

3rd set of Directions and Advisory Notes subsequent to Protocol of 25 March 2020

Under Alert Level 2: Information for parties, lawyers, witnesses and other participants

Principal Environment Judge Laurie Newhook

8 May 2020

1. New Zealand may soon reduce to COVID-19 Level 2, possibly as early as mid-May. The new level may last for a significant time and carry continuing recommendations for people to work from home, but where it is necessary to gather, to limit numbers and undertake stringent social distancing and sanitising of surfaces and equipment. These new Directions and Advisory Notes are designed to meet the likely new Government requirements.
2. The Environment Court is equipped to process time-critical and other priority cases as described below, mainly electronically, but with some personal appearances in Court under Level 2 and subsequent Level 1. It is steadily obtaining resources to process cases of lesser priority during Level 2, and endeavouring to reduce backlog resulting from earlier higher levels.
3. All cases listed for hearing up to the end of May 2020 were previously adjourned and timetables for preparation for those hearings suspended; but are now once again under active case management.
4. The Principal Environment Judge has worked with the Judges in prioritising cases in the manner described in the 25 March 2020 Protocol. Hearings are now listed for some priority cases before the end of May. Hearings are being scheduled for other cases for several weeks in June, July and August.
5. Emphasis is being placed on electronic remote means of conferencing and hearing cases, but sometimes a hearing in Court involving limited numbers of participants, strict social distancing and sanitary cleansing, will occur, consistent with safety as first priority. Alternatively, they might be agreed to be heard "on the (electronic) papers".
6. Priority cases tend to involve infrastructure or other public good that might be considered urgent in the public interest. The Judges presiding on these are conferencing by remote means with parties to timetable them for prompt advancement. Urgency and prioritisation of the Court's resources are seeing

Judge-led issues conferences being held in place of mediations in some of these cases, although independently-facilitated conferences of expert witnesses remain important.

7. Increasingly under Level 2, cases lacking the above qualities of priority are the subject of directions to progress, including the holding of telephone or audio-visual conferences. Prioritisation of these are generally being undertaken by the Presiding Judges in consultation with the PEJ as necessary. Mediation resources are finite and unevenly distributed around the country, so in these cases, mediation is unlikely to be a priority if resources are stretched at the time. Instead, at a pre-hearing conference the Presiding Judge is requiring parties to identify the key issues capable of influencing outcome, and directions are made for expert conferencing (if necessary) and a timetable for preparation for hearing.
8. During Level 4, three groups of cases were chosen for pilot mediation activity by remote means. Presiding Judges, mediating Commissioners and the Principal Environment Judge, prepared draft directions to parties in such cases. Where the cases involved many topics and many parties, they were broken down by topic to enable progress by smaller more manageable groups of participants. The Commissioners worked with the parties concerning methodologies and electronic platforms, and such mediations as were concluded proceeded very successfully in a focussed and time-efficient way.
9. Mediations and expert conferencing have now recommenced within the limitations in paragraphs 6 and 7 above. Detailed preparation by the mediators and participants is important, particularly as to the processes for fair means of electronic ways of working. Time limits are being set by the Judges. At times when Commissioner resources are stretched, parties are asked to give thought to holding privately-run mediations, remembering that good preparation and fairness to all are important. Proposals for these should be the subject of Judge-led conferences and directions.
10. Hearings have re-commenced as from early May, principally of priority matters of the kind described above. Where appearances in Court are involved, steps are taken as described in paragraph 5 above. Nevertheless, against the possibility that new Covid-19 cases could occur within an area served by a courthouse or other premises in which we conduct hearings, we will rely on official health advice. Similarly if the country or a region reverts to a higher Alert Level. If necessary, steps would be taken to reduce in-person attendances to protect those appearing or working there; the extent of any reduction would depend on all circumstances and official advice or directions.

10. It is reiterated that the Principal Judge has issued a **blanket waiver** suspending the requirement to file paper originals and copies in court meantime. This remains in force, and consideration to it becoming a permanent feature is occurring.
11. It is also reiterated that any difficulties with paying lodgement or other fees will be considered by the Registrar exercising his powers of waiver under s 281A RMA.
12. Staffing of registries will remain quite limited during Level 2, with strong focus being placed on social distancing. Some staff are in the vulnerable category and will continue to work from home as will others with different needs and pressures. Contact can be made with the Court by telephone or email to the case, hearing, or mediation manager handling any file, or if in doubt, to the Deputy Registrar in the relevant registry noted below.
13. The public counters remain closed for filing. In case any party does not have the ability to file by email, postal mail will be periodically checked. However, because of hygiene requirements there may be a delay in processing documents received by mail.
14. Finally we stress that for hearings or ADR events occurring during Level 2, there will be the following features:
 - Strict social distancing practices (1m separation for all), and sanitary cleansing regime of surfaces and equipment.
 - The Ministry of Justice has instituted rigorous cleaning regimes that include deep cleaning measures in key areas in courthouses, especially in high traffic areas.
 - PPE (gloves and facemasks) are available for all court participants. These supplies are located at the entrance point with security staff.
 - Face masks and gloves may be worn.
 - Documents cannot be handed up or exchanged on paper among parties, but must instead be lodged and exchanged by email, preferably in advance of the hearing.
 - The Ministry will also be monitoring the provision of cleaning supplies such as soap and towels, and ensuring the availability of key products such as hand sanitiser.
 - A contact tracing register will be employed.
 - An officer charged with ensuring all matters of hygiene may deny entry to anyone who is unwell, experiencing Covid-19 symptoms, or required

to be in quarantine or self-isolation. Participants may be questioned about such things on entry.

- All cleaning and other practices listed here will be kept under constant review and may change as necessary.

15. Counsel or other representatives are expected to brief parties, witnesses and other participants on all these matters. Also to report to the nearest Deputy Registrar any perceived shortcomings in arrangements for cleaning, hygiene or safe practices.

Contact details for Deputy Registrars

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