

9 July 2020

His Honour Chief Judge Taumaunu
Chief District Court Judge
Judges' Chambers
Wellington

By email: c/o steven.bishop@justice.govt.nz

Tēnā koe Judge

Covid-19 Public Health Response (Air Border) Order 2020

Thank you for your letter of 8 July 2020 regarding the Covid-19 Public Health Response (Air Border) Order 2020 and the justice sector agencies' proposed approach to managing individuals who are granted leave from managed isolation or quarantine to attend court. The New Zealand Law Society | Te Kāhui Ture o Aotearoa appreciates the update and the opportunity to provide feedback.

Section 8(1)(c) of the Order states that "a person is permitted to leave their place of isolation or quarantine ... if it is necessary to do so to access any court or tribunal". The Ministry's letter notes that:

"For any instance where a person is authorised to leave to participate in a Criminal Court matter, the Police will revert to Alert Level 4 practices, preferring Audio Visual Link hearings and the one person to one custodial cell process. In other jurisdictions the best way to proceed will be considered on a case by case basis. In all jurisdictions consultation with the appropriate executive judge or tribunal chair would occur to ensure safe arrangements can be made."

The Ministry of Justice's letter of 3 July and the Order have been reviewed by the Law Society's Criminal Law Committee. The Law Society respectfully agrees with Your Honour's proposed support in principle for the proposed approach, subject to some practical concerns briefly noted below.

Court and tribunal participants covered by the proposed arrangements

In relation to the criminal courts, references in the Ministry's letter to Police and custodial cells indicate the focus is on defendants. People in managed isolation or quarantine under the Order may also need to seek leave to attend court as a witness (including as a complainant) or in some other capacity (such as counsel). It would be helpful if Ministry officials confirmed that planning for potential access/attendance at court will apply to the following (non-exhaustive) list:

1. defendants;
2. witnesses (including complainants/sensitive witnesses who may also require support people, or expert witnesses (who are not uncommonly sourced from overseas));
3. counsel;
4. family/support people for young or otherwise vulnerable people required to attend court; and

5. claimants, potential claimants or other participants in civil or family proceedings – clause (8)(1)(c) is framed in terms of “necessary ... to access any court or tribunal”, which covers a broader class of activities than simply attending a criminal trial as a defendant or similar.

In relation to other (non-criminal) jurisdictions, we anticipate the Ministry’s assurance that leave will be handled on a case by case basis will ensure the appropriate steps are taken. It would be helpful however for an outline to be provided of the proposed steps for managing participants in these other jurisdictions, who would not normally be managed by the Police (and therefore presumably will not be subject to the proposed Alert Level 4 measures referred to in the Ministry’s letter).

For participants in all jurisdictions, it would also be useful for guidance to be issued about what will be considered to be “necessary” access.

Point of contact for practitioners

On a practical note, ideally practitioners would have one main point of contact for each of the relevant departments (Police, Ministry of Justice, Ministry of Health) should this issue arise. If, for example, a practitioner’s client arrives from overseas and is deemed to fall within section 8(1)(c) of the Order, it would be helpful for that practitioner to know who they need to contact to ascertain what arrangements are in place to facilitate their client’s attendance at court.

We hope these comments will assist officials and the judiciary to ensure appropriate arrangements are made for the safe handling of individuals granted leave from managed isolation or quarantine to access the courts and tribunals. We look forward to any further updates or information about procedures or requirements needed to appropriately manage leave in these circumstances. If further discussion would assist, I can be contacted in the first instance via the Law Society’s Law Reform Manager, Vicky Stanbridge (vicky.stanbridge@lawsociety.org.nz).

Nāku iti nei, nā



Tiana Epati
NZLS President