



# The Rules Committee

## Te Komiti mō ngā Tikanga Kooti

30 June 2025  
Minutes 06/2025

### Circular 34 of 2025

### Minutes of Meeting of 23 June 2025

*The meeting called by Agenda 11/06 (C 33 of 2025) convened at 10.00 am on Microsoft Teams facility.*

#### *Present*

Rt Hon Dame Helen Winkelmann GNZM, Chief Justice of New Zealand  
Hon Justice Cooke, Chair and Judge of the Court of Appeal  
Hon Justice Fitzgerald, Chief High Court Judge  
Hon Justice Gault, Judge of the High Court  
His Honour Judge Taumaunu, Chief District Court Judge  
His Honour Judge Kellar, District Court Judge  
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

#### *In attendance*

Her Honour Judge Moran, Principal Family Court Judge  
Ms Cathy Pooke, Parliamentary Counsel Office Rules Committee Liaison  
Ms Georgia Barclay, Clerk to the Rules Committee  
Mr Kieron McCarron, Chief Advisor Legal and Policy Supreme Court  
Ms Naomi Stephen-Smith, Acting General Manager of Courts and Justice Services Policy at Ministry of Justice  
Mr Quinn Mackay, Secretary to the Rules Committee  
Ms Susan O'Neill, Principal Advisor for family law at Ministry of Justice

#### *Apologies*

Hon Judith Collins KC MP, Attorney-General  
Hon Justice French, Special Purposes Appointee and President of the Court of Appeal  
Hon Justice Radich, Judge of the High Court  
Ms Alison Todd, Senior Crown Counsel as Representative of the Solicitor-General  
Mr Paul David KC, Special Purposes Appointee and New Zealand Bar Association President  
Ms Stephanie Grieve KC, New Zealand Law Society Representative and Barrister  
Ms Cathy Rodgers, Parliamentary Counsel Office

## **1. Preliminary**

The Committee approved the minutes of its meeting of 31 March 2025.

The Chair advised that there had been an in-principle agreement that the Family Court Rules should be brought within the Rules Committee's jurisdiction, but that legislative change was needed to achieve that. Pending such legislation it was proposed that there would be an informal arrangement whereby the Rules Committee would comment on proposed Family Court Rules changes, with a sub-committee of a similar kind as the Criminal Rules Sub-Committee established for that purpose. A proposal for establishing the informal arrangement would be brought to the Committee's October meeting.

The Chair gave an update on the planned education for the Committee's access to civil justice High Court Rules changes. There will be a seminar on 13 October, presented by the Chair, Chief High Court Judge Fitzgerald, and Daniel Kalderimis KC. The seminar would be accompanied by a booklet and would be both in-person and online, with recordings available. The Committee agreed to being identified as co-presenter of the seminar.

The Committee agreed on the dates for its meetings in 2026: 23 March, 29 June, 28 September, and 30 November. It was flagged that the 23 March 2026 meeting would be in person in the afternoon, with the aim of having an evening event to thank former Committee members.

## **2. Changes to Rules arising from the budget**

The Chair addressed the Committee on rules changes arising from the Judicature (Timeliness) Legislation Amendment Bill, which is at the select committee stage. The key proposed changes relate to abusive civil proceedings and involve High Court rules 5.35A and 5.35B — which allow Judges to strike out plainly abusive proceedings — being repealed and replaced with equivalent provisions in the Senior Courts Act allowing such orders to be made by the Supreme Court and Court of Appeal as well as the High Court, with automatic restraint if two such orders were made within two years.

## **3. Daily recovery rates for costs**

The Committee agreed to propose an increase in daily recovery rates, and to follow the process used previously by the Committee to calculate increases to daily recovery rates, in 2018 and 2019. The Committee would first set proposed increases by reference to the Producer Price Index for legal services (PPI) adjusted to round figures. The PPI is a metric created by Stats NZ and reflects the average change in selling prices received by domestic producers for their goods and services, reflecting the price changes from the perspective of the producer, not the consumer. The Committee agreed to consult with key stakeholders on the proposed increases.

The Committee agreed not to propose adjusting the daily recovery rate for litigants in person.

#### **4. Victims of Family Violence**

The Victims of Family Violence (Strengthening Legal Protections) Legislation Act 2025 specifies that where a party to family proceedings has exhibited conduct that amounts to “litigant abuse” (as defined in the Act), the court may make an order requiring that person to seek the leave of the court before taking further steps in the proceeding, in any court. The Act envisages that such orders may be made by the Family Court, District Court, or senior courts and will be a parallel regime to the existing civil restraint regime. It will come into force on 17 February 2026.

The Committee agreed that no rule changes were required to facilitate operation of the Act. It was agreed that the Chair, Principal Family Court Judge Moran, and Justice Goddard would meet with the Ministry of Justice to discuss the issues that had been raised in relation to proposed rule changes.

#### **5. Pre-action protocols for debt claims in the District Court**

Pre-action protocols (PAPs) are guidelines that outline steps parties should take before filing court proceedings. The Committee considered PAPs in the New Zealand context in its 2022 Access to Civil Justice Report. In the report, the Committee recommended that PAPs be implemented in the District Court (through either the Chief District Court Judge promulgating the protocol under s 24(3)(i) of the District Court Act or by introducing it into Sch 2 of the District Court Rules) for debt collection claims only, rather than more broadly, with the aim of assessing their functionality before turning to consider wider implementation of PAPs. This position was reached in light of uncertainty around to what extent the benefits of PAPs were likely to outweigh the cost and delay they could cause.

Judge Kellar proposed that PAPs be adopted in the District Court. The Committee agreed in principle to the implementation of a PAP for consumer debt collection in the District Court — noting that such a protocol would need to be publicly accessible and available in multiple languages. It agreed that it would be best to apply such a protocol to liquidated, and therefore certain, debt claims. It also agreed that it would be inappropriate to apply such a protocol to commercial parties due to the risk of tension between the protocol’s requirements and the relevant contract.

The Committee agreed that a PAP in the consumer debt collection context could ensure debtors receive information about the claim, how to resolve it, and where to get help before proceedings are filed. This could increase the number of matters that resolve before proceedings are filed, reducing the burden of such proceedings on the central registry and the negative implications of such proceedings on debtors. Equally, the Committee had concerns relating to:

- the risk that implementation could see costs of complying with the PAP being passed on to debtors, without equivalent benefits;
- questions about the Committee’s ability to monitor functionality and the extent to which additional costs are passed on to debtors, given the limited judicial oversight operating upon the central registry (noting that the District Court had taken steps to increase oversight in recent years); and

- the extent to which the PAP would require other changes in the District Court Rules, including a question about how failing to comply with a PAP would legitimately affect costs orders.

As such, the Committee's agreement in principle was subject to the provision of further details in response to those concerns to be considered at a future meeting.

## **6. Te Reo Māori and sign language in courts**

The Ministry of Justice advised it had received formal advice on the scope of the rights provided for in Te Ture mō Te Reo Māori 2016 | Māori Language Act 2016 and would provide further details along with its view at the October meeting.

## **7. Miscellaneous**

### **(a) Public release of meeting materials**

The Committee agreed to reaffirm that meeting materials are confidential and only to be used by Committee members for purpose of meetings. The Committee also agreed that it would, going forward, proactively release meeting materials on a case-by-case basis depending on the likely level of public interest and any confidentiality concerns.

### **(b) Organising principles**

The Committee considered a document, endorsed by the Committee in 2014, which set out general principles of civil justice and key principles of civil procedure. The document had aimed to synthesise some of the debate over the varying purposes of the rules.

The Committee continued to support much of the content of the document but considered it could go further. The Committee agreed to form a sub-committee — comprising the the Chief Justice, the Chair, Daniel Kalderimis KC and Cathy Pooke from Parliamentary Counsel Office — to consider the organising principles further. This could include additional principles to guide the Committee, such as relying on evidence where available, avoiding tinkering in an isolated way, and any guidance from PCO on its preferred approaches.

### **(c) Litigation funding**

The Committee considered recommendations 108 and 109 made by the Law Commission | Te Aka Matua o te Ture in its report on class actions and litigation funding (Report 147). Recommendation 108 suggested that the Committee consider developing rules requiring funded plaintiffs to disclose litigation funding agreements to the court and to the defendant. Recommendation 109 suggested that the Committee consider creating presumptions that funded representative plaintiffs should provide security for costs and expressly empowering the court to make security for costs and adverse costs orders directly against the litigation funder.

The Committee agreed that, at least presently, the current rules were adequate to deal with these issues. It considered that disclosure of funding agreements was better left to incremental judicial development and that rules on security for costs and costs awards against funders were able to be addressed following case-by-case assessments under the current rules.

**Justice Francis Cooke**  
Chair