

NZ Justice International Network

PĀNUI 3, AUGUST 2020: COVID-19 SPECIAL



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Greetings from Aotearoa New Zealand. I can only hope the best for you in these uncertain and unprecedented times, especially as nations around the world cope with subsequent waves of the virus sweeping across populations.

There can be no doubt that the COVID-19 pandemic has caused considerable upheaval to criminal justice systems around the world.

Each country has had a unique set of issues to face, in terms of the way governments have responded to the pandemic and how to manage existing justice systems in the face of pandemic management.

Out of the chaos comes opportunities, and over this JIN pānui and in subsequent issues I'll be highlighting some of the lessons we can learn from new ways of working under the pandemic. In this edition we'll examine how New Zealand's justice system responded, with particular focus on family violence and sexual violence, and how it is seeking to implement lessons learned.

In the next JIN pānui we'll look at how the world has coped – from what pressures were brought to bear on the justice systems around the world, and how countries responded.

At the time of writing, we are two days into a new response to new community transmission after 102 days without it. We've got a way to go yet.

As always, we'd love to hear from you. In particular, if you have some insights from your country for how we can implement better ways of working, please get in touch at safeandeffective@justice.govt.nz

I wish the best of health to you, your family and colleagues!

Ian.

The balancing act: Justice in the time of COVID-19

One of the biggest challenges facing countries is how to keep the scales of justice balanced fairly and without favour during these extraordinary times.

Issues of access to justice, transparency, critical social support services and managing sentences all posed immediate and unprecedented challenges.

While New Zealand had got through comparatively well and is getting closer to normal life (although a recent flare up has caused our largest city Auckland going back to a temporary lockdown at the time of writing), the speed at which severe restrictions on personal freedoms were imposed meant New Zealand's justice system needed to act fast – and think faster.

Balancing the scales of justice took on a new meaning as justice sector agencies strove to maintain a balance between keeping access to justice with the need to put first the health and safety of everyone involved, both those going through the system and the justice staff who keep the wheels turning.

New Zealand's national response is characterised by four 'Alert Levels':

- Alert Level 1 — Prepare: No restrictions on personal movement but people are encouraged to maintain a record of where they have been; tight border controls.
- Alert Level 2 — Reduce: Physical distancing of 2 metres; no gatherings of more than 100 people; businesses open but keeping tracing records.
- Alert Level 3 — Restrict: People must work from home unless that is not possible; businesses can open but cannot physically interact with customers; public venues closed.
- Alert Level 4 — Lockdown: People instructed to stay at home; travel is severely limited; businesses closed except for essential services.

For more information about the Alert Levels and overall response, visit covid19.govt.nz

This system was introduced 21 March, with New Zealand immediately set at AL2. AL3 was imposed two days later, escalating to AL4 another two days later where it stayed for a month before dropping back to AL3 on 27 April. Restrictions eased to AL2 on 13 May, further dropping to AL1 on 8 June – in practice, business as usual except for tight border restrictions.

While ‘flatten the curve’ has been an effective catch-cry for the global response to reduce the load on essential health services, New Zealand had the opportunity to eliminate the virus if it moved fast. It did move fast, closing its borders early and quickly escalating through the stages to AL4. The AL1 status remained until August 11, when an incident of community transmission in Auckland was announced, leading to Auckland moving to AL3 and the rest of New Zealand moving to AL2 in an attempt to quickly eliminate the flare-up.

Setting priorities

The biggest impacts on New Zealand’s justice system were felt at AL3 and AL4, as one would expect.

At AL3, courts and tribunals conducted as much of their usual business as they were safely able to, but by AL4 the Heads of Benches (led by Chief Justice Dame Helen Winkelmann) strictly prioritised proceedings that affected the liberty of an individual and their personal safety and wellbeing, or matters that were time-critical.

Interestingly, and echoing the Prime Minister’s communications approach, alongside messages to follow distancing and hygiene requirements the Chief Justice urged people to show kindness to all court users.

Jury trials

Jury trials were almost immediately suspended – even before New Zealand’s Prime Minister announced the country’s lockdown – with the Chief Justice announcing 18 March that while there was no evidence of community transmission, it was not possible to maintain ideal hygiene and physical distancing precautions for a jury trial so no new jury trials would be allowed, although jury trials that were underway were allowed to be completed. While New Zealand has resumed largely normal operations, the stay on jury trials was maintained through to the beginning of August to allow time for the appropriate preparations and notification for members of the public, who may be called upon to serve on juries.



Jury trials in New Zealand were suspended until August 3 – only to be suspended again in our largest city Auckland following a local outbreak that was announced August 11

Open and transparent justice

Hygiene and distancing also required some limitations on access to physical justice environments. The Chief Justice wielded the power available to her to exclude members of the public, to avoid endangering the safety of any person (s197 of the Criminal Procedure Act 2011). Family and supporters of those in courts, whether victims or defendants, needed permission to attend from the presiding judges through both AL3 and AL4.

The principle of open and transparent justice was maintained for members of the media, who had access to court proceedings remotely due to the Ministry’s quick adoption of audio-visual technology such as ‘virtual meeting rooms’. To reduce the need for court reporters to physically attend court during AL3 and AL4, the Chief District Court Judge advised that daily court lists should be proactively emailed to accredited court reporters. These were only supplied at courts themselves, and have helped meet a need that members of the media had been asking for from before the pandemic.

To keep some sense of openness at a time when the country was largely closed, the Ministry extended its use of existing technology such as virtual meeting rooms and AV services, and is investigating how other electronic solutions can support court operations in the future. However, a ‘digital court’ is not imminent, as it would take



some time and a dedicated budget to implement to a sufficient standard.

Victims

Throughout the different alert levels, victims of crime were able to attend hearings remotely (through audio-visual links or teleconference). While in theory judges could allow victims to attend in person, this didn't happen due to the high risk of community transmission.

Service providers

Legal aid providers remained available, and defendants were able to access duty lawyers and legal aid services during all alert levels. As a fillip for financially-pressured private providers, the Ministry agreed that all duty lawyer work and priority criminal assignments went to the private bar in the first instance, and the Public Defence Service would reduce the number of criminal cases assigned to them.

Restorative justice providers were able to deliver services remotely through AL3 and AL4.

Participants in the therapeutic-focused Alcohol and Other Drug Courts could attend hearings remotely and continue to receive treatment during all alert levels, such as counselling, peer support meetings, AA meetings and therapy using telephone and online mechanisms like Zoom.

Throughout AL3 and AL4, providers of essential services could deliver services remotely where possible, such as family violence programmes, family support services, the Public Trust office and Victim Support.

For the providers that were facing uncertainty with expiring contracts, funding agreements were extended for a year, which also allows the Ministry to assess potential changes to service delivery in a post-Covid world.

Parole and probation

Parole and probation services needed to quickly adapt to changing circumstances. Provisions in the Parole Act were activated to allow a chairperson or panel convenor to act alone and for the Parole Board (or panel or Chair) to make decisions without the offender being present.

Probation also operated differently, with Officers able to vary, cancel or suspend conditions of sentences of supervision or intensive supervision. They could also remit hours of community services, but no more than eight hours a week and no more than one third of the imposed sentence. They could also extend the time required to complete the offender's obligations by up to 12 months. Without these provisions during a time where everyone's personal liberty was significantly curtailed, it was possible for many people to be in breach of their sentences at no real fault of their own.

COVID-19: Focus on Family Violence and Sexual Violence (FVSV)

When New Zealand rapidly went into a comprehensive lockdown to combat the spread of COVID-19, one of the greatest and earliest concerns was how to protect people at risk of suffering sexual violence and family violence.

As the nation was urged to stay home and stick within 'bubbles' of close family members, advocates were concerned that people would be forced to spend time in bubbles with other people who might harm them.

New Zealand has a high rate of violence against women; around one third of all women in New Zealand have experienced physical and/or sexual intimate partner violence (IPV) in their lifetime.

Furthermore, New Zealand's *Family Violence Clearinghouse* (nzfvc.org.nz) says 87% of women who had experienced physical and/or sexual violence from a partner had not reported the violence to Police. Older people and children are also at risk.

So, the idea many New Zealanders would have to spend prolonged time indoors with people who could harm them, with the additional pressure of the loss of freedoms of movement and loss of income, presented a challenge to people working to address FVSV.

In New Zealand, the Government's response is led by the Joint Venture for Family Violence and Sexual Violence, an innovative approach that sits across ten government agencies who are working closely with the FVSV sector and communities to provide leadership at strategic, practical, operational and community levels. New Zealand's Chief Victims Advisor Dr Kim McGregor is also a strong advocate in this space.

When New Zealand moved into Alert Level 4 (see main article for explanation), the Joint Venture developed public messaging on FVSV, including where people could access support. It also re-prioritised its resources to complement work already underway by COVID-19 essential services.

The JV also implemented a triage system that enabled data, information and insights to be fed through to Government in real time, to know what was happening in frontline FVSV services.

The Courts also responded by prioritising proceedings involving safety, allowing for affidavits to be sworn remotely so people could still apply for protection orders, and the Principal Family Court Judge issued advice on shared parenting, saying children in shared care can travel between homes if they are healthy.

Meanwhile, Dr McGregor issued a statement for media to reassure people that FVSV services were classed as 'essential' during the lockdown.



"My message for all New Zealanders: You are not alone. It's not ok for anyone to hurt you. Violence is still a crime. Even though we are currently in self-isolation, we still want to hear from you if you, or someone in your bubble, is being hurt," said Dr McGregor.

"If you are being harmed, there are a range of social services with national help lines available to talk to you, as well as offer practical support and access to safe, emergency accommodation if you need it."

During Alert Levels 3-4, the JV coordinated an action plan that focused on six areas:

- **A coordinated prevention campaign** as part of COVID-19 messaging to promote service, encourage help-seeking and help-giving.
- **Providing the emergency workforce** with FVSV guidance and resources through the Civil Defence Emergency Management (CDEM) groups for frontline emergency services.
- **Connecting** essential services, like pharmacies, supermarkets and foodbanks, with information about how to access FVSV services.
- **Outreach for vulnerable families** by NGOs and kaupapa Māori providers so they could access the help they needed.
- **Providing essential needs** packs to people who had been relocated as a result of FVSV, which included food, clothing, phones and resources for children.
- **Coordinated emergency accommodation** to relocate people who were affected by FVSV (such as placing new clients in motel units).

While the acute need for FVSV support services has passed for now, contingent on the virus not reappearing, the Joint Venture has established new ways of working that will be valuable for future events of this nature.

Three topics I've been writing and/or reading about....

[Children Who Offend: Why Are Prevention and Intervention Efforts to Reduce Persistent Criminality so Seldom Applied? Psychology, Public Policy, and Law in press 2020](#)
Jerome Reil, Ian Lambie, John Horwood, and Andrew Becroft.

Children who offend (CWO) are at risk of persistent criminality and causing significant social and economic

harm. However, despite convincing evidence demonstrating that early onset offending is associated with more frequent and persistent offending, understanding how to best identify children at risk of (re)offending is limited, and consistent application of evidence-based interventions specifically targeting this group is lacking. This article calls for a spotlight on child offending in research, policy, and clinical practice. Increased attention to CWO and those at risk of offending is urgently needed for developing more effective identification and intervention strategies, ensuring more positive outcomes for children, families, and communities, and reducing criminal justice costs if we are truly going to address burgeoning prison populations across the globe. [If anyone wants a copy of this paper I am most happy to share it when it's in print.](#)

[A Criminological Fly in the Ointment: Specialty Courts and the Generality of Deviance. Victims & Offenders. 2019.](#)
Travis C. Pratta,^b and Jillian J. Turanovi

I found this paper particularly interesting given the interest in specialist courts internationally. Specialty courts—such as drug courts, mental health courts, or domestic violence courts—tend to assume, either implicitly or explicitly, that particular groups of offenders have unique problems that can be best met with specialized case processing. The problem is that criminological theory and research have long demonstrated that those in the justice system tend to be generalists. Accordingly, the authors argue here that the notion of the "generality of deviance" presents a problem for the potential effectiveness of specialty courts because they are likely operating on a faulty set of ideas about offending behavior.

[Prisons or Problem-Solving: Does the Public Support Specialty Courts? VICTIMS & OFFENDERS. 2019.](#)
Angela J. Thieloa, Francis T. Cullen, Alexander L. Burton b, Melissa M. Moon C, and Velmer S. Burton, J

This is a particularly interesting paper given the interest in such courts in New Zealand and also the importance of including the public in such initiatives. Recently, "problem-solving" courts have been developed as an alternative to imprisonment. Based on a 2017 national survey of 1,000 respondents, the current study examines overall public support for rehabilitation as a goal of corrections and then focuses specifically on support for different types of specialty courts. The analysis reveals that the American public endorses not only the rehabilitative ideal but also the use of problem-solving courts. Further, with only minimal variation, strong support for these courts appears to exist regardless of political orientation and socio demographic characteristics.