MEMORANDUM

TO: The Rules Committee
cc: Georgia Barclay

FROM: Access to Justice Sub-Committee

DATE: 20 September 2024

SUBJECT: Recommendations of Sub-Committee on submissions on the detailed provisions of proposed rules

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[1] We have considered the submissions that have been provided to the Committee on the proposed rules released for consultation. Set out below are our preliminary recommendations provided for the purposes of discussion by the Committee. We have not yet reviewed the submissions with PCO and suggest that we do so after the Committee has considered our recommendations and made decisions.

[2] We will not address some of the broader issues raised by submitters, including the further suggestions made by the New Zealand Law Society (NZLS) — such as amending the costs regime to better enforce compliance — but focus on the points raised about the details of the proposed rules.

[3] Unless indicated otherwise we will address the submissions rule by rule with reference to the compilation of submissions provided by the clerk to the Committee.

Rule 1.2 overriding objective

[4] We agree with the submission by the NZLS on the rewording of this overriding objective to address the apparent tensions within the rule, essentially for the reasons they give (at p 4 of the schedule to their submissions).

Rule 1.2A: the general duty to cooperate

[5] Simpson Grierson identify that parties are not always willing to co-operate as the proposed rules require, especially when they are self-represented (paragraphs [10]–[12]). They suggest avenues for parties to resolve roadblocks efficiently by judicial

intervention. Andrew Barker KC also suggests that the process of co-operation in an adversarial system can be expensive and inefficient (at [7]). Though, no doubt, the path of co-operation is not always smooth, we consider that the co-operation duties in the proposed rules are appropriate but that adding an express ability to apply for directions in relation to the duty may not be fruitful. We consider that it would be better to leave such judicial intervention to when they are associated with other specific applications where directions are sought. We accordingly recommend no change to the proposed rules.

Rule 7.4 – standard directions

[6] A number of submissions were directed to this rule. Many of them can be seen to concern the difficulty that arises when attempting to identify standard directions that seek to cover a variety of different situations. Some submissions suggest that we address more variations within the standard directions. As a general response we think it may be better to rely on the fact that, under proposed r 7.4(7) there is the ability of the Court to give alternative directions if this will better achieve the overriding objective in r 1.2. We consider that reliance on this power is preferable to seeking to cover other scenarios within the standard directions.

[7] Otherwise we make the following recommendations:

(a) We agree with Crown Law's suggestion (paragraphs [4]–[9] Crown Law submissions) and the NZLS (schedule p 5) that the repealed guidance in rr 7.1AA to 7.3A should be replaced by new guidance of a similar kind to make the overall regime clear. We think ideally only one concise introductory provision should be required, to provide a similar role to the flowchart, and could include or cross-reference the flow chart.

(b) We also agree with the suggested changes to the structure and content of r 7.4 itself to make it clearer as suggested in paragraph [13] of Crown Law's submission and paragraph [19] of Simpson Grierson's submission. In addition we agree that, if redrafted as suggested by Crown Law, the wording of this rule could also be

improved by deletion of the word "standard" used through it as suggested in paragraph [12] of Crown Law's submission.

(c) We do not consider that any change is required to address the situation where a party does not follow through with a interlocutory application it has given notice of under r 7.4(1)(b) (paragraph [15] Crown Law submissions). Rule 7.4(1)(a)(ii) requires an application to be filed if such notice is given, and if any such application is abandoned this situation is best resolved by agreement between the parties or directions under 7.4(7). It would unnecessarily clutter the rule to seek to expressly accommodate for this complication within the rule.

(d) Similarly the suggestion of Lee Salmon Long[1] (p 2) that an application for the addition of parties is often not controversial and would not require an interlocutory hearing is best dealt with by the parties agreeing directions under r 7.4(7) to be made on the papers rather than attempting to prescribe for this eventuality within the rule.

(e) We do not consider it necessary to expressly provide that consent memoranda can be filed seeking variations to the standard directions on the papers as suggested by Simpson Grierson (paragraph [17]). We consider that this well-established practice would continue, and need not be specifically provided for. Note that new r 7.33(3) expressly provides that interlocutory applications can be heard on the papers.

(f) We also do not think that further guidance is needed to explain when extensions of time would be granted (paragraphs [3]–[4] Reflective Construction Law). The overriding objective in r 1.2 provides that guidance.

(g) NZLS submitted that the prescribed time periods for fulfilling obligations on further parties, including third parties, may require further thought and adjustment (its appendix p 5). There may be more complex cases where additional time is

1 What we refer to as submissions from Lee Salmon Long are submissions from individuals at the firm and may not represent the views of the firm as a whole.

justified but these cases are also best addressed by agreement/directions under r 7.4(7). Similarly we do not think it is necessary to further extend the timeframes in the standard timetable as suggested by both Mr Barker KC and Reflective Construction Law. If more time is needed it can be agreed or granted under r 7.4(7). But the Committee may wish to reconsider the adequacy of the prescribed times given that there is room for different views.

(h) We do not agree with the NZLS submission (appendix p 5) that proposed r 7.4 should be changed to recognise the steps that are contemplated to be taken under the rules before the statement of defence is filed. Similar submissions are made by Stout Street Chambers[2] (at [11]–[15]) and Simpson Grierson (at [25(a)]). Proposed r 7.4 is not the rule that prescribes the relevant time for taking such steps. For example, a protest to jurisdiction must be filed at the time required for filing of a statement of defence as a consequence of existing r 5.49(1), and an application for summary judgment must be filed with the service of the original proceedings unless leave is sought under r 12.4(2). The proposed r 7.4 does not regulate these timing requirements, but (more simply) regulates the application of the standard timetable given these other rules. Rule 7.4 is only saying that when applications of this kind are made they suspend the standard timetable.

(i) A technical adjustment is warranted, however, in the case of protests to jurisdiction, to clarify that (at least for the purposes of r 7.4) a defendant's appearance and objection to jurisdiction counts as a pleading (cf the inclusive definition of "pleading" in r 1.3). This might be done by augmenting the word "pleading" in r 7.4(1)(a)(i)(A) to "pleading or appearance". We also take note of Stout Street's suggestion at paragraphs [14]–[15] and suggest r 7.4(5)(c) be amended to read "applications concerning a protest to jurisdiction under rule 5.49", to expressly encompass both defendant applications to dismiss a proceeding under r 5.49(3) and plaintiff applications to set aside an appearance under r 5.49(5).

2 What we refer to as submissions by Stout Street are submissions made by individuals at that chambers and may not represent the views of the chambers as a whole.

(j) We continue to be of the view, on balance and contrary to the suggestion by Stout Street chambers (paragraph [16]), that an application for further particulars not be included within the interlocutory applications in r 7.4(5) that suspend the standard timetable. We consider that witnesses statements can still be expected to be filed despite such complaints (which may resolve the issue about particulars) and that an order under 7.4(7) would be necessary to suspend the timetable because of inadequate particulars, thus focusing parties' minds as to the materiality of the concerns raised. Many requests for particulars are not sufficiently important to automatically suspend the standard timetable.

(k) We do not agree with the Simpson Grierson submission (paragraph [25(a)]) that the rule needs to be amended to authorise the later filing of interlocutory applications of the kind contemplated by r 7.4(5). If such applications are warranted later, it is appropriate for leave to be sought and granted, whether under r 7.4(7) or r 7.5A(f) as part of the JIC or otherwise.

(l) Although the rule could be amended to deal with the timing of the scheduling of the JIC as proposed by Crown Law in paragraph [19], we consider this is best left as a matter of Registry practice rather than being prescribed by the Rules.

(m) We do not agree with the NZLS submission that the new rules should include timeframes for completing steps going forward from the JIC (paragraphs [4.1]–[4.4]). The timetable going forward from the JIC will be more case specific (whether there will be further disclosure, supplementary witness statements, expert evidence etc) and we do not think a standard timetable would be helpful.

(n) We do not think it necessary to make specific provision to allow for a further JIC as appears to be suggested by the NZLS (schedule p 5). Realistically, judicial resources may only permit one focused JIC for each proceeding. But in any event proposed r 7.5(6) provides that a Judge may direct that a further judicial conference take place (which will ordinarily have a more targeted purpose, as determined by the JIC).

Witness statements: rr 7.4 and 9.1A

[8] In relation to witness statements:

(a) There is a misunderstanding in Mr Barker KC's submission in that there are not two sets of such statements — initial witness statements, and then subsequent witness statements for trial. There is one set of witness statements contemplated by r 7.4(c)(i) and r 9.1A. Rule 7.4(1)(c)(i) could make that clearer if it was thought ambiguous.

(b) Contrary to the submissions made by Simpson Grierson (paragraphs [22]–[24]), the existing rules continue to allow for supplementary witness statements (existing r 9.8, and JIC r 9.5A(a)(ii)). The misunderstanding arises because the draft amendment rules sent out with consultation did not include all the High Court rules that continue to apply. We note, however, that supplementary witness statements commenting on documents disclosed by opposing parties is not something that the reforms encourage. Indeed removing such commentary/argument from witnesses evidence is a key aspect of the reforms.

(c) There will be situations where a witness may need access to further disclosed documents (beyond those provided through initial disclosure) before providing a witness statement as Simpson Grierson (paragraph [22]) and Dentons (paragraph [34]) suggest. These situations are in our view best addressed by parties seeking specific directions to this effect by way of the exception to the standard directions under r 7.4(7), or by seeking permission at a JIC to serve supplementary evidence. An aspect of the reforms is, of course, as Dentons observes at paragraph [35], to separate factual witness recollection from commentary on documents (especially those that the witness themselves does not have or specifically recall).

(d) We agree with Crown Law's suggestion (paragraphs [54]–[59]) that the requirements of r 9.7 should be changed to apply to expert evidence as well as evidence of fact.

Rule 7.5: the Judicial Issues Conference

[9] A number of submissions were made in relation to the JIC, and we agree that some changes would be appropriate. In particular:

(a) We agree with Crown Law's submissions ([21]–[33]) that the rule could be clarified so that a decision not to hold a JIC, and a Judge giving alternative directions, can be made on application by a party or on the Court's own initiative to better achieve the overriding objective in r 1.2.

(b) We see merit in Mr Barker KC's suggestion that the parties be required to provide draft timetables for the trial (addressing issues such as what evidence would be read, how expert evidence will be adduced, and reading time for the Court etc). We suggest that r 7.5 be amended to include a requirement for the plaintiff to file a draft timetable, and for the defendant to comment on that draft timetable in filing their documents for the JIC.

(c) We do not agree with Crown Law's suggestion that the position papers for the JIC should address the agenda items (paragraphs [26]–[33]). We consider that this would encourage the JIC becoming too formulaic. But r 7.5B could provide that the parties should state what directions they seek at the JIC in their position paper.

(d) Both Dentons and the NZLS have suggested changes to how r 7.5A addresses potential settlement matters. As a matter of good drafting, we agree with the rewording of r 7.5A suggested by NZLS at p 6 of their schedule. The question is whether to go further as suggested by Dentons at paragraph 14. On balance, we think there is merit in the more forceful wording proposed by Dentons. Noting Mr Barker KC's observations that co-operation requirements can themselves promote inefficiency, we not agree with Dentons that r 7.5A(d) should be amended to require an agree list of significant disputed facts (paragraph [18]). This can emerge from the position papers and the discussion at the JIC itself.

(e) Dentons has also suggested that r 7.5A refer to an independent facilitator being used in an experts' conference (paragraph [21(a)]). We do not think this is needed,

but to the proposed rule 9.44(2), which contemplates this as a possible step. Dentons also suggests a standard form joint expert's report (paragraph [21(b)]). We also do not think this necessary, as the substance – recording areas of agreement and disagreement – is set out in proposed r 9.44(d).

(f) We also acknowledge the comment by Dentons (paragraph [12]) that, over time practice notes and guidance on running effective JICs may be useful.

Rule 7.34: mode of hearing interlocutory applications

[10] The Committee has previously wrestled with the proposals concerning hearing interlocutory applications by remote means, and has moved away from the presumption that all interlocutories (apart from the important/depository ones) be determined remotely, with the current proposed rule allowing remote hearings to be directed. There have been further submissions on this rule. In particular:

(a) We agree with Crown Law (paragraphs [34]–[37]) that an application to change the mode of hearing need not require the agreement of the parties, and can simply be applied for by one party. We also agree with their suggestion that the Registry advise the parties of this option, but do not suggest this be in the rule, but rather it be a matter of Registry practice.

(b) Stout Street Chambers suggest (paragraph [20]), that there should be a presumption of remote hearings for most interlocutory applications as the original drafting instructions to PCO had recommended. The Committee may recall there was some reluctance to adopt that approach, including from judicial sources. Given those views we are inclined to be of the view that the proposed rule should stay as it is, but with the adjustment suggested above.

Disclosure

[11] A number of the submissions addressed the new disclosure regime, and some of the technical issues about the new disclosure regime. As an initial observation we consider that some of the concerns in submissions may be overstated. Given that the Court can subsequently make further disclosure orders, which could be effectively the same as the

current standard discovery, the change may not be as dramatic as some submitters suggest. When there are cases that warrant the equivalent of standard discovery (or, indeed, the equivalent of categories of tailored discovery) this can be ordered. The parties will likely have been required to file the evidence before such disclosure unless the Court has made an order departing from that requirement under r 7.4(7). The experience in New South Wales is that there are some cases where discovery/disclosure before evidence is regarded as appropriate.[3] In terms of particular submissions our views are as follows:

(a) We do not agree with the concerns expressed by Mr Barker KC about the changes in his paragraphs [8]–[9] largely for the reasons just described. He did not think that excessive discovery was a contributor to excessive costs. We think it important to seek to facilitate a reduction in the scale of documentation that is currently produced in litigation, and consider that this is often a source of unnecessary cost.

(b) The NZLS point concerning r 8.4A — that as formulated it eliminates the wider search for discoverable documents that might be relevant in some cases, such as fraud cases — is, in our view, answered by the fact that the Court can make such wider disclosure orders under the existing 8.4A(4) and (5). One potential change would be to expressly state that in 8.4A — that is "… a Judge may order further disclosure, *including by ordering the equivalent of discovery*, if satisfied that this will best achieve the overarching objective in rule 1.2". But this may create an impression that such orders would be common.

(c) The Committee previously debated and eliminated the words "is not required to engage in a general search for documentation" in r 8.4(1C). The NZLS queries whether these additional words would, in fact, assist in reducing cost. The reason the words were deleted was not, however, as NZLS suggests, due to concerns that such a change will impose quasi-discovery obligations on the parties at the beginning of a proceeding, but to ensure that the obligation to make a reasonable check is not unduly watered down.[4] Our view is that the difference between a

3 See Rules Committee *Improving Access to Civil Justice* (Rules Committee, November 2022) at [187] and [200].

4 Rules Committee *Minutes of meeting of 9 October 2023* at 6–7.

reasonable check and a general search will be clarified through education and practice, but that the words send the right message to litigants and the profession. Stout Street Chambers raises a concern that the plaintiff's known adverse documents will be being identified before the defendant files its statement of defence (paragraph [5]–[6]). We acknowledge this concern, but consider that identifying known adverse documents prior to a first responsive pleading remains feasible, at least for a general matter.

(d) Submitters raised the question of the continuing obligation to disclose adverse documents, including when they become "known" (Reflective Construction Law paragraph [6], Steven Trevella submission, Stout Street Chambers paragraphs [8]–[10]). We consider this is best addressed by the ability of the Court to order further disclosure. But we agree with the suggestion of Stout Street Chambers (paragraph [10]) that it could be made clear that the Court can direct that a party engage in a search for documents, or engage in a further check for known adverse documents.

(e) We do not agree with Crown Law's submissions that further disclosure ordered should always be ordered on affidavit (paragraph [44]–[45]). We had earlier decided that this should be discretionary as there will be some cases where such verification may not be necessary. We agree that an adjustment is required to r 16(1AAA) to clarify that the affidavit is only provided when that is ordered, however (paragraph [46]). We also agree with paragraph [48] of Crown Law's submissions that the cross-referencing between r 8.16, 8.4A(4) and 8.19 should be made clearer.

(f) We agree with Lee Salmon Long's suggestion (p 2) that the original affidavit of disclosure identify documents outside the party's control that would otherwise be disclosed. It is not necessary to expressly state that a party does not need to disclose documents already disclosed by another party's pleadings, as this is already the effect of r 8(7).

(g) We do not agree with the suggestion by NZLS (schedule p 6) that there needs to be a mechanism for the Court to review privilege and confidentiality claims within these rules. We consider that the existing rules are satisfactory in this respect.

(h) We are not convinced that further clarification that "known adverse documents" is an objective test in r 8.4(1A) would assist as suggested by NZLS (schedule p 6). We consider that it is clear that, whether documents are adverse or not is an objective test.

(i) Other submitters questioned how "documents known to a party" would apply for corporate parties (Simpson Grierson paragraph [20]). We anticipate that this would encompass knowledge by officers and employees of the company according to common law attribution rules and doubt whether there is sufficient benefit in trying to prescribe a more detailed definition of knowledge applicable to corporate parties.

(j) We do not think that further refinement is required in relation to the interaction of the disclosure with interrogatories as suggested by NZLS (pp 7–8 schedule).

Documentary hearsay at trial: r 9.5A

[12] Mr Barker KC indicated disappointment that the Committee has not gone further in allowing documentary hearsay through the common bundle rules. This issue has been debated extensively by the Committee with a balance sought to be struck through proposed r 9.5A. In formulating r 9.5A the Committee anticipated this process would address challenges based on documentary hearsay as well as other admissibility challenges, and that the decision of the Judge contemplated by r 9.5A(2) would disincentivise such objections and allow the bundle to be used to establish the truth without the need to address admissibility challenges.[5] The only issue is whether this rule sufficiently clearly indicates that it is intended to deal with challenges to admissibility based on documentary hearsay; and if not, whether the addition of more explicit terms to so clarify the rule may have the perverse effect of actually encouraging parties to make

5 See Rules Committee *Drafting Instructions for changes to the High Court Rules* (9 February 2024) at [68]–[69].

documentary hearsay objections. On balance we consider the proposed rule should remain as it stands, but this issue could be further considered by the Committee.

[13] The NZLS suggested additional rules to promote addressing admissibility challenges before trial (p 8 NZLS schedule). We doubt whether additional procedures will help with efficiencies, however; especially as r 9.5A is intended to discourage use of formal process in addressing admissibility concerns and, as the NZLS recognises (p 8 schedule), promote party agreement pursuant to s 9 of the Evidence Act.

Rule 9.15 — cross-examination duties

[14] Mr Barker KC thought the proposed changes to r 9.15 were cryptic, and the rule might more helpfully suggest when the Court would suggest that such cross-examination is not necessary, such as where briefs have been exchanged (paragraphs [19]–[21]). This topic was also raised by NZLS (p 9 schedule). This is also a rule that has been previously debated by the Committee and there have been different views. The existing rule provides that the exchange of briefs does not mean the duty under s 92 of the Evidence Act does arise. We do not suggest reversing this proposition or otherwise prescribing a formula. But we do agree that some further guidance might assist. One possibility is to add concluding words to the proposed 9.15 "… given what is known about the parties cases".

Expert evidence

[15] NZLS suggested that this r 9.36AAA should be the limited to one expert "by discipline, rather than by topic" (p 9 schedule). Whilst we understand the point, we think it better to formulate this by reference to topics of expert evidence as disciplines may not capture the fields of expert dispute.

[16] NZLS's suggestion that r 9.44 be changed so that the Court is not required to order expert conferral when this is unlikely to be helpful (p 9 schedule) does not require change in our view. Proposed r 9.44(1) says that the Judge will order it "unless the overriding objective in r 1.2 is best achieved by a different direction" which covers required exceptions.

[17] We disagree with Simpson Grierson that it will be likely that supplementary evidence will be necessary before expert evidence is served (paragraph [30]). Our expectation is that the initial witness statements will provide the key factual evidence for the purpose of expert evidence.

Other technical suggestions

[18] A number of more technical drafting suggestions were made which we agree with. In particular we agree with:

(a) Crown Law's suggestion for the extended definition of ordinary proceeding (paragraph [3]).

(b) Crown Law's suggested wording adjustments (paragraphs [49]–[53]) relating to the verbal formulations for the timing of witness statements (using "by the date").

(c) Crown Law's suggested wording of proposed r 7.48 (paragraph [41]) to deal with proceedings that are still subject to the case management regime.

(d) Crown Law's suggestion about the definition of case management conference in their paragraph [64].

(e) Crown Law's suggested definition of judicial issues conference in their paragraph [65]. We consider that the consequential amendment to r 1.13 should replace the phrase "at a case management conference or pre-trial conference" with "judicial conference", which general phrase can cover both judicial issues conferences and case management conferences.

(f) Similarly, with respect to Crown Law's paragraph [68], we suggest the Part 7 and subpart 7(1) headings should read "judicial conferences, including judicial issues and case management conferences".

(g) Crown Law's suggestions in relation to the wording of rr 7.38(2) and 7.41(1)(c) in their paragraphs [70] and [71].

(h) The proposed amendment to r 8.4 in Crown Law's paragraph [72].

(i) The rewording of the ongoing disclosure obligation in r 8.18 as suggested by Lee Salmon Long (p 2) so that (1) says "A party must disclose any document when it becomes a known adverse document within the meaning of r 8.4(1A) and (1B)".

(j) That the rules clarify the standard documentation protocols as suggested by the NZLS (p 8 schedule concerning r 8.15) and that bulk/class listing be permitted (re 8.15(2)(d)).

(k) The deletion of the word "standard" in form G2 as suggested by Crown Law in paragraph [74].

(l) Crown Law's suggestion for form G37 in paragraph [75].

(m) Retaining the schedule 3 time allocations for the reasons set out in Crown Law's paragraph [76].

(n) Retaining 7.12 and 7.13 for the reasons suggested by Crown Law in paragraph [80], save that r 7.12(b) should refer to "a judicial issues conference or ~~their first~~ case management conference…".

(o) Regarding Crown Law's proposed amendments to rr 8.4(7) and 8.31 in its paragraphs [84] and [85]:

a. We note that r 8.16 does not apply to the initial affidavit and bundle required under proposed rules 8.4 and 8.15(1)(a), but only to later affidavits made in response to a judicial order for further or particular disclosure. An initial affidavit may or may not have its own schedule virtue of form G37, which is, due to proposed r 8.15(3), not mandatory. (This approach is intended to

provide some flexibility to how affidavits are prepared. The purpose of verification by affidavit is not to create formulaic compliance, but to ensure minds are focused on checking for known adverse documents. We could underscore the point and prevent misunderstandings by changing the heading of r 8.16 to "Schedule appended to <u>further</u> affidavit<u>s</u> for disclosure".)

b. This analysis suggests that substantive content of the initial bundle and accompanying affidavit will be the same (that is, they include/reference the same documents), meaning there is no need to add the words suggested to 8.4(7). This leaves only the question of whether to include a carve-out from initial disclosure for documents that would, in a further affidavit context, be excluded by r 8.16(5). For simplicity, we think that r 8.4(7) can remain as it is. At least for initial disclosure, parties should provide all referenced, principal and known adverse documents without making judgments of what will or will not be in the possession of the other party.

c. We suggest, however, deleting or amending r 8.31 so as to leave r 9.2(2) as the controlling rule for admission of documents not previously disclosed. This prevents unnecessary complexity and wordsmithing, which is otherwise required by the amendments suggested by Crown Law.

(p) Revoking r 8.16(4) for the reasons suggested by Crown Law in paragraphs [86]–[89].

(q) The amendment to schedule 1 for the reasons suggested by Crown Law in paragraph [90].

(r) The adjustments to the flowchart referred to by Lee Salmon Long (p 3).

(s) We do not agree with the NZLS submission (schedule p 10) concerning the transitional provisions. NZLS say they should be clearer that the new regime will only apply to new proceedings. We disagree because we think it possible that

existing proceedings could benefit from the convening of a JIC of the kind contemplated by the new rules. The real issue is that there may not be the resources to do this from a resource perspective.

Other parts of the Rules

[19] Some of the submissions suggested that the reforms should not be limited to ordinary proceedings but should also apply to proceedings under particular parts of the rules. In general we do not support that idea. In particular:

(a) We do not agree with the NZLS submission (schedule pp 8–9) that the new regime should apply to proceedings under Part 18. This is something the Committee previously considered, and it formed the view that proceedings under Part 18 and Part 19 should be addressed by their own case management directions rather than the more elaborate regime contemplated by these proposals. This is why there is the amendment to Part 18 to introduce a new case management rule (proposed 18.4A). Part 19 already has its own case management regime, as do the other parts (appeals, arbitration proceedings, judicial review, etc).

(b) We do not agree with the Crown Law's submission (paragraphs [60]–[61]) that the limit on one expert per topic should be applied to Part 30 proceedings (judicial review). Most judicial review procedure is controlled under the Judicial Review Procedure Act 2016 rather than Part 30. The issue about expert evidence and judicial review is limited. We do not think we should address such issues in this set of reforms.

(c) In response to Crown Law's submission at paragraph [43], the initial disclosure obligation is not intended to apply to judicial review proceedings under Part 30 (and most judicial review applications in practice proceed without such disclosure). We recommend the repeal of paragraph (a) of schedule 10 (the checklist for judicial review case management) or an adjustment accordingly.