

Hon Kiri Allan
Minister of Justice

Proactive release – District Court (Electronic Filing) Amendment Rules 2023

Date of issue: 23 February 2023

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

No.	Document	Comments
1	District Court (Electronic Filing) Amendment Rules 2023 <i>Cabinet paper</i> Office of the Minister of Justice 16 February 2023	Released in full.
2	District Court (Electronic Filing) Amendment Rules 2023 <i>Cabinet Minute</i> <i>LEG-23-MIN-0003</i> Cabinet Office 16 February 2023	Released in full.

In Confidence

Office of the Minister of Justice

Cabinet Legislation Committee

District Court (Electronic Filing) Amendment Rules 2023

Proposal

- 1 This paper seeks Cabinet's authorisation for submission to the Executive Council of the District Court (Electronic Filing) Amendment Rules 2023. Approval of changes are sought for the District Court Rules 2014, which have been proposed by the Rules Committee.

Background

The Rules Committee

- 2 The Rules Committee (the Committee) is a statutory body established under section 155 of the Senior Courts Act 2016. Members of the Committee 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. Rules of the Senior Courts and District Court are made by Order in Council, with the concurrence of the Committee.
- 3 Rules are usually initiated in one of two ways:
 - 3.1 an agency or department will approach the Committee to develop rules in response to a policy initiative agreed by Cabinet; or
 - 3.2 the Committee will initiate rules changes where it identifies a need.
- 4 The Committee discusses the proposed changes at their quarterly meetings and will give their concurrence for the amendment to be made when a consensus is reached. The proposed amendments to the District Court Rules 2014 requires the concurrence of the Chief District Court Judge and two or more members of the Committee (one of whom must be a District Court Judge)¹.

¹ s 228 District Court Act 2016

Electronic filing in the District Court

- 5 The use of electronic tools and ways of working² during the COVID-19 pandemic was successful and improved access to justice for court participants. The electronic tools continue to be available to the Courts. Further electronic capability will be developed through the implementation of Te Au Reka.³
- 6 Electronic filing within the District Court was permitted under the District Court “Practice Note Civil Proceedings – COVID-19 Preparedness” (Practice Note). The electronic filing provisions ensured safe operations of court services, and court participants were able to file documents and make payments online. As a result, access to justice was maintained for court participants.
- 7 This Practice Note was issued under section 24 of the Epidemic Preparedness Act, which relied on the Epidemic Preparedness (COVID-19) Notice 2020 (Epidemic Notice) to be in place for the power in that section to be exercised.
- 8 Expiry of the Epidemic Notice on 20 October 2022 means the Practice Note has also expired. The ability to electronically file documents in the District Court is now generally not permitted (documents may be accepted electronically by leave of a judge or court registrar).
- 9 The absence of electronic filing provisions reduces access to justice and negatively affects the efficiency of services delivered by the courts.
- 10 The Committee has considered and agreed it would be desirable to permanently enable electronic filing provisions within the District Court Rules 2014. The Committee has agreed these provisions should be consistent with rule 5.1A and rule 5.1B of the High Court Rules 2016:
 - 10.1 Rule 5.1A: allows for documents to be filed electronically (and allows a Judge or Associate Judge to require that documents be filed electronically in emergencies), including provision for electronic signatures. An electronic address, for the purposes of electronic filing, includes email addresses, fax numbers, and remotely accessible locations in file directories; and
 - 10.2 Rule 5.1B: provides when an electronically filed document is to be considered filed, including if payment of a filing fee is required.

² For example, allowing documents to be filed and served electronically, and permitting judges and registrars to electronically sign and seal orders.

³ Te Au Reka is a new initiative involving the development of court management technology to modernise New Zealand’s courts and tribunals. This work is undertaken by the Ministry of Justice and the Judiciary.

- 11 A number of amendments consequential to the insertion of the new rules have also been agreed to by the Committee. For example, inserting the definition of 'emergency', and updating relevant rules that still reference faxing and posting documents.
- 12 The proposed changes form the District Court (Electronic Filing) Amendment Rules, which the Committee has considered and given its formal concurrence to.

Proposed Amendment Rules

- 13 The District Court (Electronic Filing) Amendment Rules make changes to the District Court Rules. The changes:
 - 13.1 insert new rules 5.1A and 5.1B, consistent with the existing provisions for electronic filing in the High Court Rules;
 - 13.2 insert new cross-hearing 'filing documents' above new rules 5.1A and 5.1B;
 - 13.3 insert new rule 2.4A, providing a definition for the existence of an 'emergency' consistent with the definition in rule 3.3B of the High Court Rules; and
 - 13.4 amend the definition of 'file' to reflect the insertion of new rule 5.1A.
- 14 The amendments also make the following consequential changes to other District Court rules. These changes:
 - 14.1 revoke rule 2.6 which outlines provisions for filing documents;
 - 14.2 insert new rule 6 amending the heading to rule 2.5 for consistency with the High Court Rules;
 - 14.3 revoke rule 7.2(7) which concerns the filing of memoranda for first case management conferences;
 - 14.4 revoke rule 7.14 and rule 20.17(1) which concern provisions for filing documents in interlocutory applications;
 - 14.5 amend rule 9.53(2)(b), revoking rule 9.53(6), and amending Schedule 2, all of which concern applications to set aside New Zealand subpoenas; and
 - 14.6 revoke provisions that are considered part of normal administration by the Registry.

Timing and 28-day rule

- 15 The District Court (Electronic Filing) Amendment Rules will come into force 28 days after they are notified in the *Gazette*.

Compliance

- 16 The regulatory changes comply with each of the following:
- 16.1 the principles of the Treaty of Waitangi;
 - 16.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 16.3 the principles and guidelines set out in the Privacy Act 2020;
 - 16.4 relevant international standards and obligations; and
 - 16.5 the *Legislation Guidelines* (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Treaty analysis

- 17 These amendments support the Crown to exercise its obligation under te Tiriti o Waitangi to exercise kāwanatanga in a responsible manner and promote equitable access to justice and court services.
- 18 Māori are more likely to live in rural areas where physical access to the courts is difficult. Māori are also more at risk of digital exclusion, particularly those in rural areas. Continuing to allow these electronic tools will promote access to justice and efficient court systems for Māori generally. This will not disadvantage those for whom digital inclusion is a challenge as the amendments do not remove the ability to access these services in person.

Statutory requirements

- 19 Section 228 of the District Court Act 2016 requires the concurrence of the Chief District Court Judge and two or more members of the Committee (at least one of whom must be a District Court Judge) to rules regulating the practice and procedure of the District Court.
- 20 I confirm that the above requirement has been met.

Regulations Review Committee

- 21 There are no grounds for the Regulations Review Committee to draw the regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 22 The Parliamentary Counsel Office has certified that the legislative instruments are in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 23 The Treasury's Regulatory Impact Analysis team has determined that the proposals to allow electronic filing in the District Court permanently are exempt from the requirement to provide a Regulatory Impact Statement on the grounds that they have no or only minor impacts on businesses, individuals, and not-for-profit entities.

Climate Implications of Policy Assessment

- 24 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.

Consultation

- 25 The following government agencies were consulted on this paper and legislative amendments: Crown Law, Treasury, the Ministry of Business, Innovation, and Employment, Ministry for the Environment, Ministry for Primary Industries, Ministry of Social Development, Department of Conservation, Department of Corrections, Department of Internal Affairs, Inland Revenue Department, New Zealand Police, Department of the Prime Minister and Cabinet, Ministry of Education, and New Zealand Customs Service.

Communications

- 26 The Ministry of Justice will notify relevant stakeholders of the changes being made by these instruments, and of the commencement date, once approved by Cabinet.

Proactive Release

- 27 This Cabinet paper will be proactively released with any appropriate redactions in accordance with Cabinet Office Circular CO (18) 4, within 30 business days of the decision.

Recommendations

The Minister of Justice recommends that the Cabinet Legislation Committee:

- 1 **note** that the Rules Committee has resolved to make changes to the District Court Rules 2014;
- 2 **note** the advice of the Minister of Justice that the concurrence requirements under the District Court Act have been met;
- 3 **authorise** the submission of the District Court (Electronic Filing) Amendment Rules 2023 to the Executive Council;
- 4 **note** that the District Court (Electronic Filing) Amendment Rules will come into force 28 days after they are notified in the *Gazette*.

Authorised for lodgement

Hon Kiri Allan

Minister of Justice



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.

District Court (Electronic Filing) Amendment Rules 2023

Portfolio **Justice**

On 16 February 2023, the Cabinet Legislation Committee:

- 1 **noted** that the Rules Committee (the Committee) has resolved to make changes to the District Court Rules 2014;
- 2 **noted** that Section 228 of the District Court Act 2016 (the Act) requires the concurrence of the Chief District Court Judge and two or more members of the Committee (at least one of whom must be a District Court Judge) to rules regulating the practice and procedure of the District Court;
- 3 **noted** the advice of the Minister of Justice that the concurrence requirements under the Act have been met;
- 4 **noted** that the Cabinet Legislation Committee consider references to fax machines to be outdated, and that unless these references are necessary they should be removed in future iterations of the rules;
- 5 **authorised** submission to the Executive Council of the District Court (Electronic Filing) Amendment Rules 2023 [PCO 25104/9.0];
- 6 **noted** that the District Court (Electronic Filing) Amendment Rules come into force on 23 March 2023.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Andrew Little
Hon David Parker
Hon Barbara Edmonds
Hon Dr Duncan Webb
Hon Willow-Jean Prime
Hon Rino Tirikatene
Tangi Utikere, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG