



# The Rules Committee

## Te Komiti mō ngā Tikanga Kooti

10 June 2025  
Minutes 03/2025

### Circular 32 of 2025

### Minutes of Meeting of 31 March 2025

*The meeting called by Agenda 24/03 (C1 of 2025) convened at 10.00 am in Wellington.*

#### *Present*

Rt Hon Dame Helen Winkelmann GNZM, Chief Justice of New Zealand  
Hon Justice French, Special Purposes Appointee and President of the Court of Appeal  
Hon Justice Cooke, Chair and Judge of the Court of Appeal  
Hon Justice Fitzgerald, Chief High Court Judge  
His Honour Judge Taumaunu, Chief District Court Judge  
His Honour Judge Kellar, District Court Judge  
Ms Alison Todd, Senior Crown Counsel as Representative of the Solicitor-General  
Ms Caroline Greaney, Deputy Secretary (Policy) in the Ministry of Justice and Representative of the Secretary of Justice  
Mr Daniel Kalderimis KC, New Zealand Law Society Representative and Barrister  
Mr Paul David KC, Special Purposes Appointee and New Zealand Bar Association President  
Ms Stephanie Grieve KC, New Zealand Law Society Representative and Barrister

Hon Justice Goddard, Judge of the Court of Appeal and Judicial Lead for Te Au Reka  
Mr Oliver Sanders, Ministry of Justice, Sentencing and Rehabilitation Policy Manager  
Mr Harry Smith, Ministry of Justice, Sentencing and Rehabilitation Policy Advisor  
Ms Lucy Saunders, Ministry of Justice, Family Law Principal Policy Advisor  
Ms Sophie Marsh, Office of the Chief Justice, Te Au Reka Principal Judicial Advisor

Ms Cathy Pooke, Parliamentary Counsel Office Rules Committee Liaison  
Ms Cathy Rodgers, Parliamentary Counsel Office  
Ms Georgia Barclay, Clerk to the Rules Committee  
Ms Georgia Shen, outgoing Secretary to the Rules Committee  
Mr Kieron McCarron, Chief Advisor Legal and Policy Supreme Court  
Mr Quinn Mackay, incoming Secretary to the Rules Committee

#### *Apologies*

Hon Judith Collins KC MP, Attorney-General  
Hon Justice Gault, Judge of the High Court

## **1. Preliminary**

The Committee approved the minutes of its meeting of 25 November 2024.

## **2. Te Au Reka**

Te Au Reka is a new digital court management system which will eventually be used in every court. It is a joint initiative of the Ministry of Justice and the judiciary and will be implemented in several phases, with the first being implementation in the Family Court. Justice Goddard, Ms Saunders and Ms Marsh briefed the Committee on the Te Au Reka project.

Changes to court rules will be necessary for Te Au Reka's implementation. Those changes include:

- enabling parties and their lawyers to provide all types of information to the court, and for the court to provide all types of information to parties and/or their lawyers, through making the information available in the Te Au Reka portal rather than the information needing to be provided in hard copy or by email;
- requiring lawyers to use the Te Au Reka portal to provide information to and receive information from the court (unless exempted on narrow grounds); and
- enabling parties, lawyers, and the court to authenticate information through the Te Au Reka portal.

To enable the Committee's ongoing engagement in rules issues relating to Te Au Reka, the Committee agreed to the Ministry's creation of a Te Au Reka working group that would include Justice Cooke, Judge Kellar, Alison Todd and a member of Parliamentary Council Office. The group will address rules-related issues at a detailed level, with any rules changes to be ultimately agreed to by the Committee.

It was agreed the Te Au Reka team and working group would provide the Committee with an update at its next meeting in June.

## **3. Three strikes**

The provisions in the Sentencing (Reinstating Three Strikes) Amendment Act 2024 that relate to the three strikes regime will commence on 17 June 2025. The provisions apply different standards for what will cause a warning, first or subsequent, to appear on an offender's criminal record.

The Criminal Rules Sub-committee considered and endorsed a number of recommendations made by the Ministry of Justice for changes to the Criminal Procedure Rules at its 24 March meeting, including:

- reinstating a rule, revoked after the original three strikes regime was disbanded, requiring the prosecutor to state whether the proceeding must be transferred to the High Court because the defendant is charged with a stage-3 offence when filing a notice about a protocol offence;
- ensuring charging documents disclose whether a charged offence is a qualifying offence under the new regime; and

- ensuring applications under new s 86V(4) must be made in writing, as they are likely to be complex.

The Sub-committee was concerned that one of the recommendations, that case management memoranda (CMMs) should include whether and how many warnings a defendant has had previously, could engender a perception of bias where a judge in a judge alone trial would know that information. The matter was referred to the Rules Committee in light of the time constraints.

Oliver Sanders and Harry Smith, from the Ministry of Justice, spoke to the Ministry's recommendations, which changed slightly in light of the Sub-committee's concerns and its own further consultation process. The main change was that now the Ministry recommended CMMs should either disclose a defendant's three strikes history or that the prosecution and defence have discussed that history, depending on what would be appropriate for a judge to see at the time of the case management conference. They also recommended the information be on sentencing memoranda. The Ministry's essential concern remained the same; that defendants should know if they are facing a higher potential penalty because they have a history of warnings.

The Committee considered that the real risk of bias was low given judges in judge alone trials regularly put information about a defendant or evidence to one side, but that it was best to avoid the perception of bias where possible.

In response to concerns being raised about self-represented defendants—who do not attend case management conferences—Mr Sanders said the Ministry envisioned guidance being released that would advise prosecutors to discuss the relevant matters with self-represented defendants following a case management conference.

The Rules Committee endorsed the Ministry's recommendations, subject to the Sub-committee's approval to those recommendations that were not before it and subject to guidance being released to assist in cases of self-represented defendants.

The Committee also resolved to look at proposed changes to the Sentencing Regulations 2002, which include the wording of the written warnings judges must give an offender under the regime when sentencing them for a qualifying offence.

The Committee agreed that PCO would draft amendments to the Criminal Procedure Rules based on the Ministry's recommendations, with these to proceed to concurrence, subject to the Sub-committee's approval. The proposed amendments to the Sentencing Regulations were similarly to be circulated to the Sub-committee for its approval, and then to Committee members. Any feedback would be provided to the Ministry. These steps would take place outside of Rules Committee meetings due to the time constraints involved.

#### **4. Victim impact statements**

The Criminal Rules Sub-committee recommended a proposed new r 5A.5A that addresses the filing of victim impact statements (VIS), aiming to make them more timely. The proposed wording reflected the Rules Committee's previous concerns, expressed at its meeting of 30 September 2024, by:

- replacing references to “defendant” with “offender”, in line with the wording in the Victims Rights Act 2002;
- replacing a requirement that a victim impact statement is “submitted to the judicial officer” with a requirement that a victim impact statement is “filed in court” (this is slightly different than the wording favoured by the Rules Committee of “filed with the court”); and
- removing the requirement in the formerly proposed 5A.5A that a victim impact statement be served “on the defendant” and substituting it with a requirement that a statement is served “on a lawyer (if any) representing the offender”.

The new draft also explicitly provided that VIS filed should not be served “on every other party” to ensure compliance with s 23 of the Victims Rights Act, which provides restrictions on offenders having access to VIS. In addition, it made the service requirement subject to any order, directions or conditions imposed under ss 25 of 27 of the Act.

The Committee discussed whether the rule should regulate when self-represented defendants would be shown VIS. It was agreed that this situation is dealt with by s 23 of the Act, which requires a copy of a VIS to be shown to an offender and applies to both prosecutors and the lawyer of an offender. While s 23 does not deal with when a copy should be shown, it was agreed this should not stand in the way of the rules as drafted.

The Committee also discussed whether to add a requirement that victims sign VIS. This was ultimately not adopted because of a concern that such may defeat the purpose of the proposed amendments given timing and practicality issues.

The Committee approved the proposed amendments.

#### **5. Proposed District Court and High Court amendment Rules**

The Committee considered proposed amendments drafted by PCO to the District and High Court Rules which were agreed on at the Committees last meeting of 2024 (at Item 6). The Committee approved of the proposed amendments, subject to two minor changes relating to rr 29.2 and 15.19A(2) of the High Court Rules and subject to the further approval of Justice Fitzgerald and Daniel Kalderimis KC, who had raised the relevant concerns.

#### **6. Improving access to civil justice**

- (a) Proposed amendments to the High Court Rules

The Committee discussed the formulated rules along with a few minor changes that had been suggested by the Access to Justice subcommittee and Justice Fitzgerald since the last meeting:

- Rule 1.2: the Committee agreed with an amendment of proposed r 1.2(1) to refer to “resolution” of a proceeding to place greater emphasis on mediation. The Committee also reaffirmed proposed r 1.2(2)(c) but agreed to replace “share” with “allocate in line with the terminology in the United Kingdom’s overriding objective.
- 7.5A: the Committee agreed with an amendment to ensure that the classification of the proceeding for costs purposes was on the agenda of judicial issues conferences.
- 30.3A(1): the Committee agreed with an amendment to ensure the rule explicitly references the procedure for statutory judicial reviews, which are dealt with under r 7.17.
- 7.5(2): the Committee agreed with an amendment to ensure that categories of cases could be excluded from the requirement for judicial issues conferences.

The Committee agreed to leave the numbering in the proposed amendments to Schedule 3 as it was. The Committee also agreed that the Registry was able to schedule an issues conference before the date in r 7.4(11), and it may be that if no applications filed under r 7.4(3) the Registry would send parties a standard notice.

The Committee agreed these proposed amendments could proceed to concurrence, subject to the above changes.

#### (b) Education

The Committee agreed on the broad form of education on the Access to Civil Justice amendments. It was agreed there will be a charged in person event in Auckland with a livestream and recording available. The presenters would be Justices Cooke and Fitzgerald, as well as Daniel Kalderimis KC. The presentation would involve a roadshow booklet to be prepared by the Law Society. The Committee also agreed to promote the changes through some articles before the presentation.

#### (c) Te reo and sign language in courts

The Committee considered a letter from by Te Hunga Roia Māori o Aotearoa | The Māori Law Society which suggested amendments to proposed rules about the translation of documents from te reo Māori to English and vice versa under r 1.12, following discussions with the Chair of the Committee.

The Ministry expressed its continued reservations about the proposed rules’ fiscal implications, particularly in relation to the translation of documents.

The Committee discussed whether the proposed rules—which would see costs of translation of documents be payable by the Crown—went further than section 7 of the Te Ture mō Te Reo Māori 2016 | the Māori Language Act 2016 (about the right to speak Māori in legal proceedings). The Committee agreed that any rules did not need to go further than the Act. However, more research into what the Act required was needed before an assessment could be made. It was agreed that the

Ministry would provide such research at the next Committee meeting along with a view of how some options discussed—particularly the options to have the rule refer to the Act, to give the court discretion to order costs be payable by a party rather than the Crown, and to have translation be payable for translation from te reo Māori to English only—fit with the Act. The Ministry was also to reach a concluded view on the fiscal implications of any suggested rule change.

Finally, Cathy Pooke from PCO observed that the draft rules would need to change to reflect the access to justice amendments.

## **7. Future in person meetings**

The Committee agreed to continue with meetings being mostly online, with one a year to be in person. Other matters on the agenda for the meeting were deferred until the next meeting.

**Justice Francis Cooke**  
Chair