

DRAFT ELECTION PETITION RULES 2022

EXPLANATORY MEMORANDUM

The proposed Rules are based on the *Election Petition Rules* 2017. The layout and numbering of the Rules is essentially the same. However, some significant amendments are proposed, the main one concerning administration of the Election Petition List and responsibility for hearing and determining petitions.

The Judge Administrator would, in consultation with the Chief Justice, allocate responsibility for hearing and determining a petition to a Judge, and that Judge – the petition Judge – would conduct all interlocutory proceedings (directions hearings, status conferences etc) as well as hearing and determining any objections to competency and the trial of the petition. This would be different to the current practice, which sees the Judge Administrator conduct all interlocutory proceedings. (Note that the proposed Rules allow the petition Judge to decide, if they prefer, that the Judge Administrator, conduct the interlocutory proceedings.)

Another significant change to current practice and procedure is that a directions hearing for the trial of the petition would only be held after all objections to competency filed under rule 12 have been heard and determined. This is intended to address the problem of time and costs incurred in setting up a petition for trial being wasted when there is a successful objection to competency.

Recent experience has shown that most petitions attract at least one objection to competency, many of which are successful, resulting in dismissal of the petition. It is also the case that most decisions on objections to competency result in a Supreme Court application for leave for review, and many such applications lead to a stay of the National Court proceedings (where the objection to competency has been dismissed). For these reasons, it is better to put directions hearings and other preparations for the trial on hold until all objections to competency are determined.

Other changes to the 2017 Rules are in:

- rule 3(d) (*parties*) – simplification of names of parties.
- rule 12 (*objection to competency*) – new provisions re objections to competency:
 - introduction of time-frame for hearing and determination of objections;
 - special costs rules to discourage late objections.
- rule 16 (*trial*) – introduction of time-frame for hearing and determination of petitions.
- rule 17 (*joint trial of two or more petitions*) – there shall be no consolidation of petitions, but a joint trial is permissible.
- rule 22 (*relief from Rules*) – substantial compliance with a form (including a petition) is sufficient.

- rule 23 (*repeal*) – this is the only new Rule, it will ensure that the new Rules repeal and replace the 2017 Rules.

JUSTICE CANNINGS
CHAIRMAN, RULES COMMITTEE
