

**Hon Aupito William Sio**  
Associate Minister for Courts

**Proactive release – High Court Amendment Rules 2019**

Date of issue: 1 August 2019

The following documents have been proactively released in accordance with Cabinet Office Circular CO (18) 4.

No.	Document	Comments
1	<b>High Court Amendment Rules 2019</b> <i>Cabinet paper</i> Office of the Associate Minister for Courts	Released in full. <i>Note that the copies of the rules provided to Ministers with this paper have been withheld in accordance with section 61 of the Legislation Act 2012 and section 9(2)(h) of the Official Information Act 1982 to maintain legal professional privilege.</i> <i>The legislative instruments are publicly available from <a href="http://www.legislation.govt.nz">www.legislation.govt.nz</a>.</i>
2	<b>High Court Amendment Rules 2019</b> <i>Cabinet minute</i> Cabinet Office Meeting date: 25 June 2019	Released in full.

In confidence

Office of the Associate Minister for Courts  
Cabinet Legislation Committee

## High Court Amendment Rules 2019

### Proposal

1. I seek Cabinet's authorisation for submission to the Executive Council of the High Court Amendment Rules 2019.

### Policy

2. This paper seeks approval to introduce changes to the High Court Rules 2016 proposed and supported by the Rules Committee (the Committee).
3. The Committee is a statutory body established under section 155 of the Senior Courts Act 2016. Rules of the Senior Courts and District Court are made by Order in Council, with the concurrence of the Committee. Members include the Chief Justice, the Chief High Court Judge, the Chief District Court Judge, the Attorney-General, the Solicitor-General, the Chief Executive of the Ministry of Justice, and selected judges and lawyers.
4. Many of the changes are minor and reflect corrections or modifications suggested by the registry and the legal profession for cases not provided for, or where the application of the High Court Rules 2016 has proven to be impracticable in practice. These changes will provide clarity and enhance efficiency in court practice and procedure.
5. The changes contained in the High Court Amendment Rules 2019 include:
  - 5.1. Amendments to refer to the correct section of the Senior Courts Act 2016 and remove outdated references to the Judicature Amendment Act 1972.
  - 5.2. To provide that applications under the following enactments must be made by way of originating application:
    - 5.2.1. section 329 of the Companies Act 1993 (to restore a company to the New Zealand register);
    - 5.2.2. section 319 of the Property Law Act 2007 (to authorise entry onto or over neighbouring land);
    - 5.2.3. section 76 of the Public Trust Act 2001 (to appoint Public Trust an executor, administrator, or trustee); and

- 5.2.4. section 8 of the Trustee Companies Act 1967 (to appoint a trustee company an executor, administrator, or trustee).
- 5.3. Amendments to revoke three forms associated with the High Court Commercial List, which has now been dissolved and replaced with the Commercial Panel.
- 5.4. Schedule 2 is replaced, providing for new daily recovery rates. These are used to set awards of costs and were last adjusted in 2015. The recovery rates are updated as follows:
- 5.4.1. for category 1 proceedings the daily recovery rate is increased from \$1,480 to \$1,590;
  - 5.4.2. for category 2 proceedings the daily recovery rate is increased from \$2,230 to \$2,390; and
  - 5.4.3. for category 3 proceedings the daily recovery rate is increased from \$3,300 to \$3,530.
- 5.5. Schedule 3 is amended in relation to time allocations for hearings, differentiating between time allocations for affidavit hearings and witness hearings. The amendments relate the allocations more closely to the length of the hearing and provide a separate allocation for the preparation of the common bundle (documents that will be referred to by witnesses in their evidence or referred to in submissions).
- 5.6. Schedule 5 is amended to provide for two additional factors for consideration at case management conferences:
- 5.6.1. whether expert witnesses should conference and the manner in which expert evidence is to be given (i.e. in the normal course of a party's case, consecutively, or by way of panel); and
  - 5.6.2. whether an electronic common bundle and/or electronic casebook is to be prepared.
6. The proposed changes do not require any policy decisions. The amendments have been considered and agreed to by the Committee, a statutory committee with authority under section 155 of the Senior Courts Act 2016 to make, amend and repeal rules of the Senior Courts.

#### **Timing and 28-day rule**

7. The proposed rules will come into force on 1 August 2019. I am not seeking a waiver of the 28-day rule.

#### **Compliance**

8. The regulatory changes comply with each of the following:

- 8.1. the principles of the Treaty of Waitangi;
- 8.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 8.3. the principles and guidelines set out in the Privacy Act 1993;
- 8.4. relevant international standards and obligations; and
- 8.5. the LAC Guidelines on the Process and Content of Legislation (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

### **Statutory requirements**

9. Section 148 of the Senior Courts Act 2016 requires the concurrence of the Chief Justice and two or more members of the Rules Committee (at least one of whom must be a High Court Judge) to rules regulating the practice and procedure of the Supreme Court, the Court of Appeal and the High Court.
10. I confirm that the concurrence requirements have been met.

### **Regulations Review Committee**

11. There do not appear to be grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 319.

### **Certification by Parliamentary Counsel**

12. The Parliamentary Counsel Office (PCO) has certified that the instrument is in order for submission to Cabinet.

### **Impact analysis**

13. The Regulatory Quality Team at Treasury has determined that a Regulatory Impact Analysis is not required as these proposals are minor and technical and have no or only minor impacts on businesses, individuals or not-for-profit entities.

### **Publicity**

14. The Ministry of Justice will publicise the court rule changes to the legal profession.

### **Proactive release**

15. I propose to proactively release this paper in full, within 30 business days of the decision.

### **Consultation**

16. The Ministry of Business, Innovation, and Employment, Ministry for Primary Industries, Crown Law, Treasury, Ministry for the Environment, Ministry of Social Development, Department of Internal Affairs, Department of Conservation, Department of Corrections, Inland Revenue Department, the New Zealand Police and the New Zealand Customs Service have been consulted on the High Court Amendment Rules 2019.

17. The Minister of Justice has been consulted and has agreed to the submission of this paper.

**Recommendations**

18. I recommend that the Cabinet Legislation Committee:

1. **note** that the Rules Committee has resolved to make minor and technical changes to the High Court Rules 2016;
2. **note** that section 148 of the Senior Courts Act 2016 requires the concurrence of the Chief Justice and two or more members of the Rules Committee (at least one of whom must be a High Court Judge) to rules regulating the practice and procedure of the Supreme Court, the Court of Appeal and the High Court;
3. **note** the advice of the Associate Minister for Courts that this requirement has been met;
4. **authorise** the submission to the Executive Council of the High Court Amendment Rules 2019;
5. **note** that the High Court Amendment Rules 2019 come into force on 1 August 2019.

Authorised for lodgement

Hon Aupito William Sio

Associate Minister for Courts



# Cabinet Legislation Committee

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### High Court Amendment Rules 2019

**Portfolio**                      **Courts**

On 25 June 2019, the Cabinet Legislation Committee:

- 1        **noted** that the Rules Committee has resolved to make minor and technical changes to the High Court Rules 2016;
- 2        **noted** that section 148 of the Senior Courts Act 2016 requires the concurrence of the Chief Justice and two or more members of the Rules Committee (at least one of whom must be a High Court Judge) to rules regulating the practice and procedure of the Supreme Court, the Court of Appeal and the High Court;
- 3        **noted** the advice of the Associate Minister for Courts that this requirement has been met;
- 4        **authorised** the submission to the Executive Council of the High Court Amendment Rules 2019 [PCO 20714/4.0];
- 5        **noted** that the High Court Amendment Rules 2019 come into force on 1 August 2019.

Vivien Meek  
Committee Secretary

**Present:**

Rt Hon Winston Peters  
Hon Andrew Little  
Hon Stuart Nash  
Hon Iain Lees-Galloway (Chair)  
Hon Tracey Martin  
Hon Eugenie Sage  
Hon Ruth Dyson (Senior Government Whip)

**Officials present from:**

Office of the Prime Minister  
Officials Committee for LEG

**Hard-copy distribution:**

Associate Minister for Courts