

DRAFT FOR CONSULTATION

This preliminary draft for consultation does not represent Government policy, and has not been proofread.

Judicature Amendment Bill

Government Bill

Explanatory note

General policy statement

Clause by clause analysis

Clause

Regulatory impact statement

Executive summary

Adequacy statement

Status quo and problem

Objectives

Consultation draft

Alternative options

Option 1

Preferred option

Implementation and review

Consultation

Judicature Amendment Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Judicature Amendment Act 2010.
- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act amended**
This Act amends the Judicature Act 1908.
- 4 Purpose of this Act**
The purpose of this Act is to amend the principal Act so that it authorises the making of rules of court extending the duty of parties to a proceeding or interlocutory application and their lawyers to facilitate the expeditious, inexpensive and just dispatch of the business of the court, and to assist in the due administration of justice.
- 5 Power to make rules**
Section 51C(2) is amended by inserting the following paragraph after paragraph (c):
“(ca) add to the High Court Rules any rules of the kind specified in section 51CA:”.

6 New section 51CA inserted

The following section is inserted after section 51C:

“51CA Rules may require parties and their lawyers to assist in due administration of justice

- “(1) Rules made under section 51C may require each party to a proceeding or interlocutory application before the Court, the Court of Appeal, or the Supreme Court to conduct the proceeding or application, and any negotiations for a settlement of the dispute to which it relates, in a way that assists in the due administration of justice by facilitating the expeditious, inexpensive, and just resolution of that dispute according to law.
- “(2) Rules referred to in subsection (1) may specify duties that are included in, and form part of, the duty those rules impose on each party to the proceeding or application.
- “(3) Rules made under section 51C may require a lawyer acting for a party to take account of, and to assist the party to comply with, any duty imposed on the party by rules referred to in subsection (1).
- “(4) Rules authorised by this section do not limit or affect, and must not be inconsistent with,—
- “(a) the Lawyers and Conveyancers Act 2006, and all rules, or other regulations, made under that Act:
- “(b) any privilege (for example, for settlement negotiations or mediation) under the Evidence Act 2006.
- “(5) Rules made under section 51C may permit the Court or a Judge, when making orders for costs (including orders increasing costs otherwise payable under the relevant rules of court, and orders that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party), to take account of any failure by or on behalf of a party to comply with the duty imposed by rules referred to in subsection (1).
- “(6) Rules made under section 51C may empower the Court or a Judge, on being satisfied that a lawyer has breached a duty imposed by rules referred to in subsection (3), to order the lawyer personally to pay any costs (fixed either as a contribution to the party’s actual costs, or on an indemnity basis) that the breach has caused.

“(7) A lawyer must not recover from his or her client costs that the lawyer has been ordered to pay personally under rules referred to in subsection (6).

“Compare: Federal Court of Australia Act 1976 ss 37M, 37N, 37P”.