



The Rules Committee

Te Komiti mō ngā Tikanga Kooti

25 June 2024
Criminal Rules Minutes 06/24

Circular 11 of 2024

Minutes of the Criminal Rules Sub-Committee meeting held on 7 June 2024

The meeting was held at 9:00am using the Microsoft Teams facility.

In Attendance

Hon Justice Mander, Chair
His Honour Judge Collins, District Court Judge
Ms Julie-Anne Kincade KC
Ms Fiona Guy Kidd KC
Ms Megan Noyce, Chief Advisor, Courts and Justice Service Policy
Mr Joshua Chin, Criminal Manager Christchurch High Court
Clare Cheesman, Manager, Justice Services, Auckland District Court Criminal
Zannah Johnston, Crown Law

Ms Cathy Pooke, Parliamentary Counsel
Ms Georgia Barclay, Clerk to the Rules Committee

Apologies

1. Preliminary

The Sub-Committee confirmed the Minutes of the 29 November 2023 meeting, with one small change to reflect that the victims do not have a formal role in preparing victim impact statements.

2. Out of date practice notes

A number of practice notes have been rendered redundant by the Criminal Procedure Act 2011 and the Criminal Procedure Rules 2012 but have not been officially revoked. A previous incarnation of the Sub-Committee investigated and determined what practice notes were out of date. However, no steps appear to have been taken to have the practice notes cancelled before being disbanded in 2015.

The Chair of the Sub-Committee discussed the matter with the Judicial Office. Ms Debbie Iversen, from the office, confirmed the Rules Committee would not be able to revoke the practice notes on

the recommendation of the Sub-Committee. Instead, it was proposed te Komiti Mō Ngā Tikanga Kooti | the Rules Committee and Ms Iversen present a joint memorandum to the Advisory Committee to the Heads of Bench recommending the outdated practice notes be revoked. The Sub-Committee agreed with this view.

Action Point

The Sub-Committee agreed to refer this matter to the Rules Committee, seeking its agreement to the proposal and its clarification as to whether the Sub-Committee or the Rules Committee should join in the memorandum to the Advisory Committee.

3. Victim impact statements

In September 2023, the Criminal Bar Association wrote to the Chief District Court Judge, Judge Taumaunu and the Chief High Court Judge at the time, Justice Thomas, to express concern about the late provision of victim impact statements, often on the day of sentencing. Justice Thomas referred the letter to the Sub-Committee for consideration.

In its last meeting, the Sub-Committee generally favoured a proposal to amend the Criminal Procedure Rules to align the filing and service of victim impact statements with the filing of the prosecutor's sentencing submissions, subject to the views of relevant legal professional groups. After that meeting, the Sub-Committee engaged in consultation with several groups.

The Sub-Committee received one response, from the New Zealand Law Society. NZLS supported the proposed amendment.

Given the broad support, the Sub-Committee agreed to recommend an amendment to the Criminal Procedure Rules requiring victim impact statements to be served and filed five working days prior to a sentencing hearing. The point was made that any amendment would need to be carefully drafted to avoid restricting the rights of victims to give victim impact statements under the Victims Rights Act 2022. The need for victims to understand how the statements will be used in court was also highlighted.

The Sub-Committee then discussed the issue of the oral presentation of victim impact statements and whether it would be helpful to require notice to be given when a victim impact statement is to be read at the sentencing hearing. The Sub-Committee agreed that such notice would be beneficial. Notably, notice would allow court schedulers to allocate adequate time for sentencings and allow counsel and the Court to be properly informed.

Finally, a point was raised that the Chief Victims Advisor would need to be asked for her views. The Sub-Committee agreed to consult with her.

Action Point

The Sub-Committee agreed to recommend to the Rules Committee an amendment to the Criminal Procedure Rules 2012 requiring written victim impact statements to be served and filed, and notice of the oral presentation of a victim impact statement should be provided, five working days prior to a sentencing hearing, subject to the approval of the Chief Victims Advisor.

4. Te Reo Māori and sign language in courts

The Rules Committee requested that the Criminal Rules Sub-Committee consider amending the Criminal Procedure Rules 2012 and the Court of Appeal (Criminal) Rules 2001 to better allow the use of te reo Māori and sign language in courts, following its inquiries into making similar changes to the High Court Rules 2016, Court of Appeal (Civil) Rules 2005 and Supreme Court Rules 2004.

The Sub-Committee was informed that the Rules Committee's proposed amendments enacting that change had been delayed due to the need for the Ministry of Justice to make inquiries about implementation and funding implications. As a result, the Sub-Committee resolved to address the issue once the future of the Rules Committee's proposed amendments is more certain.

Action Point

The Sub-Committee agreed to address the issue of amending the Criminal Procedure Rules 2012 and the Court of Appeal (Criminal) Rules 2001 to better allow the use of te reo Māori and sign language in courts at its next meeting.

5. Notice of appeal forms

Ms Zannah Johnston, Crown Counsel at the Crown Law Office, raised a concern that criminal appeals are regularly filed in the incorrect court. She made the point that such errors can consume a significant amount of registry, counsel and judicial time, and they can result in the determination of an appeal being delayed (or in the worst-case scenario, heard without jurisdiction). Crown Law is of the view that this issue could be mitigated by amending existing criminal appeal forms.

The Sub-Committee agreed this was a substantive issue and broadly supported the idea. Many members of the Sub-Committee considered that a flow chart of a type proposed by Ms Johnston, as either part of the forms or as a resource on the Ministry of Justice website, would be helpful. It was noted that because many people access the forms on the website, making a flowchart available on that site may be sufficient.

Many members also considered that inclusion of further questions in the appeal forms would be of assistance in identifying the appropriate appeal court. An example raised was the potential to amend the Court of Appeal (Criminal) Rules Form 5 to include a question about whether the underlying proceeding had involved the election of a jury trial. Another potential amendment could be to Criminal Procedure Rule 8.4.

However, the point was made that the Ministry of Justice would need time to explore fiscal implications of such an amendment and that consultation may be appropriate.

Action Point

The Sub-Committee agreed that, pending further consideration at its next meeting, an offline discussion between the Ministry, Crown Law and the profession regarding provision of further guidance material on the website would be appropriate.

6. Process of referral to the Sub-Committee

Ms Megan Noyce Chief Advisor with the Ministry of Justice raised the issue of the process by which matters are referred to the Sub-Committee for its consideration. She queried whether the Sub-Committee may be limited to those matters formally referred to it by the Rules Committee.

Action Point

The Sub-Committee agreed that the Chair should make inquiries with the Chair of the Rules Committee seeking clarification of its terms of reference regarding matters not otherwise referred to it by the Rules Committee.

7. Matters for Noting

No matters for noting were raised.

Justice Cameron Mander
Chair