

## **Court of Appeal (Criminal) Amendment Rules 2006**

### **Preamble**

At Wellington this 3rd day of July 2006

Pursuant to section 51C of the Judicature Act 1908, section 409 of the Crimes Act 1961, section 73 of the Bail Act 2000, and section 107U of the Parole Act 2002, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and as far as the rules regulate the practice and procedure of the Court of Appeal in the exercise of its jurisdiction conferred by the Judicature Act 1908 and the Crimes Act 1961, with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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**1 Title**

These rules are the Court of Appeal (Criminal) Amendment Rules 2006.

**2 Commencement**

These rules come into force on 7 August 2006.

**3 Principal rules amended**

These rules amend the Court of Appeal (Criminal) Rules 2001.

**4 Interpretation**

Rule 3 is amended by inserting the following definition in its appropriate alphabetical order:

“**Registry** means the registry of the Court”.

**5 Mode of bringing appeal and effecting service**

Rule 10(1) and (2) are amended by omitting “registry of the Court” and substituting in each case “Registry”.

**6 New rule 33 substituted**

Rule 33 is revoked and the following rule substituted:

**“33 Delivery of judgments**

“(1) The Court may—

“(a) deliver its judgment orally; or

“(b) reserve its judgment.

“(2) A judgment that is delivered orally is given when a Judge or Judges deliver it in open Court.

“(3) A judgment that is reserved may be delivered—

“(a) in open Court; or

“(b) through the Registrar.

“(4) If subclause (3)(a) applies,—

“(a) a Judge who was a member of the Court that heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (**delivery time**):

“(b) as soon as the Registrar is informed of the delivery time, the Registrar must attempt to notify the parties, by telephone or otherwise, of the fact that the Court intends to

- deliver the judgment in open Court and of the delivery time:
- “(c) any 2 Judges of the Court (whether or not members of the Court that heard the appeal) may, at the delivery time, deliver the judgment on behalf of the Court:
  - “(d) the parties do not need to appear or be represented when the judgment is delivered:
  - “(e) the judgment is given when it is delivered in open Court.
- “(5) If subclause (3)(b) applies,—
- “(a) a Judge who was a member of the Court that heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (**delivery time**):
  - “(b) as soon as the Registrar is informed of the delivery time, the Registrar must attempt to notify the parties, by telephone or otherwise, of the fact that the Court intends to deliver the judgment through the Registrar and of the delivery time:
  - “(c) the judgment must for all purposes be treated as having been given at the delivery time.
- “(6) The Registrar must, if requested to do so by a party,—
- “(a) send to the party immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed, a copy of the judgment by email or facsimile or post; or
  - “(b) make a copy of the judgment available for collecting from the Registry immediately after the delivery time or, in the case of a judgment delivered orally, as soon as practicable after the judgment is transcribed.
- “(7) The Registrar must immediately after the delivery time, or in the case of a judgment delivered orally as soon as practicable after the judgment is transcribed, post a copy of the judgment to—
- “(a) any party who has given an address for service but who has not made a request under subclause (6); and
  - “(b) if appropriate, the Registrar of the Trial Court; and
  - “(c) if appropriate and if the party is in custody, the Custody Manager of the relevant penal institution and the Department of Corrections.

- “(8) A failure by the Registrar to comply with subclause 4(b), 5(b), (6) or (7) does not affect the validity of the judgment or its delivery time.
- “(9) A copy of the judgment signed by at least 1 Judge who was a member of the Court that heard the appeal must be retained by the Registry.
- “(10) This rule does not apply to minutes or procedural orders.”

**7 New rule 34 substituted**

Rule 34 is revoked and the following rule substituted:

**“34 Review of decisions made by Judge**

- “(1) Whenever a Judge has exercised a power of the Court and a party has the right to have that decision reviewed by the Court, the Registrar must, at the same time as giving notice of the decision, inform that party of his or her right to have that decision reviewed by the Court.
- “(2) An application for review must be in writing and must be made within 10 working days after receipt of notification of the Judge’s decision.”

**8 New rule 34A inserted**

The following rule is inserted immediately after rule 34:

**“34A Judges to be identified**

Every judgment, minute, or direction must identify on the face of it the Judge or Judges who made the decision or minute or gave the direction”.

**9 Abandonment of appeal**

Rule 35(1) is amended by omitting “registry of the Court” and substituting “Registry”.

Diane Morcom,  
Clerk of the Executive Council.

**Explanatory note**

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules, which come into force on 7 August 2006, amend the Court of Appeal (Criminal) Rules 2001. The amendments:—

- provide for how judgments of the Court of Appeal may be delivered:
- insert a new rule requiring the Judge or Judges responsible to be identified on all judgments, minutes, and directions.

Rule 4 inserts a definition of **Registry**. This is consistent with the definition of this term in the Court of Appeal (Civil) Rules 2005.

Rules 5 and 9 make minor drafting amendments to rules 10 and 35 consequential on the insertion of this definition.

Rule 6 substitutes a new rule 33 setting out the procedure for delivery of judgments. This is required following the repeal of section 58(2) and the amendment to section 59 of the Judicature Act 1908 by the Judicature Amendment Act 2006. Section 58(2) had been interpreted as requiring all Court of Appeal judgments to be delivered in open Court. The repeal of this provision and the amendment to section 59 mean that judgments of the Court may now be given in the manner prescribed by rules.

Key features of the new rule are—

- judgments may be delivered orally or reserved:
- if a judgment is delivered orally, it is given when a Judge or Judges deliver it in open Court:
- if a judgment is reserved, it may either be delivered in open Court or through the Registrar:
- where a reserved judgment is delivered in open Court, any 2 Judges of the Court may deliver the judgment, whether or not they were members of the Court that heard the appeal; this is consistent with the Court's decision in *Clark v Attorney-General (No 2)* [2005] NZAR 495. The judgment is given when it is delivered in open Court. The Registrar must attempt to notify the parties in advance of the fact that the Court intends to deliver its judgment, however there is no obligation on parties to appear or be represented when the judgment is delivered:
- where a reserved judgment is delivered through the Registrar, a Judge who was a member of the Court that heard the appeal must nominate and record on the judgment a date and time when the judgment will be delivered (the **delivery time**). The judgment is treated for all purposes as having been given at

the delivery time. The Registrar must attempt to notify the parties in advance that the Court intends to deliver its judgment through the Registrar and of the delivery time:

- a party may request the Registrar to send by email, facsimile or post, or make available for collecting, a copy of the judgment immediately after delivery time (or its transcription in the case of an oral judgment):
- if a party does not request the Registrar to send or make a copy of the judgment available for collecting immediately after the delivery time, the Registrar must post a copy of the judgment to the party at the party's address for service. If appropriate in either case, the Registrar must also post a copy of the judgment to the Registrar of the Trial Court and, if the party is in custody, the Custody Manager of the relevant penal institution and the Department of Corrections: the Registry must retain a copy of the judgment signed by at least 1 of the Judges who was a member of the Court that heard the appeal.

Rule 7 substitutes new rule 34 dealing with the procedure to be followed where a power of the Court has been exercised by a Judge and a party has a right to have that decision reviewed by the Court. The rule is substantially the same as rule 34(2) with 1 amendment. The time allowed for filing an application for review of a Judge's decision is extended from 5 to 10 working days after receipt of notification of the decision.

Rule 8 inserts new rule 34A providing that every judgment, minute, or direction must show on the face of it the Judge or Judges who made the decision or minute or gave the direction.

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