



High Court Amendment Rules (No 3) 2006

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 31st day of July 2006

Present:

Her Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and 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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Rules

1 Title

These rules are the High Court Amendment Rules (No 3) 2006.

2 Commencement

These rules come into force on 1 September 2006.

3 Principal rules amended

These rules amend the High Court Rules set out in Schedule 2 of the Judicature Act 1908.

4 Disbursements

Rule 48H(1)(b) is amended by revoking subparagraph (iv) and substituting the following subparagraphs:

“(iv) expenses of conducting a conference by telephone or video link:

“(v) expenses of conducting a hearing by video link; but”.

5 New heading and rules 72B to 72E inserted

The following heading and rules are inserted after rule 72A:

“Hearings by video link

“72B Interpretation

“(1) In this rule and rules 72C to 72E—

“**eligible persons** means the persons that the Judge considers should be treated as eligible persons for the purposes of a hearing by video link

“**judicial location** means the courtroom or other place where the Judge hearing a matter by video link is located

“**remote location** means the courtroom or other place, outside the judicial location, where a party, witness, counsel, or other person participating in the hearing of a matter by video link is located

“**video link** means facilities that enable audio and visual communication between persons at a judicial location and persons at a remote location.

“(2) For the avoidance of doubt, **Judge** has the meaning given to it by rule 3(1).

“72C Judge or Associate Judge may preside at hearing of certain matters by video link

- “(1) For the purposes of section 261B of the Act, a Judge or Associate Judge may, by video link, preside at the hearing of any matter referred to in section 261I of the Act.
- “(2) A Judge may direct that a matter be heard by video link, on the application of 1 or more parties or on the Judge’s own initiative.
- “(3) This rule is subject to rule 72D.

“72D Requirements for hearing by video link

A Judge must not preside at the hearing of a matter by video link under rule 72C unless he or she is satisfied that—

- “(a) the judicial location and every remote location is equipped with facilities that will—
- “(i) enable all eligible persons at every remote location to see and hear the Judge and all eligible persons at the judicial location; and
 - “(ii) enable the Judge and all eligible persons at the judicial location to see and hear all eligible persons at every remote location; and
 - “(iii) enable any document necessary for the purposes of the hearing to be viewed at both the judicial location and every remote location; and
- “(b) use of a video link is, in all the circumstances, consistent with fairness and the interests of justice.

“72E Incidental directions

- “(1) A Judge presiding at the hearing of a matter by video link under rule 72C may give directions concerning the procedure for the hearing as he or she thinks fit.
- “(2) Without limiting subclause (1), the Judge may—
- “(a) direct that an officer of the Court, or other person approved by the Court, be present to operate video equipment;
 - “(b) direct that an officer of the Court, or other person approved by the Court, be present to assist in the hearing, and in particular to—
 - “(i) introduce persons appearing or witnesses giving evidence;
 - “(ii) assist with the administration of oaths and affirmations;
 - “(iii) assist with the implementation of any directions or requests given or made by the Judge;

- “(c) direct seating arrangements at a remote location to ensure all participants in the hearing can be seen and heard:
- “(d) direct when the video link must be operational in relation to his or her own entry to, or rising from, the judicial location.”

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 1 September 2006, amend the High Court Rules by inserting new rules relating to the hearing of certain matters by video link.

Section 26IB of the Judicature Act (the **Act**) provides for Judges or Associate Judges to hear, by video link, matters that are referred to in section 26I of the Act and that are specified in rules made under section 51C of the Act for the purposes of section 26IB. In general terms, the rules—

- specify, for the purposes of section 26IB of the Act, the matters a Judge or Associate Judge can hear by video link;
- prescribe conditions that must be met before a matter can be heard by video link;
- provide for directions to be given concerning the conduct of a hearing by video link.

Rule 2 provides that the rules come into force on 1 September 2006. Section 7 of the Judicature Amendment Act 2006, which inserts section 26IB in the Act, also comes into force on that date.

Rule 3 provides that these rules amend the High Court Rules.

Rule 4 amends rule 48H(1)(b) by adding expenses of conducting a hearing by video link to the list of expenses included in the definition of disbursements for the purposes of rule 48H. As a consequence, these may be included in the costs awarded for a proceeding.

Rule 5 inserts *new rules 72B to 72E*. *New rule 72B* defines the terms relating to video links used in these rules and, for the avoidance of doubt, provides that Judge has the meaning of Judge or Associate Judge given to it by rule 3(1). *New rules 72C and 72D* deal with the jurisdiction of a Judge to hear a matter by video link. In general terms—

- a Judge can hear any matter referred to in section 26I of the Act by video link provided that he or she is satisfied that all locations involved in the video link are equipped with the facilities referred to in *new rule 72D(a)* and that the use of a video link is consistent with fairness and the interests of justice:
- a matter can be heard by video link on the application of a party to the proceeding or on the Judge's own initiative.

New rule 72E provides for the directions the Judge may give concerning the procedure for the hearing.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 3 August 2006.

These rules are administered by the Ministry of Justice.
