
To Hon Aupito William Sio, Associate Minister for Courts

From Matthew Mitchell, Policy Manager, Court System Policy

Date 07 April 2022

Subject Approval to proactively release Cabinet paper and Cabinet minute: Rules Committee Amendment Rules package 2022

For ☒ Approval ☐ Review Comment ☐ Action ☐ Noting

Purpose

1. This paper seeks your approval to publish the Cabinet paper and minutes relating to the Rules Committee Amendment Rules package 2022 on the Ministry of Justice website no later than 18 April 2022 in accordance with the Government's policy on proactive release of Cabinet and related material [CO (18) 4].

Cabinet paper and minute to be released

2. The Cabinet paper noted you would proactively release the paper, in full, within 30 business days of the decision. In accordance with CO (18) 4, we recommend releasing:
 - 2.1 the Cabinet paper: Amendments to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005, and Supreme Court Rules 2004;
 - 2.2 The Cabinet Legislation Committee minute LEG-22-MIN-0017; and
 - 2.3 the Cabinet minute CAB-22-MIN-0053.
3. We have not recommended any redactions be made to the Cabinet paper. Some redactions have been made to the Cabinet minute of information that is out of scope.
4. We can publish the Cabinet paper and minute on the Ministry's website as soon as we have your approval. We are required to proactively publish the Cabinet paper and associated Cabinet minute no later than 18 April 2022.

Option to release key advice papers

5. The Cabinet Office circular indicates that key advice papers also may be published. We do not consider it necessary to publish any of the advice we have provided you, as the Cabinet paper provides the full rationale and policy process for the Amendment Rules.

Consultation

6. We have confirmed that the Chair of the Rules Committee, Justice Cooke, is comfortable with the release of the Cabinet paper. We will inform other agencies consulted on the paper about publication following your decisions.

Publication details

7. The proposed publication details are set out in **Appendix 1**.

Recommendations

8. We recommend that you:

1. **discuss** your proposed approach to publication with Minister Faafoi;
2. **approve** publication of the Cabinet paper and minute relating to the Rules Committee Amendment Rules package 2022:

No.	Document	Approval
1	Cabinet paper: <i>Amendments to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005, and Supreme Court Rules 2004.</i> 3 March and 7 March 2022	YES / NO
2	Cabinet Legislation Committee minute LEG-22-MIN-0017	YES / NO
3	Cabinet minute CAB-22-MIN-0053	YES / NO

3. **agree** that key advice not be proactively released on the Ministry's website. YES / NO

Matthew Mitchell
Policy Manager, Court System Policy

APPROVED SEEN NOT AGREED

Hon Aupito William Sio
Associate Minister for Courts

Date / /

Attachments:

- Draft pack for publication

Appendix 1 – Publication details

The documents will be published in accordance with your directions on recommendation 2.

The following table outlines the details for loading the documents onto the external website.

Topic <i>The “topic” is the top-level tag for material in the publications finder on the website</i>	Policy
Category <i>The “category” is the second-level tag for material in the publications finder</i>	Cabinet papers
Title	Amendments to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005, and Supreme Court Rules 2004.
Description <i>This is different from the title – it’s what appears in the search results, so it needs to be meaningful.</i>	<p>This paper sought Cabinet’s approval of the High Court Amendment Rules 2022, Court of Appeal (Civil) Amendment Rules 2022, and Supreme Court Amendment Rules 2022 which replace the Rules for the Senior Courts, respectively.</p> <p>This Amendment Rules package makes minor and technical changes to the Rules of Court. The changes reflect modifications suggested by the Registry, or where the application of the Rules has proven to be impractical.</p>
Key words <i>Any additional keywords to be tagged – you don’t need to include any words already mentioned in the title or description</i>	Proactive release, Rules Committee, Associate Minister for Courts, High Court, Court of Appeal, Supreme Court, court rules
Content owner <i>This must be a person</i>	Matthew Mitchell, Policy Manager, Court System Policy
Business unit and group	Courts and Justice Services Policy, Policy Group
Owner’s email address <i>Use a generic team address if you have one – eg, teamname@justice.govt.nz</i>	Matthew.Mitchell@justice.govt.nz



Cabinet

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.

Report of the Cabinet Legislation Committee: Period Ended 4 March 2022

On 7 March 2022, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 4 March 2022:

Out of scope

LEG-22-MIN-0017

**Amendments to the High Court Rules 2016,
Court of Appeal (Civil) Rules 2005, and
Supreme Court Rules 2004**

Portfolio: Associate Justice
(Hon Aupito William Sio)

CONFIRMED

Michael Webster
Secretary of the Cabinet



Cabinet Legislation Committee

Minute of Decision

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Amendments to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005, and Supreme Court Rules 2004

Portfolio Associate Justice

On 3 March 2022, the Cabinet Legislation Committee:

- 1 **noted** that the Rules Committee has resolved to make minor and technical changes to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005, and the Supreme Court Rules 2004;
- 2 **noted** that section 148 of the Senior Courts Act 2016 requires that 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 of Justice that the concurrence requirement under the Senior Courts Act has been met;
- 4 **authorised** the submission to the Executive Council of the:
 - 4.1. High Court Amendment Rules 2022 [PCO 23675/7.0];
 - 4.2. Court of Appeal (Civil) Amendment Rules 2022 [PCO 23726/8.0];
 - 4.3. Supreme Court Amendment Rules 2022 [PCO 23893/5.0];
- 5 **noted** that the Amendment Rules package referred to in paragraph 4 above will come into force on 7 April 2022.

Rebecca Davies
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon David Parker
Hon Poto Williams
Hon Kris Faafoi*
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Hon Aupito William Sio
Hon Meka Whaitiri
Kieran McAnulty, MP

Officials present from:

Office of the Prime Minister
Officials Committee for LEG

In confidence

Office of the Associate Minister of Justice
Cabinet Legislation Committee

Amendments to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005, and Supreme Court Rules 2004.

Proposal

1. I seek Cabinet's authorisation for submission to the Executive Council of the:
 - 1.1. High Court Amendment Rules 2022;
 - 1.2. Court of Appeal (Civil) Amendment Rules 2022; and
 - 1.3. Supreme Court Amendment Rules 2022.

Background

2. This paper seeks approval for a suite of minor and technical changes to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005, and Supreme Court Rules 2004. 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. 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.
4. Rule changes are usually initiated in one of two ways: an agency or 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. 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.
5. The proposed changes do not require any new policy decisions. The amendments have been considered and agreed to by the Committee.

Proposed Amendment Rules

High Court Amendment Rules 2022

6. The High Court Amendment Rules 2022 make a number of minor and technical changes to various provisions in the High Court Rules. The changes are:

- 6.1. setting a new definition of 'emergency' consistent with the definition in the Civil Defence Emergency Management Act 2002, and setting out when, for the purpose of the Rules, an emergency is in place;
- 6.2. revoking a rule referring to a High Court Practice Note regarding electronic filing. The rule outlined that parties to proceedings and interlocutory applications are not required to have regard to the practice note so far as it requires the delivery of any common bundle or casebook to a registry, provided they have regard to the electronic filing requirements in the practice note. The rule was urgently implemented at the beginning of the COVID-19 pandemic and has since been determined as unnecessary;
- 6.3. allowing a judge to strike out plainly abusive interlocutory applications, a power that currently only extends to plainly abusive proceedings;
- 6.4. changing the requirement for parties to complete certain steps from a time period within which the steps must be completed before the first case management conference, to a requirement to complete the steps before the parties file the joint memorandum or separate memoranda under rule 7.3; and
- 6.5. providing the circumstances in which an applicant or appellant must name the decision-maker as a respondent to an appeal, and provide that the Court may direct the extent to which the decision-maker must participate. Rules 20.9(2) and (3) and 20.17 are consequentially revoked.

Court of Appeal (Civil) Amendment Rules 2022

7. The Court of Appeal (Civil) Amendment Rules 2022 make minor changes to the Court of Appeal (Civil) Rules. The changes are:
 - 7.1. adding a definition of 'emergency' consistent with the definition in the Civil Defence Emergency Management Act, and outlining Registry hours and Court holidays;
 - 7.2. making minor updates to previously implemented Rules (the Court of Appeal (Civil) Amendment Rules 2021) which cater for documents to be filed electronically, such as by clarifying how many paper copies of documents must be provided to the Court in addition to an electronic copy;
 - 7.3. setting out the Court's powers to strike out or stay an application for leave to appeal;
 - 7.4. adding a new Rule relating to the documents and fee that must accompany the filing of a notice of appeal;
 - 7.5. amending Rules and forms to point to fees payable, and the ability to apply for a waiver of fees, under the Court of Appeal Fees Regulations 2001;
 - 7.6. removing a redundant reference to a proceeding in rule 5(2);

- 7.7. broadening a Registrar's power to include the ability to reject a document for filing on the basis of lack of jurisdiction;
- 7.8. updating terminology in various rules to better reflect their intended meaning, for example referring to a respondent "contesting" rather than "opposing" an application for leave in rules 19A, 19B, 45, and 53G;
- 7.9. redrafting rule 33A to include the consequences of a respondent not filing a notice of appearance and what the appellant must do (the party will not be entitled to be served with notice of any step in the appeal or with copies of any further documents filed in the appeal);
- 7.10. clarifying the circumstances when an appellant is not treated as having defaulted on making payments for security for costs or prescribed fees because certain determinations have not been made in rule 37;
- 7.11. clarifying that a Registrar may not allocate a hearing date until the appellant has paid all prescribed fees and security for costs (unless a Judge directs, or the fees are waived);
- 7.12. resolving timing issues around public holidays and non-working days when calculating periods when review judgments are delivered;
- 7.13. clarifying that the Court may order costs in respect of an interlocutory application; and
- 7.14. amending cross-references in various rules.

Supreme Court Amendment Rules 2022

- 8. The Supreme Court Amendment Rules 2022 make minor changes to the Supreme Court Rules. The changes are:
 - 8.1. correcting the Court's te reo Māori name to better reflect its English translation;
 - 8.2. reducing the number of copies of documents that must be filed under rule 16 or 23 or supplied under any of rules 17 to 19 from three copies to one;
 - 8.3. requiring documents supplied by the Registrar of the Court of Appeal under rule 17 to be supplied electronically; and
 - 8.4. prescribing new requirements relating to the form of documents to be filed under rules 35 and 37 and the number of paper copies required, and allow for directions to reduce the number of paper copies required.

Timing and 28-day rule

- 9. The High Court Amendment Rules 2022, Court of Appeal (Civil) Amendment Rules 2022, and Supreme Court Amendment Rules 2022 will come into force on 7 April 2022. I am not seeking a waiver of the 28-day rule.

Compliance

10. The regulatory changes comply with each of the following:
 - 10.1. the principles of te Tiriti o 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 2020;
 - 10.4. relevant international standards and obligations; and
 - 10.5. the *Legislation Guidelines* (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Treaty analysis

11. As the amendments in this paper are minor and technical, there are no immediate Tiriti implications arising from this Amendment Rules package.

Statutory requirements

12. 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.
13. I confirm that the above requirement has been met.

Regulations Review Committee

14. 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

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

Impact analysis

16. Treasury's Regulatory Impact Analysis team has determined that the Rules Committee Amendment Rules 2022 package is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has 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.

Publicity

18. 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

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

Consultation

20. 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.

Recommendations

21. 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, Court of Appeal (Civil) Rules 2005, and the Supreme Court Rules 2004;
 2. **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;
 3. **note** the advice of the Associate Minister of Justice that the concurrence requirement under the Senior Courts Act has been met;
 4. **authorise** the submission to the Executive Council of the:
 - 4.1. High Court Amendment Rules 2022;
 - 4.2. Court of Appeal (Civil) Amendment Rules 2022; and
 - 4.3. Supreme Court Amendment Rules 2022.
 5. **note** that the Amendment Rules package will come into force on 7 April 2022.

Authorised for lodgement

Hon Aupito William Sio
Associate Minister of Justice

RELEASED BY THE MINISTER OF JUSTICE