

Māori Land Court: The Covid Response

Covid-19 brought forth a crisis that our country has never experienced before, and has impacted on every aspect of our lives, including the administration of justice.

On 25 March 2020 the country entered Covid-19 Alert Level 4 lockdown. The Right Honourable Dame Helen Winkelmann, Chief Justice of New Zealand, assured the public that courts were an essential service, and that New Zealand courts would continue to uphold the rule of law and to ensure that fair trial rights, the right to natural justice and rights under the New Zealand Bill of Rights Act were upheld.¹ Priority was given to proceedings that affected the liberty of the individual or their personal safety and wellbeing, or that resolution was time-critical while at Alert Level 4.

While the Māori Land Court provides an essential service, the majority of its proceedings were not priority proceedings during Alert Level 4. On 23 March 2020, Chief Judge Isaac released a protocol advising that all scheduled Māori Land Court hearings and other events would be adjourned, to be rescheduled once we ceased to be at Level 4.² Any applications for urgent injunctive or other relief filed with the Court during this period were directed to the Chief Judge to address. A significant number of applications were adjourned during this period - in April alone approximately 500 cases were notified in the National Pānui, and subsequently adjourned under the Chief Judge's protocol to be heard at a later date.

During the Level 4 lockdown, like the rest of New Zealanders, all Māori Land Court staff were required to work from home. However, the reality was that some of our Māori Land Court staff were ill-equipped to do this due to both a lack of resources, and a lack of access to court records. While the Ministry of Justice tried to disseminate resources such as laptops and tablets, preference was given to the courts dealing with priority proceedings.

On 27 April 2020, we moved into Alert Level 3 and Chief Judge Isaac released a Level 3 protocol.³ The protocol provided that applications that were postponed due to Level 4 would be dealt with on the papers where possible. Where an in-person hearing was required, an assessment would be made as to whether it could be heard either by telephone conference, audio-visual link (AVL) or zoom. Due to social distancing restrictions, only skeleton staff returned to the registries. Fortunately, as Level 3 unfolded, more technological resources became available for Māori Land Court staff to enable them to work from home.

On 11 May 2020, the Prime Minister announced moving into Alert Level 2 in stages, starting at 11:59pm on 13 May 2020. The Level 2 protocol for the Māori Land Court was released on 13 May 2020 and provided that the judiciary would continue to determine applications on the papers where possible, and hearings by way of by telephone conference, zoom and AVL would be preferred to in-person hearings.⁴ Where in-person hearings are scheduled, there will be a series of measures to ensure the safety of participants, and compliance with social distancing hygiene restrictions. As to the staffing of the Māori Land Court registries, depending on the size of the registry some staff will continue to work from home, whereas others should be at full capacity.

While the Māori Land Court is processing applications that were adjourned during Alert Level 4, the bench is also cognisant of the many outstanding applications that have not yet been set down. This includes the many applications that ought to have been heard in May but were not set down due to

¹ CJ Media statement, "Note from Chief Justice Winkelmann" released 25 March 2020.

² Māori Land Court COVID-19 Court protocol as at 23 March 2020.

³ Māori Land Court COVID-19 Court protocol as at 20 April 2020.

⁴ Māori Land Court COVID-19 Court protocol as at 12 May 2020.

the May Pānui not being finalised before the lockdown. At this stage it appears that the National Pānui will recommence in the next month or so. In the interim, the judiciary will continue to have the discretion to set applications down for special hearings to progress the many applications that are waiting for resolution. Our Court is working hard to ensure that matters are dealt with as swiftly as possible. The bench remains concerned about the cost of the delays. It's not about the backlog, rather it's the impact that the delays have had on Māori land owners, their whanau and their hapū, as ultimately justice delayed is justice denied.

While the immediacy of the Covid-19 pandemic and the subsequent lockdown restrictions raised challenges for the Māori Land Court, it has presented an opportunity to examine our processes, our use of technology, and consider how they can be improved to ultimately assist Māori land owners. New technology is in the process of being developed for the Māori Land Court which should assist in both the electronic filing of applications and monitoring case progression, which is scheduled to be operational later 2020. In addition, while it remains important that kanohi-ki-te-kanohi justice is conducted in our courthouses, which play an important role as the local face of justice for our communities, we should endeavour to use alternative measures such as telephone conferencing, zoom and or AVL if this is more suitable to Māori land owners and ultimately assists Māori land owners' access to justice.