

A suite of Rules to improve some of our court processes.

PNG has a low international ranking on 'the Ease of Enforcement of Contracts'; which to me is a rough guide to the efficiency of a country's court system.

The procedural rules of any court system are one of the keys to a smooth and efficient administration of justice. In PNG the court rules are written by the judges of the superior courts, acting collectively, in the exercise of a special legislative power given by the PNG Constitution. The Judges Rules Committee is a small committee of those judges, and is tasked with recommending changes to the rules to keep our system of justice moving forward. I sit as an invited non-judicial member of that committee.

A suite of proposed changes is currently before the Rules Committee for consideration. Some of these will potentially affect all matters in the courts, some will be more specific to specialist areas of litigation practice. I outline below at a very high level the elements of the changes to the Supreme Court Rules in particular which stand out to me as being noteworthy or likely to be particularly relevant to civil litigation practice in the Supreme Court generally. I personally am not a regular practitioner in criminal matters, matrimonial matters, or election matters so I can only particularly invite practitioners who do practice in those fields to consider the Explanatory Memoranda for them along with the draft text of the contemplated new rules and take the chance to have input at the most appropriate stage.

Supreme Court hearings 'on the papers' – a break with our oral tradition.

In PNG the Supreme Court is the only and final appellate court. The contemplated Supreme Court (Miscellaneous Amendment) Rules most notably introduce into that court's rules for the first time a process for the hearing of appeals 'on the papers'. PNG has traditionally had oral hearings at the heart of all contested matters and applications, but COVID restrictions have joined with the general march of technology and the desire for expedition and efficiency in hearings to take us to a point where some deviation from that tradition is clearly called for and the introduction of a whole part of the Supreme Court Rules to provide for hearings being done 'on the papers' without oral address is being considered. Note, for example, the proposed drafting changes to allow Applications for Leave to Appeal to be dealt with in this way.

This move from oral hearings is now wide-spread around the world and is a particularly common form of process in some specialist jurisdictions, and the committee wishes to utilise and embrace the change.

Not only is this a significant policy change, it is also a drafting challenge as it introduces wholly new ideas and procedures – so in addition to input from members of our own profession comment from any practitioners familiar with 'on the papers' hearings in other contexts or jurisdictions would be most welcome.

Dismissal of appeals and applications within appeals to be done by single judges, not requiring a bench to be empanelled.

Currently the dismissal of appeals, and all objections to competency, have had to be determined by 'the Court' (being a bench of 3) rather than a single judge, which consumes a sometimes unnecessary amount of judicial attention. The committee wishes to empower and encourage the ability of single judges to dismiss or grant objections to competency in appropriate cases. This creates both jurisdictional issues (as the empowerment by Rules may not exceed the statutory powers given to single judges by the Supreme Court Act) and drafting challenges - as we would like the proposed rules to be as 'fit for purpose' as possible.

Election petitions in the National Court and appeals from decisions in Election Petition matters.

Accurately and efficiently determining who has been duly elected to our National Parliament is always a matter of both great importance and great contest. Every election cycle it is a matter of major controversy. Along with a raft of changes to the National Court Election Petition Rules which is being

considered, is a repeal and replacement of the Supreme Court Rules division dealing with appeals from interlocutory decisions in Election Petition matters.

The proposed introduction of Court Reporting Rules.

Court reporting is an important part of an effective and efficient judicial system – I have been in practice in PNG long enough to recall judges' writing down evidence and submissions verbatim as forming the record.

After the introduction of a court reporting service recording the words spoken and subsequent transcription the process has only been governed by the Court Reporting Service charter, and it is being proposed that this be formalised, and that the manner of formalisation be by introduction of Rules governing the Court Reporting Service.

The effectiveness and the efficiency of the system depends on not just the individuals employed within the CRS, but also depends on the actions of officers of the court including the cooperation of the parties, the taking or not taking of steps by counsel, the court attendants and the judges overseeing the hearing.

To myself personally I am in favour of formalising the roles, timelines, and responsibilities of the various people involved but am not personally convinced that the court Rules are necessarily the best place to set those out. In my view, in some circumstances some, or most, of the things that are not internal to the CRS might be better done by a Practice Direction from the Registrar.

I invite anyone and everyone to consider the Explanatory Memoranda and draft new Rules and make comments or suggestions by email to me a erik.andersen@dentons.com Remember that this is your best opportunity to contribute and if the rules are ultimately adopted we all have to live with them.

I again note that the Rules Committee's role is only to make recommendations, the actual making of new Rules is a power vested by the Constitution in the judges – under the Chief Justice.