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A NEW REGIME FOR HIGH COURT CIVIL PROCEEDINGS

October 2025

Presenters
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Hon Justice Sally Fitzgerald
Daniel Kalderimis KC

In-person

Online

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MINISTRY OF JUSTICE Tāhū o te Ture

New Zealand Bar Association Ngā Ahorangi Motuhake o te Ture

In conjunction with The Rules Committee Te Komiti Mō Ngā Tikanga Kooti

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PRESENTERS

Hon Justice Francis Cooke, Court of Appeal, Wellington, Chair Rules Committee

Justice Cooke has an LLB (Hons) from Victoria University, and an LLM from Cambridge University. After periods at firms in New Zealand and the United Kingdom, he began practice at the independent bar in 1994 as one of the founding members of Thorndon Chambers, specialising in public and commercial law, and became a Queen's Counsel in 2004. Justice Cooke was appointed to the High Court in 2018 and to the Court of Appeal in 2024. He became Chair of the Rules Committee in 2020.

Hon Justice Sally Fitzgerald, Chief High Court Judge, Auckland

Justice Fitzgerald graduated with an LLB (Senior Scholar) from Victoria University of Wellington in 1992 and was admitted to the New Zealand bar in the same year. After some years overseas she returned to Auckland in 2006, and joined the partnership of Russell McVeagh in 2007, specialising in complex commercial dispute resolution, including regulatory investigations and proceedings, tax litigation, and arbitration law and practice. Justice Fitzgerald was appointed a Judge of the High Court in 2016. She was appointed the Chief Judge of the High Court of New Zealand in December 2023.

Daniel Kalderimis KC, Barrister, Wellington

Daniel is a barrister at Thorndon Chambers, Richmond Chambers and Twenty Essex, specialising in complex commercial and public law disputes. Formerly a partner at Chapman Tripp, he has appeared at all levels of the New Zealand court system and in numerous arbitrations in Singapore, London and elsewhere. Daniel is admitted in New Zealand, England & Wales and New York. He is a member of the Rules Committee, convenor of the Law Society Civil Litigation and Tribunals Committee and teaches Civil Procedure and Advocacy at Te Herenga Waka – Victoria University of Wellington Law School.

The Right Honourable Dame Helen Winkelmann

CHIEF JUSTICE OF NEW ZEALAND | TE TUMU WHAKAWĀ O AOTEAROA

This seminar and booklet provide vital information for practitioners about the High Court (Improved Access to Civil Justice) Amendment Rules 2025 which come into force on 1 January 2026. These rules change, in quite fundamental ways, the procedure governing ordinary civil proceedings in the High Court. Practitioners will need to fully understand both the new rules and the cultural change that will be required of them in their work.

The changes are the consequence of a project undertaken by the Rules Committee, with the encouragement of the Government, to consider access to civil justice issues connected to the conduct of civil proceedings before the Courts. When the Committee commenced this project in late 2019 it sought submissions from the profession, and from community groups and others who would be able to contribute to access to civil justice issues more broadly. The reform of the High Court Rules is one outcome from that review.

The Committee took considerable care to formulate the new regime to address the issues identified in the Report - issues that have led to civil litigation in the High Court being unduly protracted and expensive. In preparing the detailed rules, the committee drew upon these submissions but was also able to draw upon approaches that have proven to be successful in overseas jurisdictions.

I am confident that the new rules will significantly improve access to civil justice, enabling practitioners and parties to achieve better outcomes – outcomes that are just and efficient. But as with any reform, just how the new rules are implemented will be crucial. The challenge to the profession is to change the litigation culture that has led to the present difficulties these rules address. I believe that the contents of this booklet will greatly assist the profession in meeting that challenge.

Hei konā mai i roto i āku mihi,

Helen Winkelmann
Chief Justice

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1. INTRODUCTION

The Rules Committee | Te Komiti mō ngā Tikanga Kooti is a statutory body with the responsibility for the rules of practice and procedure in the Senior Courts, and the District Court.[1] In 2019 it commenced a comprehensive project directed at improving access to civil justice in New Zealand. At the suggestion of Government Ministers, that project extended beyond the rules of court to involve a more comprehensive review of the civil justice system encompassing legislation and policies as well as the rules.

By its nature the Rules Committee has representation that allows it to address those issues. Committee members and attendees include the Chief Justice, the President of the Court of Appeal, the Chief High Court Judge, the Chief District Court Judge, other judicial members, and representatives of the Solicitor-General, Attorney-General, the Secretary of Justice, the New Zealand Law Society | Te Kāhui Ture o Aotearoa, the New Zealand Bar Association | Ngā Ahorangi Motuhake o te Ture, and Parliamentary Counsel Office | Te Tari Tohutohu Pāremata (PCO).[2]

During the project the Committee considered a number of approaches, and engaged in extensive consultation. In November 2022 the Committee provided to Ministers, and publicly released, its "Improving Access to Civil Justice" Report (the Civil Justice Report).[3]That report made recommendations for a number of changes involving the Disputes Tribunal, the District Court, and the High Court.

Following the release of the Civil Justice Report, the Rules Committee then conducted further detailed work into the changes to the High Court Rules 2016 that would give effect to the recommendations relating to the High Court. As a consequence, a new regime for High Court general civil proceedings has been enacted in the High Court (Improved Access to Civil Justice) Amendment Rules 2025 (the "New Regime").[4] These Rules are attached as **Appendix 1**. The New Regime will take effect from 1 January 2026.[5] Proceedings filed before that date will continue to operate under the current Rules, unless the Court directs otherwise.[6]

The purpose of this seminar, and this booklet, is to ensure that practitioners, registry staff, and Judges themselves understand the substantial changes that are to be made to the way in which High Court civil proceedings are to be conducted. A significant change in litigation culture will be required. That cannot be achieved by a change in the rules alone. But the regime that the Rules Committee has decided upon is intended to lead that change, and to disincentivise current practices which impede an efficient and effective civil justice system.

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1 Senior Courts Act 2016, ss 155 and 148(2); and District Court Act 2016, s 228(2).

2 Senior Courts Act, s 155(1).

3 The Rules Committee | Te Komiti mō ngā Tikanga Kooti *Improving Access to Civil Justice* (The Rules Committee, November 2022) [Civil Justice Report]. The report can be found in the Rules Committee section of the Courts of New Zealand website: Rules-Committee-Improving-Access-to-Civil-Justice-Report.pdf. The Rules Committee website generally has considerable material relating to the New Regime on its "Improving Access to Civil Justice" page, which can be found by clicking through the links on the "New developments and current projects" page: https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/new/access-to-civil-justice-consultation.

4 In this booklet we refer to specific rules implemented by cls 4-38 of the High Court (Improved Access to Civil Justice) Amendment Rules 2025 [New Rules] as "new r [x]", and to current (at the time of writing) rules under the High Court Rules 2016 as "existing r [x]".

5 New Rules, above n 4, cl 2.

6 New Rules, sch 1.

2. THE NEED FOR CHANGE

In reviewing the current regime in the High Court a number of issues were identified by the Committee which were reiterated by submitters. The concerns were captured in a submission from Alan Galbraith KC that "litigation in the High Court has become ridiculously expensive. It has also become unduly complex and delayed". The following were identified as among the key contributors to these difficulties by the Committee:

- An overly expansive approach to litigation, including because of defensive lawyering where no stone is unturned, potentially to avoid accusations of inadequate representation or negligence.[7]
- A failure to apply a proportional approach given the nature of the case in question.[8]
- The lack of focus on the key issues that are ultimately determinative in a proceeding.[9]
- The scale and burden of discovery as a disproportionate cost that is not justified.[10]
- A conscious desire on the part of some parties to use procedural devices as a tool of attrition.[11]
- Trials becoming unnecessarily extended by evidence that contained submissions that are too elaborate, repetitive, involve recitation of documents and not confined to admissible evidence directed to factual matters in issue.[12]

As the Committee said in the Civil Justice Report:[13]

> Underlying these problems is the evolution of a "maximalist" approach to litigation. Under this approach, all issues are investigated, all evidence called, and all matters argued, without sufficient regard to proportionality. The Committee does not agree with that approach to litigation. Rather, we consider that the best litigators refine and distil the key issues arising in the case and focus on them, ever mindful of proportionality. Yet it is concerning that, in some quarters, a maximalist approach is viewed as the benchmark for the competent pursuit of litigation.

Some of these issues are not new and have been carefully reviewed by the Rules Committee in the past. Previous New Zealand Law Society seminars record the previous rule changes, and the attempts to address the problems.[14]

In responding to the concerns, the Committee initially cast its net broadly. Initial proposals included introducing a short trial process similar to that heard in the District Court, introducing more inquisitorial procedures, mandating that all proceedings will be commenced by a process akin to a summary judgment application, and streamlining the current regime.[15] Many submissions of high quality were received in response, and as a

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7 Civil Justice Report, above n 3, at [17].
8 At [17].
9 At [161].
10 At [161].
11 At [17].
12 At [161].
13 At [162].
14 The Hon Justice Chambers, The Hon Justice William Young, Christopher Finlayson and David Lawrenson "Civil Procedure Update" (New Zealand Law Society seminar, March 2004); The Hon Justice Winkelmann, The Hon Justice Asher, The Hon Justice Fogarty and The Hon Justice Miller "The New High Court Case Management Regime" (New Zealand Law Society webinar, 18 March 2013).
15 Civil Justice Report, above n 3, at [2].

consequence the Committee adapted and refined its proposals in an effort to address the core concerns referred to above, but at the same time take into account the views of submitters. Further rounds of consultation were engaged in, and further detailed submissions received before the Committee reached the views set out in its Civil Justice Report of November 2022.

Following release of the Civil Justice Report and its delivery to Ministers, the Committee then developed a series of detailed proposals to implement the recommendations relating to the High Court Rules. Further consultation was engaged in during this process. As a consequence the Committee prepared and publicly released a further document entitled "Drafting Instructions for changes to the High Court Rules" in February 2024.[16] That document outlined the proposed changes and the reasons for them. The rules then prepared by PCO were then reviewed in detail by the Committee before the final form of the new rules was adopted at the Committee's meeting in March 2025.[17]

In deciding upon a new regime, the Committee has not only been influenced by the submissions it has received, but has also been guided by a desire not to engage in undue experimentation. It has sought, where possible, to adopt approaches that have been successfully implemented overseas.[18] In reviewing overseas developments, however, it is sought to ensure that the New Regime is consistent with the particular needs of the proceedings in the New Zealand High Court.

It is important to stress from the outset that, with the exception of the changes made to the preliminary provisions of the rules, the New Regime only applies to ordinary civil proceedings in the High Court. It does not apply to the more particular regimes for more specialist proceedings. So the New Regime does not apply to judicial review, appeals to the High Court, proceedings commenced by an originating application under pt 19 or under pt 18 or other specialist regimes.[19] Having said that, there are consequential changes to the other types of proceedings, the changes to the preliminary provisions apply to all civil proceedings, and the general thrust of the reforms can be expected to resonate in all High Court proceedings. Neither does the New Regime apply to proceedings in the District Court. It is possible that the New Regime may be extended to ordinary proceedings in the District Court in the future, but it is limited to the High Court in the first instance.

The New Regime has three key differences from the existing approach:

- An "evidence first" model has been introduced. This requires the parties to file their evidence at, or near the commencement of the proceeding. Initial disclosure is required by the parties at the outset, extended to cover documents the party has used or intends to rely upon as well as "adverse documents", but any further disclosure is only by agreement, or further orders. Requiring the preparation of the evidence from the outset will encourage the parties to more properly know their cases from the beginning,

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16 Rules Committee *Drafting Instructions for changes to the High Court Rules* (9 February 2024) [Drafting Instructions]. The Drafting Instructions can be accessed on the "Improving Access to Civil Justice" page of the Rules Committee website: https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules_committee/access-to-civil-justice-consultation/2024-Fourth-Consultation/Drafting-instructions-for-changes-HC-Rules-Feb-2024.pdf.

17 Rules Committee *Minutes of Meeting of 31 March 2025* (10 June 2025) at 5. The minutes of that meeting can be found on the "Meeting and Minutes" page of the Rules Committee section of the Courts of New Zealand website: https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/meetings.

18 See, Civil Rules Review *Civil Rules Review — Phase 2 Consultation Report* (Office of the Chief Justice, Ontario Superior Court of Justice, 1 April 2025, at https://www.ontariocourts.ca/scj/files/pubs/Civil-Rules-Review-Phase-2-Consultation-Paper.pdf for similar reforms in Ontario.

19 See new r 7.1AA for an overview of case management procedures for different types of proceedings.

reducing the need for discovery, other interlocutory steps, and potentially distracting procedural arguments.

- The existing case management regime is largely repealed and replaced by a Judicial Issues Conference (JIC) which is intended to be a requirement for all ordinary proceedings. It will be a substantive fixture, rather than a short list appearance or case management conference. The parties will be expected to engage with a Judge on what the case is about, and what is required to fairly determine it. Such earlier substantive judicial engagement is designed to ensure that the focus is on the central issues in the case, and to allow directions to be given to ensure the trial is focused on those issues.
- At trial there will be a greater focus on the contemporaneous documents, which can come before the Court without being referred to by a witness, rather than the evidence of witnesses traversing all of the background to a case in long (and argumentative) evidence. The objective is to focus on the determinative issues that have been more properly identified earlier in the process.

The above is a brief summary of the New Regime. There are a number of aspects to the changes that practitioners will need to be fully aware of which are referred to in greater detail below. In addition to the Civil Justice Report of November 2022 there are other documents explaining the changes on the Rules Committee website[20] that will be of assistance, including the Drafting Instructions dated 9 February 2024.[21] To assist in an understanding the full scope of the New Regime, a flow chart has been included in the rules (see pp 7-8 of Appendix 1). New r 6A.1(3) explains that the flowchart is a guide only.

[20] https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee. The page "Improving Access to Civil Justice", which chronicles the steps taken by the Committee on the path to the New Regime, can be found on the Rules Committee website at https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/new/access-to-civil-justice-consultation.

[21] Drafting Instructions, above n 16. The Drafting Instructions can be accessed on the "Improving Access to Civil Justice" page of the Rules Committee website at https://www.courtsofnz.govt.nz/assets/4-About-the-judiciary/rules_committee/access-to-civil-justice-consultation/2024-Fourth-Consultation/Drafting-instructions-for-changes-HC-Rules-Feb-2024.pdf.

3. CHANGE IN LITIGATION CULTURE

As emphasised above, the New Regime will require a change in litigation culture. Changing the rules of court can facilitate a change in culture by incentivising some forms of behaviour, and disincentivising others. But the users of the system — litigation lawyers — will also need to consciously engage in a change in culture. Part of this involves a greater understanding that the best litigation lawyers are those that are able to identify the key issues in dispute and to focus in on them, thereby most effectively advancing the best interests of their client.

It is recognised by the judiciary that it is not just the profession that needs to change the way things are done. The judiciary itself will need to recognise the overriding need to focus on the decisive issues in dispute, and to encourage parties to that end.

The New Regime seeks to advance this cultural change in three related ways.

The overriding objective

First, a concept of an overriding objective of the Rules has been introduced. The Committee spent some time in reformulating the objective set out in new r 1.2. The existing r 1.2 provides as follows:

> **1.2 Objective**
>
> The objective of these rules is to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application.

The new rule provides as follows:

> **1.2 Overriding objective**
>
> (1) The overriding objective of these rules is to secure the just resolution of any proceeding or interlocutory application by proportionate means, including by securing its speedy and inexpensive determination.
>
> (2) When deciding how subclause (1) applies in any case, the court may consider the following:
>
> (a) how best to both fairly and expeditiously identify and resolve the issues in dispute:
>
> (b) how best to deal with the proceeding in ways that are, and at a cost that is, proportionate to the nature of the dispute and the issues in dispute:
>
> (c) the need to allocate the court's resources fairly across the court's caseload.

In formulating this rule the Committee carefully considered alternative formulations, including the formulation set out in England and Wales.[22] But the formulations were adapted in accordance with the emphasis that the Committee had in the New Regime, and New Zealand conditions.

It is important to emphasise that the new overriding objective is not merely aspirational. It is intended to guide the interpretation, implementation, and administration of the New Regime. This is reflected in the fact that, in the specific rules introduced as part of the New Regime, whenever the Court is given a discretion it is generally cross-referenced back to the

[22] See Civil Procedure Rules 1998 (UK), r 1.1.

overriding objective. There are discretions to be exercised under the existing rules prior to amendments introducing the New Regime. Whilst they do not expressly cross- reference back to the overriding objective, it is the expectation that the overriding objective will nevertheless be relevant.

A number of features of the reformulated overriding objective can be emphasised:

- First, the objective is now referred to as an "overriding" objective. That is to emphasise its significance.
- Secondly, the key concept of proportionality has been added into new r 1.2(1). So proportionality will always be relevant to the exercise of powers under the Rules.
- A further change in new r 1.2(1) is the reference to "resolution" rather than "determination" of proceedings. This reflects a greater emphasis on resolving litigation by settlement, including through mediation or other such techniques.
- New r 1.2(2) then refers to a number of principles as relevant considerations. The three considerations in new r 1.2(2) focus on three driving features of the New Regime. In particular:
  - Sub-clause (a) focuses on identifying the issues in dispute, and can be understood to be related to the need for parties to focus on the issues that are truly important to the disposition of a case or application.
  - Sub-clause (b) expands on the concept of proportionality, and refers to both the nature of the dispute, and the issues in dispute, when considering proportionality.
  - Sub-clause (c) recognises the need to allocate the Courts' resources in a fair way given the demands of the system from other litigants.

Cooperation

Secondly, the parties and the solicitors will be required to cooperate in all aspects of the conduct of the litigation so that the true issues are focused on, matters can be resolved if at all possible, and to avoid unnecessary procedural and substantive argument. In the case of solicitors and counsel this reflects their overriding professional responsibilities, and their duties to the Court. Moreover, cooperating with opposing parties in the way contemplated by the New Regime is in the best interests of the client. It ultimately saves time and cost.

A new rule at the outset of the Rules now provides:

> **1.2A General duty to co-operate**
>
> (1) The parties and their solicitors and counsel have a duty to co-operate with the other parties and their solicitors and counsel in accordance with the overriding objective in rule 1.2.
>
> (2) The duty includes lawyers and counsel representing the parties having direct discussions with each other or, in the case of a self-represented litigant, with the litigant, to attempt to agree on how the proceeding will be conducted.
>
> (3) For specific duties to co-operate under these rules, see the following:
>
> (a) rule 7.5 (preparing for and participating in judicial issues conference):
>
> (b) rule 8.2 (disclosure):
>
> (c) rule 8.4A (further disclosure):
>
> (d) rule 9.4 (preparing common bundle):
>
> (e) rule 11.22 (sale of property).

The duty applies to both parties and to their lawyers. The content of the duty of cooperation is substantially informed by the overriding objective in new r 1.2. So the parties and their lawyers are cooperating in order to facilitate this key aspect of the New Regime, including the need to fairly and expeditiously identify and resolve the issues, and to do so in a manner that is proportionate to the matters in dispute.

There are three further features to emphasise.

First, under new r 1.2A(2) lawyers representing a party are obliged to engage in direct discussions with opposing lawyers (or in the case of self-represented litigants, the self-represented litigants) to attempt to agree on how the proceedings are to be conducted. This contemplates direct communications by way of telephone discussions, or meetings. It will no longer be sufficient for the parties to exchange assertive correspondence. Such exchanges can have the effect of hardening stances rather than facilitating communications that distil the matters that are truly of importance. Direct discussions will be required to try and reach sensible agreements about matters of procedure and the substantive disputes.

Second, new r 1.2A(3) identifies the duty of cooperation expressly referred to elsewhere in the Rules at particular stages of the proceeding. That is particularly important in respect of three areas in relation to the conduct of the proceeding:

- Preparing for and participating in the Judicial Issues Conference, which is where the parties will engage with a Judge to explain what the case is about, and what is needed to fairly resolve it (new r 7.5). This is a central aspect of the New Regime.
- In relation to disclosure, to ensure that disclosure is conducted in a manner consistent with the overriding objective in new r 1.2.
- In preparing the common bundle for trial, particularly given a greater emphasis placed on the documentary record for the key facts.

Third, new r 1.2A was fashioned as a general duty and placed at the outset of the rules to reflect its anticipated importance in the New Regime.[23]

The three key changes

Finally, a change in litigation culture will be necessary to properly implement the three interrelated core aspects of the New Regime, namely:

- the "evidence first" requirement for commencing proceedings, and the associated reduction in the scope of discovery obligations;
- the Judicial Issues Conference, and the focus on identifying the determinative issues in the proceedings; and
- the focus on the contemporaneous documentary record at trial, and the reduction in lengthy and argumentative briefs of evidence.

The evidence first model, successfully implemented overseas, is designed to more clearly identify what is in dispute at the outset of the proceedings, and to reduce lengthy and disproportionate interlocutory disputes which distract the parties from focusing on the key issues, as well as reduce the burden that the existing Rules create in relation to discovery.[24]

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[23] The previous duty to cooperate under r 8.2 related only to the processes of discovery and inspection.

[24] First in New South Wales, then the Federal Court of Australia, Singapore and other countries. It is also the approach for some commercial arbitrations. See NSW Practice Note No SC EQ 11, which came into effect in 2012; Singapore's

By requiring the factual evidence to be served early in the lifecycle of a proceeding, each side will more properly know their own and the other side's case.

The parties will then proceed to a JIC with a Judge where they will be expected to explain what the case is about, and what is needed to fairly resolve it. The key issues in dispute should be distilled in this process. Any irrelevant or peripheral issues can be identified as not worthy of exploration, and the procedural requirements for the proceedings — including the need for any further disclosure — can be directed with a proper understanding of what the determinative issues will be.

Then at trial those issues can be focused on, and lengthy argumentative evidence from witnesses can be avoided. The contemporaneous documents will be a more explicit source of evidence, with the oral testimony from witnesses more focused on genuine and relevant factual disputes. Moreover, the expert evidence will be produced to the Court in a more disciplined way.

These three limbs of the New Regime are designed to avoid the maximalist approach to litigation, reduce expensive and disproportionate interlocutory disputes, and ensure the determination of the case based on the truly dispositive substantive issues.

Rules of Court 2021, O 2, r 8 and O 9, r 8, which came into effect on 1 April 2022; and the Committee's discussion in its Civil Justice Report, above n 3, at [182]-[187].

4. FIRST FEATURE: THE EVIDENCE FIRST MODEL

Introduction

This section of the booklet focuses on the lifecycle of a general proceeding from commencement up to but not including the JIC.

This period involves some of the biggest changes under the New Regime. Existing case management rules are largely revoked. There is enhanced initial disclosure. And as noted in the introductory section above, factual evidence and draft chronologies will now be served prior to further disclosure and a JIC (which will be relatively early in the proceeding). All of this is aimed at getting to the heart of the parties' dispute, and the determinative issues, much earlier and more proportionately than is presently the case.

This will be beneficial to the parties. Only around eight to 10 per cent of all general proceedings filed in the High Court actually resolve by way of a substantive trial.[25] If, through greater and earlier focus on the key issues, a proceeding that was going to resolve in any event resolves earlier, then the parties will spend considerably less time, effort, and money on the unnecessary and often disproportionate pursuit of interlocutory skirmishes and peripheral issues. Earlier resolution of proceedings also means that precious court hearing time can be freed up, and earlier hearing dates can be allocated to those cases that do require a substantive trial.

The following topics will be covered in this section of the booklet:

- commencement of a general proceeding;
- the changes to the initial disclosure regime;
- the requirements in relation to filing certain interlocutory applications, and their impact on the default timetable for serving factual evidence and draft chronologies;[26]
- the approach to any other interlocutory applications filed prior to a JIC, and their interaction with the default timetable for the service of factual evidence and draft chronologies;
- the new approach to and default timeframes for service of factual evidence, draft chronologies (including additional documents referred to);
- an introduction to the requirements for witness statements and draft chronologies (which is expanded upon in the third section of this booklet); and
- a new document for completion by the plaintiff called a "Proceeding Notice".

Commencing a proceeding

General proceedings will be commenced in the same way as now, by filing a statement of claim and notice of proceeding, for endorsement by the Registry and subsequent service on defendant parties. The Registry will provide the plaintiff with the Proceeding Notice when service copies of the pleadings are returned, as discussed further in the final part of this section.[27]

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25 This statistic has been relatively stable over the past 10 years.
26 Being those listed at new r 7.4(8).
27 See 17 to 19 below.

Initial disclosure

Initial disclosure is currently governed by r 8.4. It requires a party, at the same time as serving its pleading, to serve a bundle consisting of all documents referred to in the pleading being served, as well as "any additional principal documents in the filing party's control that that party has used when preparing the pleading and on which that party intends to rely at the trial or hearing".

Initial disclosure is now addressed in new r 8.4. It requires disclosure of two additional categories of documents. Before addressing those categories, however, it bears emphasising that it is not intended that the new initial disclosure regime replaces the discovery regime, but rather merely precedes it, with decisions about the scope of any further disclosure to be made with the benefit of the context available at the JIC.[28] That initial disclosure is not intended to replicate the full discovery process was reiterated by the Rules Committee in its meeting of 8 April 2024.[29]

Turning to new r 8.4, like existing r 8.4, the disclosing party must, at the same time as serving its first substantive pleading, serve on the other parties a bundle of documents comprising all documents referred to in the pleading being served. Under the new rule, the bundle must also include any other documents which the party has used when preparing the pleading (which will include all documents referred to in the pleading, as the current r 8.4 expressly requires), as well as any other documents which the party intends, at that point in time, to rely on at the trial or hearing. This latter category is new, as currently r 8.4 only requires disclosure of documents that are intended to be relied on if they have also been used in preparation of the pleading. In practice, however, there is unlikely to be much difference between the effect of the two rules. Documents which a party knows, at the time of giving initial disclosure, that it intends to rely on at trial, are likely to be documents used to prepare a pleading in any event.

The second new category of documents to be included in initial disclosure is "all adverse documents". There is extensive discussion of this change in the Rules Committee consultation documents[30] and meeting minutes.[31] The following provides a summary.

As the initial disclosure regime is not intended to be akin to full discovery, a party will only be required to provide at the initial disclosure stage documents that it *knows about* (as defined in the rule) and which are adverse to its case. This knowledge element is "baked into" the definition of adverse documents, as set out in the new r 8.4(1A):

> (1A) An **adverse document** that must be disclosed under this rule is a document that—
>
> (a) contains information that—

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28 Civil Justice Report, above n 3, at [198(g)].

29 Rules Committee *Minutes of Meeting of 8 April 2024* (8 April 2024) [8 April 2024 Minutes] at 4. Minutes of Rules Committee meetings are available on the Rules Committee website at https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/meetings.

30 Available on the Rules Committee website at https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/new/access-to-civil-justice-consultation. See, in particular, Civil Justice Report, above n 3, at [195]-[205]; Drafting Instructions, above n 16, at [21]-[23]; and the memorandum of advice in response to submissions received in the fourth consultation from the Access to Justice sub-committee: the Hon Justice Cooke and Daniel Kalderimis KC *Recommendations of Sub-committee on submissions on the detailed provisions of proposed rules* (Rules Committee, 20 September 2024) [Access to Justice Sub-committee memorandum of 20 September 2024] at [11(c)- (i)].

31 Available on the Rules Committee website at https://www.courtsofnz.govt.nz/about-the-judiciary/rules-committee/meetings. See, in particular, Rules Committee *Minutes of Meeting of 30 September 2024* (30 September 2024) [30 September 2024 Minutes] at 5.

(i) is adverse to the case of the party giving disclosure or another party's case; or

(ii) supports the case of another party; and

(b) the party giving disclosure—

(i) *knows* the document exists; or

(ii) *has good reason to believe* the document exists.

(Emphasis added)

The concept of "known adverse documents" draws on existing requirements for standard discovery and the approach taken in England and Wales.[32] It is based on, but is a simplified version of, the approach adopted in Practice Direction 57AD, which provides:

2.7 Disclosure extends to "adverse" documents. A document is "adverse" if it or any information it contains contradicts or materially damages the disclosing party's contention or version of events on an issue in dispute, or supports the contention or version of events of an opposing party on an issue in dispute, whether or not that issue is one of the agreed Issues for Disclosure.

2.8 "Known adverse documents" are documents (other than privileged documents) that a party is actually aware (without undertaking any further search for documents than it has already undertaken or caused to be undertaken) both (a) are or were previously within its control and (b) are adverse.

2.9 For this purpose a company or organisation is "aware" if any person with accountability or responsibility within the company or organisation for the events or the circumstances which are the subject of the case, or for the conduct of the proceedings, is aware. For this purpose it is also necessary to take reasonable steps to check the position with any person who has had such accountability or responsibility but who has since left the company or organisation.

As the Rules Committee noted in the Drafting Instructions, the approach described in Practice Direction 57AD has been interpreted as requiring the disclosing party to engage in a "check", but not a "search", for known adverse documents.[33] In *Castle Water Ltd v Thames Water Utilities Ltd*, the High Court of England and Wales emphasised this distinction, observing that "the requirement to disclose known adverse documents would be emasculated if there was no obligation at all to look for adverse documents *of which the party is aware*".[34] The Court also referred to an example given by counsel during argument, namely that it would be absurd if a party were able to escape the obligation by saying, "I know I have an adverse document, but I don't know whether it is in the left hand drawer or the right. I have therefore not located it".[35]

The Rules Committee decided not to adopt the more elaborate regime in England and Wales, noting that the references in the existing r 8.7 to "adverse documents" had not required a more elaborate definition or appeared to have given rise to any ambiguity or uncertainty in the application of the rule. The Committee nevertheless stated that:[36]

> … awareness of a document should, in this context, extend to a belief that the document may well exist, even if the party is not, without checking, sure of the position.

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32 Existing r 8.7(b) and (c).

33 Drafting Instructions, above n 16, at [23] citing *Castle Water Limited v Thames Water Utilities* [2020] EWHC 1374 at [11].

34 *Castle Water Limited v Thames Water Utilities*, above n 33, at [11], emphasis added.

35 At [11].

36 Drafting Instructions, above n 16, at [23].

It is relevant to note that the obligation in new r 8.4(1B) to take "reasonable steps to check for the existence of adverse documents" self-evidently only applies in relation to adverse documents (as defined). What constitutes reasonable steps to check for the existence of adverse documents will be case specific. But it is important that it is understood that there is a distinction between a "check" and a "search", the latter being more analogous to the current steps to be taken in the context of a full discovery exercise.

Some submitters during the consultation process on the New Regime questioned how "documents known to a party" would apply for corporate parties. A memorandum to the Rules Committee anticipates that "documents known to a party" would encompass knowledge by officers and employers of the company according to the common law attribution rules, and doubted whether there was sufficient benefit in trying to prescribe a more detailed definition of knowledge applicable to corporate parties.[37] This recommendation was accepted by the Rules Committee at its 30 September 2024 meeting.[38]

Finally on this topic, a party's initial disclosure is to be verified by affidavit to be served with the proceeding to ensure the party understands and has complied with its obligations.[39]

Dispositive interlocutory applications

A concern in current civil litigation is the time and cost devoted by parties to unnecessary interlocutory skirmishes, or interlocutory skirmishes which are not advanced and conducted in a manner proportionate to the proceeding. As emphasised earlier, a key aim of the New Regime is to reduce the time and cost associated with unnecessary, and what is often in practice overly aggressive, interlocutory disputes which can materially delay the overall progress of a proceeding.

Consistent with this aim, only a small number of interlocutory applications, being those listed in the new r 7.4(8), will be dealt with at an early stage of a proceeding. Other types of interlocutory applications will ordinarily be determined later in the proceeding, and in all likelihood following the JIC.

The new r 7.4(8) applications, which we will refer to as "dispositive interlocutory applications", comprise applications:[40]

- to add or remove parties (existing r 4.56);
- for security for costs (existing r 5.45);
- which raise a protest to jurisdiction (existing r 5.49);
- for summary judgment (existing pt 12); and
- to strike out (existing r 15.1 and inherent jurisdiction).

If a party intends to bring a dispositive interlocutory application, notice must be given within 10 working days of service of the last pleading (new r 7.4(3)(a)), and the application itself must then be filed within a further 15 working days (new r 7.4(3)(b)).

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37 Access to Justice Sub-committee memorandum of 20 September 2024, above n 30, at [11(i)].
38 30 September 2024 Minutes, above n 31, at 5.
39 New r 8.15; and see new r 8.24.
40 The Rules Committee considered whether an application for better particulars should be added to this list but decided against it because the exchange of factual evidence by the parties could assist in resolving such disputes.

If a dispositive interlocutory application is filed within the time period set out in new r 7.4(3)(b), the default timetable set out in the new r 7.4(4) for the exchange of factual witness statements and draft chronologies is suspended, pending determination of the application.[41]

Once a dispositive interlocutory application is filed, the Registrar must allocate a date for an in-person hearing.[42] The application will be listed for directions in the first available Associate Judge Chambers List. Consistent with the overriding duty to cooperate, counsel will be expected to confer and agree timetabling directions, which can be presented to the Court by way of a joint memorandum for directions to be made on the papers and by consent.

It is the Committee and the Court's firm expectation that, consistent with the overriding objective to resolve proceedings by proportionate means, parties and their lawyers will give careful consideration to whether a dispositive interlocutory application, and in particular, an application for summary judgment, is truly necessary and appropriate. The number of summary judgment applications filed has increased in recent years (particularly in Auckland), with such applications often accompanied by voluminous bundles of affidavits and other documents, which at first blush is inherently inconsistent with the very nature of a summary judgment application.

There will of course be cases in which it is appropriate to apply for summary judgment. But in many cases it is not. Statistics over the years 2019–2025 show that more than 50 per cent of all summary judgment applications filed are either dismissed or withdrawn. Parties and their lawyers ought to carefully consider whether it is preferable to focus their energy and resources on bringing the proceeding to a substantive hearing, or other form of resolution, without undue delay. Given the consequence of filing (within time) an unmeritorious summary judgment application is to suspend the default timetable for the exchange of factual evidence and draft chronologies, counsel should proceed on the basis that the Court may, in the event of an unsuccessful plaintiff's application for summary judgment, decline to reserve costs into the proceeding generally.[43]

Non-dispositive interlocutory applications prior to the JIC

Consistent with the overriding objective of the New Regime, it is expected that it will only be in exceptional circumstances that a non-dispositive interlocutory application will be filed prior to the service of factual evidence, draft chronologies and additional documents, and certainly exceptional for any applications that are filed to be determined prior to the JIC.

Nevertheless, there may be some cases in which it is appropriate and necessary for a non-dispositive interlocutory application to be filed and determined prior to the JIC. Examples include necessary protective orders, including interim injunctions, preservation orders, and freezing and search orders. Such orders might often have been sought at the time of (and in some cases before) the filing of the proceeding. Even in these cases, however, it is vital that parties and their lawyers understand that the mere filing of a non-dispositive interlocutory application does *not* halt the timetable for the exchange of factual witness statements and draft chronologies. Any party filing such an application should not proceed on the basis that the timetable will simply be adjusted.

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41 Being the effect of new r 7.4(4); also see new r 7.4(9). If the application is *not* filed within the timeframe set out in new r 7.4(3)(b), then the default timetable for the service of factual evidence and draft chronologies will continue to apply, pending any further directions from the Court.

42 New r 7.33(1).

43 The approach to costs set out in the 1990 decision in *NZI Bank Ltd v Philpott* [1990] 2 NZLR 403 is not mandatory.

Any non-dispositive interlocutory application filed prior to the JIC will be referred to an Associate Judge for directions, including for listing in the next available Associate Judge Chambers List if necessary.[44] A respondent to such an application may — but will not be required to — file a notice of opposition to any non-dispositive interlocutory application filed prior to the JIC, unless directions are made otherwise.[45]

Pursuant to new r 7.33(5), the standard time for the hearing of a non-dispositive interlocutory application is two hours. The Court is conscious that some contested protective interlocutory applications will require a longer hearing, which can be sought on a case-by-case basis. The parties and their lawyers are reminded of the 10-page limit for submissions on interlocutory applications (which is a cap and not a target).[46] Counsel should take the opportunity for effective advocacy by filing short and focussed written submissions on interlocutory applications. Common bundles of documents to accompany interlocutory applications should (consistent with the duty to cooperate) be the subject of discussion between counsel, and limited to those documents to which the parties intend to take the Judge.

The exchange of factual witness statements and draft chronologies

Service of factual evidence at an early stage of a proceeding's lifecycle, and before disclosure, is one of the key changes under the New Regime. The new approach may give rise to some anxiety. However, there was initially resistance by the profession in New South Wales to this approach when it was first introduced in that jurisdiction. But as noted in the Rules Committee's 2022 Civil Justice Report, the approach is now well supported by the judiciary and the profession in New South Wales, and is seen as having meaningfully contributed to the reduction of the costs of litigation.[47] The following extract from the leading text *Hammerschlag's Commercial Court Handbook* describes the benefits in the following way:[48]

> SC Eq 11 has proved to be effective in reducing cost and delay. In the vast majority of cases, the practical reality is that discovery before evidence is not genuinely needed (and never was). Many commercial disputes are about the nature and effect of communications between the parties and all parties usually know enough about their position to put on their evidence without the necessity for prior disclosure. It has encouraged parties to examine the real issues in the case early and has engendered a more disciplined analysis of the need for disclosure by reference to those real issues.
>
> Once evidence has been served, it is not unusual for parties to be satisfied that sufficient disclosure has taken place. Often, they do not press for any further disclosure, or where they do, it is narrow because service of the evidence has enabled a targeted assessment of what further evidence is necessary.
>
> …

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44 New r 7.33(3). Particularly in some of the circuits, the next available Associate Judge Chambers List may be some weeks away. If the party filing the application considers it needs to be dealt with urgently, and particularly if there is to be a request for alteration to the default or agreed timetable for the exchange of factual witness statements, that party should explain the suggested urgency by memorandum, and request a more urgent listing or telephone conference with an Associate Judge.

45 A direction to this effect will be issued by an Associate Judge upon the filing of any non-dispositive interlocutory application prior to the JIC.

46 Existing r 7.39.

47 Civil Justice Report, above n 3, at [183].

48 David Hammerschlag, *Hammerschlag's Commercial Court Handbook* (2nd ed, Lexis Nexis Australia, 2022) at [2.26.10]-[2.26.12] (footnotes omitted). Justice Hammerschlag served as the New South Wales Commercial List Judge from 2009 to 2022.

> Of the applications for early disclosure that are brought, few are actually ruled on because the parties frequently agree and implement by consent, and without any order of the court, a regime for (or equivalent to) disclosure.

A common concern raised by some members of the profession is "how can I properly prepare my client's factual witness statements without full disclosure from the other side?" However, this reflects one of the most common problems with the current approach to briefs of evidence, namely that large tracts of them are not in fact admissible evidence, but are a mix of commentary on the documentary record, submissions, and/or the witness's subjective thoughts and views on the other side's actions. None of this is admissible factual evidence. A useful question to ask in the context of the evidence first model is "what *admissible* factual evidence can my witness give about a document that he or she has never seen?" The answer in the vast majority of cases will be "none", especially in relation to documentation not in the party's possession that has been disclosed by the other side.[49] By contrast, admissible factual evidence should be focused on *relevant* facts the witness has personal experience of or involvement in, and can now recollect, so as to be able to give evidence of those facts.

If witness statements are properly confined to relevant and admissible factual evidence, then factual witness statements ought to be far shorter than they are now, will be far more persuasive to the (fact finder) trial Judge, and should lead to substantial cost savings in their preparation.

Another key step required at the time factual witness statements are served is to serve a draft chronology of events and facts, in form G41.[50] This requirement arises from the change to the rules concerning the production of documentation at trial, which will be through chronologies.[51] Pursuant to new r 7.4(4)(a)(ii), the draft chronology is to:

- refer to all pleaded material facts and any other events or facts of significance the party serving the draft chronology intends to establish by the documentary record; and
- include a corresponding reference to the relevant document or documents in each case.

The draft chronology is not an excuse to list every event in the case. Judgement will be required.

At the same time as serving the factual witness statements and draft chronology, the serving party is also to provide copies of any documents referred to in a witness statement or the draft chronology that have not already been disclosed. These steps are intended to further encourage the removal of inadmissible evidence about the documentary record from witness statements, and further reduce the need for subsequent disclosure (following the JIC), either at all or in a significantly fulsome way. It is also consistent with the ongoing duty of disclosure of relevant documents under new r 8.18.

Additional benefits of factual witness statements and draft chronologies being prepared and exchanged earlier in a proceeding's lifecycle is that these documents will be prepared without being formulated in response to the arguments that developed during the course of the proceedings. It will also allow the parties to understand their own case, and that of the

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[49] The same answer to the question, "what admissible evidence can my fact witness give about a document already in my party's possession?" is likely. A witness's personal and subjective views on the content or meaning of a document, or what the witness took from a document, will rarely be admissible.

[50] New r 7.4(4)(a)(ii). The template for new form G41 is set out at Sch 2 to the New Rules, above n 4. Once the New Rules are in force, form G41 will be found in sch 1 of the High Court Rules.

[51] See below at page 29.

other side, more fully so that the true issues in dispute are better understood at an earlier stage.[52] It also avoids the problem of evidence being formulated with undue advocacy, and with witnesses adjusting their evidence to best advance their case in light of documentation, rather than providing their actual recollection of the facts in issue.[53]

The timeframes for the exchange of factual witness statements, draft chronologies and copies of the additional documents referred to are set out in new r 7.4(4) and, in the event of a dispositive interlocutory application that delays matters, new r 7.4(9). The Committee gave careful consideration to these timeframes, and was of the view that they will be adequate in the large majority of cases.[54] Nevertheless, there are likely to be some cases where an enlarged timeframe will be appropriate. In those circumstances, and consistent with the duty to cooperate, the Court will expect parties to engage in discussions on any proposed alternative timetable and to reach agreement. So long as any agreed enlargement of the default timetable is sensible and consistent with the overriding objective, it is likely the Court will make such orders by consent.

In appropriate cases, the New Regime also allows for the later provision of supplementary witness statements. However, other than in cases such as fraud or in particularly complex cases, it is expected that this will be relatively uncommon. Again, it is questionable what admissible fact evidence a witness could give in response to or about a document that the witness had not previously seen. Nevertheless, a Judge will be able to permit the filing of supplementary witness statements later in the proceeding if to do so is consistent with the overriding objective. New r 7.5A(a)(ii) provides that whether any supplementary witness statements "are needed" is a topic for consideration at the JIC. Existing r 9.8 will continue for this purpose.[55]

Expert evidence is not required to be filed and served at this stage. Expert evidence is one of the matters to be addressed and timetabled at the JIC.[56] That does not mean that parties cannot disclose expert opinion at an earlier stage. This may assist in explaining the party's case for the purposes of the JIC, and otherwise.

Further disclosure prior to service of factual witness statements

The Rules Committee recognised in its various reports and meeting minutes that there may be some cases where it is necessary to direct some disclosure before the service of factual witness statements and draft chronologies (although this is very much expected to be the exception rather than the norm, particularly taking into consideration that copies of any additional documents referred to will be served together with the factual witness statements and draft chronologies). The parties may of course agree on any further disclosure, pursuant to the new r 8.4A(1) and the general duty to co-operate under the new r 8.2. New r 8.4A also includes a process for a party to request that specific documents be disclosed by the other party in certain circumstances (namely, if the first party has good reason to believe that the documents exist, are relevant and material, and have not been provided by way of disclosure). New r 8.4A(3) requires a party who receives such a request to "respond to that

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52 Drafting Instructions, above n 16, at [6].

53 At [8].

54 See 8 April 2024 Minutes, above n 29, at 4; Rules Committee *Minutes of Meeting of 24 June 2024* (26 June 2024) at 2; Access to Justice Sub-committee memorandum of 20 September 2024, above n 30, at [7]; and 30 September 2024 Minutes, above n 31, at 3-4.

55 Existing r 9.8 currently provides that the acceptance and use of any supplementary brief will be at the discretion of the Court. This discretion is now to be exercised in relation to witness statements rather than briefs and "after taking account of the overriding objective in r 1.2". See schedule 3 to the New Rules, above n 4, and the consequential amendment to existing r 9.8.

56 New rr 7.5A(g), 9.1A(3) and (4).

request in accordance with the duty of cooperation in r 8.2". The Court's expectation is that the parties will actively engage in discussions on any such requests, which in most cases ought to be able to be dealt with by agreement. Parties may also wish to consider any such requests during the pre-JIC phase, so that if there are any outstanding issues, they can be discussed and, if required, subject to directions made at the JIC.

A Judge may order further disclosure at any time, and direct a party to search or make further checks for relevant and material documents if satisfied that this will best achieve the overriding objective in the new r 1.2.[57] It bears emphasising however, that it is not expected that applications for wide-ranging disclosure will be entertained prior to the service of factual evidence or the JIC. This would undermine the very approach of the evidence first model. Parties and lawyers should also note that pursuant to the new r 8.4A(5), any further disclosure that is ordered is not automatically to be verified by way of affidavit, that being at the discretion of the Judge making any such order.[58]

Failure to comply

If a party fails to comply with any interlocutory order or the case management requirements imposed by the New Regime — including the default or any other timetable ordered by the Court — any other party should bring this default to the Court's attention (by memorandum) as soon as possible, for any further directions that may be required. That party may also apply under existing r 7.48 for more substantive judicial intervention. An application for an order under r 7.48 is a non-dispositive interlocutory application and will be dealt with in the same way as described above.[59] Similarly, if a party fails to comply with the new disclosure requirements or any orders made under pt 8, new r 8.33 makes it clear they may apply for enforcement under r 7.48 or, in the case of an order made under sub-pt 1 of pt 8, may enforce the order under the Contempt of Court Act 2019. Given the overall objectives of the New Regime and the duties on parties, lawyers and counsel, it can be expected that the Court will adopt a firm stance on compliance, and default.

Case management conferences

Despite the existing case management rules largely being revoked, it remains open to a party to request a case management conference before a Judge.[60] However, under the new approach, this should again be the exception rather than the rule. There is also the ability for the parties to seek departure from the standard directions in new r 7.4(1) and (10). There will be cases where the standard directions will not be appropriate and will not achieve the overriding objective in new r 1.2. But again, it is anticipated that they will be limited.[61]

Proceeding Notice

As noted earlier, the Registry will provide the plaintiff with a new document for completion, called a "Proceeding Notice", when the service copies of the pleadings are returned to the plaintiff. This document will contain certain information and reminders for the parties, and will also include a "check-box" section which the plaintiff will be required to complete and file back with the Registry at a later point in time (see further below).

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57 New r 8.4A(4).

58 See also new rr 8.15(1)(b) and 8.16; see also new r 8.24.

59 Under new r 7.33; see page 17 above.

60 New r 7.5C.

61 See Hammerschlag, above n 16, at [2.26.13] for examples of cases whether further disclosure was ordered before factual evidence was filed and served because of "exceptional circumstances", noting that the evidence is provided by affidavit rather than witness statements in New South Wales.

While the Proceeding Notice is not provided for under the New Regime itself, the High Court working group overseeing the implementation of the New Regime was conscious that there are fewer "touch points" between the parties and the Court during the first phase of a general proceeding.[62] Importantly, the filing of the completed Proceeding Notice will enable the Registry to forward list the proceeding for an Associate Judge Chambers List appearance shortly after the date by which it is expected the last factual evidence and draft chronologies will have been served.

The Proceeding Notice (a copy of which the plaintiff will be required to provide to the defendant(s) when serving the notice of proceeding and statement of claim) will comprise two parts. The first will remind the parties of:

- the overriding objective of the Rules (new r 1.2);
- the duty to cooperate, including having direct discussions (new r 1.2A); and
- the plaintiff's obligations under existing r 5.73A.[63]

The Proceeding Notice will also contain a statement of the Court's expectation that appropriate representatives of the parties (that is, in addition to the parties' lawyers) will attend the JIC. This reminder is to ensure that lawyers make their clients aware at an early stage of the proceeding that their client's attendance will be expected at the JIC.

The second part of the Proceeding Notice is to be completed by the plaintiff and filed with the Registry. It will provide space (in a check-box format) for:

- confirmation that no notice has been given of dispositive interlocutory applications pursuant to new r 7.4(3) (if that is the case);
- the plaintiff to list the further pleadings (beyond the statement of claim) that have been filed and served, and the dates on which that occurred;
- confirmation of the timetable for the parties to serve factual witness statements, draft chronologies and additional documents in accordance with new r 7.4(4) (or setting out any alteration of those timeframes that is sought by one or both of the parties).[64]

If no notice is given pursuant to new r 7.4(3)(a) of the intended filing of a dispositive interlocutory application, the plaintiff is to file the completed Proceeding Notice within a further five working days.[65] The Registry will review the time periods set out in the Notice for the service of factual evidence, which will be either the default time periods under new r 7.4(4) or any enlarged timetable sought by one or both of the parties. If an enlarged timetable is agreed (or sought by one party), a joint memorandum (including any differences between the parties being set out) will need to be filed together with the Proceeding Notice providing reasons, so an Associate Judge can be satisfied that the proposed enlarged timetable is appropriate and consistent with the overriding objective set out in new r 1.2. It is worth emphasising, however, that under the new approach, and particularly with a proper focus on the (admissible) content of factual witness statements, the default timeframes

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62 The implementation of the Proceeding Notice will be by way of a practice note and may well be phased out as parties and their lawyers become more familiar with the new approach.

63 Which provides that "the plaintiff must notify the Registrar of the date of service of the statement of claim and notice of proceeding on each defendant or other person directed to be served … within seven working days after service and in writing".

64 See further above, at pages 16-18.

65 In the event notice of a dispositive interlocutory application is given pursuant to new r 7.4(3)(a) and the application itself is filed within the timeframes set out in new r 7.4(3)(b), the requirement to file a completed Proceeding Notice will be deferred until 10 working days after the disposition of the application (if unsuccessful in disposing of the proceeding entirely) or after the service of the statement of defence (whichever is later).

under new r 7.4(4) for the exchange of factual witness statements are expected to be appropriate for the large majority of cases.

The purpose of the dates for the exchange of factual evidence and draft chronologies being communicated to the Registry is for the Registry to forward list the proceeding in an Associate Judge Chambers List approximately two weeks after the date upon which the last factual evidence and draft chronologies are scheduled to be served. This forward listed appearance before the Court, which will be referred to as a "JIC Ready Listing", gives the parties a firm court date to work towards.

The purpose of the JIC Ready Listing appearance will be for the parties to confirm that all factual evidence and draft chronologies have been served in accordance with the timeframes set out in new r 7.4(4) (or any enlarged timetable ordered by the Court). Even if there has been slippage in the timetable, however, the JIC Ready Listing appearance will still proceed, for the party or parties to explain to the Court why the timetable has not been met, and what steps need to be taken to ensure prompt completion of any outstanding matters. It is also expected that at the JIC Ready Listing appearance, the parties will be in a position to confirm their attendees at the JIC (noting the Court's expectation that suitably senior representatives from the parties will attend, as well the parties' lawyers),[66] and that a JIC date will be allocated.[67]

[66] The Court will have the power to direct such attendance at a JIC; see new r 7.5(5)(c).

[67] The JIC will be scheduled for approximately 30 days after the direction is made to schedule a JIC, to provide appropriate time for the parties to complete the steps required in the lead up to the JIC; these steps are set out in new r 7.5B.

5. SECOND FEATURE: THE JUDICIAL ISSUES CONFERENCE

Introduction

This section deals with the further stages of the proceeding revolving around the JIC, including:

- the requirements for cooperation before, and then leading up to a JIC;
- the key function of the JIC — being to narrow the dispute, to focus on key dispositive issues and what is required to fairly resolve them;
- the matters to be addressed at the JIC including any further disclosure, other interlocutories, expert evidence, the requirements for trial, why the parties haven't settled, and what could be done now to achieve that; and
- the new requirements for expert evidence, including compulsory conferral, and the use of facilitators to convene expert conferences.

In recommending a JIC, the Rules Committee was — and many submitters to it were — well aware of past attempts to draft into the Rules requirements for earlier and more intensive judicial interaction with the issues to be determined at trial.[68] A reasonable question to ask is 'what is likely to be different this time around?'

The short answer is quite a lot. It is not overstating matters to say that the JIC is the fulcrum around which these procedural reforms revolve. It should be reassuring to the profession that substantial work has been done behind the scenes between the Court and the Registries to anticipate and forward-plan capacity for JICs. Reasons for optimism include that:

- a JIC will now take place with the benefit of factual evidence, enhanced initial disclosure and draft chronologies setting key documents in context, all having been filed and exchanged. This means there will be much more material to work with, making it more realistic to identify what really matters in order to determine proportionate further procedural steps required before trial;
- parties need to provide concise written position papers prior to a JIC, just as they would do prior to a mediation. This process will also help ensure the focus stays on key arguments and issues in order to inform settlement potential and future required procedural steps; and
- appropriate judicial resources have been set aside to reflect the fact that JICs will be a substantive fixture, not just a list appearance.

JICs provide an important opportunity for counsel to seize the initiative. Although there are a range of matters and issues that can be considered at a JIC, what will be most effective in the end is the exercise by counsel of discerning judgment. Which particular facts, matters, or issues are most likely to lead to a just resolution for your client? How will you highlight them for the Judge and empower the Judge to assist in focusing and progressing the dispute in that suggested direction? How will you address the competing narrative focus from your

[68] See for example, existing r 7.5 relating to issues conferences. See also the Committee's discussion of submitters' views on the proposal for judicial issues conferences in its Civil Justice Report, above n 3, at [208]-[215]; and, for example, the submission for Dentons in the Committee's fourth consultation, which can be found in the compilation of submissions on the Rules Committee website at 22.

opposing counsel? What is the overall arc towards trial, and what will that trial really look like? JICs are not merely a set piece. They should be approached as if they are a kind of "mini-opening", with the opportunity to then seek directions and foster engagement on the basis of how your case is shaping up.

A day of judicial resources will be set aside for JICs, including reading time in the morning. It is anticipated that JICs will commence at 11:45am with a view to concluding around 3:30pm, but with the capacity to continue beyond if progress is being made. The New Regime provides that materials must be provided well in advance of a JIC. Adherence to these filing dates is important to place the assigned Judge in a realistic position to engage closely with the case at hand.

JIC mechanics

As new rr 7.1AA(1)(a) and 7.5(1) provide, an ordinary proceeding is subject to a JIC unless alternative directions are given by a Judge. The new rules relating to JICs are rr 7.5 (which replaces the previous rule relating to issues conferences) and 7.5A–C.

Parties may initially be interested to know when and on what basis they might obtain alternative directions such that a JIC is not required. The answer is given in new r 7.5(2): the touchstone is, unsurprisingly, the overriding objective. As a practical matter, counsel should expect that JICs will be required, and some significant persuasion will be needed to demonstrate that they are not required in a particular case. It will not be sufficient that the parties can agree on further steps by themselves (unless, perhaps, if those steps are all that are needed to bring the case to a just resolution). Merely kicking the can further down the road, even if by agreement in a joint memorandum, will not be enough. For matters on the Commercial List, a direction is likely to be made on a class-wide basis, exempting such matters from generally requiring a JIC, reflecting the close and ongoing judicial engagement through the list process.[69]

New r 7.5(3) provides that the parties, their solicitors, and counsel have a duty to cooperate when preparing for and participating in a JIC. They must, when doing so, have regard to the purposes of the conference as set out in sub-cl (4):

> The purposes of a judicial issues conference are to—
>
> identify the issues in the case, including issues that may be dispositive, and the positions of the parties on those issues; and
>
> taking into account the overriding objective in rule 1.2, consider—
>
> the procedural requirements for the fair disposition of the case; and
>
> whether it is appropriate to seek to resolve the proceeding by alternative means, for example, by mediation.

Active cooperation between the lawyers involved will be important. As new r 1.2A suggests, that may require direct discussions as well as exchanges of correspondence. The objective is to use the judicial time allocated in a JIC wisely to allow the Judge to have informed engagement with counsel at the JIC on what is really important, and guide thoughtful consideration of the two matters specified in new rr 7.5(4)(b)(i) and (ii).

Parties should be aware of the potential impact of a JIC on the future conduct of the proceeding. New r 7.5(6) provides that a Judge at a JIC "may give any directions they

[69] See High Court *Commercial List Practice Note 2025* (8 September 2025), which came into effect on 6 October 2025.

consider appropriate for the proceeding that will best achieve the overriding objective in rule 1.2". This could certainly include firm encouragement towards settlement, (bearing in mind that a JIC is not the same as a Judicial Settlement Conference (JSC)).[70] It could also include making further timetabling orders through to trial and certain interlocutory orders as part of the overall JIC directions. Parties should not therefore assume that every interlocutory matter they suggest is of importance will need to be timetabled to be heard at some distant time in the future. A good use of judicial time at the JIC may be to hear focused oral argument on the interlocutory matter and to determine it. There is explicit power for this in new r 7.5A(e). Whether a particular matter is appropriately resolved, or merely timetabled, at a JIC will be a matter for the Judge and may well depend on how the matter is presented at the JIC. Even if an interlocutory matter is timetabled for the future, it may be for a short-form remote hearing. The point is that the scope of and powers exercisable at the JIC are broad.

Another direction that can be made is to require the attendance of any or all of instructing solicitors, counsel engaged, and the parties (and, in the case of corporate parties, one or more of their senior officers or authorised representatives): new r 7.5(5). Aside from any trial itself, the JIC will be the next most important judicial fixture for parties. For cases that settle following a JIC, it may turn out to be the most important. As noted earlier in this booklet, the Court will generally expect suitable representatives of the parties to attend the JIC. This will also be helpful for those party representatives, so they can see firsthand the shape their case is taking.

For the avoidance of doubt, the Court may direct that a further JIC (new r 7.5(7)) or a standard case management conference (new r 7.5C) be scheduled.

Before the JIC

New r 7.5B sets out what parties must do before a JIC. The plaintiff must, no later than 10 working days before the JIC, file and serve:

- a position paper that explains the party's case and what is required to fairly address it, and states what directions they seek at the conference;
- a bundle of key materials that they wish to refer at the conference; and
- a draft timetable for trial. A useful template for that draft timetable is the agreed road map presently in use by the Auckland and Christchurch High Court Registries.

The defendant and any other party must serve their position paper and bundle of key materials.

Position papers are short, focused documents (of no more than 10 pages) which should aim at the twin goals of giving the Judge a flavour and understanding of your case, and explaining the directions that you will need from the JIC. They might be usefully viewed as expanded case theory documents, crisply explaining where you are, where you need to get to, and why.

The plaintiff must seek input from the defendant and any other party when preparing the draft timetable for trial.[71] This is an example of the kind of cooperation anticipated and required. If the defendant (or another party) disagrees with the draft timetable for trial, they

[70] See existing r 7.79.
[71] See new r 7.5B, sub-cls (8) and (4).

must set out their reasons in a memorandum filed with their position paper — most helpfully with an alternative proposed draft timetable.[72]

At the JIC

Perhaps the most important rule is new r 7.5A. This rule sets out the default agenda for the JIC. That default agenda can be altered and augmented by judicial direction. It is not definitive. Other matters — most notably specifying a close of pleadings date under existing r 7.6(4)— should also be considered.[73]

Lawyers have a love/hate relationship with agendas for meetings set out in the rules. It is important that the new r 7.5A agenda not be approached like a laundry list. Counsel are not expected in their position paper to dutifully tick off each item and explain their position on it. Some matters will be relevant, some will be less so. What is important is that due consideration is given to each matter on the list in coming up with the proposed directions sought as set out in the party's position paper.

The 12 listed items at new r 7.5A should be read carefully. This paper does not address them individually, or provide specific commentary, but five more general observations can be made:

- First, sight should not be lost of the key objectives of a JIC, the first of which is to identify the dispositive issues in the case and the relevant arguments concerning them. It is difficult to conceive of a JIC at which this will not be required.
- Second, thought then naturally turns to which specific procedural steps might be needed, including (but not limited to) pleading amendments, supplementary witness statements, further disclosure, and further interlocutory matters (expert evidence is dealt with below).
- Third, trial logistics will also be an important matter in many JICs. Sub-clauses (h) to
- (l) should assist the parties in focusing on the kinds of actions and decisions required for an orderly trial. It is implicit in the new r 7.5A agenda that a substantive fixture will ordinarily be set at a JIC (which further implies considering and directing a close of pleadings date).
- Fourth, settlement prospects and machinery will be an important matter in many JICs. Sub-clause (b) addresses this specifically in three parts — asking parties to address whether any steps should be taken to settle the dispute by means of facilitation, mediation, or otherwise, and if not:
  - why that is the case;
  - whether there are any steps that can be taken to maximise the chances the dispute might be able to be settled by means of facilitation, mediation, or otherwise; and
  - whether any steps should be taken to minimise the matters in dispute through facilitation, mediation, or otherwise.

This rule should be regarded as an important innovation. It is not merely a vague nod in the direction of alternative dispute resolution: it is a focused inquiry as to how alternative dispute resolution techniques can be used to help achieve a just resolution in any particular case. Counsel will be expected to have given careful thought to these matters.

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[72] Sub-clause (5).

[73] Existing r 7.6 is the subject of a consequential amendment as set out in sch 3 of the New Rules, above n 4.

- Last, but not least, focused thought will often need to be given to whether any expert evidence is to be relied upon and, if so, identifying the relevant topics, setting the relevant dates referenced other parts of these rules, and identifying directions that the Judge should make: see sub-cl (g), which cross-refers to other rules.[74] Those rules provide, amongst other matters, that:
  - Each party may call only one expert on each particular topic identified at the JIC, unless the Judge otherwise directs at or after the JIC, on the basis that alternative directions will best achieve the overriding objective.[75] This involves the general approach already applied in England and Wales.[76]
  - The Court must, unless it considers that the overriding objective is best achieved by a different direction, direct expert witnesses to confer, including on specific matters and in the absence of legal advisors.[77]
  - The Court may direct experts to prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including their reasons for their disagreement.[78]
  - The Court may, on its own initiative or on the application of a party, appoint an independent person to convene and facilitate the expert witness conference (and give any directions for such convening and facilitation as the Court thinks just).[79] The person so appointed need not be an expert in the field. The Court is also empowered to determine the remuneration of the independent person and can direct that it be paid by a particular party.
  - The Court may make directions on the sequencing of expert evidence at trial — that is whether the experts will be called at the same time (known as hot-tubbing) or at least consecutively (by topic or discipline).[80] It is expected that there will be more cases in which expert evidence is given in these ways, which is often the most efficient and proportionate way for competing expert evidence on a particular topic or issue to be put before the Court.

Following a JIC, parties can expect a reasonably comprehensive judicial minute as to what has been determined and directed at that JIC.

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74 New rr 9.1A(3), 9.36AAA and 9.44, as well as existing rr 9.36, 9.43, 9.45 and 9.46. Existing rr 9.36, 9.43 and 9.45 are the subject of consequential amendments as set out in sch 3 of the New Rules, above n 4.

75 New r 9.36AAA.

76 Civil Procedure Rules (UK), pt 35. See also the executive summary of submissions received in the Committee's first consultation: Sebastian Hartley *Précis of Reponses to Initial Consultation Papers on Access to Civil Justice* (Rules Committee, 6 October 2020) at [26(e)]; and Civil Justice Report, above n 3, at [231]-[235].

77 New r 9.44(1).

78 New r 9.44(d).

79 New r 9.44(2).

80 Existing r 9.46; the rule provides that the Court may make such directions "at the hearing" only, but it is expected such directions may be made at the JIC under new r 7.5(6) ("a Judge may give any directions they consider appropriate for the proceeding that will best achieve the overriding objective in rule 1.2").

6. THIRD FEATURE: CHANGES AT TRIAL

The third area of reform involves a change to the way that trials are conducted.

There is an expectation that the new procedures conducted through to this point will have led to a more disciplined focus on the central issues in dispute in the proceedings. At trial there will then be a greater focus on the contemporaneous documents to establish the relevant facts. In reality, particularly in longer cases, that is already the position — trial Judges almost always rely on the contemporaneous records as the primary source for factual findings. But notwithstanding this, under the current regime much time is taken up by very lengthy evidence from witnesses recounting what has happened by reference to that documentary record, often in an argumentative way. Briefs of evidence also commonly include submissions dressed up as evidence, and other inadmissible material. Objections to such evidence are common, but trial Judges often decide not to rule on these objections before trial as it takes time and distracts the Court from addressing the determinative issues.

This common scenario is not only inefficient, but also involves witnesses purporting to give evidence about those events notwithstanding that their personal recollection of them is limited. Often they are themselves dependent on the documents. The argumentative nature of this kind of evidence tends to substantially reduce its significance. Under the current approach hardly a trial goes by without (legitimate) complaint that the briefs of evidence contain argumentative, irrelevant, and inadmissible material.

The New Regime seeks to address this problem, in part, by requiring the parties to serve their factual evidence at the outset. The expectation is that this will lead to less argumentative briefs of evidence which have been drafted by lawyers, coloured by the desire to present the narrative of events as the party would like to see them presented, and with an undue focus on the arguments that have revealed themselves during the course of the proceedings. The New Regime also addresses this problem by removing the expectation that the relevant documents coming before the Court need to be produced by witnesses. Rather the contemporaneous records will come before the Court in the agreed common bundle, through chronologies that the parties will have prepared, and from the requirement for a narrative of the events that parties rely upon being provided in the parties opening submissions at trial.

The presentation of the narrative of events revealed by the documentary record is addressed by the following steps in the proceedings:

- The creation of chronologies that are based on the documents provided at the same time as the service of factual witness statements and that are initially in draft, which become a merged chronology at trial.
- The relevant documents themselves being incorporated in the common bundle, with that documentation presumed to be admissible.[81]
- The parties providing the narrative of events revealed by the documentary record (and the evidence from their witnesses) in their openings which are now required to be filed and served before trial.[82]

[81] New r 9.5.
[82] New r 9.16.

Chronologies

When parties file their factual evidence in accordance with the directions under new r 7.4 (or any alternative directions given by the Court), a draft chronology of events under new r 7.4(4)(a)(ii) and form G 41 is required. The chronologies must address pleaded material facts and other events that the party wishes to establish by the documentary record, and include a reference to the relevant documents. The witness statements will no longer be expected to traverse the events revealed by the documentary record. Rather the evidence from the witnesses will focus on the genuine factual disputes, and relevant evidential matters not revealed by the documents.

At the outset these chronologies are only in draft. Leading up to trial, however, the regime contemplates the merging of the chronologies each party has provided, and the creation of the common bundle of the documents. New r 9.2 provides:

> **9.2 Exchange of documents and index and finalising chronologies of parties**
>
> (1) Each party must provide the party who will prepare the common bundle with an index of documents to be relied upon no later than the date directed at the judicial issues conference.
>
> (2) If the index refers to a document not previously disclosed, the party must—
>
> (a) include a copy of the document with the index; and
>
> (b) seek the leave of the court for it to be included in the common bundle (see rule 9.4(5)(d), which requires the document to be identified in the index as requiring leave to be included in the bundle).
>
> (3) Each party must finalise their chronology (previously prepared as a draft under rule 7.4) and file and serve it no later than the date directed at the judicial issues conference.
>
> (4) In this rule, documents to be relied upon means any of the following:
>
> (a) any document previously disclosed that is—
>
> (i) referred to in a witness statement:
>
> (ii) to be referred to by a witness:
>
> (iii) referred to in the final version of the party's chronology:
>
> (iv) intended to be put to witnesses called by another party:
>
> (v) to be referred to in opening submissions filed under rule 9.16:
>
> (b) any document not previously disclosed for which leave is required under subclause (2) for it to be included in the common bundle.
>
> (5) Nothing in this rule affects a party's continuing obligations to give disclosure under rule 8.18.

The parties' respective chronologies will subsequently be merged in accordance with new r 9.9. Whilst an agreed chronology is preferable, the New Regime does not mandate that one be created, partly because of the desirability of avoiding disproportionate argument that can be involved with joint chronologies.

Narrative of Events/Openings

The parties will also be expected to provide a narrative of events that they contend is revealed by the documentary record. This is reflected in the new rules in relation to opening

submissions. The new rule provides (emphasis added):

> **9.16 Filing of plaintiff's and defendant's openings before trial**
>
> (a) Any plaintiff must, not later than 10 working days before the trial or hearing, file in the court and serve on every other party a copy of their opening *that includes a narrative of material facts and events*.
>
> (b) Any defendant or third or other party must, not later than 5 working days before the trial or hearing, file in the court and serve on every other party a copy of their opening *that includes a narrative of material facts and events*.
>
> (c) A Judge may give alternative directions for the filing of an opening by a party or the parties if satisfied that this will best achieve the overriding objective in rule 1.2.

Unlike the current rules, this rule contemplates the plaintiff's opening two weeks before trial, and the defendant's opening one week before trial.[83] It may be that parties will wish to provide a narrative of events revealed by the documentary record at an earlier point, including when first preparing their draft chronologies. That is a matter for the parties although a direction could be given under new r 9.16(3) that a narrative be provided earlier.

The Common Bundle/Admissibility of Documents

To facilitate the focus on the contemporary documents, adjustments have been made to the responsibilities for preparing the common bundle for trial, including a duty to cooperate. The new rule provides:

> **9.4 Preparing common bundle**
>
> (1) The parties must co-operate in the preparation of a bundle of documents (in this subpart referred to as the common bundle).
>
> (2) The duty to co-operate includes each party—
>
> (a) providing the other parties promptly, after the judicial issues conference and no later than the date directed by the Judge at the conference, with the index, documents, and final chronology required by rule 9.2; and
>
> (b) taking all practicable steps to assist the plaintiff in the preparation of the common bundle, for example, by making copies of documents available, or agreeing to the excision of part of a document if that part cannot be relevant; and
>
> (c) conferring with the other parties about the format of the common bundle and, in particular, whether an electronic format of the common bundle is appropriate.
>
> …

To further facilitate this greater focus on the contemporaneous documents, adjustments have been made that affect the admissibility of the documentary record, and documentary hearsay. Under s 132 of the Evidence Act 2006 each document in the common bundle is subject to evidential presumptions as to a document's "nature and origin". This section does not override the documentary hearsay rules in the Evidence Act, and the rules cannot override the Evidence Act. But the rules can regulate when and how objections to admissibility must be taken.[84] Whilst an objection can be taken to a document included in

[83] Alternative directions should be identified at the JIC in the case of complications in relation to further parties.
[84] Under s 9 of the Evidence Act 2006 evidence may also be received by consent.

the common bundle and referred to in a chronology or narrative of events on the basis of documentary hearsay, the New Regime stipulates when and how that is done, and strongly disincentivises such objections. The new rules provide:

> **9.5 Consequences of incorporating document in common bundle**
>
> (1) Each document contained in the common bundle is, unless a Judge directs otherwise, to be considered—
>
> (a) to be accurately described in the common bundle index:
>
> (b) to be what it appears to be:
>
> (c) to have been signed by any apparent signatory:
>
> (d) to have been sent by any apparent author and to have been received by any apparent addressee:
>
> (e) to have been produced by the party indicated in the common bundle index.
>
> (2) A document in the common bundle is automatically received into evidence and presumed to be admissible if—
>
> (a) it is referred to—
>
> (i) in a witness's evidence:
>
> (ii) in a chronology provided to the court under rule 9.2 or 9.9:
>
> (iii) in opening submissions filed under rule 9.16; and
>
> (c) no objection to admissibility under rule 9.5A is upheld.
>
> (3) However, subclauses (1) and (2) do not apply to a document for which leave is required under rule 9.2 for it to be included in the common bundle, unless a Judge gives that leave.
>
> (4) A Judge may direct that this rule or any part of it does not apply to a certain document or group of documents, including a document referred to in sub-clause (3).
>
> **9.5A Objections to admissibility of documents in common bundle**
>
> (1) A party may object to the admissibility of a document in the common bundle even though it is presumed to be admissible.
>
> (2) When considering an objection to admissibility, the Judge must have regard to the overriding objective in rule 1.2 and may consider—
>
> (a) whether any concerns are more sensibly dealt with as a matter of weight:
>
> (b) if the objection is allowed, whether an opportunity will be given to the party to adduce the evidence by other means:
>
> (c) whether any costs consequences will apply to the objection in light of the overriding objective.

The object of these rules is to allow the documents in the common bundle to be technically admissible, including for the truth of their contents, with any objection to that presumptive admissibility then required to be addressed under new r 9.5A. New r 9.5A(2) directs the Court, when considering such objections, to take into account the overriding objective in new r 1.2, with a series of considerations being identified including "whether any concerns are more sensibly dealt with as a matter of weight". This is an important feature of these provisions, and it may be expected that the general approach will be to rely on this provision.

Nonetheless, if a truly important objection to admissibility arises, sub-cls (b) and (c) allow the matter to be dealt with fairly. Objections on this basis are not encouraged, however.

It is important to emphasise that these rules simply allow the documentary record to come before the Court for the purposes of factual findings, including findings that rely on the documents for the truth of their contents. But they only address the technical admissibility issue. Documents may be technically admissible but carry little or no weight. For example, a communication from a party's solicitor contained in the common bundle which refers to factual events is most unlikely to carry any weight if the relevant facts are in dispute. Having arguments about admissibility of such material, or the limits of the admissible evidence arising from such a document are often a distraction. In most cases it is the question of weight that is significant. Arguments about technical admissibility, or requiring witnesses to be called to ensure technical admissibility, generally involves disproportionate cost.

The emphasis on the documentary record for factual findings is intended to remove the long recitation of events referring to documents from the factual witness statements, and associated arguments made by the witnesses in that evidence. Solicitors should no longer prepare witness statements with the expectation that the witness must set out the party's case, or its arguments in this way. The parties' perspective on the relevant narrative of events is to be put where it should be put — in submissions.

Witness statements

Although it has not been significantly changed, the amended rule concerning witness statements, new r 9.7, will mean that the requirements for witness statements in the reformulated rules can now be more properly enforced. Those requirements are in the following (amended) form:

> **9.7 Requirements for witness statements of factual and expert evidence**
>
> (1) Whether or not some evidence is directed to be led orally, a witness statement of factual or expert evidence is a statement from the witness that contains the testimony intended to be taken from them.
>
> (2) A witness statement of factual or expert evidence must—
>
> (a) be prepared in a manner that is consistent with the overriding objective in rule 1.2:
>
> (b) be in the words of the witness and not in the words of the lawyer involved in drafting the witness statement:
>
> (c) not contain evidence that is inadmissible in the proceeding:
>
> (d) not contain any material in the nature of a submission or be argumentative:
>
> (e) avoid repetition:
>
> (f) avoid referencing documents unless the witness has relevant evidence to give relating to them:
>
> (g) avoid reciting or summarising the contents of documents:
>
> (h) be confined to the matters in issue and, in the case of a fact witness, matters on which the witness can assist the court by giving evidence on the basis of their personal knowledge.
>
> (3) A witness statement must—
>
> (a) be signed by the witness with a statement that the evidence is true and correct:

(b) in the case of an expert witness, also confirm that the witness has complied with the code of conduct for expert witnesses (*see* rule 9.43 and Schedule 4).

…

The expectation is that this will also reduce the length of evidence-in-chief given by witnesses at trial.

The rules have further been changed to allow the efficient receipt of this evidence including by taking witness statements as read which, strictly speaking, is not contemplated by the current rule. The new rule provides:

9.12 Evidence-in-chief at trial

The evidence-in-chief of a witness at trial may,—

(a) if the court so directs, be in the form of the witness statement taken as read if the witness confirms it is true and correct:

(b) if the court so directs, be given by the witness reading the witness statement as the witness's evidence-in-chief:

(c) include further oral evidence permitted by the court:

(c) comprise any evidence given under an oral evidence direction under rule 9.10:

(d) be in the form of a witness statement received by the court as the witness's evidence without the witness confirming their witness statement under oath, provided that the witness statement is accompanied by a declaration that their witness statement is true and correct and is made under section 9 of the Oaths and Declarations Act 1957.

Parties should not expect trial Judges to have read witness statements in advance of trial, however. The estimates for the time required for trial will require reading time for the Judge if witness's statements are to be taken as read.

Cross-examination duties

There is also an associated change to the rules concerning cross-examination duties arising under s 92 of the Evidence Act. This is to address any perception that counsel for a party must put the case for the client to a witness for the other party to comply with perceived duties. As the Committee said in the Drafting Instructions:[85]

> [78] The Committee considers that these cross-examination duties are frequently misunderstood. In particular it is common for counsel to cross-examine witnesses by putting the party's case to that witness and inviting a comment on an understanding that that is a requirement. This is not what s 92 requires. The Law Commission's 1999 Report expresses the view that the duty concerned challenges to a witnesses' veracity only.[86] Even if the duty is a little broader than this, it does not mean that a party's whole case needs to be put to the leading witnesses for the other party. The real focus of s 92 is procedural fairness.[87] A party cannot invite the Court not to accept a witness's evidence, particularly on the basis that it is untrue, without that evidence being challenged. That rule of procedural fairness does not entail an obligation for a party to put their whole case to the witness. But there is apparently a wider view of s 92 — that a party's witnesses must have an opportunity to respond to the case presented by the

[85] Drafting Instructions, above n 16.

[86] Citing Law Commission *Evidence: Evidence Code and Commentary* (NZLC R55, Vol 2, 1999) at [C334]. For a recent judicial discussion to similar effect, see, eg, *Keir v Simms* [2025] NZHC 2086 at [143]–[147] per O'Gorman J.

[87] Citing *R v Soutar* [2009] NZCA 227 at [27].

> other party, especially when it has not been made apparent by prior disclosures. It may be that that is a misunderstanding of the scope of s 92.

The rule has been reformulated in the following way as a consequence:

> **9.15 Cross-examination duties**
>
> A party may raise with the court whether or the extent to which cross-examination of any witness by them is required by section 92 of the Evidence Act 2006, given what is known about the parties' cases.

Expert evidence

There are changes to the management of expert evidence under the New Regime, most of which will be dealt with prior to trial at the JIC.[88] These changes are directed at facilitating the more efficient use of expert evidence at trial, to minimise overly partial expert evidence being called and to ensure the expert evidence is properly directed at the same issues, rather than experts being at cross-purposes. If expert evidence, and how it is to be given at trial, has not been addressed at the JIC, it may be addressed at some other stage, or at the hearing under existing r 9.46.

[88] See page 726, above.

7. APPENDIX 1 – HIGH COURT (IMPROVED ACCESS TO CIVIL JUSTICE) AMENDMENT RULES 2025

High Court (Improved Access to Civil Justice) Amendment Rules 2025

Cindy Kiro, Governor-General

Order in Council

At Wellington this 21st day of July 2025

Present:
Her Excellency the Governor-General in Council

These rules are made under section 148 of the Senior Courts Act 2016—

(a) on the advice and with the consent of the Executive Council; and

(b) with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee continued under section 155 of that Act (of whom at least 1 was a Judge of the High Court).

Contents

Rules

1 Title

These rules are the High Court (Improved Access to Civil Justice) Amendment Rules 2025.

2 Commencement

These rules come into force on 1 January 2026.

3 Principal rules

These rules amend the High Court Rules 2016.

4 Rule 1.2 replaced (Objective)

Replace rule 1.2 with:

1.2 Overriding objective

(1) The overriding objective of these rules is to secure the just resolution of any proceeding or interlocutory application by proportionate means, including by securing its speedy and inexpensive determination.

(2) When deciding how subclause (1) applies in any case, the court may consider the following:

(a) how best to both fairly and expeditiously identify and resolve the issues in dispute:

(b) how best to deal with the proceeding in ways that are, and at a cost that is, proportionate to the nature of the dispute and the issues in dispute:

(c) the need to allocate the court's resources fairly across the court's case-load.

1.2A General duty to co-operate

(1) The parties and their solicitors and counsel have a duty to co-operate with the other parties and their solicitors and counsel in accordance with the overriding objective in rule 1.2.

(2) The duty includes lawyers and counsel representing the parties having direct discussions with each other or, in the case of a self-represented litigant, with the litigant, to attempt to agree on how the proceeding will be conducted.

(3) For specific duties to co-operate under these rules, *see* the following:

(a) rule 7.5 (preparing for and participating in judicial issues conference):

(b) rule 8.2 (disclosure):

(c) rule 8.4A (further disclosure):

(d) rule 9.4 (preparing common bundle):

(e) rule 11.22 (sale of property).

5 Rule 1.3 amended (Interpretation)

(1) In rule 1.3(1), replace the definition of **case management conference** with:

case management conference means a conference conducted by the court under these rules or an enactment (*see* rule 7.1AA)

(2) In rule 1.3(1), insert in their appropriate alphabetical order:

disclosure obligation means a requirement to make disclosure under these rules or as directed by the court

judicial conference means a judicial issues conference or a case management conference

judicial issues conference means a conference conducted under subpart 1 of Part 7 in accordance with rule 7.5

ordinary proceeding has the meaning given in rule 6A.1

overriding objective means the overriding objective of the rules described in rule 1.2

6 Rule 5.47 amended (Filing and service of statement of defence)

In rule 5.47(2)(b), replace "25" with "30".

7 New Part 6A inserted

After Part 6, insert:

Part 6A
Overview of steps in ordinary proceedings

6A.1 Overview of steps in ordinary proceedings

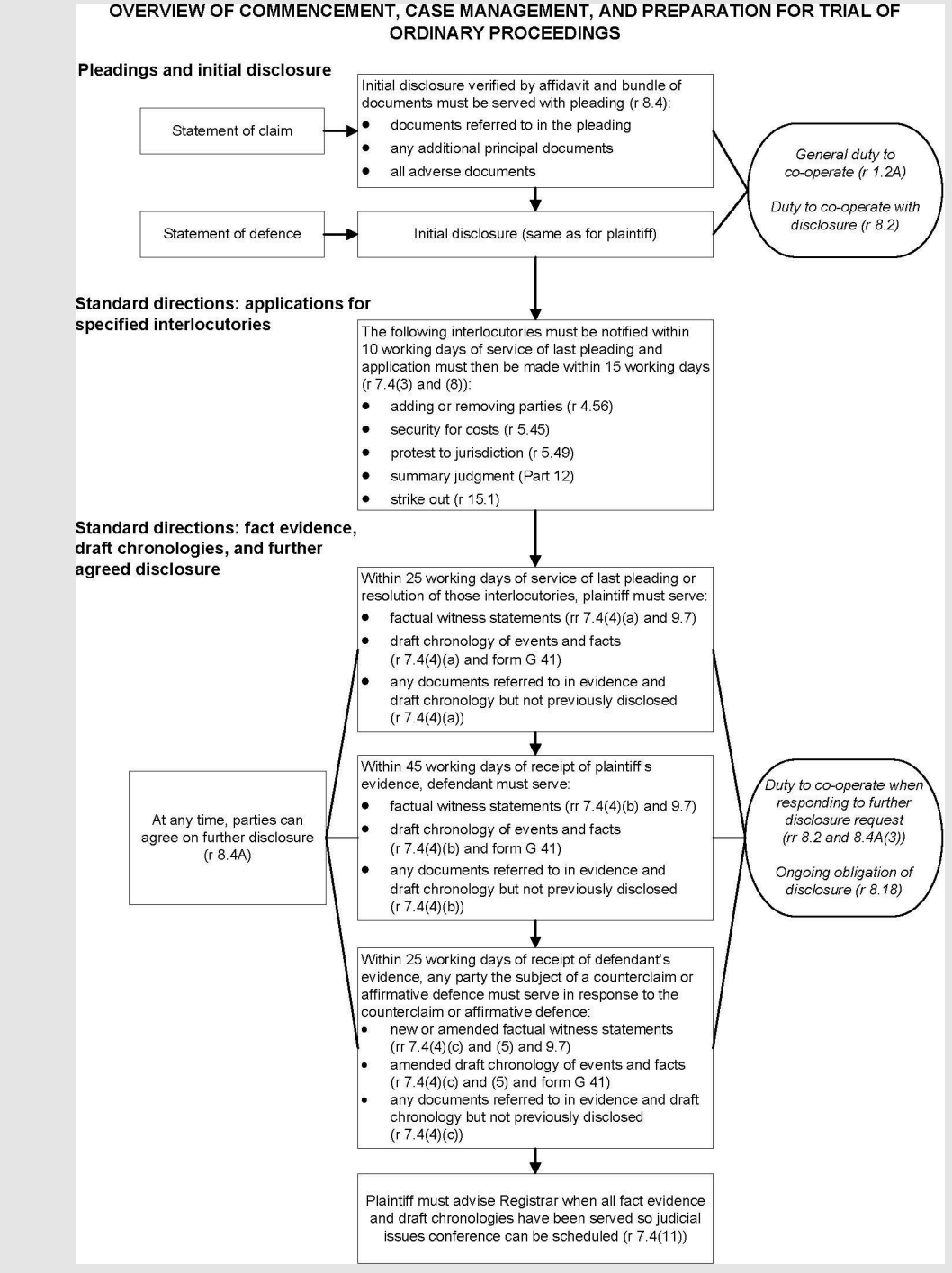
(1) For all ordinary proceedings,—

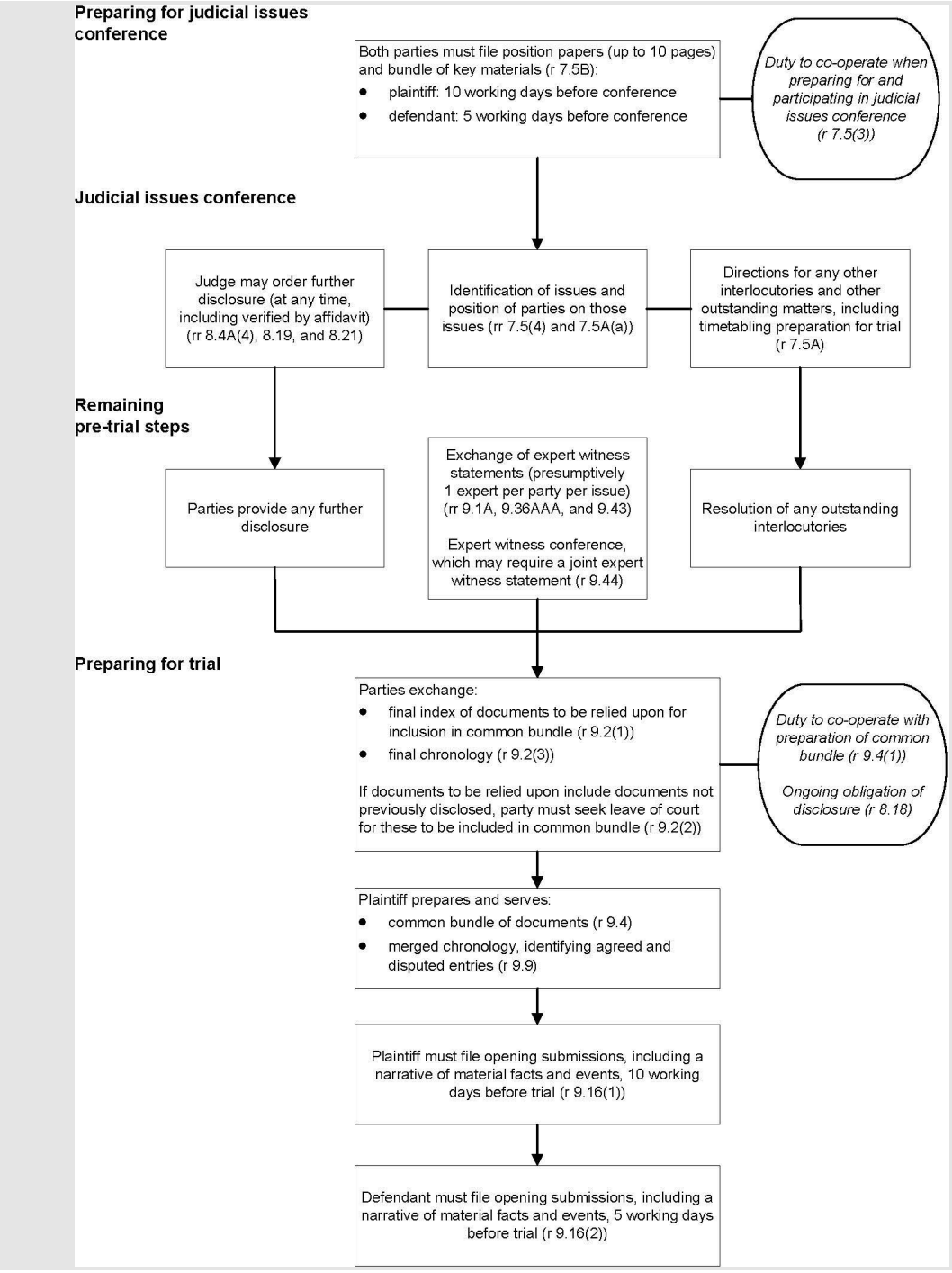
(a) the standard directions under rule 7.4 apply following the filing of pleadings unless a Judge makes alternative directions under rule 7.4(10); and

(b) a judicial issues conference under rule 7.5 must take place once the standard directions have been completed unless a Judge gives alternative directions under rule 7.5(2).

(2) In these rules, **ordinary proceeding** means a proceeding commenced in accordance with Part 5 of these rules, but excludes an application for judicial review.

(3) The flow chart below gives further details of the steps prior to trial required by these rules for ordinary proceedings. The flow chart operates only as a guide. In the event of any inconsistency between the flow chart and any other provision of these rules or any other enactment, that other provision or enactment prevails.


OVERVIEW OF COMMENCEMENT, CASE MANAGEMENT, AND PREPARATION FOR TRIAL OF ORDINARY PROCEEDINGS
Pleadings and initial disclosure
Statement of claim
Initial disclosure verified by affidavit and bundle of documents must be served with pleading (r 8.4):
documents referred to in the pleading
any additional principal documents
all adverse documents
Statement of defence
Initial disclosure (same as for plaintiff)
General duty to co-operate (r 1.2A)
Duty to co-operate with disclosure (r 8.2)
Standard directions: applications for specified interlocutories
The following interlocutories must be notified within 10 working days of service of last pleading and application must then be made within 15 working days (r 7.4(3) and (8)):
adding or removing parties (r 4.56)
security for costs (r 5.45)
protest to jurisdiction (r 5.49)
summary judgment (Part 12)
strike out (r 15.1)
Standard directions: fact evidence, draft chronologies, and further agreed disclosure
Within 25 working days of service of last pleading or resolution of those interlocutories, plaintiff must serve:
factual witness statements (rr 7.4(4)(a) and 9.7)
draft chronology of events and facts (r 7.4(4)(a) and form G 41)
any documents referred to in evidence and draft chronology but not previously disclosed (r 7.4(4)(a))
At any time, parties can agree on further disclosure (r 8.4A)
Within 45 working days of receipt of plaintiff's evidence, defendant must serve:
factual witness statements (rr 7.4(4)(b) and 9.7)
draft chronology of events and facts (r 7.4(4)(b) and form G 41)
any documents referred to in evidence and draft chronology but not previously disclosed (r 7.4(4)(b))
Duty to co-operate when responding to further disclosure request (rr 8.2 and 8.4A(3))
Ongoing obligation of disclosure (r 8.18)
Within 25 working days of receipt of defendant's evidence, any party the subject of a counterclaim or affirmative defence must serve in response to the counterclaim or affirmative defence:
new or amended factual witness statements (rr 7.4(4)(c) and (5) and 9.7)
amended draft chronology of events and facts (r 7.4(4)(c) and (5) and form G 41)
any documents referred to in evidence and draft chronology but not previously disclosed (r 7.4(4)(c))
Plaintiff must advise Registrar when all fact evidence and draft chronologies have been served so judicial issues conference can be scheduled (r 7.4(11))



8 Rule 7.1AA replaced (Outline of case management procedures for different types of proceedings)

Replace rule 7.1AA with:

Case management overview

7.1AA Case management procedures for different types of proceedings

(1) An ordinary proceeding—

(a) is subject to a judicial issues conference unless alternative directions are given by a Judge (*see* rule 7.5):

(b) may be the subject of 1 or more case management conferences (*see* rule 7.5C):

(c) if the proceeding is being, or has been, allocated a hearing or trial date, may be the subject of a pre-trial conference (*see* rule 7.8).

(2) A proceeding commenced under Part 18 may be subject to case management under rule 18.4A.

(3) A proceeding commenced under Part 19 may be subject to case management through the ability of the parties to seek directions under rules 19.11 and 7.43A.

(4) An application for judicial review under the Judicial Review Procedure Act 2016 may be subject to case management under section 13 of that Act and an application for an extraordinary remedy under Part 30 may be subject to case management under rule 30.3A (and rule 7.17 applies).

(5) An application for leave to appeal, or an appeal, under Part 20 (appeals), Part 21 (cases stated), or Part 26 (Arbitration Act 1996) is subject to case management under rules 7.14 and 7.15.

(6) This rule operates only as a guide. In the event of any inconsistency between this rule and any other provision of these rules or any other enactment, that other provision or enactment prevails.

9 Rules 7.1 to 7.3A revoked

Revoke rules 7.1 to 7.3A.

10 Rule 7.4 replaced (Further case management conferences)

Replace rule 7.4 with:

Standard directions for ordinary proceedings

7.4 Standard directions prior to judicial issues conference for ordinary proceedings

(1) Unless a Judge makes alternative directions under subclause (10), the following directions apply.

(2) The directions apply to steps after the following:

(a) the date of service of the pleading by the plaintiff:

(b) if an affirmative defence is pleaded or a counterclaim is made, the last pleading by a party responding to it.

(3) If a party wishes to make an interlocutory application or apply for another matter listed in subclause (8),—

(a) they must give notice to the other party or parties and the court that they intend to do so no later than 10 working days—

(i) from the date of service of the pleading by the defendant or, if there is more than 1 defendant, the last pleading by a defendant; or

(ii) if an affirmative defence is pleaded or a counterclaim is made, from the date of service of the pleading responding to it or, if more than 1 party is the subject of it, the last pleading by a party responding to it; and

(b) they must file the application no later than 15 working days from the date that notice is given; and

(c) *see* rule 7.33(1) for allocation of a hearing date.

(4) If no application is filed under subclause (3)(b), the following directions apply:

(a) the plaintiff must serve the following on the defendant no later than 25 working days from the date referred to in subclause (3)(a)(i) or (ii):

(i) factual witness statements (relating to their claim only, not any affirmative defence or counterclaim); and

(ii) a draft chronology of events and facts in form G 41 (a **draft chronology**) that—

(A) refers to all pleaded material facts and any other events or facts of significance they intend to establish by the documentary record; and

(B) includes a corresponding reference to the relevant document or documents in each case; and

(iii) copies of any documents referred to in a witness statement or the draft chronology that were not disclosed in initial disclosure:

(b) the defendant must then serve the witness statements, draft chronology, and documents described in paragraph (a)(i) to (iii), including for any affirmative defence pleaded or counterclaim made, no later than 45 working days from the date they receive the plaintiff's evidence and draft chronology:

(c) if an affirmative defence is pleaded or a counterclaim is made, any party that is the subject of it must serve the documents described in paragraph (a)(i) to (iii) relating to the affirmative defence or counterclaim no later than 25 working days from the date they receive the defendant's evidence and draft chronology.

(5) In the case of subclause (4)(c), the party—

(a) may amend the draft chronology, served previously by them under subclause (4)(a) or (b), to respond to the affirmative defence or counterclaim; and

(b) may serve new witness statements relating to the affirmative defence or counterclaim.

(6) For proceedings with multiple parties,—

(a) if there is more than 1 plaintiff or defendant, the references to the plaintiff or the defendant in this rule apply to each of them:

(b) if there are 1 or more third or other parties, the references to the defendant in this rule apply to each of them.

(7) The parties referred to in subclause (6) include any party joined to the proceeding by a decision on an interlocutory application.

(8) The matters referred to in subclause (3) are the following:

(a) to strike out or add a party under rule 4.56:

(b) for security of costs under rule 5.45:

(c) applications concerning a protest to jurisdiction under rule 5.49:

(d) for summary judgment under Part 12 (including an application for leave, if required):

(e) to dismiss or stay without trial (strike out) under rule 15.1 or the inherent jurisdiction.

(9) If any interlocutory applications under subclause (3) need to be determined, the 25 working days in subclause (4)(a) run from the date of the last decision on an interlocutory application unless directed otherwise by a Judge.

(10) A party may apply to the court to request alternative directions to those provided in this rule. A Judge may give alternative directions if satisfied that this will best achieve the overriding objective in rule 1.2.

(11) The plaintiff must advise the Registrar once all evidence and chronologies have been served by the parties but must confer with the other party or parties before doing so. The Registrar must then schedule a judicial issues conference. (However, *see* rule 7.5C for case management conferences.)

11 Rule 7.5 replaced (Issues conferences)

Replace rule 7.5 with:

Judicial conferences (judicial issues conferences and case management conferences)

7.5 Judicial issues conference for defended ordinary proceedings

(1) A judicial issues conference must take place for all defended ordinary proceedings unless subclause (2) applies.

(2) A Judge may determine that a judicial issues conference is not required in a particular case or cases and give alternative directions to best achieve the overriding objective in rule 1.2 on—

(a) application by a party:

(b) their own initiative.

(3) The parties and their solicitors and counsel have a duty to co-operate when preparing for and participating in a judicial issues conference and, when doing so, must have regard to the purposes of the conference set out in subclause (4).

(4) The purposes of a judicial issues conference are to—

(a) identify the issues in the case, including issues that may be dispositive, and the position of the parties on those issues; and

(b) taking into account the overriding objective in rule 1.2, consider—

(i) the procedural requirements for the fair disposition of the case; and

(ii) whether it is appropriate to seek to resolve the proceeding by alternative means, for example, by mediation.

(5) A Judge may issue a direction before a judicial issues conference requiring the attendance at the conference of all or any of the following:

(a) instructing solicitors:

(b) all counsel engaged:

(c) the parties (or, in the case of corporate parties, 1 or more of their senior officers or authorised representatives).

(6) At a judicial issues conference, a Judge may give any directions they consider appropriate for the proceeding that will best achieve the overriding objective in rule 1.2.

(7) A Judge may direct that a further judicial issues conference take place.

7.5A Agenda for judicial issues conference

Unless a Judge directs otherwise, the agenda for the judicial issues conference is the following:

(a) identifying the issues and the position of the parties on those issues, including—

(i) whether any amendment to the pleadings is appropriate:

(ii) whether any supplementary witness statements are needed (*see* rule 9.8):

(b) whether any steps should be taken to settle the dispute by means of facilitation, mediation, or otherwise, and, if not,—

(i) why this is the case:

(ii) whether there are any steps that can be taken to maximise the chances the dispute might be able to be settled by means of facilitation, mediation, or otherwise:

(iii) whether any steps should be taken to minimise the matters in dispute through facilitation, mediation, or otherwise:

(c) the nature of any significant facts that are disputed between the parties:

(d) whether any further disclosure is needed (*see* rule 8.4A):

(e) resolving, or timetabling and deciding the mode of hearing for, any interlocutory matters:

(f) whether there are any issues of tikanga raised in the proceedings, and what steps should be taken as a consequence:

(g) whether any expert evidence is to be relied upon and, if so, identifying the particular topics on which that evidence will be directed, timetabling expert witness statements, setting a date for an experts conference, timetabling joint expert statements, and the sequencing of the evidence at trial (*see* rules 9.1A(3), 9.36AAA, 9.36, and 9.43 to 9.46):

(h) the manner and timing for finalising the parties' draft chronologies under rule 9.2 and combining these into a merged chronology for trial under rule 9.9:

(i) preparing the common bundle (*see* rules 9.2 and 9.4), whether it will be an electronic bundle, and when it must be served (*see* rule 9.3):

(j) whether the proceedings can be set down for trial and, if so, allocation of key dates (*see* rule 7.6):

(k) categorising the proceedings for cost purposes under rule 14.3:

(l) the requirements for trial, including—

(i) the time required for trial, including closing submissions:

(ii) the time required for reading days:

(iii) any electronic requirements.

7.5B What parties must do before judicial issues conference

(1) Unless directed otherwise by a Judge, the following directions apply:

(a) the plaintiff must file and serve the following no later than 10 working days before the conference:

(i) a position paper:

(ii) a bundle of the key materials that they wish to refer to at the conference:

(iii) a draft timetable for trial:

(b) the defendant and any other party must file and serve the following no later than 5 working days before the conference:

(i) a position paper:

(ii) a bundle of the key materials that they wish to refer to at the conference.

(2) A position paper must—

(a) explain the party's case and what is required to fairly address it:

(b) state what directions they seek at the conference.

(3) A position paper may not exceed 10 pages.

(4) The plaintiff must seek input from the defendant when preparing the draft timetable for trial.

(5) If a defendant or another party disagrees with the draft timetable for trial, they must set out their reasons in a memorandum filed with their position paper.

(6) Each party must advise the Registrar of the number of persons attending for that party no later than 5 working days before the conference.

(7) If there is more than 1 plaintiff or defendant, the references to the plaintiff or the defendant in subclause (1) apply to each of them.

(8) If there are 1 or more third or other parties, the reference to the defendant in subclause (1) applies to each of them.

7.5C Case management conferences for ordinary proceedings

The court may on its own initiative or on application by a party direct that a case management conference be scheduled.

Other case management provisions

12 Rules 7.33 and 7.34 replaced

Replace rules 7.33 and 7.34 with:

7.33 Hearing of interlocutory applications

(1) If an application is made of the kind referred to in rule 7.4(8), the Registrar must allocate a date for an in-person hearing of the application.

(2) If an application is made following, and in accordance with directions made at, a judicial issues conference, the Registrar must proceed in accordance with those directions.

(3) In the case of an application not provided for in subclauses (1) and (2), the court must determine whether a hearing of the application is required or whether it will be determined on the papers.

(4) When making a decision under subclause (3), the court must consider which option will best achieve the overriding objective in rule 1.2.

(5) The standard time for the hearing of an interlocutory application is 2 hours, except for applications that fall within subclause (1) or if a Judge directs otherwise.

(6) This rule and rule 7.34 are subject to rule 7.36, which requires every application for summary judgment to be heard in open court.

7.34 Mode of hearing

(1) An interlocutory application for which a hearing is required and that does not fall within rule 7.33(1) must be heard in chambers and may be heard remotely in accordance with the Courts (Remote Participation) Act 2010.

(2) However, for any interlocutory application referred to in rule 7.33 for which a mode of hearing has been set, a party may request in writing to the court for an alternative mode of hearing if they do so no less than 5 working days before the allocated hearing date for a Judge to approve that alternative mode of hearing.

(3) A Judge may accept an application under subclause (2) at a later time if the Judge considers there is good reason for the delay in making the application.

13 Rule 7.48 amended (Enforcement of interlocutory order)

(1) Replace the heading to rule 7.48 with "**Enforcement of orders and requirements of rules**".

(2) Replace rule 7.48(1) with:

(1) If a party (the **party in default**) fails to comply with an order or a requirement imposed by or under subpart 1 of Part 7 or Part 8, the Judge may, subject to any express provision of these rules, make any order the Judge thinks just.

14 Rule 8.2 replaced (Co-operation)

Replace rule 8.2 with:

8.2 Co-operation

(1) The parties must co-operate to ensure that the process of disclosure is conducted in accordance with the overriding objective in rule 1.2 and, in particular, is—

(a) appropriately focused and proportionate to the subject matter of the proceeding; and

(b) facilitated by agreement on practical arrangements.

(2) The parties must, when appropriate,—

(a) consider options to focus the scope of disclosure; and

(b) achieve reciprocity in the electronic format and processes of disclosure; and

(c) ensure technology is used efficiently and effectively; and

(d) agree on and employ a format compatible with the subsequent preparation of an electronic bundle of documents for use at trial.

15 Rule 8.4 amended (Initial disclosure)

(1) Replace rule 8.4(1) to (3) with:

(1) Unless a Judge directs otherwise, a party to an ordinary proceeding must, at the same time as serving its first substantive pleading, serve on the other parties a bundle of documents verified by affidavit that complies with rule 8.15(2) and contains copies of all of the following documents that are in the party's control:

(a) all the documents referred to in that pleading:

(b) any additional principal documents—

(i) that they have used when preparing the pleading:

(ii) on which they presently intend to rely at the trial or hearing:

(c) all adverse documents.

(1A) An **adverse document** that must be disclosed under this rule is a document that—

(a) contains information that—

(i) is adverse to the case of the party giving disclosure or another party's case; or

(ii) supports the case of another party; and

(b) the party giving disclosure—

(i) knows the document exists; or

(ii) has good reason to believe the document exists.

(1B) A party must take reasonable steps to check for the existence of adverse documents.

(2) After rule 8.4(9), insert:

(10) *See* rule 8.18 for continuing obligations to give disclosure.

16 New rule 8.4A inserted (Further disclosure)

After rule 8.4, insert:

8.4A Further disclosure

(1) The parties may agree on what (if any) further disclosure is given.

(2) A party may request that specific documents be disclosed to them by another party if the first party has good reason to believe that the documents exist, are relevant and material, and have not been provided under disclosure.

(3) A party who receives a request for further disclosure of specific documents must respond to that request in accordance with the duty of co-operation in rule 8.2.

(4) Despite subclauses (1) to (3), a Judge may, if satisfied that this will best achieve the overriding objective in rule 1.2, do either or both of the following:

(a) order further disclosure at any time:

(b) direct a party to search or make further checks for relevant and material documents.

(5) If further disclosure is ordered, the Judge may also order that an affidavit verifying that disclosure be provided in a form directed by the Judge. (However, *see* rules 8.15(1)(b) and 8.16.)

17 Rule 8.15 replaced (Affidavit of documents)

Replace rule 8.15 with:

8.15 Affidavit for disclosure

(1) Each party must serve an affidavit for disclosure as follows:

(a) for initial disclosure that accompanies a bundle of documents under rule 8.4, the affidavit must comply with subclause (2):

(b) if further disclosure (under rule 8.4A) or particular disclosure (under rule 8.19 or 8.21) is ordered by a Judge, the Judge may also order that disclosure be verified by affidavit in a form, and filed and served by the time, directed by the Judge (*see also* rule 8.16).

(2) An affidavit for initial disclosure need not give a detailed description of any document but must—

(a) include a list of all the documents contained in the bundle; and

(b) state that the party understands their obligations under rule 8.4; and

(c) give brief particulars of the steps taken by the party to check for the existence of adverse documents; and

(d) give a brief description of any document or part of a document for which privilege or confidentiality is claimed and specify the ground on which the claim is based in each case; and

(e) include a list of any documents described in rule 8.4(1)(a) to (c) that are known to the party but are not in their control; and

(f) confirm that the party believes that the list of documents refers to, and the bundle contains, all documents that they are obliged to disclose

under rule 8.4, except those for which privilege or confidentiality is claimed.

(3) Documents of the same nature may be described as a group or groups, and, if so, rule 8.16(3) applies with any necessary modifications.

(4) An affidavit may be in form G 37, however, if it is not, it must refer to the categories of documents listed in rule 8.4(1)(a) to (c) in the statement required by subclause (2)(b).

18 Rule 8.16 amended (Schedule appended to affidavit of documents)

(1) Before rule 8.16(1), insert:

(1AAA) If a Judge makes an order for further or particular disclosure under rule 8.4A, 8.19, or 8.21 and orders that disclosure to be verified by affidavit,—

(a) the affidavit must list the documents to be disclosed under the order only, unless the Judge orders otherwise:

(b) the Judge may also order that the affidavit verifying the disclosure contain a schedule that complies with all or part of this rule.

(2) In rule 8.16(1), replace "The schedule referred to in rule 8.15(2)(e) must, in accordance with that discovery order," with "The schedule must".

(3) In rule 8.16(2), replace "Subject to Part 2 of Schedule 9," with "Part 2 of Schedule 9 applies to a schedule under this rule, except that".

(4) In rule 8.16(5)(b), replace "correspondence" with "any documents".

19 Rule 8.18 replaced (Continuing obligations)

Replace rule 8.18 with:

8.18 Continuing obligations

(1) A party must disclose any document they become aware of that is or becomes a document described in rule 8.4(1), including adverse documents.

(2) This obligation applies at all stages of a proceeding, including in the course of complying with any disclosure order.

20 Rule 8.24 replaced (Who may swear affidavit of documents)

Replace rule 8.24 with:

8.24 Who may swear affidavit for disclosure

(1) If a Judge orders that an affidavit for disclosure be filed, they may—

(a) specify, by name or otherwise, the person who must make the affidavit; or

(b) specify, by description or otherwise, a group or class of persons, any of whom may make the affidavit.

(2) In any other case, the affidavit may be made by the following:

(a) if the person required to make disclosure is an individual person, by that person:

(b) if the person required to make disclosure is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 9.82:

(c) if the person required to make disclosure is the Crown, or is an officer of the Crown who may sue or be sued in an official capacity, or is representing a government department, by an officer of the Crown.

21 Rule 8.33 replaced (Enforcement of order)

Replace rule 8.33 with:

8.33 Enforcement of orders and requirements of rules

(1) If a party fails to comply with an order or a requirement imposed by or under this Part, a Judge may enforce it under rule 7.48 (which applies with any necessary modifications).

(2) An order made under this subpart may be enforced under subpart 4 of Part 2 of the Contempt of Court Act 2019 against any person who is required to comply with that order.

(3) This rule does not limit or affect any power or authority of the court to punish a person for not complying with a court order.

22 New rule 9.1A inserted (Exchange of witness statements of factual evidence and expert evidence)

After rule 9.1, insert:

9.1A Exchange of witness statements of factual evidence and expert evidence

(1) Witness statements of the factual evidence that a party wishes to rely on at trial must be served by the date required by the directions in rule 7.4 unless further time is given by a Judge under rule 7.4(10).

(2) Those witness statements must meet the requirements of rule 9.7(2).

(3) Statements of the expert evidence that a party wishes to rely on at trial must be served by the date and in accordance with directions given at the judicial issues conference or by another date otherwise directed by a Judge.

(4) *See* rule 9.43, which requires expert witnesses to comply with the code of conduct set out in Schedule 4.

23 Rule 9.2 replaced (Exchange of documents and index)

Replace rule 9.2 with:

9.2 Exchange of documents and index and finalising chronologies of parties

(1) Each party must provide the party who will prepare the common bundle with an index of documents to be relied upon no later than the date directed at the judicial issues conference.

(2) If the index refers to a document not previously disclosed, the party must—

(a) include a copy of the document with the index; and

(b) seek the leave of the court for it to be included in the common bundle (*see* rule 9.4(5)(d), which requires the document to be identified in the index as requiring leave to be included in the bundle).

(3) Each party must finalise their chronology (previously prepared as a draft under rule 7.4) and file and serve it no later than the date directed at the judicial issues conference.

(4) In this rule, **documents to be relied upon** means any of the following:

(a) any document previously disclosed that is—

(i) referred to in a witness statement:

(ii) to be referred to by a witness:

(iii) referred to in the final version of the party's chronology:

(iv) intended to be put to witnesses called by another party:

(v) to be referred to in opening submissions filed under rule 9.16:

(b) any document not previously disclosed for which leave is required under subclause (2) for it to be included in the common bundle.

(5) Nothing in this rule affects a party's continuing obligations to give disclosure under rule 8.18.

24 Rule 9.4 replaced (Preparation of common bundle)

Replace rule 9.4 with:

9.4 Preparing common bundle

(1) The parties must co-operate in the preparation of a bundle of documents (in this subpart referred to as the **common bundle**).

(2) The duty to co-operate includes each party—

(a) providing the other parties promptly, after the judicial issues conference and no later than the date directed by the Judge at the conference, with the index, documents, and final chronology required by rule 9.2; and

(b) taking all practicable steps to assist the plaintiff in the preparation of the common bundle, for example, by making copies of documents available, or agreeing to the excision of part of a document if that part cannot be relevant; and

(c) conferring with the other parties about the format of the common bundle and, in particular, whether an electronic format of the common bundle is appropriate.

(3) If a party other than the plaintiff has been ordered to prepare the common bundle, the references in subclause (2) to the plaintiff are to be read as references to that different party.

(4) Subject to rule 9.6, the common bundle must contain all the documents listed in the index of each party, and no other documents.

(5) The common bundle must—

(a) arrange the documents chronologically, or in any other appropriate sequence or manner agreed by counsel and approved by a Judge:

(b) number each page in a consecutive sequence:

(c) set out before the first document a common bundle index that shows—

(i) a short description of each document:

(ii) the date of each document:

(iii) the party from whose custody each document has been produced:

(iv) the page number of each document as it appears in the common bundle:

(d) identify in the index (for example, by colour coding) any document for which leave is required under rule 9.2 to be included in the common bundle:

(e) if disclosure was provided by way of an affidavit with a schedule that complies with rule 8.16, use a format that is, so far as possible, compatible with the format of that schedule.

(6) If the parties have agreed to use an electronic format for the common bundle, the parties must have regard to any practice note on electronic formats issued from time to time by the Chief High Court Judge.

25 Rule 9.5 replaced (Consequences of incorporating document in common bundle)

Replace rule 9.5 with:

9.5 Consequences of incorporating document in common bundle

(1) Each document contained in the common bundle is, unless a Judge directs otherwise, to be considered—

(a) to be accurately described in the common bundle index:

(b) to be what it appears to be:

(c) to have been signed by any apparent signatory:

(d) to have been sent by any apparent author and to have been received by any apparent addressee:

(e) to have been produced by the party indicated in the common bundle index.

(2) A document in the common bundle is automatically received into evidence and presumed to be admissible if—

(a) it is referred to—

(i) in a witness's evidence:

(ii) in a chronology provided to the court under rule 9.2 or 9.9:

(iii) in opening submissions filed under rule 9.16; and

(b) no objection to admissibility under rule 9.5A is upheld.

(3) However, subclauses (1) and (2) do not apply to a document for which leave is required under rule 9.2 for it to be included in the common bundle, unless a Judge gives that leave.

(4) A Judge may direct that this rule or any part of it does not apply to a certain document or group of documents, including a document referred to in subclause (3).

9.5A Objections to admissibility of documents in common bundle

(1) A party may object to the admissibility of a document in the common bundle even though it is presumed to be admissible.

(2) When considering an objection to admissibility, the Judge must have regard to the overriding objective in rule 1.2 and may consider—

(a) whether any concerns are more sensibly dealt with as a matter of weight:

(b) if the objection is allowed, whether an opportunity will be given to the party to adduce the evidence by other means:

(c) whether any costs consequences will apply to the objection in light of the overriding objective.

26 Rule 9.7 replaced (Requirements in relation to briefs)

Replace rule 9.7 with:

9.7 Requirements for witness statements of factual and expert evidence

(1) Whether or not some evidence is directed to be led orally, a witness statement of factual or expert evidence is a statement from the witness that contains the testimony intended to be taken from them.

(2) A witness statement of factual or expert evidence must—

(a) be prepared in a manner that is consistent with the overriding objective in rule 1.2:

(b) be in the words of the witness and not in the words of the lawyer involved in drafting the witness statement:

(c) not contain evidence that is inadmissible in the proceeding:

(d) not contain any material in the nature of a submission or be argumentative:

(e) avoid repetition:

(f) avoid referencing documents unless the witness has relevant evidence to give relating to them:

(g) avoid reciting or summarising the contents of documents:

(h) be confined to the matters in issue and, in the case of a fact witness, matters on which the witness can assist the court by giving evidence on the basis of their personal knowledge.

(3) A witness statement must—

(a) be signed by the witness with a statement that the evidence is true and correct:

(b) in the case of an expert witness, also confirm that the witness has complied with the code of conduct for expert witnesses (*see* rule 9.43 and Schedule 4).

(4) If a witness statement does not comply with the requirements of subclause (2), the court may, before or during the trial, direct that it not be read in whole or in part, and may make an order as to costs as the court sees fit.

(5) A party intending to call a person as a witness must, if that person has not provided a witness statement,—

(a) serve a notice on the other parties informing them that the party intends to call the person as a witness; and

(b) include all of the following information in the notice:

(i) the name of the intended witness:

(ii) the steps that have been taken to obtain a witness statement from the intended witness:

(iii) the reasons for the intended witness not providing a witness statement:

(iv) an explanation of the relevance of the evidence of the intended witness:

(v) details of the evidence that the party expects the intended witness to give.

(6) At the trial or hearing, the person called as a witness must give their evidence in accordance with rules 9.10 and 9.12, subject to any directions that the court may give or any terms or conditions that the court may specify.

(7) The party serving a notice under subclause (5) must, as soon as practicable after it is served, advise the Registrar of whom it was served on and the date of service.

27 Rule 9.9 replaced (Exchange of chronology of facts intended to be relied upon at trial or hearing)

Replace rule 9.9 with:

9.9 Merged chronology

(1) A key purpose of the merged chronology (together with the common bundle) is to assist the court to identify—

(a) the events and facts that are agreed and can therefore be taken by the court as being established in evidence (*see also* rule 9.5 relating to the common bundle); and

(b) the issues in dispute.

(2) The plaintiff must, by the time set out in subclause (3), file and serve a merged chronology incorporating the chronologies of the parties and indicating the following entries in an appropriate way (for example, by colour coding):

(a) entries that are agreed:

(b) entries that are not agreed and, in each case, which party asserts that the entry is incorrect.

(3) The merged chronology must be filed and served—

(a) not later than 15 working days after the common bundle has been served; or

(b) by the time directed at the judicial issues conference.

28 Rule 9.12 replaced (Evidence-in-chief at trial)

Replace rule 9.12 with:

9.12 Evidence-in-chief at trial

The evidence-in-chief of a witness at trial may,—

(a) if the court so directs, be in the form of the witness statement taken as read if the witness confirms it is true and correct:

(b) if the court so directs, be given by the witness reading the witness statement as the witness's evidence-in-chief:

(c) include further oral evidence permitted by the court:

(d) comprise any evidence given under an oral evidence direction under rule 9.10:

(e) be in the form of a witness statement received by the court as the witness's evidence without the witness confirming their witness statement under oath, provided that the witness statement is accompanied by a declaration that their witness statement is true and correct and is made under section 9 of the Oaths and Declarations Act 1957.

29 Rule 9.15 replaced (Cross-examination duties)

Replace rule 9.15 with:

9.15 Cross-examination duties

A party may raise with the court whether or the extent to which cross-examination of any witness by them is required by section 92 of the Evidence Act 2006, given what is known about the parties' cases.

30 Rule 9.16 replaced (Plaintiff's synopsis of opening)

Replace rule 9.16 with:

9.16 Filing of plaintiff's and defendant's openings before trial

(1) Any plaintiff must, not later than 10 working days before the trial or hearing, file in the court and serve on every other party a copy of their opening that includes a narrative of material facts and events.

(2) Any defendant or third or other party must, not later than 5 working days before the trial or hearing, file in the court and serve on every other party a copy of their opening that includes a narrative of material facts and events.

(3) A Judge may give alternative directions for the filing of an opening by a party or the parties if satisfied that this will best achieve the overriding objective in rule 1.2.

31 New rule 9.36AAA and cross-headings inserted

Before rule 9.36, insert:

Party-appointed expert witnesses

9.36AAA Calling of party-appointed expert witnesses

(1) Unless a Judge otherwise directs, at or after the judicial issues conference, each party may call only 1 expert witness on each particular topic identified at the conference.

(2) A Judge may make a direction under subclause (1) only if the Judge considers this will best achieve the overriding objective in rule 1.2.

Court-appointed expert witnesses

32 New cross-heading above rule 9.43 inserted

After rule 9.42, insert:

Expert witnesses code of conduct

33 Rule 9.44 replaced and cross-heading inserted

Replace rule 9.44 with:

Conference of expert witnesses and arrangements for trial

9.44 Conference of expert witnesses

(1) The court must, unless it considers the overriding objective in rule 1.2 is best achieved by a different direction, direct expert witnesses to confer, and may also direct them to do 1 or more of the following:

(a) confer on specified matters:

(b) confer in the absence of legal advisers of the parties:

(c) try to reach agreement on matters in the proceeding:

(d) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement:

(e) prepare a joint witness statement without the assistance of the legal advisers of the parties.

(2) The court may, on its own initiative or on the application of a party,—

(a) appoint an independent person to convene and facilitate the conference of expert witnesses:

(b) give any directions for convening and facilitating the conference as the court thinks just.

(3) Subject to any subsequent order of the court for costs, the court may determine the remuneration of the independent person and which of the parties must pay all or part of that remuneration.

(4) The matters discussed at the conference must not be referred to at the hearing unless the parties by whom the expert witnesses have been engaged agree.

(5) An independent person appointed under subclause (2)—

(a) need not be an expert on any of the matters likely to be discussed at the conference:

(b) may not give evidence at the hearing unless all of the parties agree.

34 New rule 18.4A inserted (Case management)

After rule 18.4, insert:

18.4A Case management

(1) Subpart 1 of Part 7 does not apply to proceedings filed under this Part.

(2) The court may give directions for the case management of a proceeding under this Part as it thinks fit after considering what will best achieve the overriding objective in rule 1.2.

35 New rule 30.3A inserted (Case management)

After rule 30.3, insert:

30.3A Case management

Subpart 1 of Part 7 does not apply to proceedings filed under this Part, except rule 7.17 (which relates to case management).

36 Schedule 1AA amended

In Schedule 1AA,—

(a) insert the Part set out in Schedule 1 as the last Part; and

(b) make all necessary consequential amendments.

37 Schedule 1, new form G 41 inserted

In Schedule 1, after form G 40, insert the form G 41 set out in Schedule 2 of these rules.

38 Consequential amendments to principal rules

Amend the principal rules as set out in Schedule 3.

39 Rules revoked

The principal rules set out in Schedule 4 are revoked.

Schedule 1
New Part 3 inserted into Schedule 1AA

r 36

Part 3
Provisions relating to High Court (Improved Access to Civil Justice) Amendment Rules 2025

4 Application of rules amended by High Court (Improved Access to Civil Justice) Amendment Rules 2025 to proceedings filed before commencement date

(1) For any proceeding filed before the commencement date, these rules apply as if the amendment rules had not come into force, except as provided in subclause (2).

(2) The court may direct that 1 or more, or all, of the amendment rules apply in a particular proceeding commenced before the commencement date.

(3) Before making a direction under subclause (2), the court must consider what will best achieve the overriding objective in rule 1.2.

(4) In this clause,—

amendment rules means the High Court (Improved Access to Civil Justice) Amendment Rules 2025

commencement date means the date on which the amendment rules come into force.

Schedule 2
New form G 41 inserted into Schedule 1

r 37

Form G 41
Chronology of events and facts

r 7.4(4)(a)(ii)

Use the template form as set out below:

Date	Pleaded material facts and other events or facts of significance intended to be established by documentary record	Supporting document(s)

Schedule 3
Consequential amendments

r 38

Subpart 1 heading in Part 1

In Part 1, replace the subpart 1 heading with:

Subpart 1—Overriding objective, general duty to co-operate, and interpretation

Rule 1.6

In rule 1.6(2), replace "objective of these rules (*see* rule 1.2)" with "overriding objective in rule 1.2".

Rule 1.13

In rule 1.13, replace "case management" with "judicial".

In rule 1.13(a), delete "case management".

Rule 1.16

In rule 1.16(1), replace "case management" with "judicial".

Rule 7.6

In rule 7.6(1) and (2), replace "the first case management" with "a judicial".

Rule 7.8

In rule 7.8(3), replace "to secure the just, speedy, and inexpensive determination of the proceeding" with "that they consider will best achieve the overriding objective in rule 1.2".

Rule 7.11

In rule 7.11(b), replace "case management" with "judicial".

Rule 7.12

In rule 7.12(b), replace "their first case management" with "a judicial".

Rule 7.15

In rule 7.15(1)(e), replace "securing the just, speedy, and inexpensive determination of the appeal" with "achieving the overriding objective in rule 1.2".

Rule 7.17

In rule 7.17(6), after "proceeding", insert "that they consider will best achieve the overriding objective in rule 1.2".

Rule 7.36

In rule 7.36, replace "Despite rule 7.34(1), every" with "Every".

Rule 7.38

In rule 7.38(2), replace "case management" with "judicial".

Rule 7.41

In rule 7.41(1)(c), replace "outlined in" with "outlined in a position paper filed for a judicial issues conference or".

Rule 7.81

In rule 7.81(3)(b), replace "discovery under subpart 3 of Part 8" with "disclosure under Part 8".

Part 8 heading

In the Part 8 heading, replace "**Discovery and inspection**" with "**Disclosure**".

Subpart 1 heading in Part 8

In Part 8, in the subpart 1 heading, replace "Discovery" with "Disclosure".

Rule 8.3

In rule 8.3(1), replace "discoverable in the proceeding" with "subject to disclosure obligations under these rules".

In rule 8.3(2), replace "discoverable" with "subject to disclosure obligations".

Rule 8.4

In rule 8.4(4), replace "subclause (1) or (3)" with "subclauses (1) to (1B)".

In rule 8.4(9), delete "prior to the making of a discovery order".

Rule 8.13

In the heading to rule 8.13, replace "**discovery**" with "**disclosure**".

In rule 8.13, replace "discovery order" with "disclosure obligation".

In rule 8.13(a), delete "under the order".

Rule 8.16

In the heading to rule 8.16, replace "**of documents**" with "**for further or particular disclosure**".

In rule 8.16(1)(a), (b), (c), (d), and (e), replace "discovery" with "disclosure".

In rule 8.16(1)(e), replace "be discoverable" with "need to be disclosed".

Rule 8.19

In the heading to rule 8.19, replace "**discovery**" with "**disclosure**".

Rule 8.19—*continued*

In rule 8.19, replace "discovered" with "disclosed" in each place.

In rule 8.19(a), replace "affidavit" with "affidavit in a form directed by the Judge".

In rule 8.19, insert as subclause (2):

(2) For form of affidavit, *see* rules 8.15(1)(b) and 8.16.

Rule 8.20

In the heading to rule 8.20, replace "**discovery**" with "**disclosure**".

In rule 8.20(2)(a), replace "affidavit" with "affidavit in a form directed by the Judge".

Rule 8.21

In the heading to rule 8.21, replace "**discovery**" with "**disclosure**".

In rule 8.21(1), replace "discover" with "disclose".

In rule 8.21(2)(a), replace "affidavit" with "affidavit in a form directed by the Judge".

After rule 8.21(2), insert:

(2A) For form of affidavit, *see* rules 8.15(1)(b) and 8.16.

Rule 8.22

In the heading to rule 8.22, replace "**discovery**" with "**disclosure**".

In rule 8.22(3), replace "discovery" with "disclosure".

Rule 8.23

In the heading to rule 23, replace "**of documents**" with "**for disclosure**".

In rule 8.23, replace "of documents" with "for disclosure" in each place.

In rule 8.23, replace "in response to a discovery order" with "to meet a disclosure obligation".

In rule 8.23, replace "making discovery" with "making disclosure".

Rule 8.25

In rule 8.25(1), replace "of documents" with "for disclosure".

Rule 8.27

In rule 8.27(1) and (4), replace "discovery" with "disclosure".

In rule 8.27(1) and (3), replace "of documents" with "for disclosure".

In rule 8.27(3), replace "If a discovery order exempts a party from giving discovery" with "If a party is exempted from giving disclosure".

Rule 8.28

In rule 8.28(3), replace "of documents" with "for disclosure".

Rule 8.30

In the heading to rule 8.30, after "**documents**", insert "**disclosed in the proceeding**".

In rule 8.30(4), replace "inspection" with "disclosure".

Subpart 1 heading in Part 9

In Part 9, in the subpart 1 heading, replace "Briefs" with "Witness statements".

Rule 9.1

In the heading to rule 9.1, replace "**Objective**" with "**Overriding objective**".

In rule 9.1(1), replace "pursue the just, speedy, and inexpensive determination of that proceeding" with "act in a manner that will best achieve the overriding objective of these rules in rule 1.2".

In rule 9.1(2), replace "briefs" with "witness statements".

Rule 9.3

In rule 9.3(2), replace "a case management, issues," with "the judicial issues".

Rule 9.6

In rule 9.6(2) and (3), replace "discovered" with "disclosed".

Rule 9.8

In the heading to rule 9.8, replace "**briefs**" with "**witness statements**".

In rule 9.8(1) and (2), replace "brief" with "witness statement".

In rule 9.8(2), after "Judge", insert "after taking account of the overriding objective in rule 1.2".

Rule 9.11

In rule 9.11(1), replace "brief" with "witness statement" in each place.

Rule 9.13

In the heading to rule 9.13, replace "**Briefs**" with "**Witness statements**".

In rule 9.13(1) and (2), replace "brief" with "witness statement" in each place.

Rule 9.14

In the heading to rule 9.14, replace "**briefs**" with "**witness statements**".

In rule 9.14(d) and (e), replace "brief" with "witness statement".

Rule 9.36

In rule 9.36(4), replace "an independent expert in a proceeding under rule 9.44(3)" with "the independent person who will convene a conference of expert witnesses under rule 9.44".

Rule 9.43

In rule 9.43(2)(a), delete "served under rule 9.2 or 9.3".

In rule 9.43(2)(b), delete "to be served under rule 9.2 or 9.3".

Rule 9.45

In rule 9.45(2), delete "under rule 9.2 or 9.3".

Rule 9.56

In rule 9.56(3), replace "rule 7.2" with "rule 7.5".

Rule 10.10

In rule 10.10(5)(a), replace "rule 7.2" with "rule 7.5".

Rule 12.4

In rule 12.4(2), replace "may be made either at the time the statement of claim is served on the defendant" with "must be made by the time required by rule 7.4(3)".

In rule 12.4(2A), replace "If an application by a plaintiff is made at the time that the statement of claim is served on the" with "For proceedings served on a".

In rule 12.4(3), replace "may be made either at the time the statement of defence is served on the plaintiff" with "must be made by the time required by rule 7.4(3)".

Rule 14.6

In rule 14.6(3)(b)(iv), replace "an order for discovery" with "disclosure obligations".

Rule 14.7

In rule 14.7(f)(iv), replace "an order for discovery" with "disclosure obligations".

Schedule 1

In Schedule 1, form G 2, replace "25*" with "30".

In Schedule 1, form G 2, delete "**Substitute "30", in accordance with rules 5.47(3) and 6.35, if this notice is served out of New Zealand.*".

In Schedule 1, form G 2, after the first signature block, second paragraph, replace "will be notified of the date and time of the first case management conference." with "must then follow the standard directions in rule 7.4. You will then be notified of the date of a judicial issues conference (*see* rules 7.5 to 7.5B)."

In Schedule 1, form G 2, after the first signature block, revoke the third and fourth paragraphs.

In Schedule 1, form G 12, replace statements A to C with:

Select the statement that applies.

Statement A

all hearings and conferences relating to the above proceeding.

Schedule 1—*continued*

Statement B

all hearings and conferences relating to the above proceeding held after [*specify date or particular hearing or conference after which the person wishes to speak Māori*].

Statement C

the hearing/conference* relating to the above proceeding to be held on [*specify date of particular hearing or conference at which the person wishes to speak Māori*].

*Select one.

In Schedule 1, form G 12, replace note 2 with:

2 If a person intends to speak Māori in a proceeding or at the hearing of an application, they (or, if the person is a witness, the party intending to call the person as a witness) must file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application by the time described in note 2A.

2A The notice must be filed and served at least 10 working days before—

(a) the first hearing of an application; or

(b) a judicial issues conference, case management conference, or pre-trial conference; or

(c) the particular hearing or conference.

In Schedule 1, form G 12, revoke notes 3 and 4.

In Schedule 1, form G 12, note 5, replace "case management conference or hearing" with "hearing or conference".

In Schedule 1, form G 12, note 5(a), replace "conference or hearing" with "hearing or conference".

In Schedule 1, form G 12, note 5(a), delete "at the adjourned case management conference or hearing".

In Schedule 1, in the heading to form G 37, replace "of documents" with "for disclosure".

In Schedule 1, form G 37, replace paragraph 2 with:

2 I make this affidavit for disclosure under rule 8.4/under an order for further disclosure under rule 8.4A/under an order for particular disclosure under rule 8.19/under an order for particular disclosure under rule 8.21* on [*date*].

*Select one.

In Schedule 1, form G 37, revoke paragraph 3.

In Schedule 1, form G 37, replace paragraph 4 with:

4 I understand the obligations to make disclosure under rule 8.4/the disclosure order*.

*Select one.

Schedule 1—*continued*

In Schedule 1, form G 37, replace paragraph 5 with:

5 *Include this paragraph if it applies, otherwise omit.*

I have complied with the obligations for initial disclosure under rule 8.4 and, in order to do so,—

(a) I have disclosed the following:

(i) all documents referred to in the pleading; and

(ii) any additional principal documents in my/the plaintiff's/the defendant's* control that have been used when preparing the pleading; and

(iii) any additional principal documents in my/the plaintiff's/the defendant's* control on which I/the plaintiff/the defendant* presently intend to rely at trial or hearing; and

(iv) all adverse documents; and

*Select one.

(b) I have also taken the following particular steps: [*specify other steps taken, for example, inquiries made of named persons*].

5A *Include this paragraph if it applies, otherwise omit.*

I have complied with the obligations under the disclosure order and, in order to do so, I have taken the following particular steps: [*specify steps taken, for example, inquiries made of named persons*].

In Schedule 1, form G 37, paragraph 6, replace "discover" with "disclose".

In Schedule 1, form G 37, paragraph 11, replace "be discoverable" with "need to be disclosed".

In Schedule 1, form G 37, replace paragraph 12 with:

12 To the best of my knowledge and belief, this affidavit is correct in all respects and carries out my disclosure obligations under rule 8.4/the disclosure order*.

*Select one.

Schedule 3

In Schedule 3, in the heading above item 10, after "*management*" insert "*for any proceeding (including an ordinary proceeding)*".

In Schedule 3, replace items 10 to 13 with:

9A	Preparation for judicial issues conference	1	2	3
9B	Preparation of position paper and bundle for judicial issues conference	1	2	3
9C	Appearance at judicial issues conference	The time occupied by the hearing		
10	Preparation for case management conference	0.2	0.4	1
11	Filing memorandum for case management conference or mentions hearing	0.2	0.4	1

Schedule 3—*continued*

12	Appearance at mentions hearing or callover	0.2	0.2	0.2
13	Appearance at case management conference	0.3	0.3	0.7

In Schedule 3, delete item 14.

In Schedule 3, in the heading above item 16, replace "*discovery*" with "*disclosure,*".

In Schedule 3, replace item 20 with:

20	Affidavit of initial disclosure	0.5	1.5	3
20A	Affidavit of further or particular disclosure	0.2	1	2

In Schedule 3, replace item 21 with:

21	Inspection of documents	0.5	1.5	3
	Factual witness statements and draft chronology			
21A	Preparation of factual witness statements	1	2	5
21B	Preparation of draft chronology	0.4	0.8	2

In Schedule 3, item 33, replace "Preparation of briefs, list of issues, authorities, and agreeing common bundle" with "Finalisation of chronology of events, preparation of expert witness statements and any further factual witness statements, index of documents, authorities, and agreeing common bundle".

In Schedule 3, after item 33A, insert:

33AA	Additional allowance for preparing merged chronology	0.2	0.5	0.8

In Schedule 3, delete item 39.

In Schedule 3, delete item 54.

Schedule 9

In the Schedule 9 heading, replace "**Discovery checklist**" with "**Disclosure considerations**".

In the Schedule 9 heading, replace "8.10, 8.11, 8.12," with "8.4, 8.4A,".

In Schedule 9, replace "carrying out discovery" with "carrying out disclosure".

In Schedule 9, replace "when giving discovery" with "when giving disclosure".

In Schedule 9, in the Part 1 heading, replace "**Discovery checklist**" with "**Disclosure considerations**".

In Schedule 9, replace clauses 1 to 3 with:

1 Initial disclosure

The parties must, before filing a pleading, review their pleading and any other pleading that has been filed to identify the documents that are required to be disclosed under rule 8.4.

Schedule 9—*continued*

1A Extent of search for initial disclosure

The parties must comply with the duty to co-operate in rule 8.2 when doing the following:

(a) identifying the documents described in rule 8.4(1)(a) and (b); and

(b) taking reasonable steps to check for adverse documents under rule 8.4(1)(c).

2 Further disclosure by agreement or following request

The parties must comply with the duty to co-operate in rule 8.2 when making further disclosure under rule 8.4A(1) to (3).

3 Further disclosure, and particular disclosure, by order of court

When further disclosure, or particular disclosure, is ordered by a Judge under rule 8.4A(4), 8.19, or 8.21, the parties must—

(a) comply with the duty to co-operate in rule 8.2; and

(b) follow any directions given by the Judge.

In Schedule 9, clause 4(1), replace "8.12(2)" with "8.16 (if ordered by a Judge)".

In Schedule 9, clause 4(1), replace "schedule unless a discovery order otherwise requires. Parties must—" with "schedule. Parties must, however, comply with the duty to co-operate in rule 8.2 and—".

In Schedule 9, clause 4(1)(a), after "protocol", insert "in Part 2".

In Schedule 9, clause 4(2), delete "The discovery order must record that the parties have agreed to modify the listing and exchange protocol, but it is not necessary for the specific modifications to be contained in the discovery order or be considered by the Judge.".

In Schedule 9, clause 4(3)(c) and (d), replace "discovery" with "disclosure or inspection".

In Schedule 9, clause 5, replace "The parties must—" with "The parties must comply with the duty to co-operate in rule 8.2 and with rule 9.4 and—".

In Schedule 9, clause 7(5), replace "discovery" with "disclosure".

In Schedule 9, clause 8(1)(a), replace "discovered" with "disclosed".

In Schedule 9, clause 8(2)(a), replace "individually discoverable emails" with "emails individually subject to disclosure obligations".

In Schedule 9, clause 8(2)(b)(i), replace "discover" with "disclose".

In Schedule 9, clause 8(6)(b), replace "discovery" with "disclosure".

In Schedule 9, clause 11(6), replace "discovery" with "disclosure".

In Schedule 9, definition of **metadata**, replace "discoverable" with "subject to disclosure obligations".

Schedule 9—*continued*

In Schedule 9, definition of **redaction**, replace "an otherwise discoverable document" with "a document otherwise subject to disclosure obligations".

Schedule 4
Revocations

r 39

Rule 7.9

Rule 7.11(a)

Rule 7.37

Rule 8.1

Rule 8.5 to 8.12

Rule 8.14

Rule 8.16(4)

Rule 8.17

Rule 8.27(6)

Rule 8.31

Rule 9.3(1)

Rule 9.10(1) and (2)

Rule 9.42

Rule 12.4(4)(c) and (d)

Schedule 3, item 14

Schedule 5

Schedule 10, paragraph (a)

Rachel Hayward,
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 January 2026, amend the High Court Rules 2016 (the **principal rules**).

The main amendments to the principal rules are described below.

Two key changes are as follows:

- introducing a proportionality test as the overriding objective for the just resolution of any proceeding or interlocutory application (*new rule 1.2*):
- imposing a general duty on parties and their solicitors and counsel to co-operate with each other in accordance with the overriding objective (*new rule 1.2A*).

Additional explanatory material is added to the principal rules by—

- inserting *new Part 6A*, which gives an overview of steps in ordinary proceedings and includes a flow chart:
- replacing rule 7.1AA with a comprehensive list of case management procedures contained in the rules for the different types of proceedings dealt with under the rules.

Rules relating to discovery for ordinary proceedings are replaced by new disclosure rules. These replace the rules relating to standard and tailored discovery and—

- require a bundle of documents, which must include adverse documents, to be provided for initial disclosure (verified by affidavit) and served at the same time as a party's first substantive pleading (*new rules 8.4(1) to (1B) and 8.15(2)*):
- allow further disclosure to be agreed by the parties or made by order of a Judge (*new rule 8.4A*):
- allow Judges to limit the extent of further disclosure (*see new rule 8.4A* that requires the Judge to be satisfied that ordering further disclosure will best achieve the overriding objective in *new rule 1.2*):
- increase flexibility with the form and content of affidavits (*new rules 8.15 and 8.16*).

Rules relating to case management for ordinary proceedings are largely replaced by—

- new standard directions for steps to be taken after pleadings are filed (for example, certain types of interlocutory applications must be made, and witness statements must be filed, within time frames specified in the rules), which are then followed by a judicial issues conference (*new rule 7.4*):
- a requirement that parties participate in a judicial issues conference, a main aim of which is to identify the issues and position of the parties on those issues, and for which the parties must each file a position paper and a bundle of key materials (*new rules 7.5 to 7.5B*):
- a list of agenda items for the conference (*new rule 7.5A*).

A Judge may give alternative directions to the standard directions (*new rule 7.4(10)*). A Judge may also direct that a judicial issues conference is not required (*new rule 7.5(2)*). In both cases, the Judge must be satisfied that this will best achieve the overriding objective in *new rule 1.2*. A Judge may also order that a case management conference be scheduled (*new rule 7.5C*).

These rules also amend requirements in the principal rules relating to evidence at trial to—

- require factual witness statements (formerly briefs of evidence) and a draft chronology of events and facts to be filed within specified time frames after the service of pleadings (*see* the standard directions in *new rule 7.4* and *new form G 41* in *Schedule 2*):

- impose stricter rules on the content of witness statements, for example, that they must avoid reciting or summarising documents and be confined to the matters in issue and the witness's personal knowledge of the matters dealt with in the statements (*new rule 9.7*):
- require the leave of the court for documents not previously disclosed to be included in the common bundle (*new rule 9.2*):
- provide that documents included in the common bundle are automatically received into evidence and presumed to be admissible if referred to in a witness's evidence, a chronology provided to the court, or opening submissions (*new rule 9.5*):
- require Judges to have regard to the overriding objective in *new rule 1.2* when considering an objection to the admissibility of a document in the common bundle (and by listing other factors the Judge may consider when doing so (*new rule 9.5A*)):
- require the plaintiff to file and serve a chronology for trial that merges the chronologies of the parties (*new rule 9.9*):
- clarify the rule about cross-examination duties (*new rule 9.15*):
- allow each party to call only 1 expert witness on each topic (*new rule 9.36AAA*):
- require the court to order a conference of experts before trial (that the court may direct be in the absence of legal advisers) and allow the court to direct those expert witnesses to prepare and sign a joint witness statement (that the court may direct be done without the assistance of legal advisers) (*new rule 9.44*).

For the above requirements,—

- the standard directions in *new rule 7.4* may be varied by a Judge if the Judge is satisfied that alternative directions will best achieve the overriding objective in *new rule 1.2* (*new rule 7.4(10)*):
- the consequences of including a document in the common bundle in *new rule 9.5* may be disapplied by a Judge (*new rule 9.5(4)*):
- the rule allowing only 1 expert in *new rule 9.36AAA* may be varied by a Judge if the Judge is satisfied that this will best achieve the overriding objective in *new rule 1.2* (*new rule 9.36AAA(2)*):
- the requirement to call a conference of experts in *new rule 9.44* may be varied by a Judge if the Judge is satisfied that alternative directions will best achieve the overriding objective in *new rule 1.2* (*new rule 9.44(1)*).

The rule relating to the plaintiff's synopsis of opening is replaced with a rule requiring both the plaintiff and the defendant (and other parties) to file and serve their opening in advance of trial (*new rule 9.16*). In each case, the opening must include a narrative of material facts and events.

The changes to the principal rules made by these rules do not apply to proceedings filed before these rules commence. *See new Part 3 of Schedule 1AA* of the principal rules (in *Schedule 1*). However, the court may direct that 1 or more of these rules apply in a particular case even if it was filed before these rules commence. Before doing so, the court must consider what will best achieve the overriding objective in *new rule 1.2*.

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