

Hon Aupito William Sio
Associate Minister of Justice

Proactive release – Amendments to the District Court Rules 2014, High Court Rules 2016, Court of Appeal (Civil) Rules 2005, Court of Appeal (Criminal) Rules 2001, Supreme Court Rules 2004, and Criminal Procedure Rules 2012.

Date of issue: 1 June 2021

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

No.	Document	Comments
1	Amendments to the District Court Rules 2014, High Court Rules 2016, Court of Appeal (Civil) Rules 2005, Court of Appeal (Criminal) Rules 2001, Supreme Court Rules 2004, and Criminal Procedure Rules 2012 <i>Cabinet paper</i> Office of the Associate Minister of Justice <i>Lodged: 08 04 2021</i>	Released in full
2	Amendments to Court Rules <i>Cabinet Legislation Committee minute</i> Cabinet Office <i>Meeting date: 15 April 2021</i>	Released in full
3	Amendments to Court Rules <i>Cabinet Minute</i> Cabinet Office <i>Meeting date: 19 04 2021</i>	Some information withheld as it is out of scope

In confidence

Office of the Associate Minister of Justice
Cabinet Legislation Committee

Amendments to the District Court Rules 2014, High Court Rules 2016, Court of Appeal (Civil) Rules 2005, Court of Appeal (Criminal) Rules 2001, Supreme Court Rules 2004, and Criminal Procedure Rules 2012.

Proposal

1. I seek Cabinet's authorisation for submission to the Executive Council of the:
 - 1.1. District Court Amendment Rules 2021;
 - 1.2. High Court Amendment Rules 2021;
 - 1.3. High Court (Personal Property Securities) Amendment Rules 2021;
 - 1.4. Court of Appeal (Civil) Amendment Rules 2021;
 - 1.5. Court of Appeal (Criminal) Amendment Rules 2021;
 - 1.6. Supreme Court Amendment Rules 2021; and
 - 1.7. Criminal Procedure Amendment Rules 2021.

Background

2. This paper seeks approval for a suite of minor and technical changes to the District Court Rules 2014, High Court Rules 2016, Court of Appeal (Civil) Rules 2005, Court of Appeal (Criminal) Rules 2001, Supreme Court Rules 2004, and Criminal Procedure Rules 2012. These changes are proposed 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. Rule changes are usually initiated in one of two ways: a department will approach the Committee to develop rules in response to a policy initiative agreed by Cabinet, or the Committee will initiate rules changes where it identifies a need.
5. The proposed changes do not require any new policy decisions. The amendments have been considered and agreed to by the Committee, which has authority under section 155 of the Senior Courts Act 2016 to make, amend and repeal rules of the Senior Courts and District Court.

Proposed Amendment Rules

District Court Amendment Rules 2021

6. The District Court Amendment Rules 2021 make a number of minor and technical changes to various provisions in the District Court Rules, including:
 - 6.1. requiring that documents filed in proceedings include the registry name in both English and te reo Māori;
 - 6.2. amending forms to include the names of the District Court registries in both English and te reo Māori;
 - 6.3. allowing summary judgments to be granted on part of a claim, aligning with the High Court Rules 2016;
 - 6.4. adding references to 'undertakings' where necessary to give effect to the Contempt of Court Act 2019 after this was inadvertently omitted from the last Amendment Rules package;
 - 6.5. amending forms in Schedule 2 to provide for the enforcement of undertakings as well as court orders to give effect to the Contempt Act; and
 - 6.6. providing for awards of costs for case management appeals to the District Court as for ordinary proceedings, aligning with the position on appeals to the High Court.

High Court Amendment Rules 2021

7. The High Court Amendment Rules 2021 make a number of minor and technical changes to various provisions in the High Court Rules, including:
 - 7.1. enabling an arrest order to be issued and sanctions to be imposed for breach of an undertaking as well as a court order, correcting an inadvertent omission when the Rules were initially amended to give effect to the Contempt Act;
 - 7.2. amending forms in Schedule 1 of the Rules to allow for the enforcement of undertakings as well as original court orders under the Contempt Act;
 - 7.3. clarifying and codifying the proper manner of bringing a Beddoe application¹; and
 - 7.4. expressly providing that Part 18 of the Rules (Applications in equity and under statutes) applies to proceedings in which the sole relief sought is a declaration of inconsistency under the New Zealand Bill of Rights Act 1990.

¹ A Beddoe application allows a trustee to seek directions as to whether or not to bring or defend a proceeding in their capacity as a trustee.

High Court (Personal Property Securities) Amendment Rules 2021

8. The changes contained in the High Court (Personal Property Securities) Amendment Rules 2021 amends the High Court Rules to clarify the relationship between sale orders enforcing a court judgment and the Personal Property Securities Act 1999, including by:
 - 8.1. outlining that an entitled party must take all necessary steps to check the personal properties register to ascertain whether a financing statement is registered against personal property that has been, or is to be, seized and sold under a sale order;
 - 8.2. allowing a secured party to apply to the court for an order appropriately protecting the secured party's security interest in the personal property;
 - 8.3. outlining that a judge may order the sale of property and decide how the proceeds are to be distributed, as well as determining any other disputes between the entitled party and the secured party, or either of them and the enforcing officer;
 - 8.4. clarifying that the purchaser of property obtains good title to the property free of interests in the property before it was sold; and
 - 8.5. providing that the disposal of sale proceeds is subject to certain provisions of the Insolvency Act 2006 and the Companies Act 1993.

Personal Property Securities Amendment Act 2011 Commencement Order 2021

9. The Personal Property Securities Amendment Act 2011 (the Amendment Act) authorises the removal of securities registered against property seized and sold by the court from the Personal Property Securities Register (PPSR) if the secured party has not removed it following a court decision on their claim or if they have not submitted a claim. The Commencement Order will bring the provision in the Amendment Act relating to the High Court civil jurisdiction into effect. The Amendment Act already applies to the equivalent processes in all other courts.
10. The secured party will be able to challenge the removal of the security from the PPSR if a mistake has been made. A Judge will consider the challenge. If the challenge is successful, the Judge would order a correction to the Register.
11. The removal of the security from the property will prevent the security being enforced against purchasers of secured property seized and sold by the court. The secured party will only be able to take enforcement action against the debtor.

Court of Appeal (Civil) Amendment Rules 2021

12. The Court of Appeal (Civil) Amendment Rules 2021 make minor changes to the Court of Appeal (Civil) Rules to ensure that the electronic filing of documents can continue past the expiry of the Epidemic Notice (issued by the Prime Minister under

section 5 of the Epidemic Preparedness Act 2006), which currently allows the practice, including by:

- 12.1. removing an inadvertent incorporation by reference to the Senior Courts Civil Electronic Document Protocol;
- 12.2. allowing the Court of Appeal to receive electronic filing of civil initiating documents; and
- 12.3. clarifying the distinction between the extensions of time or suspensions the Court of Appeal or a Registrar may grant.

Court of Appeal (Criminal) Amendment Rules 2021

13. The Court of Appeal (Criminal) Amendment Rules 2021 make two minor changes to the Court of Appeal (Criminal) Rules to:
 - 13.1. allow an appellant's lawyer to sign a notice of appeal, notice of application for leave to appeal, or an interlocutory application if it is impracticable for the appellant to do so; and
 - 13.2. require that documents filed in proceedings include the registry name in both English and te reo Māori.

Supreme Court Amendment Rules 2021

14. The Supreme Court Amendment Rules 2021 amend the Supreme Court Rules to allow the Supreme Court to receive electronic filing of all documents, including initiating documents. The amendments allow the practice to continue past the expiry of the Epidemic Notice, which currently permits the practice.

Criminal Procedure Amendment Rules 2021

15. The Criminal Procedure Amendment Rules 2021 make minor changes to the Criminal Procedure Rules, including:
 - 15.1. requiring that all documents filed in a criminal registry name the registry in both English and te reo Māori;
 - 15.2. making proof of service of a document sent by mail to be treated as having been served on the earlier of the fifth (rather than the third) working day on which it is posted or the day on which it is received;
 - 15.3. correcting a reference to the rules that apply to access to court documents, from the Senior Courts (Access to Court Documents) Rules 2017 to the District Court (Access to Court Documents) Rules 2017; and
 - 15.4. inserting a new *Schedule 2* which sets out the names of criminal registries in both English and te reo Māori.

Timing and 28-day rule

16. The District Court Amendment Rules 2021, High Court Amendment Rules 2021, High Court (Personal Property Securities) Amendment Rules 2021, Court of Appeal (Civil) Amendment Rules 2021, Court of Appeal (Criminal) Amendment Rules 2021, Supreme Court Amendment Rules 2021, and Criminal Procedure Amendment Rules will come into force on 20 May 2021. I am not seeking a waiver of the 28-day rule.
17. The requirement for court forms to include the registry name in both English and te reo Māori in both the District Court Amendment Rules and Criminal Procedure Amendment Rules will require an extended commencement date to allow sufficient time for implementation. Therefore, the relevant amendments in the District Court Amendment Rules and Criminal Procedure Amendment Rules will come into force on 1 April 2022. The equivalent provision in the Court of Appeal (Criminal) Amendment Rules does not require an extended period of time for implementation, so it will come into force on the statutory commencement date.

Compliance

18. The regulatory changes comply with each of the following:
 - 18.1. the principles of the Treaty of Waitangi;
 - 18.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;
 - 18.3. the principles and guidelines set out in the Privacy Act 2020;
 - 18.4. relevant international standards and obligations; and
 - 18.5. the *Legislation Guidelines* (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

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. Section 148 of the Senior Courts Act 2016 requires the concurrence of the Chief Justice and two or more members of the 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.
21. Section 386 of the Criminal Procedure Act 2011 requires that concurrence of the Chief Justice, the Chief District Court Judge and two or more members of the Committee (at least one of whom must be a District Court Judge and 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, the High Court and the District Court

22. I confirm that the above requirements have been met.

Regulations Review Committee

23. 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

24. The Parliamentary Counsel Office (PCO) has certified that the legislative instruments are in order for submission to Cabinet.

Impact analysis

25. 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.
26. 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.

Publicity

27. 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

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

Consultation

29. 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 Prime Minister and Cabinet, Ministry of Education, and New Zealand Customs Service.

Financial implications

30. New Zealand Police and Ministry of Justice operational staff have indicated that the amendments to court forms requiring registry names to be stated in both English and te reo Māori in the District Court Amendment Rules and Criminal Procedure Amendment Rules (in paragraphs 6.1 and 12.1, respectively) will have financial

implications. These costs will need to be scoped further as part of the implementation work but both agencies have indicated they will be met within baselines.

Recommendations

31. I recommend that the Cabinet Legislation Committee:

1. **note** that the Rules Committee has resolved to make minor and technical changes to the District Court Rules 2014, High Court Rules 2016, Court of Appeal (Civil) Rules 2005, Court of Appeal (Criminal) Rules 2001, Supreme Court Rules 2004, and the Criminal Procedure Rules 2012;
2. **note** that section 228 of the District Court Act 2016 requires the concurrence of the Chief District Court Judge and two or more members of the Rules Committee (of whom at least one is a District Court Judge) to rules regulating the practice and procedure of the District Court;
3. **note** that section 148 of the Senior Courts Act 2016 requires that concurrence of the Chief Justice and two or more members of the 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;
4. **note** that section 386 of the Criminal Procedure Act 2011 requires that concurrence of the Chief Justice, the Chief District Court Judge and two or more members of the Committee (at least one of whom must be a District Court Judge and 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, the High Court and the District Court;
5. **note** the advice of the Associate Minister of Justice that these requirements have been met;
6. **authorise** the submission to the Executive Council of the:
 - 6.1. District Court Amendment Rules 2021;
 - 6.2. High Court Amendment Rules 2021;
 - 6.3. High Court (Personal Property Securities) Amendment Rules 2021;
 - 6.4. Court of Appeal (Civil) Amendment Rules 2021;
 - 6.5. Court of Appeal (Criminal) Amendment Rules 2021;
 - 6.6. Supreme Court Amendment Rules 2021; and
 - 6.7. Criminal Procedure Amendment Rules 2021.

7. **note** that the Amendment Rules package will come into force on 20 May 2021; and
8. **note** that the provisions requiring court forms to include the registry name in both English and te reo Māori in the District Court Amendment Rules and Criminal Procedure Amendment Rules will come into force on 1 April 2022.

Authorised for lodgement

Hon Aupito William Sio
Associate Minister of Justice

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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.

Amendments to Court Rules

Portfolio Associate Justice (Hon Aupito William Sio)

On 15 April 2021, the Cabinet Legislation Committee:

- 1 **noted** that the Rules Committee has resolved to make minor and technical changes to the District Court Rules 2014, High Court Rules 2016, Court of Appeal (Civil) Rules 2005, Court of Appeal (Criminal) Rules 2001, Supreme Court Rules 2004, and the Criminal Procedure Rules 2012;
- 2 **noted** that section 228 of the District Court Act 2016 requires the concurrence of the Chief District Court Judge and two or more members of the Rules Committee (of whom at least one is a District Court Judge) to rules regulating the practice and procedure of the District Court;
- 3 **noted** that section 148 of the Senior Courts Act 2016 requires that concurrence of the Chief Justice and two or more members of the 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;
- 4 **noted** that section 386 of the Criminal Procedure Act 2011 requires that concurrence of the Chief Justice, the Chief District Court Judge and two or more members of the Committee (at least one of whom must be a District Court Judge and 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, the High Court and the District Court;
- 5 **noted** the advice of the Associate Minister of Justice (Hon Aupito William Sio) that these requirements have been met;
- 6 **authorised** the submission to the Executive Council of the:
 - 6.1 District Court Amendment Rules 2021 [PCO 22080/5.0];
 - 6.2 High Court Amendment Rules 2021 [PCO 23085/5.0];
 - 6.3 High Court (Personal Property Securities) Amendment Rules 2021 [PCO 16651/6.0];
 - 6.4 Personal Property Securities Amendment Act 2011 Commencement Order 2021 [PCO 22480/4.0];
 - 6.5 Court of Appeal (Civil) Amendment Rules 2021 [PCO 22476/8.0];

- 6.6 Court of Appeal (Criminal) Amendment Rules 2021 [PCO 22081/6.0];
- 6.7 Supreme Court Amendment Rules 2021 [PCO 23090/5.0];
- 6.8 Criminal Procedure Amendment Rules 2021 [PCO 21983/5.0];
- 7 **noted** that the Amendment Rules package will come into force on 20 May 2021;
- 8 **noted** that the provisions requiring court forms to include the registry name in both English and te reo Māori in the District Court Amendment Rules and Criminal Procedure Amendment Rules will come into force on 1 April 2022.

Gerrard Carter
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon David Parker
Hon Poto Williams
Hon Aupito William Sio
Hon Meka Whaitiri
Keiran McAnulty, MP (Senior Government Whip)

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 16 April 2021

On 19 April 2021, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 16 April 2021.

out of scope

Proactively Released

LEG-21-MIN-0046

Amendments to Court Rules

CONFIRMED

Portfolio: Associate Justice (Hon Aupito William Sio)

out of scope

out of scope

Michael Webster
Secretary of the Cabinet

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