

25 March 2020

Ms Charlotte Walker
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New Zealand Law Society
WELLINGTON

By email only: charlotte.walker@lawsociety.org.nz

Dear Charlotte

Administration of Oaths and Declarations in Circumstances of Pandemic Level 4 Self-isolation

This advice is concerned with the concept of remote administration of oaths and declarations in the circumstances currently facing this country. The difficulty arises because the legislation governing the administration of oaths and declarations, and swearing of affidavits, contemplates the deponent being in close physical proximity to the administering person (I will refer to this person as the lawyer but it could be any person authorised by law to administer an oath or declaration or the swearing of an affidavit). For example, Rule 9.73(2)(b) of the High Court Rules 2016 requires an affidavit to be sworn “before a person authorised to administer oaths [under the Oaths and Declarations Act 1957]”, and ss 3&9 of that Act contemplate physical proximity between the deponent and the lawyer.

In the absence of any identified authority to show that a term such as “before a person authorised to administer oaths” could mean something other than close physical proximity, for example by audio-visual link, any doubt about the validity of such a process should be addressed by the lawyer completing a certificate like the draft accompanying this letter. That will give confidence that the document would be accepted by the authority before which it is being offered, as being binding on the deponent. The certificate could be offered by the deponent, with reference to:

- (a) Rule 1.6 of the High Court Rules, or Rule 1.11 in the District Court Rules, in circumstances where there is no form of procedure to meet the pandemic isolation requirements, and the matter may be addressed “*in the manner that the court thinks is best calculated to promote the objective of [the] rules*”; and
- (b) Section 24 of the Epidemic Preparedness Act 2006, which applies in circumstances of the *Epidemic Preparedness (Covid-19) Notice 2020*, from 25 March 2020, by which a Judge of the High Court and certain other judicial officers may modify any rule of court to the extent necessary in the interests of justice to take account of the effects of the disease stated in the notice. I consider that s.24 would cover this situation.

If the certification procedures are followed, in the absence of binding authority to the effect that the existing legislation accommodates remote attestation, that will best ensure the integrity of the system for formally proving a written statement.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'P. Collins', with a long horizontal flourish extending to the right.

Paul Collins