

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

Third 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 courts and in some tribunals.

Background

2. The Judiciary and the Ministry have prepared courts and tribunals as far as possible to operate safely and effectively 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 other 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 (senior members of a court or tribunal) and the Ministry may set requirements relating to COVID-19 that people must meet to enter and remain in a court and some tribunals.¹ This supplements the existing ability of the Judiciary and the Ministry to set entry requirements relating to safety and security under section 11A of the Courts Security Act. Clause 1 of the new schedule to the Courts Security Act re-enacts section 11A with clarifications relating to COVID-19.
4. Safeguards apply when the Judiciary and the Ministry set entry requirements. They must be satisfied the requirements are necessary in the interests of justice and to protect 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 1990.
5. People who are compelled to attend court, such as criminal defendants, will be able to enter the court even if they do not meet the requirements. This is because the requirements cannot override legislation regulating who is entitled to be present at a court proceeding.
6. Additionally, to ensure the requirements do not inadvertently compromise a person's rights, on a case-by-case basis a judicial officer may direct that a person can enter or remain in a court or a tribunal where this is necessary in the interests of justice, even if the person does not comply with the requirements.
7. 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 reasonable force if necessary in denying a person entry or removing them.
8. These changes supplement officers' existing powers to ask for identification, and to deny entry to or remove a person if they fail to provide this information, do not comply with certain other requests relating to safety and security, or engage in

¹ The amendments apply to all Ministry of Justice-supported tribunals and to other tribunals when they sit in buildings where court security officers are present.

threatening behaviour. Officers may currently use reasonable force if necessary while denying entry or removing a person. These existing powers are re-enacted alongside the above amendments in clauses 2, 3 and 4 of the new schedule to the Courts Security Act.

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 and two other areas of the law. The Bill provides that the Criminal Procedure 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. any inherent or implied powers of a judicial officer, or the powers of the Judiciary and the 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.

Schedule 3 - Amendments to the Juries Act 1981

11. 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. These requirements will be secondary legislation.
12. The Bill provides that the requirements may apply in addition to, and despite, the Jury Rules and sections of the Juries Act relating to juror summoning, selection, service and discharge. 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. Requirements made under the Bill that add to the existing law may necessarily have the effect of varying the existing law. Without the Bill expressly providing for the requirements to have this effect, they risk being interpreted very narrowly.
13. Enabling the Judiciary to set these requirements reflects the need to allow rapid changes to the requirements in response to evolving health risks and interventions during the pandemic. 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 by the House, and will be published.
14. The ability to set requirements is subject to safeguards. 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.

15. The Bill allows a judge or registrar to defer or excuse the jury service of a potential juror if they do not meet the requirements. Potential jurors will also be able to apply to have their jury service deferred or excused if they - or a member of their household or family - are particularly vulnerable to COVID-19, or if their finances have been significantly negatively affected by COVID-19.

The amendments are temporary

16. Most of the Bill will only be in force while the COVID-19 Public Health Response Act 2020 is in force. The remaining amendments will expire two years after the repeal of the COVID-19 Public Health Response Act. These remaining amendments aim to 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 to undertake their deferred service following the repeal of the Bill. The grounds on which they can be excused are the less stringent grounds that would have been available to them if their service had not previously been deferred.

17. The two-year period has been chosen because the Bill authorises jury service to be deferred for up to two years.