

Webinar: Access to family justice internationally during the Covid-19 crisis

23 April 2020 – 2-3pm UK time

QUESTIONS FOR EACH JURISDICTION

1. What is your jurisdiction?
2. When did the lockdown start?
3. Were courts affected before/after/same time as schools being shut?
4. What access is there currently to family courts at first instance?
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7. Which IT is being used?
8. Is live evidence being given remotely?
9. Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?
10. Other relevant issues?

Speakers

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Wong Kai Yun - Singapore

When did the lockdown start?

- 1 February 2020: All travellers arriving from mainland China who had been there in the past 14 days will be barred from entry or transit in Singapore.
- 17/18 March 2020: Singaporean students studying overseas were encouraged to consider returning home soon. Singaporeans were encouraged to defer all travel abroad with immediate effect.
- 20 March 2020: All Singaporeans, permanent residents, long-term pass holders and short-term visitors entering will be issued a 14-day stay-home notice (SHN)
- 23 March 2020: All short-term visitors (from anywhere in the world) will not be allowed to enter or transit through Singapore.
- 27 March 2020: Returnees who disregard prevailing travel advisory and leave Singapore will be charged at unsubsidised rates for their inpatient stay at public hospitals, if they are admitted for suspected COVID-19 symptoms within 14 days of returning to Singapore.
- 27 March 2020: Selected hearings in the Family Justice Courts will be conducted by video conferencing or where appropriate, telephone conferencing.
- 31 March 2020: Employers must allow employees to work from home as far as reasonably practicable or risk facing penalties.
- 1 April 2020: Selected hearings in the Supreme Court of Singapore will be conducted by video conferencing or where appropriate, telephone conferencing.
- 3 April 2020
(‘Circuit Breaker’ announced at 4pm): Circuit Breaker Period from 7 April to 5 May 2020 - Any hearing conducted during the Relevant Period will be conducted through electronic means of communication, unless otherwise directed by the Court.

Were courts affected before/after/same time as schools being shut?

The Courts began implementing restrictions such as safe distancing measures and limiting the number of persons for physical Court attendance in March 2020. From 7 April 2020 for the

'Circuit Breaker' period, every matter scheduled for hearing in the Courts will be adjourned to a date to be fixed, unless the matter is assessed to be "urgent and essential".

Schools (all primary, secondary, Pre-University and Institute of Higher Learning (IHL) students, including students from Special Education (SPED) schools) moved to home-based learning on 8 April 2020.

What access is there currently to family courts at first instance?

Only "urgent and essential matters" are heard, with other matters being adjourned to a date to be fixed. These matters comprise matters which are "time sensitive, constitute a threat to life and liberty and/or involve urgent needs of the family".

The following are some of the matters which will proceed by video-conferencing, where practicable:

- a. Maintenance proceedings where an urgent hearing is necessary due to immediate financial needs on the part of the applicant and/or his/her dependants
- b. Child Protection cases where the safety of the child is at risk
- c. Family violence proceedings where matters involve a higher risk of imminent danger

Save for hearings, the Courts still function and the Court Circulars provide that all subsisting timelines to stand during the Circuit Breaker Period, unless parties write in to seek an adjournment. Electronic filing (EFS) to the Courts has been in place since 2000, and a streamlined electronic litigation (eLit) system has been in place since 2013.

What access is there currently to family courts at appeal level?

The hearings of appeals will be adjourned to a later date unless they are deemed to be urgent and essential.

How is this access being provided at each level? In person/phone/video?

Access to hearings will be provided by electronic means of communication such as video conferencing or telephone conferencing.

Which IT is being used?

Zoom is the Court-approved video conferencing software in the Singapore Courts. Previously, video conferencing software such as WebEx and Skype were also utilised.

Is live evidence being given remotely?

Even before the 'Circuit Breaker', our Evidence Act does allow for live evidence to be given remotely if the witness is below the age of 16 years; if it is expressly agreed between the parties to the proceedings that evidence may be so given; if the witness is outside Singapore; or if the court is satisfied that it is expedient in the interests of justice to do so. However, the giving of live evidence remotely is not commonplace.

Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?

The Courts are closed on Saturdays, Sundays and Public Holidays. Court vacations are generally in June and December, not exceeding 2 months. During Court Vacation, any matter to be immediately heard shall be heard by the vacation judge.

Other relevant issues?

"The Association of Women for Action and Research (Aware) said its helpline received 574 enquiries in February, which was 38 per cent higher compared with the same month last year. For calls related to family violence alone, the figures went up by 33 per cent in February compared with February last year. In March, the helpline received 619 enquiries, a 35-per-cent increase compared with the same period last year. The enquiries are related to issues such as emotional and psychological distress, violence and abuse during the Covid-19 pandemic." (8 April 2020, Today, "Covid-19: Counsellors watching out for expected rise in family abuse victims seeking help")

"Nanyang Technological University's associate professor of psychology, Dr Andy Ho, noted that physical isolation also makes it harder for victims to get help. He said: 'Victims are now constantly in close physical proximity with their abusers. This exposes them to a higher likelihood of abuse.'" (9 April 2020, Straits Times, "Rise in domestic abuse cases as families forced to stay home")

"In particular, for cases where ex-spouses have an acrimonious relationship, sorting out child access and maintenance payouts during this period is not clear-cut."

"In response to queries from ST, the Family Justice Courts (FJC) said parents should communicate with each other or through lawyers and work together to find 'practical and suitable solutions to access issues', bearing in mind the best interests of the children and the need to comply with government measures."

"If there is no agreement despite best efforts, parents can write in jointly to the courts with their views or apply for a variation or suspension of access orders. 'The Courts should be the

last resort in parenting matters,' stressed the FJC." (19 April 2020, Straits Times, "Coronavirus: Divorced couples face child access and maintenance issues during circuit breaker period")

Natalia Ołowska-Czajka - Poland

When did the lockdown start?

13 March it was first announced, with effect from 14 March, under the name of "the state of threat of pandemic".

30 March it was declared officially that there is "the state of pandemic" and it lasts ever since.

Were courts affected before/after/same time as schools being shut?

Schools were closed 5 days before, for 14 days initially yet remain closed until now, with little knowledge as to when it is going to change, rumours say that schools might not reopen until the end of the school year (which is scheduled for 26 June).

What access is there currently to family courts at first instance?

March and April – all planned hearings were revoked and cancelled.

Only urgent matters such as interim measures (injunctions) as to contacts with/access to children were being heard although the Hague Convention Cases were all cancelled too.

Currently no decision/concise politics as to May hearings, they still exist on our calendars.

However, the judges and secretaries work, written dealings go as before, the mailing is being done the traditional way by registered mail.

What access is there currently to family courts at appeal level?

Similarly, no hearings in March and April, no information as for May.

The paper work is ongoing.

How is this access being provided at each level? In person/phone/video?

In many instances there is not even physical access to the court premises, the guards do not let people in.

Which IT is being used?

None.

Is live evidence being given remotely?

Not at this stage. However, the procedure would even allow written testimony.

Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?

No. They operate permanently except for Christmas, New Year, 1 and 3 May, Easter and Corpus Cristi, and some other national holidays: 15 August and 1 and 11 November.

There has not been an instance of the courts not operating at all.

Other relevant issues?

1. The Bill on the Covid-19 crises provides for the suspension of all the court deadlines until the state of pandemic is cancelled.
2. Draft law: 16 April for remote, not indicating the electronic tool which is to be used, still a draft though.

Patricia Kuyumdjian de Williams - Argentina

When did the lockdown start?

The lockdown started in Argentina on March 20th with a mandatory total quarantine at national level. Preventive and compulsory social isolation was ordered for all the inhabitants of the country. We are only allowed to leave our homes to go to pharmacies and buy food in the area where we live. It is a crime against public health to violate these restrictions. There are criminal consequences for those who breach the isolation. The streets are controlled by the police. Public passenger transport only works for those who are exempted.

Exemptions have been increased since April 13th.

Were courts affected before/after/same time as schools being shut?

Schools and Universities are closed since March 16th and Courts since March 20th. Until now it seems that school will reopen in August and there is no date for the reopening of the Family Courts.

What access is there currently to family courts at first instance?

Access is minimum and exceptional.

From March 20th to April 1st, only 2 Family Courts, from 23, were on duty in Buenos Aires city, and they only accepted:

1. Domestic violence,
2. Psychiatric hospitalizations,
3. Measures for child protection when they are at risk. What we call: "controles de legalidad".
4. All precautionary measures, which expired during the lockdown, were automatically extended until it finishes.

On April 1st the Supreme Court added cases related to child support executions. Those related to visitation rights are, in almost all cases, dismissed except for very special situations: for example if the parents live far away from one another and they have to use public transportation to take the child from one house to the other.

From April 20th all family judges have begun to work remotely in Buenos Aires, but they continued accepting only urgent cases because, it is said, that as the remote system is not prepared for full work, it will collapse

What access is there currently to family courts at appeal level?

There is almost no access to the appeal level. The deadlines are suspended.

How is this access being provided at each level? In person/phone/video?

During this exceptional period, access is exclusively virtual.

Since the beginning all the situations are treated only remotely. Attention to the public has been suspended. Judges on duty have no contact with the parties except if it is essential. There are no hearings at all. The deadlines are suspended. The Minor defenders, that normally are part in every case where minors are involved, are not on duty.

During the first 30 days, up to April 20th, judges performed remote work, they saw the requests in their computers and forwarded them to the Judges on duty, that were the only ones that had signature.

Normally there are 23 family judges in Buenos Aires. During this lockdown, we first had 2 Family Judges on duty, and then another one was added.

From April 20th, all family judges are working remotely with virtual signature, but as I've said, they continue accepting only urgent cases and there is no access in person, or video.

Our judicial system is not prepared for this remote mechanism. We, lawyers, can litigate by uploading our briefs, but the system "is unstable".

Our current judicial system is still in paper and at the same time part of it is digital. We don't have yet a fully digital file.

However, we have Electronic Notifications.

Which IT is being used?

In Buenos Aires city, the IT used is Lex100 and in the Province of Buenos Aires, Augusta.

Is live evidence being given remotely?

No remote hearings at all. I have foreign clients and I've made attempts, in normal times, so that they could be heard remotely, but the judges never allowed it.

Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?

Yes, our courts are shut during 31 days in January and 15 days in July. During that period Judges on duty are designated to attend only urgent matters: domestic violence, psychiatric hospitalizations, measures for child protection, child support, visitation rights, travel authorizations, health issues, precautionary measures, attribution of the family home, international restitution. The cases they accept are only the urgent ones, but it is much more flexible than the current situation.

This extended period of 45 days a year along which Argentine courts are closed every year, is a highly criticized issue. Several governments have tried to reduce it, but the unions opposed and their power in Argentina is very strong.

What % of family cases are taking place?

It's a minimum percentage. It's difficult to say a number.

Other relevant issues?

The violence denounced did not only not increase during this isolation, but a judicial source has told me that they have decreased. In normal times there are near 100 denounces per day in Buenos Aires City. The first week of lockdown there were only 20. They think that it may be because only the serious cases reach the Courts, and not the circumstantial cases or the fake denounces that have other motivations. Other reason may be that during the lockdown is more difficult for the victims to denounce and when it finish it will considerably increase.

Our justice system was already overloaded before the Covid 19 so it is obvious that the minute the courts reopen there is going to be an avalanche of demands and petitions of all sort.

What has really increased in family Courts during the last 30 days of lockdown are the **psychiatric hospitalizations**. Only last Thursday there were 53 in one day. Judges couldn't believe it.

Another very critical situation is the extremely strict lockdown for **people over 70** in the city of Buenos Aires. They can't leave their homes at all without a special permission. Not even to go to pharmacies and buy food. The city government says that it is to protect them, but the elderly are getting seriously depressed.

Fernanda Machado - Brazil

When did the lockdown start?

Brazil has been reasonably successful to this date precisely because the social isolation measures have been undertaken way sooner in comparison to most of the rest of the world. Regarding our climate, right now we are in the first half of fall and winter will begin officially 2 months from now, late June. Even though "winter is coming", weather doesn't get severely cold even in the most Southern States, closer to Paraguay, Argentina and Uruguay.

First official case was identified on February 26th, right after Carnival (Ash Wednesday). The WHO declared that the new coronavirus was a pandemic on March 11th and Brazil started lockdown measures only a couple of days after that.

Until this morning (April 20th), the whole country has had 2,500 deaths and a little less than 40,000 confirmed cases.

São Paulo alone accounts for more than 1,000 of these deaths and 14,000 of the confirmed cases.

In Rio, we had around 400 deaths and 4,700 confirmed cases to this date.

One also has to bear in mind that Brazilian population today is of more than 211,000,000 people.

The number of cases started raising faster from early April, but from the past week the daily counts of deaths have been decreasing. We expect to reach the end of the peak of the pandemic during these next couple of weeks, that is to say, by late April/early May.

It is important to highlight that the delay in adopting lockdown measures is one of the main reasons why the United States are considered to be today as the hard core of the pandemic worldwide: even though their population is bigger (330,000,000 inhabitants, 1,5 times bigger than the Brazilian) and their first official case was identified around 10 days earlier, they are counting more than 40,000 deaths to this date (16 times more than Brazil), out of which almost 20,000 in New York alone (20 times more than São Paulo), and 765,000 confirmed cases to this date (almost 20 times more than Brazil), out of which almost 250,000 in New York alone (18 times more than São Paulo).

No beach, concerts, etc., but no concrete fines and lengths of staying out, gender, hours, etc., like in countries such as Panamá. Policy is to stay home, period, leave as little as possible, only supermarket and pharmacy and medical appointments. Wearing masks in the street has just begun to be mandatory.

In the State of Rio, commerce and circulation are also shut down and will also remain that way at least until April 30th.

Brazilian flight companies have cancelled all international flights until April 30th and are operating on domestic flights with only 10% of the fleet capacity.

We believe that by the second semester things will be mostly under control.

Were courts affected before/after/same time as schools being shut?

Courts were affected pretty much at the same time as schools being shut. In the State of Rio, Courts were shut from March 13th (Friday) and schools were shut from March 16th (Monday). Countrywide, all Courts have been closed since March 19th and will remain that way at least until April 30th.

What access is there currently to family courts at first instance?

Practicalities vary slightly from one State to the other (Family Courts are State Courts), but basically we cannot go there in person and all deadlines and hearings are suspended. Even though the Courts' staff are working on limited capacity and judges and district attorneys are doing home office, there is no way of accessing directly any of the latter.

What access is there currently to family courts at appeal level?

In general, it is the same situation described for the first instance. The difference is that not all trials are suspended. In some cases here – regardless of involving Family Law or not –, oral pleadings are mandatory in trials; in that case, some Courts are simply suspending the trials and setting the dates for the first week of May, and other Courts are allowing lawyers to record on video their oral arguments (here each lawyer has 15 minutes for their pleadings) and submit them to Court 48 business hours before the date of the trial, at the latest. That being said, the Bar questions the fact that there is no way of providing actual interaction during these trials. Also, some Courts are undertaking what they call virtual trials when oral arguments aren't mandatory, but they are not broadcasted and the lawyers can only have access to the result later on. Last but not least, here we usually submit a summary of our pleadings a couple of days before trial, off record, but we cannot do that in person, so some Justices of Courts of Appeals are allowing lawyers to send them by e-mail, but there is no specific uniform guidance regarding this aspect.

How is this access being provided at each level? In person/phone/video?

We can call Courts and speak to the clerks and secretaries for the judges and district attorneys. Hardly anything can be done in person. There are no news of the use of video for such, except for oral pleadings at appeal level, in the circumstances described herein above.

Which IT is being used?

Nothing different from the usual. Most procedures are electronic, though there are variations between States and sometimes between cities within certain States, and, in that case, motions can be filed electronically at all times.

Is live evidence being given remotely?

No hearings or trials are taking place, except for the trials where oral pleadings are mandatory – see previous answer.

Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?

Courts are generally shut from December 20th until January 6th for Christmas and New Year's Eve, and this is the longest period. Since these holidays here take place during summertime, from January 7th until January 20th, Courts resume activities only partially – it is possible to go there in person, but all deadlines are suspended and no hearings or trials take place during this total period of one month. In addition to that, in our Superior Court of Justice and our Supreme Federal Court, in the capital, Brasília, equivalent to the Supreme Court in the UK, during summer, the Justices have their collective vacations until the very end of the month of January, and also during the whole month of July (which corresponds to our winter break in schools). Urgent cases are dealt with year-round any day or time when Courts are shut – basically, Courts activities take place somehow literally 24/7.

Other relevant issues?

Within Family and Succession Law, the issues arising during the lockdown have been mostly related to children (visitation rights and custody) and to living wills – and also to domestic violence, though such matters are dealt by Criminal Courts. We foresee a high increase in estate and probate procedures, given the number of deaths, and also divorces.

Diana Carrillo - Spain

When did the lockdown start?

The lockdown started in Spain on the 14th march, with the Royal Decree 463/2020, which declared the state of emergency in Spain, and limited the right of circulation of people. That

very day 14th march, all judicial activity was suspended with few exceptions such as criminal law, habeas corpus, domestic violence, arrests, fundamental rights and measures to protect the minors.

At the same time, all judiciary terms were suspended, so no petition could be filed and no cases were processed. Still lawyers kept filing writs until the chief justice of the Judges in Madrid ordered that only urgent matters according to the Royal Decree could be filed, so for a month there has been no justice system except for urgent matters.

Were courts affected before/after/same time as schools being shut?

All schools had been previously shut on Thursday and courts closed on Saturday 14th of March.

What access is there currently to family courts at first instance?

According to the Decree of emergency, the only cases that may be filed to family courts at first instance are the protection measures for children of article 158 Spanish Civil Code, this is, suitable measures to ensure the provision of support, adequate provisions to prevent harmful disturbances to the children, necessary measures to prevent the abduction of underage children, generally other provisions deemed suitable to remove the minor from danger or to prevent any damages to him or her.

In practise, the Judges are refusing to admit many cases, possibly only 20%. The enforcement of the decisions regarding access is refused on a general basis. The main issue has been the accomplishment of joint custody and access which generated a hot debate. Like everywhere else, fear has provoked that some parents have suspended the access with the other parent, sometimes for a relevant reason related to the Covid 19 and others not so relevant. The General Council for the Judiciary, as well as the Spanish Minister of Justice, stated that the judicial orders must be accomplished although it was down to the Judge to decide on a case by case basis in each situation.

From the Family Section in Madrid, we issued a note asking parents to reach temporary agreements and to be generous for the general health, and some have been reasonable and generous. Another concern is child support, as we have over 300.000 people whose labour contracts have been suspended and very possibly will be finally dismissed if the employer loses the business.

What access is there currently to family courts at appeal level?

The decision may be appealed to the High Courts.

How is this access being provided at each level?

In person/phone/video? The access to the Court may be personal, keeping safety distance and using a mask and gloves, although we are also implementing remote hearings, mostly in domestic abuse cases. The issue is that not everyone has access to this technology.

Which IT is being used?

Zoom, Skype and Microsoft Teams are being used although there are many concerns regarding the security of the communications. Also, IT issues arise such as freezing of the image, difficulty to listen to the other parties, although with a good order and protocol it works quite well.

Is live evidence being given remotely? Yes. Actually, the possibility of using digital technology was introduced in the Spanish Civil Procedure Act 2000, since then all cases are recorded not only the sound but also the image and the possibility of live evidence could be used in special circumstances such as long distances or illnesses. Now we have to rush and start using the remote hearings on a regular basis, although, in my opinion in family law the face to face of the parties is essential, a divorce hearing should not be heard remotely if it can be helped, mainly a contested one.

Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?

In Spain the month of August is a court holiday. This does not mean all courts are closed, but in the civil jurisdiction only urgent matters such as the article 158 are seen. All jurisdictions keep working although only in certain issues such as dismissals, fundamental rights, criminal cases or urgent family matters. Of course, domestic abuse courts are opened.

This is a hot issue as most lawyers take August as their only holiday while the civil servants take their holidays from middle of June until mid September. If we did not have the month of August we would have no rest at all the whole year. In Spain 85% of the lawyers are small offices with one, two or three lawyers at the most, so the client hires a lawyer not a firm, and there is only one hearing for the divorce, so being substituted for another lawyer is the quickest way of losing the client or being denounced to the bar.

Also, the civil servants before they go on holiday send all the notifications that they had pendant to the lawyers, so June and July are very heavy months for the lawyers. Not to speak of the heat.

Other relevant issues?

It is a great concern that for over a month there is no justice system in Spain which may affect the fundamental right of effective judicial protection. The main issue now is to restart the justice system immediately. Our justice system was already overloaded before the Covid 19 so it is obvious that the minute the courts reopen there is going to be an avalanche of demands and petitions of all sorts.

The General Council for the Judiciary has proposed a plan to avoid the possible collapse, 436 pages, with many amendments, but it has been rejected by most Lawyers and Association of Judges. Finally this last Wednesday 15th of April the CGPJ allowed petitions, demands and

writs to be filed in Court but the cases will not be processed until the state of emergency has been upheld.

Another very relevant issue in family Law in Spain is to be able to give a unified and efficient answer to the families, so from the Family Section of the Bar Association of Madrid, the Spanish Association of Family Lawyers and the Platform for Family & Law, we are all asking for a family jurisdiction so there is the same family justice all over the Spanish territory.

The most relevant issue is to overcome this pandemic, and I would like to give my condolences to all those who have been affected by the virus. We are all in this together and together we will overcome it.

David Truex - Australia and England & Wales

When did the lockdown start?

13 March: Federal courts (including family courts) imposed restrictions on attendance by persons recently arrived in Australia from China, Korea, Iran and Italy.

17 March: All hearings by telephone where possible. Court attendances only when unavoidable, number of persons in court restricted to eight.

23 March: Only urgent or priority matters to be dealt with by in-court face-to-face hearings or interviews. Everything else by telephone.

1 April: Paperless court. No paper documents to be sent to court. Documents to be sent by email only.

Were courts affected before/after/same time as schools being shut?

The family courts started introducing restrictions before school closures were introduced.

Rules for school closures vary between states.

In Queensland schools are open only for vulnerable children and children of essential workers.

In Victoria all children who can learn at home must learn at home. Children of workers in essential services may attend school as are those from disadvantaged families.

In New South Wales parents and carers are strongly encouraged to keep their children home if possible. Any student whose parents or carers are not able to supervise their children appropriately at home should continue to attend school. It may also be appropriate that children and young people with additional vulnerabilities continue to attend school.

What access is there currently to family courts at first instance?

Almost all hearings are conducted by telephone or video link. Only if oral evidence or argument are necessary for justice will parties and lawyers attend a court building in person. This requires adherence to the rule of Court +8 (the Judge, Court Officer and Orderly plus a maximum of 8 other persons – barrister, solicitor and client from each side and a witness – 1 spare spot).

Comment from Paul Staindl, Managing Director, Clancy & Triado, Melbourne: It doesn't always work though as we are midway through a trial where each side has a QC as well and there is an Independent Children's Lawyer– counsel and solicitor – so already well over the 8. The case has been adjourned to November for another 8 days of hearing.

What access is there currently to family courts at appeal level?

As above. If they're not urgent they're not being heard.

How is this access being provided at each level? In person/phone/video?

Straightforward matters are generally heard by telephone (directions hearings, consent orders, short points). Video links are used when the court considers that a visual presentation of evidence or argument would be in the interests of justice. Court attendances are reserved for those cases where there is no practical alternative. I have not heard of a physical court hearing in the family courts in Victoria since the lockdown was introduced in March.

Which IT is being used?

Microsoft Teams is the Court-approved software in the Australian family courts.

Is live evidence being given remotely?

Yes – but both parties must agree to have a hearing remotely or else it is adjourned.

Are courts generally shut in holiday periods? If so, what is the longest period and how are urgent cases usually dealt with?

Courts are shut during public holidays, but the family courts make duty judges available to hear urgent cases outside normal court hours.

Other relevant issues?

There have been anecdotal press reports that the lockdown has increased the reporting of family violence, with a consequent increase in legal aid, police and court resources diverted to

this. Also, that some parents are taking advantage of the lockdown to cause problems over sharing the care and guardianship of their children.

I have not been able so far to find any reliable statistics from government sources in Australia to enable me to check these reports.