/Documents/Publications/Employment-Court-Covid-19-Alert-Level-4.pdf>

⁶ <https://www.courtsofnz.govt.nz/publications/announcements/covid-19-coronavirus/court-protocols/district-court/>

⁷ <https://www.districtcourts.govt.nz/media-information/media-releases/25-march-2020/>

The District Court will also hear the following civil matters by telephone:

- injunctions;
- harassment / harmful digital communications orders; and
- Tenancy Tribunal appeals against evictions.

Any other matters will be adjourned to the next available date.

High Court⁸

All new criminal jury trials and civil trials have been suspended. The Auckland, Wellington and Christchurch registries (the **home courts**) will remain open to conduct priority proceedings. In limited cases, counsel may need to be present in court in person.

Priority circuit work will be conducted using telephone and AVL as far as possible. Documents for proceedings in circuit registries should be filed in the home courts.

All current and new proceedings filed will be triaged to determine if they are a priority.

Priority work areas for the High Court include matters where:

- liberty of the individual is threatened;
- personal safety and wellbeing is an issue; or
- resolution is time-critical.

Priority civil matters may include:

- applications for injunctions, freezing orders and interim orders in judicial review proceedings;
- urgent caveat matters; and
- urgent probate matters.

⁸ <https://www.courtsofnz.govt.nz/publications/announcements/covid-19-coronavirus/court-protocols/high-court/>

The Justice System as an Essential Service (Continued)

Court of Appeal⁹

During Alert Level 3 and 4, only urgent hearings will take place. All non-urgent hearings will be adjourned.

Urgent hearings include appeals:

- concerning the liberty of the individual; or
- where resolution is time critical.

These may include bail applications, family violence and care matters, and also injunctions.

Supreme Court¹⁰

Any hearings that will proceed during Alert Level 4 will be via telephone or AVL. The Supreme Court will contact counsel involved in hearings scheduled over the next three months to discuss arrangements.

The Supreme Court will be flexible with deadlines and may make special arrangements for urgent hearings if necessary.

Want to know more?

If you have a claim which you or your business considers requires urgent consideration during Alert Level 4, please contact our specialist [Disputes Resolution](#) team to see if we can assist.

If you have any questions, or if you consider your claim is not urgent, we would recommend getting in touch to discuss with us how you can best use this time to pull together a strong claim to pursue when restrictions ease.

⁹ <https://www.courtsofnz.govt.nz/publications/announcements/covid-19-coronavirus/court-protocols/court-of-appeal/>

¹⁰ <https://www.courtsofnz.govt.nz/publications/announcements/covid-19-coronavirus/court-protocols/supreme-court/>