

# The impact of COVID-19 in New Zealand

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## Current situation

On 25 March 2020 New Zealand moved to Covid-19 Alert Level 4 and declared a national emergency.

During Alert Level 4, only businesses that have been deemed essential may remain open. Other businesses that are able to work from home, may also continue to do so. The Alert Level 4 status was initially estimated to continue for a period of at least 4 weeks, which would see it expire on or about 22 April 2020. The Alert Level 4 status may be extended as necessary.

Insurers are deemed to be essential service providers, meaning they may continue to operate during Alert Level 4, though their employees should still work from home where possible. Much the same rules apply to those businesses that support insurers (including those lawyers in private practice working for insurers).

More information about the Government's response to Covid-19 in New Zealand can be found here: <https://covid19.govt.nz/>

## Impact upon insurance

### 1. Courts

During Alert Level 4, the Courts are only hearing priority proceedings, those that affect the liberty or personal safety and wellbeing of an individual.

Wherever possible, remote access will be encouraged, including for mediation and other alternate dispute resolution mechanisms. Where it is necessary to appear in court in person, strict hygiene standards have been implemented.

Members of the public whose attendance is not required for the business of court that day have been excluded from the courtroom. The court will remain open to accredited members of the media to ensure that the principles of open justice continue to be observed.

More information about the Courts' response to Covid-19 in New Zealand can be found here: <https://www.courtsofnz.govt.nz/publications/announcements/covid-19/>

Many insurance litigation matters have been put on hold or will be delayed to allow priority matters to be heard.

Some insurers are adopting a cautious approach in commencing or continuing litigation, including to avoid appearing overzealous in the current climate. It is likely many insurers will choose to progress files at a delayed pace.

### 2. Insurance cover

The Insurance Council of New Zealand (ICNZ) and its members have announced a set of core principles they have each pledged to use to guide their individual response to support their customers and suppliers during the Covid-19 crisis. More information about those principles, and the insurance market's response to Covid-19 generally in New Zealand, can be found here:

<https://www.icnz.org.nz/media-resources/covid-19/>

Covid-19 is expected to lead to changes to the wording of policies and their application in New Zealand. It may also impact upon consumers' appetite and desire to buy certain types of insurance.

Some general comments can be made about the way Covid-19 is impacting upon certain types of insurance in New Zealand:

*a. Business Interruption*

Even if a business is able to continue operating, Covid-19 and the ensuing lockdown may cause a range of economic issues, including supply-chain disruption, delays due to remote working, compliance costs and staffing issues.

Businesses may seek to rely upon Business Interruption policies. However, most of these policies require material damage to the property or place of business to trigger cover, and do not respond to disease outbreaks. There may be some cover if a policy extends to contingent business interruption, but typically these policies cover only a small proportion of the loss.

*b. Future cover*

It is predicted that more people will begin to seek insurance cover for events such as redundancy, stress and mental health related illnesses, and interruptions due to pandemics or the outbreak of a disease. Insurers have pre-emptively predicted that this type of cover will become more difficult and expensive to receive.

*c. Exclusions to existing cover*

Insurers are reminding their clients that income protection, mortgage repayment or household expenses cover are only available in the limited circumstance of their policy, which usually covers inability to work due to disability. These type of policies typically do not include financial difficulty.

*d. Travel insurance*

Many insurance policies exclude claims relating to a pandemic or the outbreak of a disease. As a general rule, any travel insurance policies purchased after Covid-19 became a known event will typically exclude that from cover. The ICNZ has defined this time period as between 20 – 31 January 2020 and since.

Many insurers have temporarily ceased issuing new travel insurance policies.

*e. D&O insurance*

It is anticipated that as insolvency increases and New Zealand's economy worsens, shareholder action against companies and/or their directors will be inevitable.

Urgent legislation has been passed to allow directors a "safe harbour" from insolvency responsibilities and to place certain company debts into hibernation for a period. These urgent reforms do not excuse directors from their other responsibilities, including to act in good faith and in the best interests of the company.

### **3. Mediation**

Like in many other jurisdictions, there has been recent growth in the use of online or virtual mediation, conducted by video-conference. The Covid-19 situation has led many New Zealand mediators now to offer online mediation as a regular service.

More information about the use of online mediation in New Zealand can be found here:

<https://geoffsharpmediation.com/online-mediation/>  
[https://www.aminz.org.nz/Story?Action=View&Story\\_id=1762](https://www.aminz.org.nz/Story?Action=View&Story_id=1762)