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**RULES COMMITTEE CONSULTATION PAPER:  
CRIMINAL PROCEDURE RULES 2012**

**Request for submissions on draft rules**

**Date of issue:** 20 February 2012

**Date submissions due:** 7 May 2012

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**Introduction**

1. The Rules Committee seeks submissions on the attached draft **Criminal Procedure Rules 2012** (the “**Rules**”), made pursuant to section 386 of the Criminal Procedure Act 2011, section 122(1) of the District Courts Act 1947, and section 51C of the Judicature Act 1908. This consultation paper sets out the background to the Rules and provides a summary of them. Input is sought on both the substantive content of the Rules as well as any specific drafting issues or matters of detailed practical application arising from them.
2. Please return submissions or comments to the Clerk to the Rules Committee by **Monday 7 May 2012**. Submissions received may be posted on the Rules Committee’s webpage.

### *Legislative Background*

3. The Criminal Procedure Act (the Act) and 14 related Amendment Acts were passed in late 2011. They will commence in two stages by Order in Council (the second stage 24 months after enactment if not commenced earlier).<sup>1</sup>
4. Six Orders in Council to commence certain provisions in the Act and related Amendment Acts on 5 March 2012 were signed by the Governor-General on 14 November 2011. These provisions deal with the law on suppression, sentence indications, bail, warrants to arrest, and jury numbers.
5. It is expected that an Order in Council will be sought to commence the remaining provisions in the Act (that is, the vast majority of changes) and related Amendment Acts around March or April 2013. If no Order is made, these remaining provisions will come into force on 18 October 2013.
6. The Act provides for Court Rules and Regulations. The rule-making power is set out in section 386 of the Act. Without limiting the general rule-making power in subsection (1), subsection (2) lists a number of matters that may be dealt with in rules.
7. Rules are not required to support the legislative provisions commencing on 5 March this year (although the opportunity has been taken to provide rules relating to the new sentence indication regime which commences on 5 March). However, procedural rules are required to supplement the legislative provisions commencing in 2013.
8. In order to ensure that the Act and its supporting rules commence at the same time, the consultation deadline on the Rules has been set as 7 May 2012. While comment is invited on all aspects of the Rules, this consultation is limited to the Rules and does not include the Act or any other statutes passed relating to the Act.

### *Rules process*

9. A Criminal Rules Sub-Committee (the Sub-Committee) was established by the Rules Committee in June 2011. The Sub-Committee was asked to consider issues for inclusion in the Rules and to develop the content of the Rules in consultation with the Ministry of Justice. In drafting the Rules the Sub-Committee has focussed on ensuring that the Rules are consistent with the statutory provisions in the Act. It has also attempted to draft the Rules in a manner that is simple and not more prescriptive than necessary.
10. The purpose of the Rules is to regulate the practice and procedure of the District Courts and the High Court in their exercise of their jurisdiction under the Act. It is proposed that the criminal jurisdiction of the Court of Appeal and Supreme Court continue to be governed by the Court of Appeal (Criminal) Rules 2001 and the Supreme Court Rules 2004 respectively. However, a small number of consequential amendments will need to be made to these regimes to ensure consistency with the new terminology and procedures in the Act.

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<sup>1</sup> Criminal Procedure Act 2011, s 2.

11. In developing these Rules, the Sub-Committee has drawn on the Court of Appeal (Criminal) Rules 2001 and the Supreme Court Rules 2004. It has also taken into account the approach taken in legislation from other jurisdictions.

### **General issues**

12. Before outlining below a part by part summary of the key aspects of the Rules, we bring to your attention two particular aspects of the Rules upon which feedback is sought:
- a. Timeframes; and
  - b. Forms.

#### *Timeframes*

13. One of the key objectives of the Act is to reduce delay in the courts through the timely resolution of criminal proceedings and by creating efficiencies in the justice sector.
14. To this end a number of timeframes are specified in the Rules. For example:
- Rule 2.17(1) governs the timeframe for filing a notice of response;
  - Part 4; Subpart 1 governs the time for specified appearances;
  - Part 4; Subpart 3 details the timeframes for case management;
  - Rules 5.4 to 5.6 deal with the timeframes for pre-trial applications, the filing of formal statements and the filing of trial callover memoranda; and
  - Part 8 which covers the appeal process.
15. A high degree of compliance with the specified timeframes will be critical to the success of the new criminal procedure regime. That said rule 1.7 provides a discretion for the court to vary the time for doing anything in a proceeding if required. The Committee specifically welcomes consideration of the timeframes in the Rules.
16. **Appendix A** includes a flow diagram of the proposed new procedure and relevant timeframes for the specified steps in the process.

#### *Forms to be used for criminal proceedings*

17. The Rules specify the information that must be included in certain documents to be used in criminal proceedings. For example, rule 3.1 lists the information that must be included in charging documents, while rule 3.2 lists the requirements for summonses. The Rules do not, however, include any such forms in a Schedule.
18. Rule 2.1(2) specifically allows that the Secretary for Justice may provide forms for use under the Act or Rules. The Sub-Committee decided that this provision would be appropriate to allow the Ministry of Justice to develop template forms for the various documents in the Act and Rules. The Ministry would be able to make these templates available in a range of hard copy and electronic formats, including in a manner that allows a document to be filed in court electronically.<sup>2</sup>

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<sup>2</sup> Enabling electronic filing is a key objective of the Ministry of Justice's Electronic Operating Model project (EOM), which aims to allow for electronic filing of documents in all criminal proceedings. Phase one of the project will be to create a system for charges to be electronically filed in court by the police. That system will eventually be expanded to apply to all prosecutors. The second phase of the project will involve design of systems to enable any document to be electronically filed in court. Phase

## Summary of the Rules

### *Part 1: Preliminary and general provisions*

19. *Subpart 1* contains rules dealing with the objective and interpretation of the Rules.
20. *Subpart 2* deals with the application of the Rules, extending and shortening time under the Rules, and amendment of errors in reasons for orders in judgments. Rule 1.6 must be read in conjunction with rule 7.1(6) and rule 7.2-(27).
21. *Subpart 3* deals with custody of exhibits and sets out concisely in one rule the Registrar's responsibility to return exhibits to the person who provided them, subject to court directions or statutory requirements to the contrary. Rule 1.8 also provides for the transfer of exhibits to another court and the examination of exhibits by jurors.
22. *Subpart 4* deals with speaking Māori or using New Zealand Sign Language in criminal proceedings and translation of documents. The rules in this subpart (rules 1.9 - 1.11) are based on High Court Rules but reflect a consistent approach with the Act and Rules except for:
  - costs issues (which will be dealt with in Regulations);
  - where specific matters in the corresponding provisions in High Court Rules are already dealt with in these Rules (such as service); and
  - where the process in the corresponding provisions in High Court Rules relates solely to civil legal matters.

### *Part 2: Rules about documents, filing, service, and applications*

23. *Subpart 1* covers content of documents and authentication.
  - a. The word “document” is defined in an expansive manner under section 5 of the Act.
  - b. Rule 2.1 means that if any person does not use a document or form provided by the Ministry of Justice for that purpose, that person must nonetheless comply with the information requirements of the governing rule.
  - c. Rule 2.3 specifies the means by which documents must be authenticated; an affidavit or other document required to be sworn may only be authenticated by being signed and dated.
24. *Subpart 2* deals with filing of documents and specifies the means by which documents are to be filed. These rules reflect elements of existing rules regarding filing, both in the civil and criminal context, and ensure that electronic filing may be utilised where such means is provided by the court for that purpose.

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one of EOM also entails designing a system that will allow the permanent court record to be kept and maintained in electronic format.

25. *Subpart 3* governs service of documents. Again these rules reflect elements of existing rules, both in the civil and criminal context. Electronic service is permitted (see rules 2.6(1)(b) and 2.11). Specific rules govern requirements for personal service (rule 2.7), who is responsible for service (rule 2.10) and proof of service (rule 2.12).
26. Until now, only a small number of criminal processes and documents explicitly require service. The Rules require a broader range of matters to be served in the interests of efficiency and fairness by ensuring that each party is given sufficient notice of relevant proceedings.
27. *Subpart 4* provides rules about the application process. In devising this subpart, the Subcommittee considered both New Zealand and foreign legislation governing application processes to try and ensure that any such process in the Rules is standardised and comprehensive. Rule 2.13 states that this subpart must be read subject to any requirements of the Act governing applications.

***Part 3: Commencing proceedings and preliminary steps***

28. This Part specifies the information to be included in charging documents, summonses and warrants.
29. The requirements are largely based on existing law and practice but are supplemented by the additional requirements and new processes provided for in the Act (for example, the replacement of informations and indictments with charging documents).
30. Of particular interest may be the Schedule specifying information to accompany summonses required by rule 3.2.

***Part 4: Procedure before trial***

31. As already noted, the need for certain procedural steps to be completed in a timely manner is critical to the success of the new criminal procedure regime.
32. *Subpart 1* specifies the time of the defendant's second appearance, the time of case review (see section 57 of the Act), and trial callover (see sections 87 to 89 of the Act).
33. *Subpart 2* applies to notices entering a plea made under sections 37 or 38 of the Act.
34. *Subpart 3* governs the case management procedure and specifies timeframes for making applications under sections 58 or 59 of the Act relating to departures from the application of certain case management procedures, or for those procedures to apply to category 1 offences. (Generally the statutory case management regime will not apply to category 1 offences, being offences carrying a penalty of fine only.)
35. *Subpart 4* provides more specificity as to the kind of information that the court may require before giving a sentence indication under section 61 of the Act.
36. *Subpart 5* provides the requirements imposed upon a Registrar if a proceeding is transferred to a different court or venue.
37. *Subpart 6* deals with Crown notices, provided for under sections 189 to 192 of the Act. The policy of the Crown assuming responsibility for certain criminal proceedings is

currently being developed by the Ministry of Justice in consultation with the Crown Law Office, Police and other justice sector agencies. This policy will be included in Regulations.

38. *Subpart 6* specifies the requirements for Crown notices where the Solicitor General or a Crown prosecutor assumes responsibility for a prosecution under section 187 of the Act as well as the requirements for notices to amend, add or withdraw charges under sections 190 – 192 of the Act.

#### ***Part 5: Procedure for trial***

39. *Subpart 1* specifies that in a Judge-alone trial a pre-trial admissibility application must be made no later than the case review hearing.
40. *Subpart 2* applies to jury trials and specifies the time by which pre-trial applications must be made and by which formal statements and trial callover memoranda must be filed. This subpart also specifies information that must be provided by a Registrar to defendants and prosecutors regarding formal statements, trial callover memoranda and the date of trial callovers. Rule 5.11 specifies steps to be taken before a jury trial commences.

#### ***Part 6: Access to court documents***

41. The Sub-Committee drafted Part 6 with regard to the fact that the Criminal Proceedings (Access to Court Documents) Rules 2009 apply generally only to indictable proceedings. The relevant parts of those Rules have been simplified and extended to all criminal proceedings in Part 6.

#### ***Part 7: Permanent court record***

42. The Sub-Committee took into account existing statutory requirements regarding court records in framing the rules in Part 7. In particular, consideration was given to section 71 of the Summary Proceedings Act 1957, section 353 of the Crimes Act 1961, and the Supreme Court decision in *Mafart v Television New Zealand*.<sup>3</sup>

#### ***Part 8: Appeals to District Court or High Court***

43. This Part is based on the Court of Appeal (Criminal) Rules 2001, amending those Rules as necessary to ensure compliance with specific provisions in the Act and with the requirements as to terminology and time periods. The opportunity has been taken to simplify and consolidate the provisions in the Act in a relatively non-prescriptive manner, where possible.

#### **Submissions**

44. Submissions are welcomed on any aspect of the Rules, including in relation to any matter that you consider would benefit from further clarity or refinement. Comment is also sought on any matter that you consider gives rise to legal or practical difficulties including the workability of any rule, or compliance with any particular specified requirement. Comments relating to the issues of timeframes are specifically welcomed.

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<sup>3</sup> [2006] 3 NZLR 18 (SC).

45. You may further wish to consider whether, although no rules have been drafted in a particular area or with regard to a specific issue, additional rules would assist in giving effect to the provisions or objectives of the Criminal Procedure Act 2011.
46. Please send comments and submissions to the Clerk of the Rules Committee by 7 May 2012.

## Appendix A

### Timeframes between appearances and for filing in respect of case review (case management memorandum) and trial callover (trial callover memorandum)

