

Responding to COVID-19: Operation of the court system

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26 March 2020

The country is now at Level 4 on the four level alert system for COVID-19, meaning that all organisations that do not provide essential services must close. The courts have been designated as providing an essential service, meaning that they will remain open, however in an extremely limited capacity. The Chief Justice, along with the heads of each other court, have made announcements regarding the effects that Level 4 will have on their respective courts. The essential features of these announcements are summarised below:

Courts will remain open, but only for essential matters

Though some courts will remain physically open during Level 4, the only matters that will be heard are those that “[affect] the liberty of the individual or their personal safety and wellbeing, or proceedings that are time-critical”. Cases meeting these criteria will predominantly be criminal, family or youth court hearings.

The courts will hear applications for certain civil remedies (such as injunctions and freezing orders) where time is of the essence, but not full civil trials. Ordinary civil hearings will be adjourned, possibly for the duration of the pandemic. As will be discussed, the courts are likely to develop procedures to accommodate the self isolation requirements that high alert levels entail, but at present only a small portion of cases will be heard.

Altered court processes

The courts have modified their operations to remove any unnecessary physical interaction. Documents can only be filed by email or mail, and cannot be delivered in person. Where possible, matters will be dealt with on the papers. Other proceedings will take place by audio-visual link or telephone, with physical appearances reserved for situations where no practical alternative exists.

As an Epidemic Notice is in force, judges are empowered to modify any court rule as they consider necessary in the interests of justice. Many rules of the court are predicated on the availability of physical proximity (such as those for service and attendance at hearings) and will require significant alterations to accommodate self isolation. At present, judges will make these alterations on an ad hoc basis, but the judicial Rules Committee is in the process of drafting more comprehensive amendments to better facilitate remote trials. The power to alter rules is not currently available to District Court judges, but is likely to be extended by Parliament in the coming days.

Currently, alterations to the rules are likely to focus on the immediate caseload the courts have prioritised. However, if self isolation continues for an extended period, further changes might be considered to allow for the resolution of less urgent matters. While non-urgent matters can be delayed for now, courts are conscious that this cannot continue indefinitely.

Consequences for litigants

As is evident from the developments summarised above, disruption to commercial cases already in the Court system is inevitable. Accordingly, the prospect of full resolution of non-time critical commercial disputes through the courts in the coming months is slim.

However, as yet there has been no general directive regarding extension of pending filing deadlines. Most law firms (including Buddle Findlay) are fully operational and working on a business as usual basis. Processes such as witness-briefing and discovery will be able to continue, through increased reliance on video-conferencing and electronic file-sharing. Requests for extensions will inevitably be made but will need to be supported with clear reasons as to why more time is required.

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