

Hon Aupito William Sio
Associate Minister of Justice

Proactive release – Jury Amendment Rules 2020

Date of issue: 31 July 2020

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

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

No.	Document	Comments
1	Jury Amendment Rules 2020 <i>Cabinet paper</i> Ministry of Justice Meeting date: 21 July 2020	Released in full
2	Jury Amendment Rules 2020 <i>Cabinet Minute</i> Cabinet Office Meeting date: 21 July 2020	Released in full
3.	Jury Amendment Rules 2020 <i>Attachment to Cabinet paper.</i> Legislative instrument 27 July 2020	Note that the copy of the Order 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. The legislative instrument is publicly available at www.legislation.govt.nz

In confidence

Office of the Associate Minister of Justice
Cabinet Legislation Committee

Jury Amendment Rules 2020

Proposal

1. I seek Cabinet's authorisation for submission to the Executive Council of the Jury Amendment Rules 2020 (the Amendment Rules).

Policy

2. Jury trials are currently suspended and are due to recommence from 3 August 2020. In order to provide assurance to potential jurors regarding their safety while completing jury service, and for jury trials to operate in compliance with any future physical distancing requirements, amendments are needed to the Jury Rules 1990. The Amendment Rules also progress other minor and technical amendments to the Jury Rules.

Enabling some jurors to listen to balloting from another part of the court

3. Amendments are required to enable the balloting of jurors to occur from another part of the court because many courts do not have rooms large enough to accommodate all jurors while adhering to physical distancing requirements. The specific amendments are described below.
4. The Amendment Rules add new definitions of physical distancing requirements and quarantinable disease. The latter definition has the same meaning as in the Health Act 1956.
5. The amendments authorise the preliminary ballot to be undertaken in the presence of some jurors only when all jurors cannot fit into the room because of physical distancing requirements. The other jurors are to listen to the ballot from another part of the court by means such as Audio-Visual Link (AVL).
6. The amendments also authorise the jurors selected in the preliminary ballot to be divided into two groups for the final ballot if the courtroom for the trial is not large enough to accommodate all preliminarily balloted jurors when physical distancing requirements are in effect.
7. The same approach is authorised if a judge has dispensed with the preliminary ballot while physical distancing is in effect. The final ballot would be undertaken in the presence of some of the summoned jurors only, with the other jurors listening from another part of the court by means such as AVL if necessary to comply with physical distancing requirements.

Minor and technical amendments are also being made to the Jury Rules 1990

8. The following minor and technical amendments are being made:
 - 8.1. amending the juror oath to require jurors to expressly agree to decide the case only on the evidence presented in court and not to undertake their own research;
 - 8.2. authorising the collection of email addresses and phone numbers from summoned jurors for use in communications relating to the summons;
 - 8.3. adding the words, 'if known' after 'occupation' in the rules governing jury lists, provisional panels and jury records to recognise this information is not always available;
 - 8.4. changing from 'clear days' to the equivalent number of 'working days' to provide clarity, particularly during the Christmas period;
 - 8.5. replacing a reference to 'registered post', which no longer exists, with signature-required courier delivery; and
 - 8.6. revoking the definition of 'coextensive jury districts' because this definition is now in the Act.¹

Timing and 28-day rule

9. A waiver of the 28-day rule is sought to enable the Amendment Rules to come into effect on 31 July 2020, the day after gazetting. This will enable jury trials to resume from 3 August 2020 if physical distancing requirements have been reinstated and will provide assurance to potential jurors that all measures are being taken to ensure their safety during their summons and while carrying out their duties. These amendments are beneficial to the public.

Compliance

10. The regulatory changes comply with each of the following:
 - 10.1. the principles of the Treaty of Waitangi;
 - 10.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 10.3. the principles and guidelines set out in the Privacy Act 1993;
 - 10.4. relevant international standards and obligations; and
 - 10.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

¹ The Courts Matters Act 2018 amended the Juries Act 1981 to add this definition to the Act.

Statutory requirements

11. Section 35 of the Juries Act 1981 requires the Minister of Justice to consult the Chief Justice, the Chief District Court Judge and the President of the New Zealand Law Society on proposed amendments to the Jury Rules 1990.
12. I confirm that this statutory requirement has been met. The Heads of Bench and the Law Society support the proposed amendments.

Regulations Review Committee

13. 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

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

Impact analysis

15. The Regulatory Quality Team at the Treasury has determined that the regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals, or not-for-profit entities.

Publicity

16. No publicity is planned because the amendments relating to physical distancing may not be needed for some time and the other amendments are too minor to warrant publicity.

Proactive release

17. I propose to proactively release this paper with appropriate redactions, within 30 business days of the decision.

Consultation

18. The Minister of Justice has been consulted and has agreed to the submission of this paper.
19. The following government agencies were consulted on this paper and the legislative instruments: Crown Law, New Zealand Police, Office of the Privacy Commissioner and Treasury.

Recommendations

20. I recommend that the Cabinet Legislation Committee:
1. **note** that the Jury Amendment Rules 2020 make minor changes to enable compliance with any future physical distancing requirements and to address technical issues;
 2. **authorise** the submission to the Executive Council of the Jury Amendment Rules 2020;
 3. **note** that the Jury Amendment Rules 2020 will come into force on 31 July 2020, the day after notification in the Gazette;
 4. **note** that a waiver of the 28-day rule is sought:
 - 4.1. so that the regulations can come into force on the day after gazetting;
 - 4.2. on the grounds that this will be beneficial for the public;
 5. **agree** to waive the 28-day rule so that the regulations can come into force on 31 July 2020;
 6. **note** that section 35 of the Juries Act 1981 requires the Minister of Justice to consult the Chief Justice, the Chief District Court Judge and the President of the New Zealand Law Society on proposed amendments to the Jury Rules 1990;
 7. **note** the advice of the Associate Minister of Justice that this requirement has been met.

Authorised for lodgement

Hon Aupito William Sio
Associate 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.

Jury Amendment Rules 2020

Portfolio **Associate Justice**

On 21 July 2020, the Cabinet Legislation Committee:

- 1 **noted** that the Jury Amendment Rules 2020 make minor changes to enable compliance with any future physical distancing requirements and to address technical issues;
- 2 **noted** that a waiver of the 28-day rule is sought:
 - 2.1 so that the Jury Amendment Rules 2020 can come into force on 31 July 2020;
 - 2.2 on the grounds that this will be beneficial for the public;
- 3 **agreed** to a waiver of the 28-day rule;
- 4 **noted** that section 35 of the Juries Act 1981 requires the Minister of Justice to consult the Chief Justice, the Chief District Court Judge and the President of the New Zealand Law Society on proposed amendments to the Jury Rules 1990;
- 5 **noted** the advice of the Associate Minister of Justice that this requirement has been met;
- 6 **authorised** the submission to the Executive Council of the Jury Amendment Rules 2020 [PCO 22994/7.0].

Gerrard Carter
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Stuart Nash
Hon Iain Lees-Galloway
Hon Kris Faafoi
Hon Tracey Martin
Hon Aupito William Sio
Hon Julie Ann Genter
Hon Eugenie Sage
Michael Wood MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG