

Family law considerations in the COVID-19 context

This guidance note is written by the LexisNexis team and covers children in shared care during the COVID-19 alert levels; changes to Family Court proceedings and Family Dispute Resolution; and family violence proceedings.

Children in shared care

The Principal Family Court Judge, Jacquelyn Moran, has issued [guidance](#) on children in shared care, as follows:

- The overriding consideration is for parents to make decisions that are in the best interest of their children.
- The intent of Alert Level 4 is to prevent COVID-19 spreading within New Zealand. Staying at home will save lives and is key to Alert Level 4.
- Where there is a shared care arrangement and the families are in different towns or communities, the safety of the children and others in their family units should not be compromised by movement between those homes, particularly if there are more than two homes involved.
- Generally, children in the same communities can continue to go between their homes, unless:
 - 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.
- Parents and caregivers should discuss if shared custody arrangements would allow COVID-19 to potentially spread without them being aware and reach an agreement. This may mean the child may stay with one parent/caregiver for the initial [level 4 lockdown] 4-week period.
- If children are moving:
 - Children should be accompanied by an adult when moving between homes.
 - Private vehicles should be used, where possible. Public transport can be used where there are no alternatives.
- Where children cannot move between homes, the Court would expect indirect contact - such as by phone or social media messaging - to be generous.
- Parents must put aside their conflict at this time and make decisions that are in the best interests of the child and their families and the wider community. This global pandemic should not be seen as an opportunity for parents to unilaterally change established care arrangements without cause or otherwise behave in a manner inconsistent with the child's best interests or the court ordered care arrangements.
- For up to date information, families are referred to the [Unite against COVID-19 website](#).

Judge Moran emphasises that children are precious and that, more than ever, this is a time to focus on their wellbeing, and in particular their safety. It is important that their loved ones are also safe and well, and that children know that, and are able to see their parents and caregivers lead by example.

The Family Court will continue to operate through all pandemic alert levels but on a reduced capacity, dealing with priority proceedings.

See also:

[Ministry of Justice: Guidance for managing shared custody during Alert Level 4](#)

Changes in the move to alert level 3

The Ministry of Justice advises that there will be some changes to these guidelines when New Zealand moves to alert level 3.

Minor extensions to 'bubbles'

As far as possible, it is recommended that people stick to their level 4 lockdown 'bubbles', however some expansion is permitted, for example to add a caregiver, children in shared care, or a de facto partner who is caring for others.

Travel restrictions remain but move from local to regional

This change recognises that more people will travel to work, or to take children to school (note that only children up to Year 10 of essential workers or those who cannot work from home are to attend school). To minimise the potential spread of COVID-19, limiting movement to what is necessary remains the goal.

For further guidance, see:

[Day-to-day care and contact: definitions and principles](#)

[Parenting agreements](#)

[Parenting orders and enforcement](#)

Family Dispute Resolution and Family Court proceedings

Family Dispute Resolution

Many Family Dispute Resolution services are still be available but the way these are delivered will change, including doing some of the programme remotely by video conferencing, tele conferencing, email exchanges, or by other remote means, depending on the provider.

The Family Law Section of the New Zealand Law Society sets out the types of matters that FDR providers are mediating during COVID-19, including:

- How parents can work together to keep children safe;
- How parents can talk about COVID-19 with their children;
- Whether parents should stick to shared care arrangements, or whether there is a need to change these for a period of time;
- Whether one parent is an essential worker;
- Whether parents are wanting to share childcare differently at this time;
- How a parent who can't see children physically during this time might maintain meaningful contact;
- How parents might share information about their own health and the health of their children; and
- How COVID-19 might impact the family economically and how this may affect child support.

For further guidance, see:

[Family Dispute Resolution](#)

See also:

[Family Law Section of the New Zealand Law Society: FAQs relating to COVID-19](#)

Family Court proceedings

During the COVID-19 alert period, the Family Court will only consider genuinely urgent cases. There will be judges on hand to deal remotely with urgent applications made. Arrangements can be made for hearings in person for unrepresented litigants for whom remote access is not possible, or otherwise in circumstances where remote participation is inappropriate.

All applications and related documents will be accepted for filing electronically during Level 3 and 4 Alert period, and these will be deemed to be filed between court hours, namely 9am — 5pm Monday to Friday. No hard copies are to be posted or delivered to the Court at this time. For telephone

hearings, any document that would usually be handed up in Court, including any minute of proposed consent orders, must be emailed to the Registrar before the hearing.

If parties are attending a face-to-face hearing, the handing up of hard copy documents will not be allowed in any circumstances as the virus can last on surfaces for up to 72 hours.

See also:

[Courts of New Zealand: Information about the District Court's COVID-19 protocol](#)
[Courts of New Zealand guidelines for District Court Practitioners during period of Epidemic Notice](#)
[Ministry of Justice: 'Without Notice' email addresses for the Family Court](#)
[Family Law Section of the New Zealand Law Society: FAQs relating to COVID-19](#)

Affidavits

The Government has made a temporary law change to modify the requirements for signing and witnessing oaths, affirmations (such as affidavits) and declarations under the Oaths and Declarations Act 1957. This is contained in the [Epidemic Preparedness \(Oaths and Declarations Act 1957\) Immediate Modification Order 2020](#).

The Ministry of Justice advises that:

- The change makes it clear that there is no requirement for a person taking oaths, affirmations or declarations to be in the physical presence of those making them. The person witnessing the oath, declaration or affirmation is also not required to physically sign the same document as the person making it. Instead, oaths, affirmations or declarations can be administered using audio-visual or audio links, such as over Skype, Zoom, Facetime, or over the phone.
- Other requirements for taking oaths, affirmations, and statutory declarations remain the same. It will still be important for the person taking the oath, affirmation or declaration to be sure that:
 - the person making the oath, affirmation, declaration is the person signing the document
 - the person making the oath, affirmation or declaration has read and understood its contents and believes its contents to be true, and
 - the exhibits attached are those referred to in the oath, affirmation or declaration.
- The person making the oath, affirmation or declaration should sign the document during the audio-visual or audio link.
 - As soon as possible after that, the person must send it to the person taking the oath, affirmation or declaration (the witness) so that they can also sign it. The document can be scanned or photographed and sent electronically. At Alert Levels 1-3, it could also be posted or couriered. At Alert Level 4, the document can be posted or couriered if it is an essential good (for example, because it relates to priority court or tribunal proceedings).
 - The person taking the oath, affirmation or affidavit can also note on the document that it was taken by audio or audio-visual link.
- The order also allows entities that receive statutory declarations to authorise some of their employees to take statutory declarations instead of a lawyer, JP, Deputy Registrar in a court, or other person who would usually do that. This is because people may find it harder than usual to find someone to take their statutory declarations. Entities authorising their staff to do this should make sure that staff are trained in the process outlined below and that staff don't take declarations where they may have a conflict of interest with the person making it.
- The changes made by this modification order are temporary. The modification order will expire after the Epidemic Notice is lifted.

For further guidance, see:

[Family Court proceedings](#)

See also:

[Ministry of Justice: Oaths, Affirmations or Declarations](#)

Family violence

The Ministry of Justice advised that the family violence and sexual violence continue to be taken very seriously during the COVID-19 alert levels. Family violence and sexual violence services are essential services and will remain available during all COVID-19 alert levels.

Protection orders continue to be available through the Ministry of Justice website. Without notice applications must be made to the nearest court at the [applicable email address](#). (See information above regarding the process for signing affidavits at this time).

The Family Law Section of the New Zealand Law Society has [advised](#) that there may be immigration implications for family violence applicants who are not New Zealand citizens or residents, including potential breach of work visa conditions if the victim is on a partnership-based work visa. Immigration New Zealand has announced that, although visa processing capacity is limited during COVID-19 circumstances, certain visa applications will be prioritised, including applications for victims of domestic violence.

For further guidance, see:

[Family Violence: Protection Orders](#)

See also:

[Family Law Section of the New Zealand Law Society website](#)

[Ministry of Justice: Information for families and whānau during COVID-19](#)

[Immigration New Zealand: COVID-19 key updates](#)