

Hon Kiri Allan
Minister of Justice

Proactive release – Family Court Amendment Rules 2022

Date of issue: 24 January 2023

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

No.	Document	Comments
1	Amendments to the Family Court Rules 2022 <i>Cabinet Paper</i> Office of the Minister of Justice 15 December 2022	Released in full.
2	Family Court Amendment Rules 2022 <i>Cabinet Minute</i> <i>LEG-22-MIN-0233</i> Cabinet Office 15 December 2022	Released in full.

Office of the Minister of Justice

Cabinet Legislation Committee

Amendments to the Family Court Rules 2002

Proposal

- 1 This paper seeks Cabinet's authorisation to submit the Family Court Amendment Rules 2022 to the Executive Council.

Background

- 2 This paper seeks Cabinet approval of changes to the Family Court Rules 2002 (the Rules). The Governor-General, by order in Council, may make rules regulating the practice and procedure of the Family Court under s16A of the Family Court Act 1980.
- 3 Prior to the COVID-19 pandemic, the Ministry of Justice was piloting a small number of initiatives introducing electronic tools to make it easier for court participants to file documents and make payments online. Work to develop legislative enablers for a permanent and broader implementation of the electronic tools had not commenced.
- 4 In March and April 2020, these electronic tools were stood up quickly across jurisdictions to enable court services to continue to operate during the COVID-19 pandemic.
- 5 The use of these tools and broader use of electronic ways of working in the Family Court was initially enabled by relying on powers under the Epidemic Preparedness (COVID-19) Notice 2020. In June 2020, the Family Court (Emergency) Amendment Rules were enacted to codify the use of electronic ways of working during the pandemic and ensure access to justice was maintained, by:
 - 5.1 allowing documents to be filed electronically;
 - 5.2 allowing documents to be served electronically; and
 - 5.3 permitting registrars to electronically sign and seal orders.

I propose making changes to the Family Court Rules to reinstate the use of electronic tools

- 6 The use of electronic tools during the 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.¹

¹ 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

- 7 However, with the expiry of the Epidemic Notice on 20 October 2022, the courts are no longer able to use the electronic tools as the Family Court rules do not permit their use. Without these rules in place, court participants are required to revert to paper-based systems. Reverting to paper-based systems reduces access to justice and negatively affects the efficiency of services delivered by the courts. Court participants will experience barriers which aren't in the interests of promoting access to justice and impacts on the delivery of efficient services by the courts.

Family Court Amendment Rules 2022

- 8 I am seeking approval of the Family Court Amendment Rules which will amend the Family Court Rules 2002, to permanently enable the ongoing use of electronic tools in the Family Court by:
- 8.1 amending rule 76 to provide for the electronic filing of documents in the Family Court. This amendment is consistent with rules for electronic filing in other New Zealand courts;
 - 8.2 amending rules 102, 105 and 127A and inserting new rule 113A to enable electronic addresses to be a method of effecting personal service by officers of the court, when the recipient has provided an electronic address for service of that document;² and
 - 8.3 inserting new rule 206B to allow registrars and judges to use electronic signatures and seals on orders and judgments.³
- 9 Two of the emergency rules that were enacted in 2020 will remain as provisions operational only during an emergency. These rules allow for unsworn affidavits to be filed and used in proceedings; and provide judges with the discretion to dispense with directions conferences in proceedings filed without notice under the Care of Children Act 2004.

Timing and 28-day rule

- 10 The Epidemic Preparedness (COVID-19) Notice 2020 issued pursuant to s 5(1) of the Epidemic Preparedness Act expired on 20 October 2022. I am seeking a waiver of the 28-day rule to enable electronic tools to be reinstated as quickly as possible, so impacts on access to justice for participants in the Family Court are alleviated. The amendments confer only benefits on the public by providing greater access to the Family Court, without removing any existing pathways (Cabinet Manual paragraph 7.97(a)).

Compliance

- 11 The regulatory changes comply with each of the following:
- 11.1 the principles of the Treaty of Waitangi;

² Service of documents establishes personal jurisdiction of the court over the person served.

³ Sealing Court documents authenticates them so that they can be relied on in the future, including to enforce court orders.

- 11.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
- 11.3 the principles and guidelines set out in the Privacy Act 2020;
- 11.4 relevant international standards and obligations; and
- 11.5 the *Legislation Guidelines* (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Treaty analysis

- 12 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.
- 13 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 and 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.

Regulations Review Committee

- 14 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

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

Impact Analysis

Regulatory Impact Statement

- 16 The Treasury's Regulatory Impact Analysis team has determined that the proposals to provide for the ongoing use of electronic tools in the Family Court is 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.
- 17 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

- 18 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.

- 19 The Principal Family Court Judge and Family Law Society have also been consulted and are supportive of the proposed amendments to the Family Court Rules.

Communications

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

Proactive Release

- 21 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 amendments to the Family Court Rules 2002 are necessary to permanently enable electronic tools to be used for filing, serving and sealing Court documents;
- 2 **authorise** the submission of the Family Court Amendment Rules 2022 to the Executive Council;
- 3 **authorise** a waiver of the 28-day rule so the proposed amendments can come in force as soon as possible; and
- 4 **note** that the Family Court Amendment Rules 2022 will come into force the day after their notification 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.

Family Court Amendment Rules 2022

Portfolio Justice

On 15 December 2022, the Cabinet Legislation Committee:

- 1 **noted** that amendments to the Family Court Rules 2002 are necessary to permanently enable electronic tools to be used for filing, serving, and sealing Court documents;
- 2 **authorised** the submission of the Family Court Amendment Rules 2022 to the Executive Council [PCO 25105/6.0];
- 3 **noted** that the waiver of the 28-day rule is sought on the grounds that the amendments confer only benefits on the public, and can come into force as quickly as possible;
- 4 **authorised** a waiver of the 28-day rule;
- 5 **noted** that the Family Court Amendment Rules 2022 will come into force the day after their notification in the Gazette.

Rebecca Davies
Committee Secretary

Present:

Hon Andrew Little
Hon David Parker
Hon Michael Wood (Chair)
Hon Dr David Clark
Hon Kieran McAnulty
Dr Duncan Webb, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG