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## **RULES COMMITTEE CONSULTATION PAPER**

### **PROPOSALS FOR REFORM OF SCHEDULE 3 HIGH COURT RULES (TIME ALLOCATIONS) AND REVIEW OF SCHEDULE 2 HIGH COURT RULES & SCHEDULE 2 DISTRICT COURT RULES (DAILY RECOVERY RATES)**

**Date of issue:** 27 July 2011  
**Date submissions due:** 7 September 2011

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#### **Introduction**

1. The Rules Committee is seeking feedback on its proposed changes to the rules governing time allocations (Schedule 3 of the High Court Rules), as well as its regular review of the daily recovery rates (Schedule 2 of the High Court Rules and Schedule 2 of the District Court Rules).

2. **Part One and Appendix One** of this paper deal with proposals for the reform of time allocations in Schedule 3 of the High Court Rules.
3. **Part Two** outlines the proposed changes to the appropriate daily recovery rates in Schedule 2 of the High Court Rules.
4. The Committee is also seeking feedback from the profession on how to better enforce judgments and recover reasonable costs more efficiently from debtors. One suggestion is to change the cost rules to make a presumption of increased costs in enforcement proceedings, the idea being that an uplift of 50% on standard costs against a debtor would allow a more reasonable total recovery. Suggestions and comments on this issue as well would be appreciated.
5. Please return comments to the Clerk to the Committee, Dr Caroline Anderson, by 7 September 2011, to the address above.

## **PART ONE**

### **Proposals for Reform of Schedule 3 High Court Rules (Time Allocations)**

6. The Rules Committee has identified a number of issues with Schedule 3 of the High Court Rules and has determined that revision is required. This paper outlines proposed changes to the current schedule.

#### **Issues with the current schedule**

7. The Rules Committee received a request from the New Zealand Law Society to review Schedule 3, based on concerns raised by a practitioner. The Law Society supported the practitioner's view. Item 7 covers preparation for hearing if a trial does not eventuate; item 8 provides for preparation for hearing if the case proceeds to hearing. There was perceived to be an anomaly in that the operation of those two cost items could lead to unusual outcomes, as item 8 is linked to the hearing time while item 7 is not (and cannot be) based upon hearing time for its calculation. Hence the situation could arise where preparation time allocated for a matter which did not proceed to a hearing was significantly greater than the allocation of preparation time in respect of a matter which did proceed to hearing. Fixing preparation costs to the duration of the hearing also caused difficulties with shorter hearings that had nonetheless required a great deal of preparation.

8. The Committee considered that it was desirable to improve the provision for preparation for hearing with a view to the same provision applying whether or not a trial or hearing eventuated.
9. Preparation costs on appeal (item 16) have also been identified as problematic. The item may not adequately provide for the preparation costs of cases on appeal and reviews of decisions of Associate Judges.
10. There has also been confusion associated with the heading “Appeals and reviews of Associate Judges”.

### **Proposed changes to the schedule**

11. The draft revised schedule is intended to address the above problems. The project has expanded over time to include re-consideration of the discrete provision for “specified” originating applications, and to reflect various changes occasioned by amendments to the Rules and current procedures involving preparation of bundles and other items. Finally, the opportunity was taken to refresh the structure and headings to produce a more crisp presentation.
12. The draft revised schedule is attached in full as an appendix to this paper.
13. The primary changes are (in the sequence of the Schedule):

<b>Description of change</b>	<b>Item number in revised schedule</b>
Provision for “Reply”;	3
Case management is a discrete section (with cross-references from other parts);	10 onwards
“Interrogatories, discovery and inspection” is a discrete section;	13 onwards
The items “Payment into Court” and “Filing offer of other relief” have been deleted;	Current 4.8, 4.9
Both summary judgment applications and reviews of interlocutory decisions (HCR 7.49) are incorporated in “Interlocutory proceedings and related steps”;	20
Bundle preparation by the applicant/appellant is provided for in interlocutory proceedings, originating applications and appeals;	23, 39, 53

Preparation (of written submissions) is a specified time allocation in interlocutory proceedings, originating applications and appeals;	22, 38, 54
Preparation is a specified time allocation for trials;	31
The A, B and C categories have been supplemented with trial duration allocations of 1-2, 3-5 and 6+ days respectively (see paragraph 10 below) for the purposes of preparation;	For items 22, 31, 38, 54
Appearance time is measured in quarter days in all instances;	24, 32, 40, 55
The separate category of “specified” originating applications has been abandoned;	Current 25-30
Some adjustments to time allocations have been made, including: <ul style="list-style-type: none"> <li>- Reply</li> <li>- Preparation of written submissions</li> <li>- Preparation for hearing</li> <li>- Filing of bankruptcy petition;</li> </ul>	3 22, 38, 54 31 34
Case management time allocations are now uniform.	10-12

14. In order to explain the different categories of hearing/trial duration, the following statement is proposed:

“For the purposes of preparation in Schedule 3 items 22, 31, 38 and 54:  
Band A means a 1-2 day fixture of the hearing being prepared for;  
Band B means a 3-5 day fixture of the hearing being prepared for;  
Band C means a 6+ day fixture of the hearing being prepared for.”

15. Such a statement could be included as rule 14.5(3).

16. There has not been a comprehensive reappraisal of the specific time allocations in Schedule 3, save to the extent that was necessary. Hence, generally the time allocations accord with the current Schedule, with the particular exceptions listed above.

## PART TWO

## Review of Schedule 2 High Court Rules & Schedule 2 District Court Rules (Daily Recovery Rates)

17. The Rules Committee is also seeking feedback as part of its regular review of the appropriate daily recovery rates contained in the Second Schedules to the High Court Rules and District Court Rules. The review is designed to ensure the Schedules remain up to date.
18. The High Court Rules are formulated on the basis of a two-thirds recovery rate. The appropriate daily recovery rates in the Second Schedule to the High Court Rules are supposed to be set at two-thirds of the actual daily rates considered appropriate: r 14.2(d). This is the same in the District Courts Rules: r 4.2(d).
19. The last amendment to the appropriate daily recovery rates took effect on 24 May 2010. Since then, the price paid for personal and corporate legal services has increased by approximately 2.4%.<sup>1</sup>

### Proposed New Rates

20. Based on the percentage change in the Producers Price Index for legal services the revised rates for the **High Court** should be:

Category of costs	Current appropriate daily recovery rate (\$)	PPI increase of 2.4% (rounded up to nearest 1) (\$)	Proposed increase (rounded to nearest 10) (\$)	% increase
1	1250	1280	1280	2.4%
2	1880	1925	1930	2.4%
3	2780	2846	2850	2.5%

21. At previous reviews, the Rules Committee accepted the advice of the New Zealand Law Society that the rates provided in the District Courts Rules should be 80% of the rates in the High Court Rules.<sup>2</sup> It is proposed that the same course should be adopted in this review. The proposed revised rates for the **District Courts** are:

<sup>1</sup> This figure is based on the *Producers Price Index – Legal Services: Personal and Corporate* from the quarter ending June 2009 to the quarter ending December 2010. By referring to and applying this figure the Rules Committee is not suggesting that it should dictate any amendment to the Second Schedule.

<sup>2</sup> See Minutes of Meeting held on Monday 5<sup>th</sup> December 2005.

Category of costs	Current appropriate daily recovery rate (\$)	Proposed increase (80% of High Court rate, rounded up to nearest 10) (\$)	% increase
1	1000	1020	2%
2	1500	1540	2.7%
3	2220	2280	2.7%

## Conclusion

22. Submissions are invited on all aspects of Schedule 3 and on the particular revisions to time allocations proposed. Alternative suggestions are welcomed.
23. Comments on the appropriateness of the proposed amendments to the daily recovery rates for each category of proceedings are also sought. Any amendment to the Second Schedules of the High Court and District Court Rules is envisaged to take effect late 2011.
24. Comments are also invited on the issue of changing cost rules so as to ease the burden of judgment enforcement (see above, paragraph 4).
25. Please return submissions or comments to the Clerk to the Rules Committee by **7 September 2011**. Submissions received may be posted on the Rules Committee's website. The contact details are as follows:

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## APPENDIX ONE

### Draft revised Schedule 3

<b>ORDINARY PROCEEDINGS</b>		<b>Allocated days or part days</b>		
		<b>A</b>	<b>B</b>	<b>C</b>
<b>Commencement</b>				
1	Commencement of proceeding by plaintiff	1.6	3	10
2	Commencement of defence by defendant	1	2	6
<b>Other pleadings and notices</b>				
3	Reply	0.4	0.8	2.4
4	Counterclaim	0.8	1.6	4.8
5	Cross-notice between defendants	0.6	1.2	4
6	Third party notice and statement of claim	1.2	2.4	7
7	Notice of appearance	0.2	0.2	0.2
8	Notice of appearance with protest to jurisdiction	0.3	0.6	2
9	Pleading in response to amended pleading (payable regardless of outcome except where formal or consented to)	0.3	0.6	2
<b>Case management</b>				
10	Filing memorandum for case management conference or mentions hearing	0.2	0.4	1
11	Appearance at mentions hearing or callover	0.2	0.2	0.2
12	Appearance at case management conference	0.3	0.3	0.7
<b>Interrogatories, discovery and inspection</b>				
13	Notice to answer interrogatories	0.4	1	4
14	Answer to interrogatories	0.4	1	4
15	Notice to admit facts	0.4	0.8	2.4
16	Admissions of facts	0.4	0.8	2.4
17	List of documents on discovery	0.7	1.5	6
18	Production of documents for inspection	0.3	1	3
19	Inspection of documents	0.5	1.5	6
<b>Interlocutory applications (including applications for summary judgment and for review of interlocutory decisions)</b>				
20	Filing interlocutory application	0.3	0.6	2

21	Filing opposition to interlocutory application	0.3	0.6	2
22	Preparation of written submissions	0.5	1.5	3
23	Preparation by applicant of bundle for hearing	0.4	0.6	1
24	Appearance at hearing of defended application for sole or principal counsel	The time occupied by the hearing measured in quarter days		
25	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
26	Obtaining judgment without appearance	0.3	0.3	0.5
27	Sealing order or judgment	0.2	0.2	0.2

### **Trial preparation and appearance**

28	Plaintiff's or defendant's preparation of briefs or affidavits	1.5	2.5	5
29	Plaintiff's preparation of list of issues, authorities and common bundle	1.5	2.5	5
30	Defendant's preparation of list of issues, authorities and common bundle	1	2	4
31	Preparation for hearing	2	3	5
32	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		
33	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
34	Other steps in proceeding not specifically mentioned	As allowed by the Court		

### **ORIGINATING APPLICATIONS**

35	Filing application and supporting affidavits	1	2	6
36	Filing notice of opposition and supporting affidavits	1	2	6
37	Case management (as for ordinary proceeding)			
38	Preparation of written submissions	0.5	1.5	3
39	Preparation by applicant of bundle for hearing	0.4	0.6	1
40	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		
41	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		

### **BANKRUPTCY PROCEEDINGS (UNDEFENDED)**



42	Filing and serving bankruptcy notice	0.1	0.2	0.6
43	Filing bankruptcy petition and other documents	0.3	0.6	1.8
44	Appearance at hearing	0.2	0.4	1.2
45	Supporting party on bankruptcy	0.2	0.4	1.2

**COMPANY LIQUIDATION PROCEEDINGS  
(UNDEFENDED)**

46	Issuing statutory demand	0.1	0.2	0.6
47	Filing statement of claim and other documents	0.3	0.6	1.8
48	Appearance at hearing	0.2	0.4	1.2
49	Supporting party on liquidation	0.2	0.4	1.2

**APPEALS**

50	Commencement of appeal or cross-appeal	0.5	1	3
51	Commencement of response to appeal or cross-appeal	0.3	0.5	1
52	Case management (as for ordinary proceeding)			
53	Preparation of Case on Appeal	0.5	1	2
54	Preparation of written submissions	1	3	6
55	Appearance at hearing for sole or principal counsel			The time occupied by the hearing measured in quarter days
56	Second and subsequent counsel if allowed by court			50% of allowance for appearance for principal counsel

**ENFORCEMENT OF JUDGMENT OR ORDER**

57	Charging order without application	0.3	0.3	1
58	Charging order with application, including any unopposed order	0.5	0.5	1.4
59	Writ of sale	0.5	0.5	0.7
60	Other enforcement process	0.5	0.5	0.7