

Legislative Statement
COVID-19 Response (Courts Safety) Legislation Bill

Second Reading

Presented to the House of Representatives
In accordance with Standing Order 272

1. The COVID-19 Response (Courts Safety) Legislation Bill (the Bill) is an omnibus bill that removes legal barriers to the Judiciary and the Ministry of Justice (the Ministry) addressing COVID-19 health and safety risks in the courts.

Background

2. The Judiciary and the Ministry have prepared the courts as far as possible to operate under the COVID-19 Protection Framework. They have introduced measures including more remote participation, staggered court hearings, and enhanced court entry requirements. The Bill will remove legal barriers to desirable safety measures.

Schedule 1 - Amendments to the Courts Security Act 1999

3. The Bill amends the Courts Security Act 1999 to clarify that Heads of Bench and the Ministry may set requirements relating to COVID-19 that people must meet to enter and remain in a court and some tribunals. This supplements the existing ability of the Judiciary and the Ministry to set entry requirements relating to safety and security. Clause 1 of the new schedule to the Courts Security Act re-enacts the existing law and also contains the clarifying provisions.
4. Safeguards apply when the Judiciary and the Ministry set requirements. They must be satisfied the requirements are necessary in the interests of justice and to protect health and safety in the courts. The requirements are subject to other enactments regulating who may be present at proceedings. The requirements must be consistent with the New Zealand Bill of Rights Act 1990.
5. Additionally, to ensure the requirements do not inadvertently compromise a person's rights, a judge in an individual case may direct that a person can enter or remain in a court where this is necessary in the interests of justice, even if the person does not comply with the requirements.
6. The requirements will be enforced by court security officers. The Bill provides that officers may request evidence of a person's compliance with the requirements, and refuse entry to or remove a person from a court or tribunal based on non-compliance with the requirements. The officers may use force if necessary in denying a person entry or removing them.
7. These changes supplement officers' existing powers to ask for identification, and to deny entry to or remove a person for failing to provide this information, for non-compliance with certain other requests relating to safety and security, or for engaging in threatening behaviours. Officers may currently use force if necessary while denying entry or removing a person. These existing powers are re-enacted in clauses 2, 3 and 4 of the new schedule to the Courts Security Act.
8. The Justice Committee did not recommend any changes to these amendments.

Schedule 2 - Amendments to the Criminal Procedure Act 2011

9. The Bill amends the Criminal Procedure Act 2011 to clarify the relationship between that Act's protections for open justice, remote hearings, and the court entry requirements set by the Judiciary and Ministry. It provides that the Act's protection of the rights of the public and media to be present at criminal hearings does not affect:
 - a. the ability of a court to conduct a hearing remotely, including requiring some or all members of the public or media who wish to observe the hearing to do so remotely; and
 - b. the inherent or implied powers of a judicial officer, or the powers of the Judiciary and Ministry under the Courts Security Act, to set court entry requirements.
10. These amendments do not change the circumstances in which hearings can be conducted remotely.
11. The Justice Committee did not recommend any changes to these amendments.

Schedule 3 - Amendments to the Juries Act 1981

12. The Bill amends the Juries Act 1981 to allow the Judiciary to set requirements relating to certain aspects of jury selection and management, to take account of the effects of COVID-19 (COVID-19 jury requirements). The requirements will be secondary legislation.
13. The Bill provides that the COVID-19 jury requirements may apply in addition to, and despite, some existing sections of the Juries Act. This means that in some cases secondary legislation may in effect amend primary legislation. This formulation is necessary because the Juries Act is very detailed. COVID-19 jury requirements that add to the existing law may necessarily have the effect of varying it. Without the Bill expressly providing for the requirements to have this effect, they risk being interpreted very narrowly.
14. Enabling the Judiciary to set these requirements reflects the need to allow rapid changes to requirements in response to evolving health risks and interventions. It is also consistent with the Judiciary's constitutional responsibility for the orderly and efficient conduct of the courts. As secondary legislation, the requirements will be presented to the House, will be disallowable and will be published.
15. The ability to set requirements is subject to safeguards limiting the circumstances and time period in which the requirements may be set. The Judiciary may only set requirements where necessary in the interests of justice and health and safety in the courts, to take account of the effects of COVID-19. The requirements must be consistent with the New Zealand Bill of Rights Act.
16. The Justice Committee agreed that the ability of secondary legislation to amend primary legislation would be justified in this situation. It also agreed that the Judiciary's ability to set requirements was appropriately limited.

17. As introduced the COVID-19 jury requirements would apply in addition to, and despite, section 6 of the Act, which relates to qualification and liability for jury service. This means any COVID-19 jury requirements would be applied in addition to the existing requirements for juror qualification in section 6, not instead of them.
18. The Justice Committee recommended that reference to section 6 and juror qualification and liability be removed from clause 4(2) of new Schedule 2 to clarify the interaction between the additional COVID-19 jury requirements and the existing requirements in section 6 of the Act. The broad basis for qualification as a juror in section 6 is a fundamental feature of our justice system.
19. The Justice Committee recommended that the interaction between the COVID-19 jury requirements and section 6 should instead be addressed through a new clause 10A, to be inserted into new Schedule 2. Clause 10A would state that a person must not serve as a juror if their jury service is deferred or if they are excused because they did not meet the COVID-19 jury requirements. New clause 10A would also state that it applies despite section 6 of the Act. This would make it clear that a person who qualifies to serve on a jury under section 6 would also need to meet the COVID-19 requirements.
20. As introduced the COVID-19 jury requirements would also apply despite section 22 of the Act, which relates to the discharge of juries and jurors. The Justice Committee recommended that clause 4 of new Schedule 2 be amended to specifically exclude section 22(1A). This subsection states that the court may proceed with fewer than 10 jurors if all parties consent to doing so, and the court, having regard to the interests of justice, considers that it should do so. The Committee considered it would not be appropriate for requirements to change these criteria.
21. As introduced, clauses 9, 10, and 19 of new Schedule 2 prohibited applications for deferral of, or excusal from, jury service on the grounds of non-compliance with the COVID-19 jury requirements. The Bill envisioned this information would be proactively collected from summoned jurors rather than being provided through an application. The Justice Committee recommended removing the prohibition on applications. They considered that there is no need to prohibit applications being made.
22. The Justice Committee also recommended several minor and technical amendments to improve drafting clarity.

The amendments are temporary

23. Most of the bill will only be in force for the duration of the COVID-19 Public Health Response Act 2020. The remaining amendments will expire two years after the repeal of the COVID-19 Public Health Response Act 2020. These relate to the deferral of jury service and excusal from jury service. These provisions will return summoned jurors to the position that they would have been in but for the pandemic. They do this by enabling a person whose jury service was deferred for a COVID-19-

related reason during the pandemic to apply to be excused when they are summoned for their deferred service following the repeal of the Bill. The grounds for excusal will be less stringent than typically apply. The two-year period has been chosen because a summoned juror's jury service could be deferred for up to two years.