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Prospective Consolidation High Court Rules 2016

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Key:

- this is inserted text
- ~~this is deleted text~~

These rules—

(a) are deemed to form part of the Senior Courts Act 2016 under section 147 of that Act; but

(b) are published as the High Court Rules 2016, as if they were a legislative instrument within the meaning of the Legislation Act 2012, under section 154 of the Senior Courts Act 2016.

Contents

Page

Part 1
Rules of general application

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

1.1	Title	39
~~1.2~~	~~Objective~~	~~39~~
1.2	Overriding objective	39
1.2A	General duty to co-operate	40
1.3	Interpretation	40

Subpart 2—Application and compliance

1.4	Application	44

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

1.4A Transitional, savings, and related provisions 44
1.5 Non-compliance with rules 44
1.6 Cases not provided for 45
1.7 Oral applications for relief 45
1.8 Consent instead of leave of court 45
1.9 Amendment of defects and errors 46
1.10 Security 46

Subpart 3—Use of Māori language, translations, and sign language

1.11 Speaking in Māori 46
1.12 Translation of documents into te reo Māori 47
1.13 Failure to give notice 48
1.14 Translation may be ordered by court 48
1.15 Affidavit in language other than English 49
1.16 Sign language 49

Subpart 4—Time

1.17 Calculating periods of time 50
1.18 When time expires when court registry is closed 50
1.19 Extending and shortening time 50

Subpart 5—Lawyers' obligations

1.20 Lawyers' duties 50

Subpart 6—Forms

1.21 Variation of forms 51

Subpart 7—International co-operation

1.22 Communication with foreign court 51

Part 2
Jurisdiction and powers of Associate Judges and Registrars

Subpart 1—Associate Judges

2.1 Jurisdiction and powers 51
2.2 Interim order on transfer of proceeding 52
2.3 Review of decision *[Revoked]* 52
2.4 Appeal to Court of Appeal *[Revoked]* 52

Subpart 2—Registrars

2.5 Registrars' jurisdiction and powers relating to interlocutory applications 52
2.6 Additional jurisdiction for certain Registrars 52
2.7 Limits on jurisdiction 53
2.8 Powers ancillary to jurisdiction 53
2.9 Jurisdiction in other registries 53
2.10 Form of order 53
2.11 Review of Registrar's decision 54

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Part 3
Court administration

Subpart 1—Registry hours and court holidays

3.1	Registry hours	54
3.2	Court holidays	54
3.3	Sitting on court holidays	55
3.3A	Vacations	55

Subpart 1A—Emergencies

3.3B	Emergencies	55
3.4	Closure of court or registries in emergencies	56

Ensuring hearings can proceed with remote participation

3.4A	Judge may direct form of participation in hearings and at trials	57

Subpart 2—Access to court documents

[Revoked]

3.5	Interpretation *[Revoked]*	57
3.6	Application *[Revoked]*	57
3.7	General right of access to formal court record and certain applications under Administration Act 1969 *[Revoked]*	58
3.8	Right of parties to access court file or documents *[Revoked]*	58
3.9	Access to documents during substantive hearing stage *[Revoked]*	58
3.10	Meaning of relevant deadline in rule 3.9 *[Revoked]*	58
3.11	Access to court files, documents, and formal court record in other cases *[Revoked]*	58
3.12	Restrictions on access *[Revoked]*	58
3.13	Applications for permission to access documents, court file, or formal court record other than at hearing stage *[Revoked]*	58
3.14	Decisions on applications under rule 3.13 *[Revoked]*	58
3.15	Review of decisions by Registrar *[Revoked]*	58
3.16	Matters to be taken into account *[Revoked]*	58

Subpart 3—Investment of funds in court

3.17	Application for order	58
3.18	Powers of court in relation to application	59
3.19	Disposal of securities and income	59

Part 4
Parties

Subpart 1—Limit on parties

4.1	Limit on parties	60

Subpart 2—Plaintiffs

4.2	Plaintiffs	60

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Subpart 3—Defendants

4.3 Defendants 60

Subpart 4—Third, fourth, and subsequent parties

4.4 Third parties 61
4.5 Fourth parties 61
4.6 Subsequent parties 62
4.7 Status of third, fourth, and subsequent parties 62
4.8 Court's power and discretion 62
4.9 Application of third party notice rules to fourth and subsequent party notices 62
4.10 Requirements of third party notice 62
4.11 Filing of third party notice 63
4.12 Service on third party 63
4.13 Service on plaintiff 63
4.14 Filing and service of statement of defence 64
4.15 Service of application for leave 64
4.16 Setting aside third party notice 64
4.17 Default in filing statement of defence 64

Subpart 5—Claims between defendants

4.18 Right to give notice 65
4.19 Statement of claim to be filed and served 65
4.20 Statement of defence 65
4.21 Form of notice 66
4.22 Effect of omission to give notice 66

Subpart 6—Impact of certain capacities

4.23 Trustees, executors, and administrators 66
4.24 Persons having same interest 66
4.25 Partners 67
4.26 Person trading as firm 67
4.27 Representation by other persons 67
4.28 Relators 68

Subpart 7—Incapacitated persons

4.29 Incapacitated person, litigation guardian, and minor defined 68
4.30 Incapacitated person must be represented by litigation guardian 69
4.31 Minor must be represented by litigation guardian 69
4.32 Minor may apply to conduct proceeding without litigation guardian 69
4.33 Application of rules 4.34 to 4.46 to minors 70
4.34 Court may set aside step in proceeding 70
4.35 Appointment of litigation guardian 70
4.36 Application to be served on person for whom litigation guardian is to be appointed 70

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

4.37 Notification of appointment 71
4.38 Powers of litigation guardian 71
4.39 Heading on documents when incapacitated person is represented 71
4.40 Service of documents 71
4.41 Representation to be disregarded in making award of costs 72
4.42 Award of costs enforceable against incapacitated person or litigation guardian 72
4.43 Liability of former litigation guardian for costs subsequently awarded against incapacitated person 72
4.44 Compliance with liability order 73
4.45 Litigation guardian may be reimbursed for costs out of property of incapacitated person 73
4.46 Retirement, removal, or death of litigation guardian 73
4.47 Procedure when person ceases to be incapacitated person 74
4.48 Procedure when minor attains full age 74

Subpart 8—Change of parties by death, bankruptcy, or devolution

4.49 Proceeding not to come to end 75
4.50 Procedure on death, bankruptcy, and devolution 75
4.51 Devolution when proceeding pending 75
4.52 New parties order 75
4.53 Discharge or variation of new parties order 76

Subpart 9—Adjusting parties

4.54 Change of name 76
4.55 Parties wrongly joined 76
4.56 Striking out and adding parties 76

Subpart 10—Interpleader

4.57 Interpretation 77
4.58 Right to interplead 77
4.59 Form of application 77
4.60 Affidavit in support 78
4.61 Time for applying 78
4.62 Claimants to file affidavits 78
4.63 Powers of court 79
4.64 Costs of applicant 79

Part 5
Commencement of proceedings and filing of documents

Subpart 1—Proper registry of court

5.1 Identification of proper registry 80
5.1A Filing generally 81
5.1B When documents filed 82

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Subpart 2—Formal requirements for documents

5.2 Non-complying documents 84
5.3 Paper 84
5.4 Contents to be typed, etc 84
5.5 Margin 84
5.6 Signature on documents 85
5.7 Cover sheet, numbering, and fastening of document 85
5.8 Description of document 85
5.9 Heading generally 85
5.10 Format of cover sheet 85

Subpart 3—Heading of court documents

5.11 Heading on statement of claim and counterclaim 86
5.12 Heading on judgment and certain orders 87
5.13 Heading on other documents 87
5.14 Division into paragraphs 87
5.15 Numbers 87
5.16 Information at foot of cover sheet 87

Subpart 4—Pleadings generally

5.17 Distinct matters to be stated separately 88
5.18 Denial of representative character 88
5.19 Denial of contract 88
5.20 Effect of document to be stated 89
5.21 Notice requiring further particulars or more explicit pleading 89

Subpart 5—Notice of proceeding

5.22 Notice of proceeding to be filed with statement of claim 89
5.23 Requirements as to notice of proceeding 89
5.24 When not necessary to file notice of proceeding 90

Subpart 6—Statement of claim

5.25 Proceeding commenced by filing statement of claim 90
5.26 Statement of claim to show nature of claim 91
5.27 Statement of claim to specify relief sought 91
5.28 Inclusion of several causes of action 91
5.29 Joint plaintiffs 92
5.30 Joining claims by or against spouses or partners 92
5.31 Specifying relief sought 92
5.32 Amount of money claim 92
5.33 Special damages 92
5.34 Set-off 92
5.35 Representative capacity of party 92

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Striking out proceeding before service

5.35A Registrar may refer plainly abusive proceeding to Judge before service 93
5.35B Judge's powers to make orders and give directions before service 93
5.35C Requirement for signature and release of proceeding in certain circumstances 94

Subpart 7—Authority of solicitors to act

5.36 Authority to file documents 94
5.36A Authority of certain Australian solicitors in certain trans-Tasman proceedings 94
5.37 Solicitor's warranty as to authorisation to file documents 95
5.38 Solicitor on record 96
5.39 Authority to sign documents 96
5.40 Change of representation or address for service 96
5.41 Withdrawal of solicitor who has ceased to act for party 97
5.42 Address for service of party whose solicitor has ceased to act 98
5.43 Solicitors to inform clients of orders or directions 98

Subpart 8—Memorandum on first document

5.44 Memorandum at end of first document filed by party 98

Subpart 9—Security for costs

5.45 Order for security of costs 99
5.46 Solicitor not to be surety 100

Subpart 10—Statement of defence and appearance

5.47 Filing and service of statement of defence 100
5.48 Requirements of statement of defence 100
5.49 Appearance and objection to jurisdiction 101
5.50 Appearance for ancillary purposes 102
5.51 Appearance reserving rights 102
5.52 Forms 102

Subpart 11—Counterclaims

5.53 Counterclaim against plaintiff only 103
5.54 Heading of counterclaim 103
5.55 Filing and service 103
5.56 Defence to counterclaim 103
5.57 Counterclaim against plaintiff and another person 103
5.58 Place of trial of counterclaim 104
5.59 Status of counterclaim if proceeding stayed 104
5.60 Counterclaim by counterclaim defendant 104
5.61 Restriction when the Crown involved 105

Subpart 12—Reply

5.62 Duty to file and serve reply 105

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

5.63 Contents of reply 105

Subpart 13—Proceedings and actions transferred from District Court

5.64 Application of rules 106
5.65 Documents to be filed in proper registry 106
5.66 On filing treated as proceeding 106
5.67 Title of documents 106
5.68 Time for filing statement of defence 106
5.69 Transfer under section 91 of District Court Act 2016 106

Subpart 14—Service of statement of claim and notice of proceeding

5.70 Service generally 107
5.71 Personal service required 107
5.72 Prompt service required 107
5.73 Extension of time for service 108
5.73A Notice of service to Registrar 108

Subpart 15—Registration of users for e-filing purposes

[Revoked]

5.74 Interpretation *[Revoked]* 108
5.75 Registration procedure *[Revoked]* 108
5.76 Effect of registration *[Revoked]* 108
5.77 Renewal of registration *[Revoked]* 108

Subpart 16—E-filing documents

[Revoked]

5.78 Requirements for e-filing *[Revoked]* 109
5.79 Provisional filing *[Revoked]* 109
5.80 Acceptance of provisionally filed documents *[Revoked]* 109
5.81 Affidavits and formal undertakings *[Revoked]* 109

Part 6
Service

Subpart 1—Methods and proof of service

6.1 Methods of service 109
6.1A Power to limit acceptable methods of service in emergency 110
6.2 Service of copies 110
6.3 Notices 110
6.4 Personal service on spouses or partners 110
6.5 Service at address for service 111
6.6 Service by means of post office box, document exchange, fax, or email 111
6.7 Service under agreement 112
6.8 Substituted service 112

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

6.9 Notices to be given by Registrar 113
6.10 Proof of service 113
6.11 Personal service 114

Subpart 2—Corporations, partners, attorneys, and agents

6.12 Personal service on New Zealand corporations 114
6.13 Personal service in New Zealand on foreign corporations 114
6.13A Personal service on Australian corporations, partnerships, and attorneys 115
6.13B Personal service in Australia on foreign corporations 115
6.14 Personal service on unincorporated societies 116
6.15 Personal service on partnership or apparent partnership 116
6.16 Personal service on attorney or agent of absentee 116
6.17 Service on representatives 117
6.18 Service on solicitor 117
6.19 Service of statement of claim on certain days void 117
6.20 Failure to give address for service 117

Subpart 3—Foreign process

6.21 Service of foreign process 117
6.22 Sheriff to effect service 118
6.23 Method of service 118
6.24 Return as to service 118
6.25 Certification 119
6.26 Sealing and transmission of certificate 119

Subpart 4—Service out of New Zealand

6.27 When allowed without leave 119
6.28 When allowed with leave 121
6.29 Court's discretion whether to assume jurisdiction 121
6.30 Service of other documents outside New Zealand 122
6.31 Notice to defendant served outside New Zealand 122
6.32 Service outside New Zealand 123
6.33 Service through official channels 123
6.34 Service in convention countries 123
6.35 Time for filing defence 124
6.36 Subpart does not apply to service in Australia of documents for or in certain trans-Tasman proceedings 125

Part 6A
Overview of steps in ordinary proceedings

6A.1 Overview of steps in ordinary proceedings 125

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Part 7
Case management, Judicial issues conference, interlocutory applications, and interim relief

Subpart 1—Case management

~~7.1AA~~ ~~Outline of case management procedures for different types of proceedings~~ ~~125~~

Case management overview

7.1AA Case management procedures for different types of proceedings 126
~~7.1~~ ~~Proceedings subject of case management~~ ~~127~~
~~7.2~~ ~~Case management conferences generally~~ ~~128~~
~~7.3~~ ~~First case management review~~ ~~128~~
~~7.3A~~ ~~First case management conference~~ ~~130~~
~~7.4~~ ~~Further case management conferences~~ ~~130~~

Standard directions for ordinary proceedings

7.4 Standard directions prior to judicial issues conference for ordinary proceedings 131
~~7.5~~ ~~Issues conferences~~ ~~133~~

Judicial conferences (judicial issues conferences and case management conferences)

7.5 Judicial issues conference for defended ordinary proceedings 133
7.5A Agenda for judicial issues conference 134
7.5B What parties must do before judicial issues conference 135
7.5C Case management conferences for ordinary proceedings 136

Other case management provisions

7.6 Allocation of key dates 136
7.7 Steps after close of pleadings date restricted 137
7.8 Pre-trial conferences 137
~~7.9~~ ~~Cancellation of conference~~ ~~137~~
7.10 Limitation of right of appeal 138
7.11 Timetable and monitoring obligations 138
7.12 Lists of proceedings 138
7.13 Registrar's functions in relation to hearing dates 138
7.14 Case management conferences for appeals 139
7.15 Directions for conduct of appeal 139
7.16 Jury notice 140
7.17 Case management conferences for proceedings under Part 30 140
7.18 No steps after setting down date without leave *[Revoked]* 141

Subpart 2—Interlocutory applications and interlocutory orders

7.19 Contents, form, and filing of interlocutory application 141
7.20 Affidavit to be filed with application 141
7.21 Filing by post 141

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

7.22	Service of application and supporting affidavit	141
7.23	Application without notice	142
7.24	Notice of opposition to application	143
7.25	Affidavit to be filed with notice of opposition	143
7.26	Affidavit in reply	143
7.27	Evidence normally given by affidavit	143
7.28	Cross-examination of maker of affidavit	143
7.29	Rules governing affidavits	144
7.30	Statements of belief in affidavits	144
7.31	When admissions binding	144
7.32	Previous affidavits and agreed statements of fact	144
~~7.33~~	~~Allocation of hearing date~~	~~144~~
~~7.34~~	~~Mode of hearing~~	~~144~~
7.33	Hearing of interlocutory applications	145
7.34	Mode of hearing	145
7.35	Publication about hearing in chambers	145
7.36	Application for summary judgment to be heard in open court	146
~~7.37~~	~~No hearing required if respondents consent or do not oppose~~	~~146~~
7.38	Respondent who consents, or who does not oppose, need not attend hearing	146
7.39	Synopsis of argument	146
7.40	Failure to attend	147
7.41	Certain applications may be made orally at hearing	148
7.42	Adjournment	148
7.42A	Judge’s powers to make orders and give directions on interlocutory applications	148
7.43	Making of interlocutory orders	148
7.43A	Directions as to conduct of proceedings	149
7.44	Power to grant interlocutory order or interlocutory relief	149
7.45	Interlocutory orders may be made subject to conditions	149
7.46	Determination of application without notice	149
7.47	Drawing up and sealing interlocutory order	150
7.48	~~Enforcement of interlocutory order~~ Enforcement of orders and requirements of rules	151
7.49	Order may be varied or rescinded if shown to be wrong	151
7.50	Order relating to management of proceeding may be varied if circumstances change	152
7.51	Order may be rescinded if fraudulently or improperly obtained	153
7.52	Limitation as to second interlocutory application	153
	Subpart 3—Interim relief	
7.53	Application for injunction	153
7.54	Undertaking as to damages	153
7.55	Preservation of property	154
7.56	Sale of perishable property before hearing	154

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

7.57 Order to transfer part of property to person with interest in property 154
7.58 Interim payment of income to person with interest in income 155

Subpart 4—Receivers

7.59 Application 155
7.60 Address for service 155
7.61 Receiver must give security 155
7.62 Remuneration of receiver 156
7.63 Accounts of receiver 156
7.64 Examination of accounts 156
7.65 Default by receiver 156
7.66 Powers of receiver 157
7.67 Accounts on death of receiver 157

Subpart 5—Interim payments

7.68 Interpretation 157
7.69 Application for interim payment 158
7.70 Order for interim payment in respect of damages 158
7.71 Order for interim payment in respect of sums other than damages 159
7.72 Method of payment 159
7.73 Directions on interim payment application 160
7.74 Non-disclosure of interim payment 160
7.75 Adjustment on final judgment or order or on discontinuance 160
7.76 Counterclaims and other proceedings 161

Subpart 6—Amendment of pleading

7.77 Filing of amended pleading 161

Subpart 7—Recovery of specific property subject to lien

7.78 Recovery of specific property subject to lien or other security 162

Subpart 8—Negotiations for settlement

7.79 Court may assist in negotiating for settlement 162
7.80 Arbitration by consent 163

Subpart 9—Interim relief in respect of overseas proceedings

7.81 Interim relief in support of overseas proceedings 163

Part 8

~~Discovery and inspection~~ Disclosure and interrogatories

Subpart 1—~~Discovery~~ Disclosure and inspection

~~8.1~~ ~~Interpretation~~ ~~164~~
~~8.2~~ ~~Co-operation~~ ~~164~~
8.2 Co-operation 164
8.3 Preservation of documents 165
8.4 Initial disclosure 165

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

8.4A	Further disclosure	167
~~8.5~~	~~Discovery orders~~	~~167~~
~~8.6~~	~~Two kinds of discovery~~	~~167~~
~~8.7~~	~~Standard discovery~~	~~167~~
~~8.8~~	~~Tailored discovery~~	~~168~~
~~8.9~~	~~Presumption as to tailored discovery~~	~~168~~
~~8.10~~	~~Obligation of party ordered to make tailored discovery~~	~~168~~
~~8.11~~	~~Preparation for first case management review~~	~~168~~
~~8.12~~	~~Orders that may be made~~	~~168~~
8.13	Solicitor's ~~discovery~~ disclosure obligations	169
~~8.14~~	~~Extent of search~~	~~169~~
~~8.15~~	~~Affidavit of documents~~	~~170~~
8.15	Affidavit for disclosure	170
8.16	Schedule appended to affidavit ~~of documents~~ for further or particular disclosure	171
~~8.17~~	~~Variation of discovery order~~	~~172~~
~~8.18~~	~~Continuing obligations~~	~~172~~
8.18	Continuing obligations	172
8.19	Order for particular ~~discovery~~ disclosure against party after proceeding commenced	172
8.20	Order for particular ~~discovery~~ disclosure before proceeding commenced	173
8.21	Order for particular ~~discovery~~ disclosure against non-party after proceeding commenced	174
8.22	Costs of ~~discovery~~ disclosure	174
8.23	Incorrect affidavit ~~of documents~~ for disclosure to be amended	175
~~8.24~~	~~Who may swear affidavit of documents~~	~~175~~
8.24	Who may swear affidavit for disclosure	175
8.25	Challenge to privilege or confidentiality claim	176
8.26	Crown documents and public interest	176
8.27	Inspection of documents	176
8.28	Privilege and confidentiality	177
8.29	Order facilitating inspection	177
8.30	Use of documents disclosed in the proceeding	177
~~8.31~~	~~Effect of failure to include document~~	~~178~~
8.32	Notice to produce documents or things	178
~~8.33~~	~~Enforcement of order~~	~~178~~
8.33	Enforcement of orders and requirements of rules	179
	Subpart 2—Interrogatories	
8.34	Interrogatories by notice	179
8.35	Duties of party served	179
8.36	Limitation of interrogatories by notice	179
8.37	Multiple parties	180
8.38	Order to answer	180

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

8.39	Contents of statement	180
8.40	Objection to answer	181
8.41	Who may swear affidavit verifying statement in answer to interrogatories	181
8.42	Insufficient answer	182
8.43	Incorrect answer to be amended	182
8.44	Answers as evidence	182
8.45	Public interest	182
8.46	Defamation proceedings	183

Subpart 3—Notice to admit facts

8.47	Notice to admit facts	183
8.48	Judgment on admission of facts	183

Part 9
Evidence

Subpart 1—~~Briefs~~Witness statements, oral evidence directions, common bundles, and chronologies

9.1	~~Objective~~ Overriding objective and scope	183
9.1A	Exchange of witness statements of factual evidence and expert evidence	184
~~9.2~~	~~Exchange of documents and index~~	~~184~~
9.2	Exchange of documents and index and finalising chronologies of parties	184
9.3	Timing	185
~~9.4~~	~~Preparation of common bundle~~	~~185~~
9.4	Preparing common bundle	186
~~9.5~~	~~Consequences of incorporating document in common bundle~~	~~187~~
9.5	Consequences of incorporating document in common bundle	188
9.5A	Objections to admissibility of documents in common bundle	189
9.6	Consequence of not incorporating document in common bundle	189
~~9.7~~	~~Requirements in relation to briefs~~	~~189~~
9.7	Requirements for witness statements of factual and expert evidence	190
9.8	Supplementary ~~briefs~~ witness statements	191
~~9.9~~	~~Exchange of chronology of facts intended to be relied upon at trial or hearing~~	~~192~~
9.9	Merged chronology	192
9.10	Oral evidence directions	193
9.11	Compliance with Evidence Act 2006	193
~~9.12~~	~~Evidence-in-chief at trial~~	~~193~~
9.12	Evidence-in-chief at trial	193
9.13	~~Briefs~~ Witness statements not given in evidence	194
9.14	Privilege and admissibility not affected by ~~briefs~~ witness statements	194

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

~~9.15~~ ~~Cross-examination duties~~ ~~195~~
9.15 Cross-examination duties 195
~~9.16~~ ~~Plaintiff's synopsis of opening~~ ~~195~~
9.16 Filing of plaintiff's and defendant's openings before trial 195

Subpart 2—Evidence by depositions

9.17 Order for examination of witness or for letters of request 195
9.18 Security for costs for taking evidence outside New Zealand 196
9.19 Documents for examiner 196
9.20 Procedure for examination before examiner 196
9.21 Examination of additional persons 197
9.22 Objection to question 197
9.23 Form of report 197
9.24 Depositions as evidence 198
9.25 Letters of request where convention exists 198
9.26 Issue of letters of request 198
9.27 Agents of parties 199
9.28 Consequences of non-compliance with undertaking as to expenses 199
9.29 Application by Solicitor-General on letters of request from abroad 199

Subpart 3—Medical examinations

9.30 Order for medical examination 199
9.31 Report 200
9.32 Service of report 200
9.33 Evidence of medical practitioner when medical examination ordered 200

Subpart 4—Inspection and testing

9.34 Order for inspection, etc 200
9.35 Notice of application 201

Subpart 5—Experts

Party-appointed expert witnesses

9.36AAA Calling of party-appointed expert witnesses 201

Court-appointed expert witnesses

9.36 Appointment of court expert 201
9.37 Submission of question to court expert 202
9.38 Report of court expert 202
9.39 Experiments and tests 202
9.40 Cross-examination of court expert 202
9.41 Remuneration of court expert 203
~~9.42~~ ~~Calling of expert witnesses~~ ~~203~~

Expert witnesses code of conduct

9.43 Expert witness to comply with code of conduct 204

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

~~9.44~~ ~~Court may direct conference of expert witnesses~~ ~~204~~

Conference of expert witnesses and arrangements for trial

9.44 Conference of expert witnesses 205
9.45 Status of joint witness statement by expert witnesses 206
9.46 Evidence of expert witnesses at trial 206

Subpart 6—Preserving evidence

9.47 Right to preserve evidence 206
9.48 Procedures in which the Crown may have interest 206
9.49 Examination of witness 207
9.50 Subsequent admissibility 207

Subpart 7—Evidence at trial

9.51 Evidence to be given orally 207
9.52 Issue of subpoenas 207
9.53 Service of subpoena 207
9.54 Evidence of person in custody 207
9.55 Affidavit evidence by agreement 208
9.56 Affidavit evidence under order of court 208
9.57 Agreed statement of facts 208

Subpart 8—Evidence in Trans-Tasman proceedings

9.58 Interpretation 209
9.59 Issue of subpoenas by High Court for service in Australia 209
9.60 Leave to serve New Zealand subpoena on witness in Australia 209
9.61 Service of subpoena on witness in Australia 210
9.62 Application to set aside New Zealand subpoena 210
9.63 Service of documents on applicant 211
9.64 Hearing of application 211
9.65 Failure to comply with subpoena 212
9.66 Transmission of documents or things to Australian Court 212
9.67 Evidence and submissions by remote appearance medium from Australia 212

Subpart 9—Procedure when evidence given by affidavit

9.68 Application of rules 9.69 to 9.74 213
9.69 Time for filing plaintiff's affidavits 213
9.70 Time for filing defendant's affidavits 214
9.71 Time for filing affidavits in reply 214
9.72 Use of affidavits 214
9.73 Swearing of affidavits 214
9.74 Cross-examination of person who has sworn affidavit 215
9.75 Person refusing to make affidavit 215
9.76 Form and contents of affidavits 216
9.77 Exhibits to affidavits 217
9.78 Interlineation, alteration, or erasure in affidavit 217

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

9.79	Irregularity in form of affidavit	217
9.80	Service copies of affidavits	218
9.81	Affidavit may be sworn on Sunday	218
9.82	Affidavits made on behalf of corporation	218
9.83	Affidavit by 2 or more persons	218
9.84	Affidavit by blind or illiterate person	218
9.85	Authority to take affidavits in New Zealand	218
9.86	Authority to take affidavits in places outside New Zealand	219
9.87	Meaning of authenticated deposition	219
9.88	Admissibility of authenticated deposition	220
9.89	Application of other rules	220

Part 10
Trial

Subpart 1—Place

10.1	Venue and changing it	220

Subpart 2—Adjournments, methods of trial, and verdicts

10.2	Adjournment of trial	221
10.3	Method of trial	221
10.4	Court may order separate trials	221
10.5	Existence or accuracy of record	221
10.6	When neither party appears	221
10.7	When only plaintiff appears	221
10.8	When only defendant appears	221
10.9	Judgment following non-appearance may be set aside	222
10.10	When both parties appear	222
10.11	When proceeding tried with jury	222

Subpart 3—Consolidation of proceedings

10.12	When order may be made	223
10.13	Application of rule 10.12	223

Subpart 4—Separate decision of questions

10.14	Definition of question	223
10.15	Orders for decision	224
10.16	Removal into Court of Appeal	224
10.17	Agreed result	224
10.18	Record, etc, of decision	224
10.19	Disposal of proceeding if proceeding substantially affected by decision of question	224
10.20	Form and contents of case	225
10.21	Insufficient case or disputed facts or documents	225

Subpart 5—Counsel assisting

10.22	Counsel assisting	225

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Subpart 6—Hearings by video link

10.23 Interpretation 225
10.24 Judge may preside at hearing of certain matters by video link 226
10.25 Requirements for hearing by video link 226
10.26 Incidental directions 226

Subpart 7—Disruptive behaviour

10.27 Disruptive behaviour relating to court proceedings 227

Part 11
Judgment

Subpart 1—General provisions

11.1 Interpretation 227
11.2 Types of judgment 227
11.3 How judgment given 228
11.4 Time judgment given 228
11.5 Delivery time of written judgment 228
11.6 Form of judgment 228
11.6A General court order 228
11.7 Duplicate judgments 229
11.8 Death or incapacity of Judge before judgment 229
11.8A Further submissions after end of hearing but before judgment 229
11.9 Recalling judgment 230
11.10 Correction of accidental slip or omission 230

Subpart 2—Sealing and notification

11.11 Judgments to be sealed, dated, and served 230
11.12 When judgment takes effect 231
11.13 Steps before judgment sealed 231
11.14 Registrar's role on receipt of judgment 231

Subpart 3—Judgment if proceeding tried with jury

11.15 Judgment after proceeding tried with jury 231
11.16 Leave to apply to set aside judgment 232
11.17 Judgment not in accordance with verdict 232
11.18 Application for judgment on special verdict or subject to special case 232
11.19 Application for judgment by both parties 232

Subpart 4—Giving effect to judgments

11.20 Conduct of proceedings after judgment 232
11.21 Applying for dismissal because of inactivity 233
11.22 Judgment directing sale of property 233
11.23 Judgment for balance of claim over counterclaim 233
11.24 Judgment for balance of counterclaim 234
11.25 Cross judgments 234

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

11.26 Judgment if third party defends 234
11.27 Interest as part of judgment debt 234
11.28 Satisfaction of judgment 235

Part 12
Summary judgment

12.1 Application of summary judgment procedure 235
12.2 Judgment when there is no defence or when no cause of action can succeed 235
12.3 Summary judgment on liability 235
12.4 Interlocutory application for summary judgment 235
12.5 Service out of New Zealand 236
12.6 Requirements as to notice of proceeding 237
12.7 Time for service 237
12.8 Postponement of hearing 237
12.9 Notice of opposition and affidavit in answer 237
12.10 Statement of defence 238
12.11 Affidavits in reply 238
12.12 Disposal of application 238
12.13 Time for filing statement of defence on dismissal of plaintiff's application 238
12.14 Setting aside judgment 238
12.15 Discontinuance 239
12.16 Application to counterclaims and claims against third parties 239

Part 13
Summary proceeding for recovery of land

13.1 Interpretation 239
13.2 Application of Part 239
13.3 Defendants 239
13.4 Affidavit in support 240
13.5 Service 240
13.6 Time for filing statement of defence 240
13.7 Power of court to make unlawful occupiers defendants 240
13.8 Judgment for possession 241
13.9 Possession order 241

Part 14
Costs

Subpart 1—Costs generally

14.1 Costs at discretion of court 241
14.2 Principles applying to determination of costs 241
14.3 Categorisation of proceedings 242
14.4 Appropriate daily recovery rates 243
14.5 Determination of reasonable time 243

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

14.6 Increased costs and indemnity costs 243
14.7 Refusal of, or reduction in, costs 244
14.8 Costs on interlocutory applications 245
14.9 Costs may be determined by different Judge or Associate Judge 246
14.10 Written offers without prejudice except as to costs 246
14.11 Effect on costs 246
14.12 Disbursements 246
14.13 Proceedings within jurisdiction of District Court 248
14.14 Joint and several liability for costs 248
14.15 Defendants defending separately 248
14.16 Claim and counterclaim both established 248
14.17 Set-off if costs allowed to both parties 248

Subpart 2—Taxation of costs between parties

14.18 Appointment to tax costs 248
14.19 Taxation of disbursements 249
14.20 No charge allowed for bill of costs 249
14.21 Registrar sole judge of questions of fact 249
14.22 Direction to Registrar to ascertain expenses 249
14.23 Review of taxation 249

Part 15
Disposal other than by trial

Subpart 1—Dismissal or stay without trial

15.1 Dismissing or staying all or part of proceeding 250
15.2 Dismissal for want of prosecution 250

Subpart 2—Judgment by default

15.3 Application where appearance 250
15.4 Affidavits to be filed 250
15.5 When several causes of action 251
15.6 When several defendants 251
15.7 Liquidated demand 251
15.8 Recovery of land or chattels 252
15.9 Formal proof for other claims 252
15.9A When amended pleading filed but not served 252
15.10 Judgment may be set aside or varied 253
15.11 Overseas service cases 253
15.12 Other proceedings *[Revoked]* 253
15.13 Judgment may be set aside or varied *[Revoked]* 253
15.14 Overseas service cases *[Revoked]* 253

Subpart 3—Judgment on admission

15.15 Judgment on admission of facts 253
15.16 Admission of cause of action 254
15.17 Admission of defence 254

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Subpart 4—Discontinuance

15.18 Interpretation 255
15.19 Right to discontinue proceeding 255
15.20 Restrictions on right to discontinue proceeding 255
15.21 Effect of discontinuance 256
15.22 Court may set discontinuance aside 256
15.23 Costs 256
15.24 Restriction on subsequent proceedings 256
15.25 Certain remedies not affected 256

Part 16
Accounts and inquiries

16.1 Interpretation 257
16.2 Orders for accounts and inquiries 257
16.3 Directions 257
16.4 Summary order for accounts 257
16.5 Mutual accounts 258
16.6 Account-taker 258
16.7 Direction as to evidence 258
16.8 Remuneration of accountant 258
16.9 Form and verification of account 259
16.10 Filing and service of account 259
16.11 Notice of receipt that is not admitted 259
16.12 Notice of error 259
16.13 Admission of items 259
16.14 Appointment and notice for taking accounts 259
16.15 Parties to attend account hearing 260
16.16 Adjournment of account hearing 260
16.17 Power of summary decision 260
16.18 Examination of accounting party 260
16.19 Production of documents 260
16.20 Interest on debts of deceased person 261
16.21 Interest on legacies 261
16.22 Accounting and estimates 261
16.23 Directions for inquiries 261
16.24 Powers of persons taking accounts or making inquiries 261
16.25 Duty of persons summoned to attend 262
16.26 Time for proving claims 262
16.27 Statement of claim to be filed 262
16.28 Failure to claim within time 262
16.29 Result to be certified 262
16.30 Party may ask for court’s decision 263
16.31 Certificate when approved to be signed by Judge 263
16.32 Effect of certificate when filed 263
16.33 Distribution before all persons entitled are ascertained 263

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

16.34 Payment of share carried over to separate trust account 263

Part 17
Enforcement

Subpart 1—General provisions

17.1 Interpretation 264
17.2 Method of enforcing orders 265
17.3 Method of enforcing judgments 265
17.4 No excessive recovery 265
17.5 No enforcement against the Crown 265
17.6 Enforcement by or against non-parties 266
17.7 Enforcement against partners or alleged partners 266
17.8 Issuing enforcement process as of right 266
17.9 When leave to issue enforcement process necessary 267

Subpart 2—Obtaining information from liable party for enforcement purposes

17.10 Notice to liable party to complete financial statement 268
17.11 Interpretation 268
17.12 Order for examination 268
17.13 Service of order for examination 269
17.14 Examining party's affidavit 269
17.15 Procedure for examination 269
17.16 Adjournment of hearing 270
17.17 Orders by court 270
17.18 Failure to comply with order for examination 270
17.19 Certification of breach of arrest order 271
17.20 Discharge of arrest order 271

Subpart 3—Preparation and issue of enforcement process

17.21 Enforcement process to conform with judgment 271
17.22 Preparation and issue of enforcement processes 271
17.23 Date of enforcement process 272
17.24 Currency and renewal of enforcement processes (except for charging orders) 272
17.25 Expenses of enforcement 272
17.26 Concurrent enforcement processes 272
17.27 Return of enforcement process 272
17.28 Reissue of enforcement process 273
17.29 Stay of enforcement 273
17.30 Enforcement process may be set aside 273

Subpart 4—Attachment orders

17.31 Interpretation 273
17.32 Effect of attachment order 274
17.33 When attachment order may be issued 274

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

17.34 Attachment order to be served on employer 275
17.35 Priority of attachment order 275
17.36 Protected earnings amount 276
17.37 Liability of employer 276
17.38 Attachment orders in State services 277
17.39 Variation, suspension, and discharge of attachment orders 277

Subpart 5—Charging orders

17.40 Effect of charging order 278
17.41 Leave to issue charging order 278
17.42 Issue of charging order without leave after judgment 278
17.43 Charging order where amount involved small 278
17.44 Application for relief by persons prejudicially affected 278
17.45 Claim of third party on property charged 279
17.46 Apportionment when more than 1 charging order 279
17.47 Charging order for land final when issued 279
17.48 Registration of charging order under Land Transfer Act 1952 279
17.49 Registration of charging order not under Land Transfer Act 1952 280
17.50 Sale before registration of charging order 280
17.51 Discharge of land from charging order 280
17.52 Lapse of charging order after 2 years 281
17.53 Personal property may be charged 281
17.54 Interim charging order in first instance 281
17.55 Effect of interim charging order 282
17.56 Liability of persons breaching interim charging order 282
17.57 Money may be paid into court 283
17.58 Court may order sale of property affected 283
17.59 Application to make final charging order after judgment 283
17.60 Execution after charging order made final 283
17.61 Discharge of person served with order 284

Subpart 6—Sale orders and possession orders

17.62 Effect of sale order 284
17.63 When sale order may be issued 285
17.64 Execution for less than full amount of judgment 285
17.65 Recovery of money owing on cheques and other securities 285
17.66 Discharge of person paying on cheque or other security 286
17.66A Personal property securities register must be checked 286
17.66B Claim by secured party 286
17.66C Court's power to deal with claim 287
17.66D Purchaser of personal property obtains good title 287
17.67 Disposal of proceeds 287
17.68 Not necessary to seize land 288
17.69 Moving seized chattels 288
17.70 Place of sale 288

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

17.71 Advertising of notice of sale 288
17.72 Service of notice of sale on liable party 289
17.73 Contents of notice of sale 289
17.74 Method and conditions of sale 289
17.75 Powers of enforcing officer in relation to sale by auction 289
17.76 Power of enforcing officer to seize title deeds 290
17.77 Order of sale of land and chattels 290
17.78 Power of liable party or mortgagee to give directions concerning sale of land 290
17.79 Transfers, etc, to purchaser 291
17.80 Effect of possession order 291
17.81 When possession order may be issued 292
17.82 Combined sale and possession order 292

Subpart 7—Arrest orders and sequestration orders

17.83 Effect of arrest order 292
17.84 Power to issue arrest order 292
17.85 Court may impose sanctions for non-compliance with original court order or enforceable undertaking 293
17.86 Effect of sequestration order 293
17.87 Court may issue sequestration order 293

Subpart 8—Absconding debtors and imprisonment for debt

17.88 Arrest of absconding debtor 294
17.89 Process for order to arrest and imprison defendant 294
17.90 Security by absconding debtor 294
17.91 Orders about security 294
17.92 Discharge on payment 295

Part 18
Applications in equity and under statutes

Subpart 1—Application

18.1 Types of proceedings 295
18.2 Limited application of this Part to proceedings under Property (Relationships) Act 1976 297
18.3 This Part subject to rules under other Acts 297
18.4 Commencement of proceedings 297
18.4A Case management 297

Subpart 2—Special provisions concerning pleadings, directions, and affidavits

18.5 Naming of defendants in cases involving deceased estates or trusts 298
18.6 Persons served by direction of court need not be named as defendant 298
18.7 Applications for directions as to service 298
18.8 Orders giving directions as to service 299

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

18.9 Proceeding without service 299
18.10 Time for serving claimant's affidavit in proceedings under Family Protection Act 1955 300
18.11 Time for serving affidavit in support of appearance 300
18.12 Statement of defence to be filed 300

Subpart 3—Multiple claims, joinders, and consolidations of claims

18.13 Joining in proceedings under Family Protection Act 1955 and Law Reform (Testamentary Promises) Act 1949 300
18.14 Joinder of claims and consolidation 301
18.14A Procedure under section 174 of Companies Act 1993 301
18.14B Service of order made under section 174 of Companies Act 1993 302

Subpart 4—Evidentiary requirements

18.15 Evidence generally by agreed statement of facts or affidavit 302

Part 19
Originating applications

Subpart 1—Proceedings eligible to be commenced by originating application

19.1 Meaning of originating application 302
19.2 Applications under certain enactments 302
19.3 Application of this Part to certain kinds of proceeding 304
19.4 Certain directions may be sought by originating application 304
19.4A Application under rule 19.4(f) 304
19.5 Court may permit proceeding to be commenced by originating application 305
19.5A Directions as to filing of statement of claim and defence 305
19.6 Certain proceedings must be commenced by interlocutory application 305

Subpart 2—Procedure for originating applications

19.7 Commencement of proceeding 306
19.8 Memorandum relating to filing and address for service 306
19.9 Heading of documents 306
19.10 Application of rules relating to interlocutory applications 306
19.11 Directions as to parties and conduct of applications 307
19.12 Originating applications relating to certain proceedings under Companies Act 1993 307
19.12A Special provisions for service of applications to remove caveats or set aside statutory demands 307

Subpart 3—Evidence in originating applications

19.13 Evidence 308
19.14 Cross-examination of person making affidavit 308

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Part 20
Appeals

Subpart 1—Preliminary provisions

20.1 Application of this Part 308
20.2 Interpretation 308

Subpart 2—Application for leave to appeal

20.3 Application for leave to appeal to court 309

Subpart 3—Commencement of appeal

20.4 Time for appeal if there is right of appeal 310
20.5 Commencement of periods in rules 20.3 and 20.4 310
20.6 When appeal brought 310
20.7 Power to dispense with service 311
20.8 Filing notice of appeal 311
20.9 Contents of notice of appeal 311
20.9A When to name decision-maker as respondent to appeal 312
20.10 Stay of proceedings 312
20.11 Cross-appeal 312
20.12 Dismissal or stay or abandonment of appeal or cross-appeal 313
20.13 Security for appeal 314

Subpart 4—Matters leading up to hearing

20.14 Order for transcript of evidence 314
20.15 Report by decision-maker 315
20.16 Further evidence 315

Subpart 5—Conduct of appeal

20.17 Decision-maker entitled to be heard on appeal *[Revoked]* 316
20.18 Appeal is rehearing 316
20.19 Powers of court on appeal 316
20.20 Repayment of judgment sum and interest 317
20.21 Registrar to notify result of appeal 317

Subpart 6—Appeals to Court of Appeal

20.22 Applications for leave 317

Part 21
Cases stated

21.1 Application 318
21.2 Some rules in Part 20 apply 318
21.3 Interpretation 318
21.4 Method of commencing appeal or reference 319
21.5 Time for appeal 319
21.6 Notice of appeal 319
21.7 Place for filing notice 319

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

21.8 Lodging of draft case stated 320
21.9 Contents of case 320
21.10 Order for transcription of evidence 321
21.11 When case deemed to be stated 321
21.12 Power to amend case 321
21.13 Security for costs 322
21.14 Determination of questions 322

Part 22
Patents

22.1 Interpretation 322

Subpart 1—Scientific advisers

22.2 Appointment 323
22.3 Nominating scientific adviser and settling questions and instructions 323
22.4 Report 323
22.5 Cross-examination 323
22.6 Experiment or test 324
22.7 Further or supplementary report 324
22.8 Remuneration 324

Subpart 2—Amending specification

22.9 Application of subpart to application under section 89 324
22.10 Notifying Commissioner 324
22.11 Advertisement 324
22.12 Right to be heard 325
22.13 Time for making application 325
22.14 Service of notice of interlocutory application 325
22.15 Duty of court to give directions 325
22.16 Procedure when amendment allowed 326

Subpart 3—Revoking patent

22.17 Application by originating application 326
22.18 Respondent begins proceeding 326

Subpart 4—Objections

22.19 Particulars if validity of patent disputed 326
22.20 Particulars if want of novelty alleged 327
22.21 Service of notice on Solicitor-General 327
22.22 Particulars supplied by plaintiff 327
22.23 Particulars supplied by defendant *[Revoked]* 328
22.24 Evidence restricted to particulars delivered 328
22.25 Amendment of particulars 328

Subpart 5—Appeals

22.26 Application of Part 20 328

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

22.27 Method and time of bringing appeal 328
22.28 Contents of notice of appeal 328
22.29 Grounds of appeal 329
22.30 Service of notice of appeal 329
22.31 Commissioner to transmit papers 329
22.32 Contentions raised by respondent 329
22.33 Respondent's notice 329
22.34 Appeal by way of rehearing 330
22.35 Proceeding heard and determined in public 330
22.36 Documentary evidence 330
22.37 Cross-examination of witnesses 330

Subpart 6—Costs

22.38 Costs 331

Part 23
Enforcement between jurisdictions

Subpart 1—Enforcement under Reciprocal Enforcement of Judgments Act 1934

23.1 Scope and interpretation 331
23.2 Application of other Parts 332
23.3 Subpart subject to Orders in Council 332
23.4 Method of application for registration 332
23.5 Title and content of application 332
23.6 Place of filing 332
23.7 Supporting affidavits 332
23.8 Copy judgment and translation 332
23.9 Judicial notice of authentication of judgment 333
23.10 Evidence of exchange rates and interest 333
23.11 Evidence of right to registration 333
23.12 Further evidence 334
23.13 Registration of part of judgment 334
23.14 Security for costs 335
23.15 Order for registration 335
23.16 Method of registration 335
23.17 Date of registration 336
23.18 Notice of registration 336
23.19 Contents of notice of registration 336
23.20 Application to set aside registration 337
23.21 Determination of certain questions 337
23.22 Enforcement of judgments 337
23.23 Form of enforcement process 338

Subpart 2—Certified copy procedure

23.24 Method of application 338

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

23.25 Issue of certified copy 339

Subpart 3—Enforcement of certain judgments and orders of Federal Court of Australia

[Revoked]

23.26 Interpretation *[Revoked]* 339
23.27 Scope *[Revoked]* 339
23.28 Application of other Parts *[Revoked]* 339
23.29 Method of application *[Revoked]* 339
23.30 Title of proceeding *[Revoked]* 339
23.31 Place of filing *[Revoked]* 339
23.32 Evidence of exchange rates and interest *[Revoked]* 340
23.33 Method of registration *[Revoked]* 340
23.34 Notice of registration *[Revoked]* 340
23.35 Contents of notice of registration *[Revoked]* 340
23.36 Service of copy of judgment, order, or injunction *[Revoked]* 340
23.37 Copy of judgment, order, or injunction to be filed if facsimile produced *[Revoked]* 340
23.38 Application to set aside registration or for stay of enforcement *[Revoked]* 340

Part 24
Insolvency

Subpart 1—Scope

24.1 Interpretation 340
24.2 Application of Part 340
24.3 Application of general rules and practice of court 341

Subpart 2—Proceedings generally

24.4 Forms 341
24.5 General requirements of documents filed in court 341
24.6 Advertising of notices or proceedings 341
24.7 Discretion of court as to method of taking evidence 341

Subpart 3—Bankruptcy notices

24.8 Issue of bankruptcy notice 342
24.9 Service of bankruptcy notice in New Zealand 342
24.10 Setting aside bankruptcy notice 342

Subpart 4—Adjudication proceedings

24.11 Application for adjudication by creditor 342
24.12 Verification of creditor's application 343
24.13 Where application for adjudication to be filed 343
24.14 Registrar to fix hearing date for creditor's application 343
24.15 Court may alter hearing date for creditor's application 344
24.16 Service of creditor's application on debtor 344

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

24.17	Service of creditor's application on trustee or supervisor	344
24.18	Debtor's notice of intention to oppose adjudication	344
24.19	Affidavit evidence of applicant creditor	344
24.20	Applicant creditor's solicitor's certificate as to unpaid debt	345
24.21	Death of debtor against whom application filed	345
	Subpart 5—Appointment of Official Assignee	
24.22	Applicant to deposit sum for Official Assignee's expenses	345
24.23	Official Assignee may seek additional sum where original deposit insufficient	345
24.24	Notification of order appointing Official Assignee as receiver and manager	345
24.25	Repayment of deposits after order of adjudication	346
24.26	Dismissal of application after order appointing Official Assignee as manager and receiver	346
	Subpart 6—Contributions from bankrupt	
24.27	Application for order under section 147	346
24.28	Official Assignee's report	346
24.29	Official Assignee to notify employer, etc, about proposed assignment or charge	347
24.30	Official Assignee to serve order of assignment, etc	347
	Subpart 7—Compositions during bankruptcy	
24.31	Application for order approving composition	347
24.32	Notice to Official Assignee of application to approve composition	347
24.33	Notice of application to approve composition	348
24.34	Official Assignee to account when composition approved	348
	Subpart 8—Irregular transactions	
24.35	Applications by Official Assignee for cancellation of irregular transactions or retransfer of property or payment of value	348
	Subpart 9—Discharge of bankrupt	
24.36	Filing and service of objection to discharge	348
24.37	Service, etc, of notice of application for discharge	348
24.38	Report of Official Assignee	348
24.39	Opposition by creditor to discharge	349
24.40	Conditions affecting salary, etc, after order of discharge	349
24.41	Annulment of adjudication to be advertised	349
	Subpart 10—Proposals	
24.42	Proposal and statement of affairs and affidavit	349
24.43	Trustee's report on proposal	349
	Subpart 11—Insolvent deceased estates	
24.44	Application for order to administer under Part 6 of Act	350

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

24.45 Application by creditor or beneficiary 350
24.46 Duty of Registrar when order made 350
24.47 Duty of administrator when order made 350
24.48 Person who has intermeddled in estate may be ordered to give particulars 350
24.49 Administration election 351

Subpart 12—Appeals

24.50 Applications to vary or discharge order or decision of Registrar or District Court Judge 351
24.51 Appeals to Court of Appeal 351

Subpart 13—Official Assignee

24.52 Applications to court by Official Assignee 351
24.53 Official Assignee's liability for costs 352

Subpart 14—District Court filings

24.54 Filing decisions of District Court 352

Subpart 15—Cross-border proceedings

24.55 Interpretation 352
24.56 Applications for recognition of foreign proceedings 352
24.57 Other procedural requirements 353
24.58 Relief after recognition 353
24.59 Modification or termination 353

Subpart 16—Voluntary administration

24.60 Appointment of administrator under section 239L of Companies Act 1993 354
24.61 Applications in course of administration 354
24.62 Proper registry of court 354

Part 25
Admiralty

Subpart 1—Preliminary provisions

25.1 Interpretation 355
25.2 Scope of this Part 355
25.3 Application of other rules and practice of court 355
25.4 Parties can apply for directions if procedure not prescribed 355
25.5 Form of application 356

Subpart 2—Starting proceedings in admiralty

25.6 Action *in personam* or *in rem*, or both, started by notice of proceeding 356
25.7 Notice of proceeding for action *in personam* 356
25.8 Notice of proceeding for action *in rem* 356
25.9 Notice of proceeding for action both *in rem* and *in personam* 357

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

25.10	How to serve notice of proceeding in action *in rem* on ship, cargo, or other property	357
25.11	Other provisions about service in action *in rem*	358
25.12	Defendant must enter appearance	358
25.13	Content of memorandum	358
25.14	Time limits for entering appearance	359
25.15	Provisions about filing	359
25.16	Service of memorandum	360
25.17	Defendant may apply for orders	360
25.18	Solicitor's undertaking	360
25.19	Substituted defendants, third parties, and interveners	360
25.20	Statement of claim	360
25.21	Statement of defence	361

Subpart 3—Procedure in collision cases

25.22	Meaning of preliminary act	361
25.23	Preliminary acts to be filed in collision cases	362
25.24	Proceedings against party in default where other party fails to lodge preliminary act	363

Subpart 4—Limitation of liability under Part 7 of Maritime Transport Act 1994

25.25	Actions for limitation of liability	364
25.26	Plaintiff must apply to court within 5 working days	364
25.27	Protection against other parties	366
25.28	Order limiting plaintiff's liability	367

Subpart 5—Judgment by default

25.29	Who may seek judgment by default in action *in personam*	367
25.30	Default in filing and service of statement of claim	367
25.31	Third parties	368
25.32	Application for judgment by default in action *in rem*	368
25.33	Judgment by default in action *in rem*	369

Subpart 6—Arrest, release, and sale of property

Arrest of property

25.34	Application for warrant of arrest of property	369
25.35	Issue of warrant of arrest	370
25.36	Service of warrant	371
25.37	Currency of warrant	371
25.38	Notice of arrest of property	371
25.39	No Crown indemnity required	371
25.40	Breach of court order to move ship under arrest	372
25.41	Application for directions concerning property under arrest	372
25.42	Request for caveat against arrest of property	372
25.43	Entry of caveat	372

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

25.44 Request for instrument of release 373
25.45 Issue of release 374
25.46 Caveat against release and payment 374
25.47 Discharge of cargo under arrest from ships not under arrest and of cargo not under arrest 375
25.48 Security 375
25.49 Payment out of court 376
25.50 Interveners 376
25.51 Appraisement and sale of property 376
25.52 Determination of priority of claims where court orders sale of ship 377

Subpart 7—Miscellaneous provisions

25.53 Inspection of ship, etc 377
25.54 Consent orders 378
25.55 Registrar may seek court's assistance 378
25.56 Parties may seek review of Registrar's decision 378

Part 26
Arbitration Act 1996

Subpart 1—Preliminary provisions

26.1 Interpretation 378
26.2 Application 379

Subpart 2—Appeals under clause 5(1)(a) or (b) of Schedule 2

26.3 Originating application to commence appeal 379
26.4 Affidavit to be filed in support 379
26.5 Service 379
26.6 Amending appeal grounds 379
26.7 Notice of opposition to application 379
26.8 Cross-appeal 380
26.9 Record of arbitration 380
26.10 Service and filing of record 381
26.11 Transcript of evidence 381
26.12 Service and filing of transcript 382
26.13 Hearing of appeal 382
26.14 Leave to appeal to Court of Appeal 383

Subpart 3—Leave to appeal under clause 5(1)(c) of Schedule 2

26.15 Applications for leave to appeal 383
26.16 Submissions 383
26.17 Granting leave 384
26.18 Refusing leave 384
26.19 Applying to Court of Appeal for leave to appeal 384

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Subpart 4—Entry of award as judgment under article 35 of Schedule 1

26.20 Entry of judgment if all parties agree 384
26.21 Entry of judgment in other cases 384
26.22 Application for entry of award as judgment 384
26.23 Affidavit to be filed in support 385
26.24 Service 385
26.25 Entry as judgment without notice in exceptional circumstances 385
26.26 Entry as judgment if defendant takes no steps 385
26.27 Opposition to entry as judgment 386

Part 27
Administration (including probate)

Subpart 1—General

27.1 Wills and intestacies to which this Part applies 386
27.2 Interpretation 387

Subpart 2—Applications for administration

27.3 Kinds of applications for grants 387
27.4 Applications without notice 387
27.5 Restrictions if possibly invalid will exists 388

Applications in solemn form

27.6 Applications in solemn form 389
27.7 Respondents and additional parties 389
27.8 Compromises 389
27.9 Pleadings 390
27.10 Where application is filed 390
27.11 Where caveat is lodged 391
27.12 Evidence of death 391
27.13 Sale of perishable property 392
27.14 Registrars may make some orders 392
27.15 Application of rules 27.16 to 27.28 393
27.16 Evidence as to execution 393
27.17 Evidence of validity 393
27.18 Doubt as to will-maker's understanding 393
27.19 Doubt as to originality of signature 394
27.20 Doubt as to date 394
27.21 Changes 394
27.22 Revocations or revivals by other document 395
27.23 Revocation 395
27.24 Duplicate wills 395

Subpart 3—Administration with will annexed

27.25 Circumstances in which grant may be made 396
27.26 Priority of potential administrators for purposes of rule 27.25 396

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

27.27 Proving entitlement to grant 397
27.28 Grant while executor is minor 398

Subpart 4—Grants

27.29 Time for making grant 398
27.30 Grants to attorneys 398
27.31 Common or solemn form 399

Subpart 5—Inventories and accounts

27.32 Inventory and account filed by administrator 399

Subpart 6—Overseas assets

27.33 Administration of overseas assets 400

Subpart 7—Recall of grant

27.34 Recall of grant 400

Subpart 8—Priorities on intestacy

27.35 Order of priority for grant in case of intestacy 401
27.36 Justification of entitlement to grant 402

Subpart 9—Commission

27.37 Form of application for commission 403
27.38 Affidavit in support 403
27.39 Documents to be filed and verified 404
27.40 Power to adopt previous accounts 405
27.41 Power to refer matter to Registrar for inquiry 405
27.42 Notice of inquiry by Registrar 405
27.43 Evidence before Registrar 406
27.44 Costs 406
27.45 Power to dispense with rules 406

Part 28
Trans-Tasman competition proceedings

28.1 Interpretation 406
28.2 Commencement of New Zealand proceedings 407
28.3 Registry of court in which proceedings to be commenced 407
28.4 Issue of subpoenas for service in Australia 408
28.5 Service of subpoena 409
28.6 Subpoenas for production 409
28.7 Setting aside subpoena issued in New Zealand proceeding 410
28.8 Failure to comply with subpoena in New Zealand proceeding 410
28.9 Payment of additional amounts to persons complying with subpoena in New Zealand proceeding 411
28.10 Transmission of documents to Federal Court 411
28.11 Certification of judgments, orders, and injunctions in New Zealand proceedings 411

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

28.12 Evidence and submissions by video link and telephone conference 412

Part 29
Commercial panel

29.1 Interpretation 413
29.2 Procedure for assignment of panel Judge 413
29.3 Cancellation of assignment 414
29.4 Heading of documents 415
29.5 Registry for filing and registry for hearings 415
29.6 Application of other rules 415

Part 29
Commercial list

[Revoked]

29.1 Interpretation *[Revoked]* 415
29.2 Application of this Part *[Revoked]* 415
29.3 Entry on commercial list by endorsement *[Revoked]* 415
29.4 Entry on commercial list by order *[Revoked]* 415
29.5 Entry on commercial list of appeals against determinations of Commerce Commission *[Revoked]* 416
29.6 Entry on commercial list of applications for directions by liquidators or receivers *[Revoked]* 416
29.7 Documents to be served on and filed and served by defendant *[Revoked]* 416
29.8 Heading of documents *[Revoked]* 416
29.9 Interlocutory applications *[Revoked]* 416
29.10 Application for directions *[Revoked]* 416
29.11 Response to application for directions *[Revoked]* 416
29.12 Hearing of application for directions *[Revoked]* 416
29.13 Removal from list *[Revoked]* 416
29.14 Proceedings in other registries *[Revoked]* 416
29.15 Memorandum that decision will be final *[Revoked]* 416
29.16 Additional powers of commercial list Judge *[Revoked]* 416
29.17 Disputes concerning construction *[Revoked]* 416
29.18 Form of documents *[Revoked]* 416

Part 30
Judicial review

30.1 Crown Proceedings Act 1950 not affected 417
30.2 Interpretation 417
30.3 Procedure 417
30.3A Case management 417
30.4 Interim orders 417

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Part 31
Companies: Liquidation

31.1	Application	418
31.2	Hearing of applications	418
31.3	Applications to be made by statement of claim	418
31.4	Proper registry of court	418
31.5	Notice of proceeding and verifying affidavit	419
31.6	Date of hearing	419
31.7	Exclusion of rules relating to setting down *[Revoked]*	419
31.8	Directions *[Revoked]*	419
31.9	Advertisement of application	420
31.10	Restriction on advertising of proceeding	421
31.11	Power to stay liquidation proceedings	421
31.12	Service of proceeding	421
31.13	Affidavit of service	422
31.14	Evidence of advertising	422
31.15	Entitlement to copy of statement of claim, etc	422
31.16	Statement of defence	422
31.17	Time for filing statement of defence	423
31.18	Appearance	423
31.19	Time for filing appearance	423
31.20	Effect of failure to file statement of defence or appearance	423
31.21	Evidence as to unpaid debts	423
31.22	Interlocutory applications	424
31.23	Power to appoint interim liquidator	424
31.24	Additional and substituted plaintiffs in liquidation proceeding	424
31.25	Consolidation of proceedings	425
31.26	Discontinuance of proceeding	425
31.27	Requirements in relation to order appointing interim liquidator	425
31.28	Costs, charges, and expenses of interim liquidator and Official Assignee	426
	Order to put company into liquidation	
31.29	Obligation to send notice of order appointing liquidator or interim liquidator of company	426
31.30	Order and copies to be sealed	427
31.31	Contents of order putting company into liquidation	427
31.32	Transmission of order putting company into liquidation	427
31.33	Service of order made under section 174 of Companies Act 1993 *[Revoked]*	427
31.34	Service of notice to officer executing process that company being put into liquidation	427
31.35	Procedure in respect of miscellaneous applications	428
31.36	Applications involving allegations of fraud, negligence, misfeasance, or similar behaviour	428

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

31.37 Liquidator's notice to set aside voidable transaction or voidable charge 429
31.38 Proper registry of court 429
31.39 Transitional provision for companies registered under the Companies Act 1955 429

Part 32
Freezing orders

32.1 Interpretation 429
32.2 Freezing order 430
32.3 Ancillary order 430
32.4 Respondent need not be party to proceeding 431
32.5 Order against judgment debtor or prospective judgment debtor or third party 431
32.6 Form and further terms of freezing order 432
32.7 Duration of freezing order 433
32.8 Discharge or variation of freezing order 433
32.9 Jurisdiction 433
32.10 Costs 433

Part 33
Search orders

33.1 Interpretation 433
33.2 Search order 434
33.3 Requirements for grant of search order 434
33.4 Restriction on entrants 434
33.5 Applicant's undertaking and duty 434
33.6 Terms of search order 435
33.7 Independent solicitors 435
33.8 Review of search 436
33.9 Costs 436

Schedule 1AA 437
Transitional, savings, and related provisions

Schedule 1 439
Forms

Schedule 2 655
Appropriate daily recovery rates

Schedule 3 656
Time allocations

Schedule 4 660
Code of conduct for expert witnesses

~~**Schedule 5**~~ ~~662~~
~~**Matters for consideration at case management conference**~~

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Schedule 6 664
Standard directions for appeals

Schedule 7 666
Standard directions for appeals by way of case stated and references under Part 21

Schedule 8 666
Matters for consideration at pre-trial conference for proceedings on standard track

[Revoked]

Schedule 9 667
~~Discovery checklist~~ Disclosure considerations and the listing and exchange protocol

Schedule 10 677
Issues to be addressed at case management conference in proceedings under Part 30

Rules

Part 1
Rules of general application

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

1.1 Title

These rules are the High Court Rules.

Compare: 1908 No 89 Schedule 2 r 1

~~1.2 Objective~~

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

~~Compare: 1908 No 89 Schedule 2 r 4~~

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:

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

1.3 Interpretation

(1) In these rules, unless the context otherwise requires,—

Act means the Senior Courts Act 2016

address for service, in relation to a party, means the address of a place in New Zealand at which a document may be left for that party, or to which it may be sent by post to that party, under these rules or, if the party is a defendant as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010 who is served in Australia under section 13 of that Act with an initiating document for a proceeding, the address of a place in New Zealand or Australia that, under section 18 of that Act, is or is to be treated as the defendant's address for service for the proceeding

appearance means a document that states a person's address for service, and is either—

(a) an appearance and objection to the jurisdiction of the court under rule 5.49; or

(b) an appearance for ancillary purposes under rule 5.50; or

(c) an appearance reserving rights under rule 5.51; or

(d) an appearance authorised by any other rule

application without notice has the same meaning as in rule 7.23

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~**case management conference** means a conference conducted under subpart 1 of Part 7~~

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

chattels includes all things that are not land

civil means not criminal

civil proceedings, in relation to the Crown, has the same meaning as in section 2(1) of the Crown Proceedings Act 1950

control, in relation to a document, means—

(a) possession of the document; or

(b) a right to possess the document; or

(c) a right, otherwise than under these rules, to inspect or copy the document

court means the High Court; and includes—

(a) a Judge of the High Court; and

(b) an Associate Judge of the High Court exercising the jurisdiction conferred on an Associate Judge by the Act or by rules made under section 148 of the Act

court holiday means a day that is a holiday under rule 3.2

the **Crown** has the same meaning as in section 2(1) of the Crown Proceedings Act 1950

defendant means a person served or intended to be served with a proceeding (other than a third or subsequent party served with a proceeding under rule 4.12)

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

document means—

(a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds, or from which such symbols, images, or sounds can be derived, and includes—

  (i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached:

  (ii) a book, map, plan, graph, or drawing:

  (iii) a photograph, film, or negative; and

(b) information electronically recorded or stored, and information derived from that information

electronic includes electrical, digital, magnetic, optical, electromagnetic, biometric, and photonic, and **electronically** has a corresponding meaning

emergency has the meaning set out in rule 3.3B

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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expert means a person who has specialised knowledge or skill based on training, study, or experience

expert evidence means the evidence of an expert based on the specialised knowledge or skill of that expert and includes evidence given in the form of an opinion

to **file**, in relation to any document, means to file the document pursuant to rule 5.1A in the proper registry of the court

hearing date, in relation to an interlocutory application or a proceeding, means the date on which, and the time at which, the application or the proceeding is to be heard

hearing in chambers means a hearing that takes place in circumstances in which the general public is not admitted, except with the leave of the Judge, and includes any conference held under these rules

interlocutory application means an application made in accordance with rule 7.19 or 7.41

interlocutory order—

(a) means an order or a direction of the court that—

(i) is made or given for the purposes of a proceeding or an intended proceeding; and

(ii) concerns a matter of procedure or grants some relief ancillary to that claimed in a pleading; and

(b) includes—

(i) an order for a new trial; and

(ii) an order striking out the whole or part of a pleading; and

(iii) an order varying or rescinding an interlocutory order

Judge means a Judge of the High Court; and includes an Associate Judge of the High Court exercising the jurisdiction conferred on an Associate Judge by the Act or by rules made under section 22 of the Act

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

land includes any estate, right, title, or interest in land

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

Māori means a person of the Māori race of New Zealand; and includes any descendant of that person

nearer or **nearest**, in relation to any place, means nearer or nearest by the most practicable route

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notice of proceeding means a notice filed under rule 5.22

opinion, in relation to a statement offered in evidence, means a statement of opinion that tends to prove or disprove a fact

opposite party means, in relation to any party, any other party whose interests are opposed to those of that party

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

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

party means any person who is a plaintiff or a defendant or a person added to a proceeding

plaintiff means the person by whom or on whose behalf a proceeding is brought

pleading includes a statement of claim, a statement of defence, a reply, and a counterclaim

proceeding means any application to the court for the exercise of the civil jurisdiction of the court other than an interlocutory application

property includes real and personal property, and any estate or interest in any property real or personal, and any debt, and any thing in action, and any other right or interest

Registrar includes a Deputy Registrar

respondent, in relation to an interlocutory application, means a party on whom the application has been served

these rules means the High Court Rules 2016

trial includes a hearing before a Judge alone

working day means any day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year; and

(c) if Waitangi Day or Anzac Day falls on a Saturday or Sunday, the following Monday.

(2) A word or an expression in a rule or form in these rules not defined in these rules but defined in an enactment dealing with the subject matter of that rule or form, unless the context otherwise requires, has the meaning given to it by that enactment.

(3) In these rules, unless the context otherwise requires, a reference to a numbered form is a reference to the form so numbered in Schedule 1 of these rules.

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(4) In a judgment, order, direction, or other document forming part of a proceeding or of an interlocutory application, unless the context otherwise requires,—

month means a calendar month

working day has the same meaning as in subclause (1).

Compare: 1908 No 89 Schedule 2 r 3

Subpart 2—Application and compliance

1.4 Application

(1) The practice and procedure of the court in all civil proceedings and interlocutory applications is regulated by these rules.

(2) Despite subclause (1), these rules do not apply to—

(a) appeals to the Court of Appeal; or

(b) appeals to the Supreme Court.

(3) These rules are subject to—

(a) the enactments referred to in section 146(5) of the Act:

(b) the Evidence Act 2006:

(c) any statute prescribing the practice and procedure of the court in a proceeding or an appeal or application for leave to appeal under that statute:

(d) rules made under section 148 of the Act prescribing the procedure applicable in respect of any class of civil proceedings.

(4) If in any civil proceedings any question arises as to the application of any provision of these rules, the court may, either on the application of a party or on its own initiative, determine the question and give any directions it thinks just.

Compare: 1908 No 89 Schedule 2 r 2

1.4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

1.5 Non-compliance with rules

(1) A failure to comply with the requirements of these rules—

(a) must be treated as an irregularity; and

(b) does not nullify—

(i) the proceeding; or

(ii) any step taken in the proceeding; or

(iii) any document, judgment, or order in the proceeding.

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) Subject to subclauses (3) and (4), the court may, on the ground that there has been a failure to which subclause (1) applies, and on any terms as to costs or otherwise that it thinks just,—

(a) set aside, either wholly or in part,—

(i) the proceeding in which the failure occurred; or

(ii) any step taken in the proceeding in which the failure occurred; or

(iii) any document, judgment, or order in the proceeding in which the failure occurred; or

(b) exercise its powers under these rules to allow any amendments to be made and to make any order dealing with the proceeding generally as it thinks just.

(3) The court must not wholly set aside any proceeding or the originating process by which the proceeding was begun on the ground that the proceeding was required by the rules to be begun by an originating process other than the one employed.

(4) The court must not set aside any proceeding or any step taken in a proceeding or any document, judgment, or order in any proceeding on the ground of a failure to which subclause (1) applies on the application of a party unless the application is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Compare: 1908 No 89 Schedule 2 r 5

1.6 Cases not provided for

(1) If any case arises for which no form of procedure is prescribed by any Act or rules or regulations or by these rules, the court must dispose of the case as nearly as may be practicable in accordance with the provisions of these rules affecting any similar case.

(2) If there are no such rules, it must be disposed of in the manner that the court thinks is best calculated to promote the ~~objective of these rules (*see* rule 1.2)~~ overriding objective in rule 1.2.

Compare: 1908 No 89 Schedule 2 r 9

1.7 Oral applications for relief

(1) A Judge may grant relief on an oral application if the case is urgent and the interests of justice so require.

(2) This rule applies despite any rule requiring a written application.

(3) Relief may be granted on terms and conditions considered just.

1.8 Consent instead of leave of court

(1) When, by these rules, the leave of the court is required in any matter of procedure, and all parties and persons who are affected consent to the grant of

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leave, a party may file a memorandum signed by all those parties and persons evidencing that consent and its terms and conditions.

(2) The Registrar must either—

(a) make and seal an order in terms of the memorandum; or

(b) refer the memorandum to the court, in which case the memorandum must be treated as an interlocutory application for the leave.

Compare: 1908 No 89 Schedule 2 r 10

1.9 Amendment of defects and errors

(1) The court may, before, at, or after the trial of any proceeding, amend any defects and errors in the pleadings or procedure in the proceeding, whether or not there is anything in writing to amend, and whether or not the defect or error is that of the party (if any) applying to amend.

(2) The court may, at any stage of a proceeding, make, either on its own initiative or on the application of a party to the proceedings, any amendments to any pleading or the procedure in the proceeding that are necessary for determining the real controversy between the parties.

(3) All amendments under subclause (1) or (2) may be made with or without costs and on any terms the court thinks just.

(4) This rule is subject to rule 7.7 (which prohibits steps after the close of pleadings date without leave).

Compare: 1908 No 89 Schedule 2 r 11

1.10 Security

(1) An officer who is empowered to take security from a person for any purpose may determine the appropriate number of sureties and the form and the amount of the security.

(2) Any person required to give security may appeal to the court against any decision under subclause (1).

(3) If a surety becomes bankrupt or insolvent, or makes a composition with that surety's creditors, the court may stay all further steps in the proceeding by the principal party to the security until another surety has been found.

Compare: 1908 No 89 Schedule 2 rr 16, 17

Subpart 3—Use of Māori language, translations, and sign language

1.11 Speaking in Māori

(1) This rule applies to a person entitled under section 7(1) of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 to speak Māori in a proceeding or at the hearing of an interlocutory application.

(2) If a person to whom this rule applies wishes to speak Māori in a proceeding or at the hearing of an interlocutory application, that person, or, if the person is

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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a witness, the party intending to call that person, must file and serve on every other party to the proceeding a notice of his or her intention to speak Māori.

(3) The notice must state that the person intends to speak Māori at—

(a) all case management conferences and hearings; or

(b) all case management conferences and hearings held after a specified case management conference or hearing; or

(c) a specified case management conference or hearing.

(4) The notice must be in form G 12.

(5) The notice must be filed and served,—

(a) if the person intends to speak Māori at all case management conferences and hearings, not less than 10 working days before the first case management conference or hearing; or

(b) if the person intends to speak Māori at case management conferences and hearings held after a particular case management conference or hearing, not less than 10 working days before the first case management conference or hearing at which the person intends to speak Māori; or

(c) if the person intends to speak Māori at a particular case management conference or hearing, not less than 10 working days before the case management conference or hearing.

Compare: 1908 No 89 Schedule 2 r 65A

1.12 Translation of documents into te reo Māori

(1) A person upon whom a document is served in any proceeding is entitled to receive a translation of the document into the Māori language if he or she—

(a) applies, orally or in writing, to the Registrar in the place where the proceeding is pending, within 10 working days after the date of service, for a translation into the Māori language of the document; and

(b) states a postal address for the service of the translation (if an address for service has not already been given); and

(c) satisfies the Registrar that he or she is unable to read the document but could read it if it were translated into the Māori language.

(2) The Registrar must require that translation to be prepared by the party or person on whose behalf the document was served.

(3) The translation must be certified correct by a person holding an endorsed certificate of competency under clause 4 of Schedule 6 of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016.

(4) The translation may be served—

(a) personally; or

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) at the address for service (if any) of the person entitled to the translation; or

(c) by sending it by registered post addressed to that person at the stated postal address.

(5) When the translation is sent by registered post, it is to be treated as having been served when it would be delivered or available for delivery at its address in the ordinary course of registered post.

(6) The costs of preparing, certifying, and serving the translation are in the discretion of the court as costs in the proceeding.

(7) Unless the court otherwise orders,—

(a) the document is deemed not to have been served until the translation is served in accordance with subclause (4); and

(b) the proceeding in which the document is issued must be stayed as far as the person entitled to the translation is concerned until the translation is so served; and

(c) every subsequent document served on that person in the proceeding and every execution process or other process issued against that person to enforce any judgment entered or order made in the proceeding must, unless that person is at the time represented by a solicitor, be accompanied by a translation into the Māori language complying with this rule.

Compare: 1908 No 89 Schedule 2 rr 62–64

1.13 Failure to give notice

A failure to comply with rule 1.11 does not prevent a person speaking Māori at a ~~case management~~ judicial conference or pre-trial conference or hearing, but—

(a) the court may adjourn the conference or hearing to enable the Registrar to arrange for a person who holds a certificate of competency under clause 1(2)(a) or (c) of Schedule 6 of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016 or some other person competent to interpret Māori to be available at the adjourned ~~case management~~ conference or hearing:

(b) the court may treat the failure to comply as a relevant consideration in an award of costs.

Compare: 1908 No 89 Schedule 2 r 65B

1.14 Translation may be ordered by court

(1) The court may at any time order that a translation into the Māori language, complying with rule 1.12(2) to (7), of any document served, before or after the making of the order, upon a Māori concerned in a proceeding be served on that Māori, whether or not he or she has applied for it under rule 1.12(1).

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) An order may be made subject to such terms and conditions as the court thinks just.

(3) The court may, on ordering a translation under this rule, grant an adjournment of the proceeding if justice so requires.

Compare: 1908 No 89 Schedule 2 r 65

1.15 Affidavit in language other than English

(1) An affidavit in a language other than English (**non-English language affidavit**) may be filed in a proceeding.

(2) The non-English language affidavit must be accompanied by an affidavit by an interpreter to which is exhibited—

(a) a copy of the non-English language affidavit; and

(b) the interpreter's translation of the non-English language affidavit.

Compare: 1908 No 89 Schedule 2 r 512

1.16 Sign language

(1) Any person permitted by the New Zealand Sign Language Act 2006 to use New Zealand Sign Language in a proceeding or at the hearing of any interlocutory application or at a ~~case management~~ judicial or pre-trial conference must give the court and all other parties 10 working days' notice of that person's intention to do so.

(2) A Judge may at any time, on application by or on behalf of a party, make any order thought just relating to—

(a) providing, with the Registrar's assistance, a competent interpreter, and ensuring that the interpreter is available; and

(b) the interpretation of the sign language into English or Māori and the interpretation of English or Māori words used in court into sign language; and

(c) the cost of any interpretation ordered and its incidence; and

(d) the method of making and recording the sign language communication.

(3) A failure to give notice as required by subclause (1) does not prevent any permitted person using New Zealand Sign Language, however—

(a) the failure is a relevant consideration in an award of costs; and

(b) the Judge may adjourn the conference or hearing or trial to enable the Registrar to arrange for a competent interpreter to be available at the adjourned conference or hearing or trial.

(4) In this rule, **competent interpreter** means an interpreter who meets the standards of competency specified in regulations made under the New Zealand Sign Language Act 2006; and in the absence of such regulations means a person whom the Judge is satisfied is competent to translate from English or Māori

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(as the case requires) into New Zealand Sign Language and from New Zealand Sign Language into English or Māori (as the case requires).

Subpart 4—Time

1.17 Calculating periods of time

(1) A period of time fixed by the rules or by a judgment, order, or direction or by a document in a proceeding must be calculated in accordance with this rule and rule 1.18.

(2) When a time of 1 day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event must not be counted.

(3) Nothing in this rule or in rules 1.18 and 1.19 affects the reckoning of a period of time fixed by the Limitation Act 2010 or any other statute or the application of the Interpretation Act 1999 in relation to the Limitation Act 2010 or any other statute.

Compare: 1908 No 89 Schedule 2 r 13

1.18 When time expires when court registry is closed

When the time for doing any act at a registry of the court expires on a day on which that registry is closed, so that that act cannot be done on that day, the act is in time if done on the next day on which that registry is open.

Compare: 1908 No 89 Schedule 2 r 15

1.19 Extending and shortening time

(1) The court may, in its discretion, extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding, on such terms (if any) as the court thinks just.

(2) The court may order an extension of time although the application for the extension is not made until after the expiration of the time appointed or fixed.

Compare: 1908 No 89 Schedule 2 r 6

Subpart 5—Lawyers' obligations

1.20 Lawyers' duties

(1) The duties imposed by these rules on lawyers do not limit a lawyer's obligations to a client or another lawyer or the court under the rules of conduct and client care for lawyers in New Zealand or other applicable ethical rules or guidelines.

(2) A lawyer who acts for a party to a proceeding, or is a party to any proceeding, must not, without the leave of the court, act for any other party to the proceeding who does not have the same interest in the subject matter of the proceeding.

(3) In this rule, **lawyer** includes the partner of a solicitor to whom subclause (1) applies.

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(4) In applying these rules, the court may have regard to the obligations referred to in subclause (1).

Compare: 1908 No 89 Schedule 2 r 41A

Subpart 6—Forms

1.21 Variation of forms

(1) Variations may be made to any form directed or authorised by these rules to be used, as the circumstances of a particular case require.

(2) Subclause (1) does not apply if a Judge orders that a court document be prepared in a particular format or with prescribed content.

Compare: 1908 No 89 Schedule 2 r 7

Subpart 7—International co-operation

1.22 Communication with foreign court

(1) This rule applies if, and to the extent that, the court is required, or wishes, to seek the co-operation of a court in another country when dealing with an application under these rules.

(2) The court is entitled to communicate with the foreign court if—

(a) the parties consent; and

(b) the communication is not prohibited by the law of the other country.

(3) When the court acts under subclause (2) it must give the parties to the proceeding an opportunity to be heard on the form of the communication.

(4) The communication and any reply must be treated as part of the record of the proceeding or interlocutory application.

Part 2
Jurisdiction and powers of Associate Judges and Registrars

Subpart 1—Associate Judges

2.1 Jurisdiction and powers

(1) An Associate Judge has the jurisdiction and powers of a Judge in chambers conferred by the Act or these rules or another enactment.

(2) The jurisdiction and powers referred to in subclause (1) are in addition to the jurisdiction and powers conferred by section 20 of the Act.

(3) Despite subclause (1), an Associate Judge does not have jurisdiction or powers—

(a) in relation to the matters specified in section 22(4) of the Act; or

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(b) under rules 5.35A to 5.35C.

Compare: 1908 No 89 Schedule 2 r 61A

2.2 Interim order on transfer of proceeding

An Associate Judge who refers a proceeding or a matter arising in a proceeding to a Judge under section 26(1) of the Act may, before the final disposal of the proceeding or matter, make any interim order he or she considers just.

Compare: 1908 No 89 Schedule 2 r 61B

2.3 Review of decision

[Revoked]

2.4 Appeal to Court of Appeal

[Revoked]

Subpart 2—Registrars

2.5 Registrars' jurisdiction and powers relating to interlocutory applications

A Registrar (not including a Deputy Registrar) has the jurisdiction and powers of a Judge to do the following:

(a) hear and determine an application to extend or shorten the time for filing a statement of defence or notice of interlocutory application:

(b) hear and determine an application under rule 6.28 (relating to service out of New Zealand):

(c) adjourn a trial, reserving to the court the costs of, or arising out of, the adjournment:

(d) order a stay on an application made to vary or rescind an order or a decision of a Registrar:

(e) make an order in an interlocutory application on notice—

(i) if the consent of all relevant parties is endorsed on the application or filed; or

(ii) on receiving a draft order consented to in writing by all relevant parties or by their solicitor or counsel.

Compare: 1908 No 89 Schedule 2 r 270

2.6 Additional jurisdiction for certain Registrars

The Registrar (not including a Deputy Registrar) at the Auckland, Hamilton, Rotorua, Palmerston North, Wellington, Christchurch, or Dunedin registry has the jurisdiction and powers given to a Judge by the following:

(a) rule 1.19, so far as it applies to—

(i) rule 5.73:

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(ii) rule 8.15:

(iii) rule 9.69:

(iv) rule 9.70:

(v) rule 9.71:

(b) rule 4.35(4):

(c) rule 5.1(4):

(d) subpart 2 of Part 17:

(e) rule 17.24.

Compare: 1908 No 89 Schedule 2 r 271

2.7 Limits on jurisdiction

(1) A Registrar must exercise jurisdiction under rules 2.5 and 2.6—

(a) in chambers; and

(b) subject to any judicial direction.

(2) However, a Registrar may exercise his or her jurisdiction under those rules without further direction.

(3) In exercising a jurisdiction conferred by these rules a Registrar is not subject to direction by any person except a Judge acting under rule 2.11.

Compare: 1908 No 89 Schedule 2 r 272

2.8 Powers ancillary to jurisdiction

A Registrar may exercise powers ancillary to jurisdiction under rules 2.5 and 2.6 if a Judge may exercise those ancillary powers in the same circumstances.

Compare: 1908 No 89 Schedule 2 r 273

2.9 Jurisdiction in other registries

A Registrar may exercise jurisdiction under rules 2.5 and 2.6 in respect of an application filed in a registry of the court other than the one at which he or she is Registrar.

Compare: 1908 No 89 Schedule 2 r 274

2.10 Form of order

An order made by a Registrar under rule 2.5 or 2.6 must—

(a) be headed "Before the Registrar at [*place*], in chambers"; and

(b) be signed by a Registrar or Deputy Registrar, and sealed with the seal of the court; and

(c) state the rule under which it is made.

Compare: 1908 No 89 Schedule 2 r 275

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2.11 Review of Registrar's decision

(1) An affected party to a proceeding or an intended proceeding may apply to a Judge by interlocutory application for a review of any of the following:

(a) a Registrar's exercise of jurisdiction:

(b) a Registrar's refusal to file a document tendered for filing:

(c) a Registrar's refusal to perform a duty placed on him or her under these rules.

(2) The Judge may, on review, make any orders he or she thinks just.

(3) It is not necessary to apply for an order for an extraordinary remedy under Part 30 or to make an application for review under the Judicial Review Procedure Act 2016 when seeking a review under subclause (1)(b) or (c).

(4) Notice of an application for review must be filed,—

(a) if it is made by a party who was present or represented when the decision or refusal of the Registrar was given, within 5 working days of the decision or refusal; or

(b) if it is made by a party who was not present or represented, within 5 working days after the receipt by the party of notice of the decision or refusal.

(5) An application for review under this rule is not a stay of proceeding or a step in the proceeding, unless a Judge, or a Registrar acting under rule 2.5, so directs.

Compare: 1908 No 89 Schedule 2 r 276

Part 3
Court administration

Subpart 1—Registry hours and court holidays

3.1 Registry hours

The court's registries must be open from 9 am to 5 pm on every day that is not a court holiday.

Compare: 1908 No 89 Schedule 2 r 22

3.2 Court holidays

(1) The following are court holidays for the court and the court's registries:

(a) the period beginning on Good Friday and ending on the close of the Tuesday after Easter:

(b) the period beginning on 24 December and ending on the close of 3 January:

(c) Saturdays and Sundays:

(d) the Sovereign's birthday:

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(e) Anzac Day:

(f) Labour Day:

(g) Waitangi Day:

(ga) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday:

(gb) Te Rā Aro ki a Matariki/Matariki Observance Day:

(h) the anniversary day of the region in which the court is situated:

(i) in each place where a registry of the court is situated, any day which is in that place—

(i) a public holiday; or

(ii) a proclaimed holiday; or

(iii) a day observed by the Government as a holiday:

(j) any days on which the court and its registries are closed under an order made under rule 3.4.

(2) The Holidays Act 2003 overrides subclause (1).

Compare: 1908 No 89 Schedule 2 rr 18, 19

3.3 Sitting on court holidays

(1) The court may sit on a court holiday if a Judge considers it desirable to do so in order to dispose of business.

(2) Despite subclause (1), the court may sit on a Sunday, Christmas Day, New Year's Day, or Good Friday only if a Judge is of the view that the business to be disposed of is extremely urgent.

(3) If the court sits on a court holiday, it may—

(a) authorise the receipt or issue of any document complying with these rules; and

(b) authorise the service of any document received or issued under paragraph (a).

Compare: 1908 No 89 Schedule 2 r 21

3.3A Vacations

(1) There is to be a long vacation beginning on 20 December and ending with the close of 31 January.

(2) There is to be an Easter vacation beginning on the day before Good Friday and ending with the close of the Saturday following Easter.

Subpart 1A—Emergencies

3.3B Emergencies

(1) For the purposes of these rules, an **emergency** exists in relation to a place if,—

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(a) in relation to that place,—

(i) a state of emergency is declared, or a transition period is notified, under the Civil Defence Emergency Management Act 2002; or

(ii) an emergency is declared under other legislation; or

(iii) an epidemic notice is in force under section 5 of the Epidemic Preparedness Act 2006; or

(b) the Chief High Court Judge, being satisfied of the following, gives notice that an emergency exists in relation to that place for the purposes of these rules:

(i) that a situation exists that is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a lifeline utility, or actual or imminent attack or warlike act; and

(ii) that the situation affects, or may affect, the operation of the court or any registry of the court.

(2) A notice is given for the purposes of subclause (1)(b) when it is published in the manner the Chief High Court Judge directs.

(3) The Chief High Court Judge must—

(a) keep a notice given for the purposes of subclause (1)(b) under review; and

(b) revoke the notice when satisfied that the emergency has ended.

(4) Subclause (3)(b) does not limit the Chief High Court Judge's powers to revoke a notice sooner.

(5) For the purposes of subclause (1), **place** includes the whole of New Zealand.

(6) If an emergency exists, *see* rules 3.4, 3.4A, 5.1A(6), 5.1B(2)(d), 6.1A, and 9.73(4) to (6).

(7) *See also* sections 24 and 24A of the Epidemic Preparedness Act 2006 if an epidemic notice is in force.

3.4 Closure of court or registries in emergencies

(1) Despite rule 3.1, the Chief High Court Judge may order that the court or one or more of its registries be closed for a period not exceeding one week specified in the order if an emergency exists in the place where the court or one or more of its registries is located.

(2) For the avoidance of doubt, the Chief High Court Judge may make orders under subclause (1) in respect of consecutive periods of time.

(3) *[Revoked]*

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(4) A Registrar must ensure that an order made under subclause (1) is immediately advertised in the manner the Judge directs.

(5) For the avoidance of doubt, nothing in this rule, or any other provision of these rules, relating to the powers of a Judge in respect of a proceeding in circumstances in which an emergency exists is intended to limit the court's inherent jurisdiction.

Ensuring hearings can proceed with remote participation

3.4A Judge may direct form of participation in hearings and at trials

(1) Where an emergency exists in any part of New Zealand, a Judge may make a direction as to the form of participation by counsel, parties, witnesses, and other persons at any hearing or trial conducted pursuant to these rules, by—

(a) dispensing with any requirement for a person to be physically present in the court and make provision for an alternative means of complying with any such requirement:

(b) directing particular methods of attendance at, and participation in, a hearing or trial (for example, in person, by telephone, or by audio-visual link) that will be permitted, required, or excused:

(c) directing where and how any person attending or participating in a hearing or trial in person must conduct themselves in respect of their physical proximity to other persons in attendance:

(d) requiring any person attending or participating in a hearing or trial in person to be attired in a particular manner.

(2) No direction may be made under subclause (1) that modifies any requirement imposed by another provision of these rules more than is reasonably necessary to protect the health and wellbeing of those required or compelled to attend or participate in a hearing or trial, having regard also to,—

(a) the requirements of natural justice; and

(b) the rights affirmed by the New Zealand Bill of Rights Act 1990.

(3) Subject to subclause (2), the power in subclause (1) may be exercised notwithstanding that it is contrary to any other provision of these rules, regulation, or rule of law.

Subpart 2—Access to court documents

[Revoked]

3.5 Interpretation

[Revoked]

3.6 Application

[Revoked]

This is an unofficial prospective consolidation showing
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3.7 General right of access to formal court record and certain applications under Administration Act 1969

[Revoked]

3.8 Right of parties to access court file or documents

[Revoked]

3.9 Access to documents during substantive hearing stage

[Revoked]

3.10 Meaning of relevant deadline in rule 3.9

[Revoked]

3.11 Access to court files, documents, and formal court record in other cases

[Revoked]

3.12 Restrictions on access

[Revoked]

3.13 Applications for permission to access documents, court file, or formal court record other than at hearing stage

[Revoked]

3.14 Decisions on applications under rule 3.13

[Revoked]

3.15 Review of decisions by Registrar

[Revoked]

3.16 Matters to be taken into account

[Revoked]

Subpart 3—Investment of funds in court

3.17 Application for order

(1) Subclause (2) applies if money has been, or is to be, paid into court in a proceeding under—

(a) an order of the court; or

(b) a provision of these rules.

(2) If this subclause applies, a party to the proceeding may apply to the court for an order directing the Registrar to invest the money on whatever security or securities the court thinks just.

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(3) Unless the court otherwise orders, an application may not be made until 15 working days after the money has been paid into court.

Compare: 1908 No 89 Schedule 2 r 69

3.18 Powers of court in relation to application

(1) The court may, when making an order for investment of money under rule 3.17,—

(a) direct that the security on which the money is invested must be taken in the name of the Registrar alone or with another person the court nominates; and

(b) also give—

(i) directions as to the form and the terms of the security; and

(ii) any other directions as may appear necessary or expedient.

(2) An order may be varied by the court on the application of a party to the proceeding.

Compare: 1908 No 89 Schedule 2 r 70

3.19 Disposal of securities and income

(1) The court may, on the application of a party to a proceeding, direct that—

(a) the security on which money is invested under rule 3.17 be transferred to a party or parties in the shares or proportions the court thinks just; or

(b) the security be converted into money and the resulting capital and income be paid to a party or parties in the shares or proportions the court thinks just; or

(c) the capital be paid to a party or parties and the income be paid to another party or parties in the shares or proportions the court thinks just.

(2) An application may be made—

(a) at the time of making an order under rule 3.17; or

(b) at a later time.

(3) Unless the court directs otherwise, the income received from an investment under an order under rule 3.17 must be paid to the party or parties who are found by the court to be entitled to the capital, in the shares or proportions the court thinks just.

Compare: 1908 No 89 Schedule 2 r 71

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Part 4
Parties

Subpart 1—Limit on parties

4.1 Limit on parties

The number of persons named or joined as parties to a proceeding must be limited, as far as practicable, to—

(a) persons whose presence before the court is necessary to justly determine the issues arising; and

(b) persons who ought to be bound by any judgment given.

Compare: 1908 No 89 Schedule 2 r 76

Subpart 2—Plaintiffs

4.2 Plaintiffs

(1) Persons may be joined jointly, severally, or in the alternative as plaintiffs,—

(a) if it is alleged that they have a right to relief in respect of, or arising out of, the same transaction, matter, event, instrument, document, series of documents, enactment, or bylaw; and

(b) if each of those persons brought a separate proceeding, a common question of law or fact would arise.

(2) On the application of a defendant, the court may, if it considers a joinder may prejudice or delay the hearing of a proceeding, order separate trials or make any order it thinks just.

Compare: 1908 No 89 Schedule 2 r 73

Subpart 3—Defendants

4.3 Defendants

(1) Persons may be joined jointly, individually, or in the alternative as defendants against whom it is alleged there is a right to relief in respect of, or arising out of, the same transaction, matter, event, instrument, document, series of documents, enactment, or bylaw.

(2) It is not necessary for every defendant to be interested in all relief claimed or every cause of action.

(3) The court may make an order preventing a defendant from being embarrassed or put to expense by being required to attend part of a proceeding in which the defendant has no interest.

(4) A plaintiff who is in doubt as to the person or persons against whom the plaintiff is entitled to relief may join 2 or more persons as defendants with a view to the proceeding determining—

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(a) which (if any) of the defendants is liable; and

(b) to what extent.

Compare: 1908 No 89 Schedule 2 r 74

Subpart 4—Third, fourth, and subsequent parties

4.4 Third parties

(1) A defendant may issue a third party notice if the defendant claims any or all of the following:

(a) that the defendant is entitled to a contribution or an indemnity from a person who is not a party to the proceeding (a **third party**):

(b) that the defendant is entitled to relief or a remedy relating to, or connected with, the subject matter of the proceeding from a third party and the relief or remedy is substantially the same as that claimed by the plaintiff against the defendant:

(c) that a question or issue in the proceeding ought to be determined not only between the plaintiff and the defendant but also between—

(i) the plaintiff, the defendant, and the third party; or

(ii) the defendant and the third party; or

(iii) the plaintiff and the third party:

(d) that there is a question or an issue between the defendant and the third party relating to, or connected with, the subject matter of the proceeding that is substantially the same as a question or an issue arising between the plaintiff and the defendant.

(2) A third party notice must be issued within—

(a) 10 working days after the expiry of the time for filing the defendant's statement of defence; or

(b) a longer time given by leave of the court.

(3) A third party notice may be issued only with the leave of the court if an application for judgment is pending under rule 12.2 or 12.3.

Compare: 1908 No 89 Schedule 2 r 75(1), (5)

4.5 Fourth parties

(1) A third party claiming any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **fourth party**) may issue a fourth party notice.

(2) A fourth party notice must be issued within—

(a) 10 working days after the expiry of the time for filing the third party's statement of defence; or

(b) a longer time given by leave of the court—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(i) on an application on notice to all existing parties; or

(ii) with the written consent of all existing parties.

(3) Rule 4.4(3) applies to fourth party notices.

Compare: 1908 No 89 Schedule 2 r 75(2)

4.6 Subsequent parties

(1) A fourth party who claims any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **subsequent party**) may issue a subsequent party notice and so on.

(2) A subsequent party notice may be issued only with—

(a) the written consent of all existing parties; or

(b) the leave of the court made on an application on notice to all existing parties.

(3) Rules 4.4(3) and 4.5(2) apply, with all necessary modifications, to subsequent party notices.

Compare: 1908 No 89 Schedule 2 rr 75(2), 162

4.7 Status of third, fourth, and subsequent parties

(1) A third, fourth, or subsequent party is a party to the proceeding from the time a notice is served on that party.

(2) A third, fourth, or subsequent party has the same rights of defence as a defendant to the proceeding.

Compare: 1908 No 89 Schedule 2 r 75(3)

4.8 Court's power and discretion

(1) On an application seeking leave to issue a third, fourth, or subsequent party notice, the court must have regard to all relevant circumstances, including delay to the plaintiff.

(2) On the making of an application of that kind, the court may grant or refuse leave or grant leave on just terms.

Compare: 1908 No 89 Schedule 2 r 75(4)

4.9 Application of third party notice rules to fourth and subsequent party notices

Rules 4.10 to 4.17 apply, with all necessary modifications, to fourth and subsequent party notices.

Compare: 1908 No 89 Schedule 2 r 162

4.10 Requirements of third party notice

(1) A third party notice must be signed by the defendant and inform the third party of—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) the plaintiff's claim against the defendant; and

(b) the defendant's claim against the third party; and

(c) the steps the third party is required to take if the third party wishes to dispute either claim; and

(d) the consequences that will follow if the third party fails to dispute either claim.

(2) A third party notice may be in form G 14.

Compare: 1908 No 89 Schedule 2 r 154

4.11 Filing of third party notice

(1) A third party notice must be filed in the court together with a statement of the defendant's claim against the third party.

(2) The statement of claim must—

(a) comply with rules 5.27 to 5.35; and

(b) state the nature of the question or issue to be determined; and

(c) state the nature and extent of any relief or remedy claimed against the third party.

Compare: 1908 No 89 Schedule 2 r 155

4.12 Service on third party

A defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the following on the third party:

(a) a copy of the third party notice:

(b) a copy of the defendant's statement of claim against the third party:

(c) a copy of the plaintiff's statement of claim:

(d) a copy of the notice of proceeding:

(e) a copy of the defendant's statement of defence or appearance:

(f) a list of other documents that have been served—

(i) by the plaintiff on the defendant; or

(ii) by the defendant on the plaintiff.

Compare: 1908 No 89 Schedule 2 r 156

4.13 Service on plaintiff

(1) The defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the plaintiff with—

(a) a copy of the third party notice; and

(b) a copy of the defendant's statement of claim against the third party.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) The plaintiff must not, without the leave of the court, do the following until the expiry of the time for the third party to file a defence:

(a) enter judgment in the proceeding; or

(b) apply for the allocation of a hearing date for the proceeding.

(3) An application for leave to the court must be made on notice—

(a) to the defendant; and

(b) if the third party has been served, to the third party.

Compare: 1908 No 89 Schedule 2 r 157

4.14 Filing and service of statement of defence

(1) A statement of defence by a third party must be filed and served within 25 working days after the date of service of the third party notice.

(1A) Subclause (1) is subject to rule 6.35 (which, unless the court otherwise orders, requires a defendant who has been served out of New Zealand to file a statement of defence within 30 working days from the date of service).

(2) A third party must serve a copy of the third party's statement of defence on the plaintiff and the defendant.

Compare: 1908 No 89 Schedule 2 r 158

4.15 Service of application for leave

If an application to the court for leave to issue a third party notice is required, it must be served on the other parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r 159

4.16 Setting aside third party notice

(1) A third party may apply to the court to have a third party notice issued and served with the leave of the court set aside.

(2) A party to a proceeding served with a third party notice issued and served without leave of the court may apply to the court to have the notice set aside.

(3) In either case, the court may—

(a) set the third party notice aside and dismiss the defendant's statement of claim against the third party—

(i) on the merits; or

(ii) without prejudice to the right of the defendant to pursue that claim against the third party in an independent proceeding; or

(b) give other directions.

Compare: 1908 No 89 Schedule 2 r 160

4.17 Default in filing statement of defence

(1) A third party defaulting in filing a statement of defence—

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(a) admits the validity of, and is bound by,—

(i) any judgment (whether by consent, default, or otherwise) given in the proceeding; and

(ii) any decision on a question specified in the defendant's statement of claim; and

(b) admits liability if a contribution, indemnity, relief, or remedy is claimed against the third party in the defendant's statement of claim.

(2) Subclause (1) does not apply in third party proceedings against the Crown, unless—

(a) an application is made to that effect and the court orders it; and

(b) the application was served on the Crown not less than 5 working days before the day for hearing the application.

Compare: 1908 No 89 Schedule 2 r 161

Subpart 5—Claims between defendants

4.18 Right to give notice

If a defendant claims against another defendant in circumstances in which (had that other defendant not been a defendant) it would be permissible to issue and serve a third party notice on that other defendant, the claiming defendant may, at any time before the close of pleadings date for the proceeding, file and serve that other defendant and the plaintiff with a notice to that effect.

Compare: 1908 No 89 Schedule 2 r 163

4.19 Statement of claim to be filed and served

(1) A defendant who files a notice under rule 4.18 must file and serve with it a statement of that defendant's claim against the other defendant.

(2) The statement of claim—

(a) must comply with the requirements of subpart 6 of Part 5; and

(b) in particular, must state the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed against the other defendant.

Compare: 1908 No 89 Schedule 2 r 164

4.20 Statement of defence

(1) Unless a defendant served with a notice under rule 4.18 wishes to raise an affirmative defence to the claim made against that defendant by the defendant serving the notice, it is not necessary to file a statement of defence to that claim.

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(2) A statement of defence to a claim made in a notice served under rule 4.18 must, within 10 working days after the day of service of the notice, be filed and served—

(a) on the defendant serving the notice; and

(b) on the plaintiff.

Compare: 1908 No 89 Schedule 2 r 165

4.21 Form of notice

(1) A notice filed and served under rule 4.18 must be in form G 15.

(2) Every such notice must be signed by the defendant or the defendant's solicitor.

Compare: 1908 No 89 Schedule 2 r 166

4.22 Effect of omission to give notice

Even if a defendant has not given a notice under rule 4.18 the court may give any judgment or grant any relief in favour of that defendant that might have been given or granted in the absence of that rule.

Compare: 1908 No 89 Schedule 2 r 167

Subpart 6—Impact of certain capacities

4.23 Trustees, executors, and administrators

(1) Trustees, executors, and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees, executors, or administrators.

(2) There is no need to join persons beneficially interested in a trust or an estate to a proceeding because the trustees, executors, and administrators represent those persons.

(3) However, the court may, at any stage, order that a beneficially interested person be made a party, either in addition to or instead of the trustees, executors, or administrators.

Compare: 1908 No 89 Schedule 2 r 77

4.24 Persons having same interest

One or more persons may sue or be sued on behalf of, or for the benefit of, all persons with the same interest in the subject matter of a proceeding—

(a) with the consent of the other persons who have the same interest; or

(b) as directed by the court on an application made by a party or intending party to the proceeding.

Compare: 1908 No 89 Schedule 2 r 78

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4.25 Partners

(1) Any 2 or more persons making a claim as partners or alleged to be liable as partners may sue or be sued in the name of the firm (if any).

(2) The opposite party may apply to the firm for the names of the persons who are partners in the firm and, until an affidavit has been filed stating the names and addresses of the partners, all further steps in the proceeding on the part of the partners are stayed.

Compare: 1908 No 89 Schedule 2 r 79

4.26 Person trading as firm

(1) A person carrying on business in the name of a firm may be sued in the name of the firm.

(2) The opposite party may apply to the court for an order—

(a) directing that an affidavit be filed stating the name and address of the person carrying on the business; and

(b) staying any further step in the proceeding on the part of the person carrying on the business until the affidavit has been filed.

Compare: 1908 No 89 Schedule 2 r 80

4.27 Representation by other persons

In respect of a proceeding or intended proceeding, the court may, on an application by a party or an intending party or on its own initiative,—

(a) direct an executor or a trustee to represent minors, unborn persons, absentees, or unrepresented persons:

(b) appoint a counsel who agrees to represent minors, unborn persons, absentees, or unrepresented persons:

(c) appoint a litigation guardian to represent a person if it appears necessary:

(d) direct the Public Trust to represent a person or class of persons:

(e) direct that the Attorney-General or the Solicitor-General be served:

(f) direct, with the consent of the Attorney-General, that a head of a government department or other officer represent the public interest:

(g) direct that a local authority, public body, or other representative body represent the inhabitants of a locality or any class of persons, unless their interests, or the interests of a considerable section of them, may be adverse to those of the local authority, public body, or other representative body:

(h) if a local authority, public body, or other representative body is a plaintiff or a party whose interests appear to be adverse to those of the inhabitants of a locality or any class of persons, or a considerable section of them,

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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direct the manner in which the inhabitants, class, or section are to be represented.

Compare: 1908 No 89 Schedule 2 r 81

4.28 Relators

(1) In this rule, a **relator** is a person who has been approved by the Attorney-General to bring a proceeding in the name of the Attorney-General.

(2) A person who seeks to bring a proceeding in the name of the Attorney-General must obtain the approval of the Attorney-General.

(3) A relator is liable for the costs of a proceeding.

(4) A proceeding does not come to an end because a relator or all relators die or become incapable of acting.

(5) However, the court may stay a proceeding until the name of a new relator, who has been approved by the Attorney-General, has been substituted.

(6) A person must not be named as a relator in a proceeding until the person has authorised the solicitor issuing the proceeding to name him or her as a relator.

(7) The authority must be—

(a) in writing; and

(b) signed by the proposed relator; and

(c) filed in the registry of the court in which the proceeding is to commence.

Compare: 1908 No 89 Schedule 2 r 95

Subpart 7—Incapacitated persons

4.29 Incapacitated person, litigation guardian, and minor defined

For the purposes of these rules,—

incapacitated person means a person who by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is—

(a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or

(b) unable to give sufficient instructions to issue, defend, or compromise proceedings

litigation guardian

(a) means—

(i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); or

(ii) a person who is appointed under rule 4.35 to conduct a proceeding; and

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(b) has the same meaning as the expression "guardian *ad litem*"

minor means a person who has not attained the age of 18 years; and a person is of **full age** if he or she has attained the age of 18 years.

Compare: 1908 No 89 Schedule 2 rr 82, 83

4.30 Incapacitated person must be represented by litigation guardian

(1) An incapacitated person must have a litigation guardian as his or her representative in any proceeding, unless the court otherwise orders.

(2) If a person becomes an incapacitated person during a proceeding, a party must not take any step in the proceeding without the permission of the court until the incapacitated person has a litigation guardian.

Compare: 1908 No 89 Schedule 2 r 84

4.31 Minor must be represented by litigation guardian

(1) A minor must have a litigation guardian as his or her representative in any proceeding, unless the court otherwise orders.

(2) Subclause (1) does not apply to a minor who—

(a) is required by an enactment to conduct a proceeding without a litigation guardian; or

(b) is permitted by an enactment to conduct a proceeding without a litigation guardian and elects to do so; or

(c) is authorised under rule 4.32 to conduct a proceeding without a litigation guardian.

Compare: 1908 No 89 Schedule 2 r 85

4.32 Minor may apply to conduct proceeding without litigation guardian

(1) This rule applies to a minor who—

(a) is not required or permitted by an enactment to conduct a proceeding without a litigation guardian; and

(b) is not prohibited by an enactment from conducting a proceeding without a litigation guardian.

(2) A minor who wishes to conduct a proceeding in his or her own name may apply to the court for authorisation to conduct the proceeding without a litigation guardian.

(3) On an application under subclause (2), the court may make an order allowing the minor to conduct the proceeding without a litigation guardian if it is satisfied that—

(a) the minor is capable of making the decisions required or likely to be required in the proceeding; and

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) no reason exists that would make it in the interests of the minor to be represented by a litigation guardian.

Compare: 1908 No 89 Schedule 2 r 86

4.33 Application of rules 4.34 to 4.46 to minors

Rules 4.34 to 4.46 apply to a minor to whom rule 4.31(1) applies, and every reference in those rules to an incapacitated person must be read as if it were also a reference to a minor.

Compare: 1908 No 89 Schedule 2 r 86A

4.34 Court may set aside step in proceeding

The court may set aside a step in a proceeding if an incapacitated person did not have a litigation guardian when that step was taken and the court considers that the incapacitated person was unfairly prejudiced.

Compare: 1908 No 89 Schedule 2 r 86B

4.35 Appointment of litigation guardian

(1) This rule applies if an incapacitated person does not have a litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29.

(2) The court may appoint a litigation guardian if it is satisfied that—

(a) the person for whom the litigation guardian is to be appointed is an incapacitated person; and

(b) the litigation guardian—

(i) is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and

(ii) does not have interests adverse to those of the incapacitated person; and

(iii) consents to being a litigation guardian.

(3) In deciding whether to appoint a litigation guardian, the court may have regard to any matters it considers appropriate, including the views of the person for whom the litigation guardian is to be appointed.

(4) The court may appoint a litigation guardian under this rule at any time—

(a) on its own initiative; or

(b) on the application of any person, including a person seeking to be appointed as litigation guardian.

Compare: 1908 No 89 Schedule 2 r 86C

4.36 Application to be served on person for whom litigation guardian is to be appointed

(1) Unless the court otherwise orders, an application under rule 4.35—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) may be made without notice; and

(b) must be served on the person for whom the litigation guardian is to be appointed.

(2) When the person for whom the litigation guardian is to be appointed is a minor,—

(a) subclause (1)(b) does not apply; and

(b) unless the court otherwise orders, the application must be served instead on—

(i) the minor's parent or guardian; or

(ii) if there is no parent or guardian, a person of full age who has the care of the minor or with whom the minor lives.

Compare: 1908 No 89 Schedule 2 r 86D

4.37 Notification of appointment

(1) A litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29 must file a copy of the order or other document that empowers him or her to conduct the proceeding, at the same time as the first document relating to the proceeding is filed.

(2) A person appointed under rule 4.35 as a litigation guardian of a party to a proceeding must give notice of the appointment to other parties in the proceeding as soon as practicable after the appointment.

Compare: 1908 No 89 Schedule 2 r 86E

4.38 Powers of litigation guardian

A litigation guardian may do anything in relation to a proceeding that the incapacitated person could do if he or she were not incapacitated.

Compare: 1908 No 89 Schedule 2 r 87

4.39 Heading on documents when incapacitated person is represented

The heading of a document filed in a proceeding in which an incapacitated person is represented by a litigation guardian must state—

(a) the name of the incapacitated person followed by the words "by his (*or* her) litigation guardian"; and

(b) the litigation guardian's name.

Compare: 1908 No 89 Schedule 2 r 88

4.40 Service of documents

(1) A party who knows that an incapacitated person has a litigation guardian must serve any document in a proceeding—

(a) on the litigation guardian, unless the litigation guardian has filed an address for service:

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) where the litigation guardian has filed an address for service, at that address for service.

(2) Subclause (3) applies to a party who believes on reasonable grounds that a person is an incapacitated person but does not know if that person has a litigation guardian.

(3) The party—

(a) may apply to the court for the appointment of a litigation guardian under rule 4.35; and

(b) may apply for directions as to service; and

(c) must serve any documents in the proceeding in accordance with any directions as to service.

Compare: 1908 No 89 Schedule 2 r 89

4.41 Representation to be disregarded in making award of costs

The fact that an incapacitated person is, or has been, represented by a litigation guardian must be disregarded in making an award of costs under the rules in favour of or against the incapacitated person.

Compare: 1908 No 89 Schedule 2 r 90

4.42 Award of costs enforceable against incapacitated person or litigation guardian

(1) Unless the court otherwise orders, an award of costs made against an incapacitated person may be enforced against any 1 or more of the following:

(a) the incapacitated person:

(b) the person who is the litigation guardian of the incapacitated person at the time the costs determination is made:

(c) a person against whom an order for indemnity or contribution has been made under rule 4.43, to the extent of the amount of the indemnity or contribution.

(2) Unless the court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs paid under subclause (1)(b) or (c).

Compare: 1908 No 89 Schedule 2 r 91

4.43 Liability of former litigation guardian for costs subsequently awarded against incapacitated person

The court may make an order—

(a) directing a person who has ceased to be a litigation guardian of an incapacitated person (a **former litigation guardian**) to indemnify the incapacitated person or a current litigation guardian for any costs sub-

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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sequently awarded against the incapacitated person in relation to steps taken in the proceeding by the former litigation guardian:

(b) directing a former litigation guardian to indemnify the incapacitated person or the current litigation guardian on a basis specified by the court for any costs subsequently awarded against the incapacitated person in relation to steps taken in the proceeding after the former litigation guardian ceased to be the litigation guardian:

(c) directing the former litigation guardian to make a contribution to the costs referred to in paragraph (a) or (b):

(d) declaring that the former litigation guardian is not liable for any of the costs referred to in paragraph (a) or (b).

Compare: 1908 No 89 Schedule 2 r 92

4.44 Compliance with liability order

(1) A former litigation guardian may be required by the incapacitated person or the current litigation guardian to give effect to an order made under paragraph (a), (b), or (c) of rule 4.43.

(2) The court may, on the application of a former litigation guardian, declare that the former litigation guardian is not required to comply with that order if it is satisfied, having regard to circumstances occurring after the order was made, that it is no longer just that the former litigation guardian be required to comply with the order.

Compare: 1908 No 89 Schedule 2 r 92

4.45 Litigation guardian may be reimbursed for costs out of property of incapacitated person

Unless the court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs (including solicitor and client costs) paid or incurred, or that are to be paid or incurred, by the litigation guardian on behalf of the incapacitated person.

Compare: 1908 No 89 Schedule 2 r 93

4.46 Retirement, removal, or death of litigation guardian

(1) A litigation guardian may retire only with the leave of the court.

(2) Unless the court otherwise orders, the appointment of a litigation guardian under rule 4.35 ends if another person is subsequently authorised by or under an enactment to conduct the proceeding in the name of, or on behalf of, the incapacitated person.

(3) A litigation guardian may be removed by the court when it is in the interests of the person he or she represents.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(4) In the case of retirement, removal, or death of a litigation guardian, no further step may be taken in the proceeding without the leave of the court until the incapacitated person is represented by another litigation guardian.

Compare: 1908 No 89 Schedule 2 r 94

4.47 Procedure when person ceases to be incapacitated person

(1) The court must make an order terminating the appointment of a litigation guardian if it is satisfied that the person the litigation guardian represents is no longer an incapacitated person.

(2) The court may make an order at any time—

(a) on its own initiative; or

(b) on the application of—

(i) the incapacitated person; or

(ii) his or her litigation guardian; or

(iii) a party.

(3) From the date of the order,—

(a) all subsequent steps in the proceeding must be carried on by the person formerly represented by the litigation guardian; and

(b) the person formerly represented by the litigation guardian is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not an incapacitated person.

Compare: 1908 No 89 Schedule 2 r 94A

4.48 Procedure when minor attains full age

(1) A minor who attains full age must file and serve an affidavit confirming that he or she is no longer a minor.

(2) Unless the court otherwise orders, from the date a minor attains full age—

(a) the appointment of his or her litigation guardian ends; and

(b) all subsequent steps in the proceeding must be carried on by that person; and

(c) that person is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not a minor.

Compare: 1908 No 89 Schedule 2 r 94B

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Subpart 8—Change of parties by death, bankruptcy, or devolution

4.49 Proceeding not to come to end

(1) A proceeding does not come to an end on the death or bankruptcy of a party if a cause of action survives or continues.

(2) A proceeding does not become defective because of the assignment, creation, or devolution of an estate or a title when the proceeding is pending.

Compare: 1908 No 89 Schedule 2 r 98

4.50 Procedure on death, bankruptcy, and devolution

In the case of death, bankruptcy, or devolution of an estate of a party to a proceeding by operation of law in circumstances where the complete settlement of all the questions involved in the proceeding is necessary, the court—

(a) must order that a personal representative, trustee, or other successor to the interest (if any) of that party be made a party to the proceeding, or be served with notice of it, in the prescribed manner and form on terms it thinks just; and

(b) may make orders it thinks just for the disposal of the proceeding.

Compare: 1908 No 89 Schedule 2 r 99

4.51 Devolution when proceeding pending

A proceeding may be continued by or against a person to or on whom an estate or title is assigned, created, or devolved if the assignment, creation, or devolution takes place when a proceeding is pending.

Compare: 1908 No 89 Schedule 2 r 100

4.52 New parties order

(1) Subclause (2) applies if, after a proceeding has commenced, there is an event causing a change or transmission of interest or liability (including death or bankruptcy) or an interested person comes into existence, making it necessary or desirable—

(a) that a person be made a party; or

(b) an existing party be made a party in another capacity.

(2) An application without notice may be made for an order that the proceeding be carried on between the continuing parties and the new party (a **new parties order**).

(3) The new parties order must, unless the court otherwise directs, be served on—

(a) the continuing parties to the proceeding; and

(b) each new party, unless the person making the application is the only new party.

(4) The new parties order is binding on a person served from the time of service.

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(5) A person who is not already a party who is served with a new parties order must file a statement of defence in the same time frame and manner as a person served with a statement of claim.

Compare: 1908 No 89 Schedule 2 rr 101, 102

4.53 Discharge or variation of new parties order

(1) A person may apply to the court to discharge or vary a new parties order within 10 working days from the service of the order.

(2) An incapacitated person who is served with a new parties order who does not have a litigation guardian may apply to the court within 10 working days from the appointment of a litigation guardian for the new parties order to be discharged or varied.

(3) Until the period of 10 working days has expired, the new parties order has no force or effect on the incapacitated person.

Compare: 1908 No 89 Schedule 2 rr 103, 104

Subpart 9—Adjusting parties

4.54 Change of name

A party's name that is incorrectly stated in pleadings or changed by marriage, civil union, deed poll, or other means, may be amended, without an application to the court, by a notice signed by the party and filed and served on all other parties.

Compare: 1908 No 89 Schedule 2 r 105

4.55 Parties wrongly joined

(1) A proceeding is not defeated by reason of parties having been wrongly joined.

(2) Despite a misjoinder, the court may deal with a proceeding in accordance with the rights and interests of the parties.

Compare: 1908 No 89 Schedule 2 r 96

4.56 Striking out and adding parties

(1) A Judge may, at any stage of a proceeding, order that—

(a) the name of a party be struck out as a plaintiff or defendant because the party was improperly or mistakenly joined; or

(b) the name of a person be added as a plaintiff or defendant because—

(i) the person ought to have been joined; or

(ii) the person's presence before the court may be necessary to adjudicate on and settle all questions involved in the proceeding.

(2) An order does not require an application and may be made on terms the court considers just.

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(3) Despite subclause (1)(b), no person may be added as a plaintiff without that person's consent.

Compare: 1908 No 89 Schedule 2 r 97

Subpart 10—Interpleader

4.57 Interpretation

In this rule and rules 4.58 to 4.64, unless the context otherwise requires,—

applicant means a person or an officer entitled under rule 4.58 to apply to the court for relief under rule 4.63

claimant means a person claiming against an applicant in terms of rule 4.58

execution creditor means a person who has issued an enforcement process under Part 17

execution debtor means a person against whose property an enforcement process has been issued under Part 17.

Compare: 1908 No 89 Schedule 2 r 172

4.58 Right to interplead

(1) When a person (**A**) who is under a liability in respect of a debt or in respect of any money or chattels is, or expects to be, sued for or in respect of the debt, money, or chattels by 2 or more persons making adverse claims, A may apply to the court, on notice to the persons making the adverse claims, for relief under rule 4.63.

(2) If a person (**B**) who is not a person against whom a sale order (described in rule 17.62) or a possession order (described in rule 17.80) is issued claims money or chattels taken or intended to be taken by an officer giving effect to either of those orders, or the proceeds or value of those chattels, the officer may apply to the court, serving notice on the execution creditor, the execution debtor, and B for relief under rule 4.63.

(3) Subclause (2) applies—

(a) whether or not there has been a return of the order; and

(b) whether or not a proceeding has been commenced against the officer in respect of the money or chattels.

Compare: 1908 No 89 Schedule 2 r 173

4.59 Form of application

(1) When a claimant has issued a proceeding against the applicant in respect of the debt or money or chattels referred to in rule 4.58(1), and in cases within rule 4.58(2), the application must be an interlocutory application in the proceeding.

(2) Subject to rules 4.61 to 4.64, subpart 2 of Part 7 of these rules applies to the application.

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(3) In other cases the application must be made by filing and serving a statement of claim and notice of proceeding under Part 5.

Compare: 1908 No 89 Schedule 2 r 174

4.60 Affidavit in support

(1) An application under rule 4.58 must be supported by an affidavit stating—

(a) that the applicant claims no interest in the subject matter in dispute other than the charges or costs; and

(b) that adverse claims (of which details must be given) have been made by the claimants and the steps already taken by the respective claimants in support of their claims; and

(c) that the applicant is not colluding with any of the claimants to that subject matter; and

(d) that the applicant is willing to pay or transfer that subject matter into court or dispose of it as the court may direct.

(2) A copy of the affidavit must be served on each claimant when the application under rule 4.58 is served.

Compare: 1908 No 89 Schedule 2 r 175

4.61 Time for applying

(1) If a claimant has commenced a proceeding against the applicant to enforce the claim, an application under rule 4.58 must be made before a statement of defence has been filed by the applicant.

(2) If no statement of defence has been filed by the applicant, it must be made before judgment has been entered against the applicant.

Compare: 1908 No 89 Schedule 2 r 176

4.62 Claimants to file affidavits

(1) Subject to subclauses (2) and (3), a claimant who wishes to justify a claim must, within 5 working days after service of an application made under subclause (1) or (2) of rule 4.58, file and serve on other claimants and on the applicant an affidavit stating the facts and matters relied on.

(2) When, in accordance with rule 4.59(3), a statement of claim and notice of proceeding have been filed and served together with an affidavit under rule 4.60, the claimant must file and serve a statement of defence with the claimant's affidavit.

(3) If the claimant, had the claimant been a defendant, might have filed an appearance under rules 5.49 to 5.51, the claimant may, instead of filing and serving an affidavit under subclause (1), file and serve an appearance.

(4) An appearance filed and served under subclause (3), for all the purposes of rules 4.63 and 4.64, has effect as though the claimant were a defendant in a

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proceeding brought by the applicant or by any other claimant referred to in the appearance.

Compare: 1908 No 89 Schedule 2 r 177

4.63 Powers of court

(1) Upon hearing an application under rule 4.58, the court may make whatever orders and directions justice requires.

(2) In particular, and without limiting subclause (1), the court may—

(a) stay a proceeding commenced by a claimant:

(b) bar the claim of a claimant who has not filed and served either—

(i) an affidavit justifying the claim under rule 4.62(2); or

(ii) an appearance under rule 4.62(3):

(c) adjudicate upon the competing claims on the affidavits filed, or adjourn the application for that purpose:

(d) if the question appears to be one of law only, direct that the question be determined by the court:

(e) direct the trial of the issues involved by the method that the court directs:

(f) order that one of the claimants commence a proceeding against any other or others to try the question involved or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding:

(g) order that the chattels in dispute or any part of them be sold, and that the proceeds of the sale be applied in such manner and on such terms as are just.

(3) Subclause (4) applies to a claimant who has been served with an application and—

(a) does not appear on the hearing of the application; or

(b) having appeared, fails or refuses to comply with an order.

(4) The court may make an order declaring that the claimant and all persons claiming under that claimant may not continue or subsequently prosecute that claim against the applicant and all persons claiming under the applicant but that order does not affect the rights of the claimants as between themselves.

Compare: 1908 No 89 Schedule 2 r 178

4.64 Costs of applicant

(1) Unless the court otherwise orders, an applicant is entitled to the indemnity costs (as defined by rule 14.6(1)(b)) of and incidental to the application.

(2) The court may order that the applicant's costs be paid by any 1 or more of the claimants and may apportion the liability between any 2 or more claimants, as it thinks just.

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(3) The court may charge any property in dispute, or the proceeds of the sale of it, or both, with payment of the costs of the applicant.

Compare: 1908 No 89 Schedule 2 r 179

Part 5
Commencement of proceedings and filing of documents

Subpart 1—Proper registry of court

5.1 Identification of proper registry

(1) The proper registry of the court, for the purposes of rules 5.25 and 19.7, is,—

(a) when a sole defendant is resident or has a principal place of business in New Zealand, the registry of the court nearest to the residence or principal place of business of the defendant, but when there are 2 or more defendants, the proper registry is determined by reference to the first-named defendant who is resident or has a principal place of business in New Zealand:

(b) when no defendant is resident or has a principal place of business in New Zealand, the registry the plaintiff selects:

(c) when the Crown is a defendant, the registry nearest to the place where the cause of action or a material part of it arose:

(d) despite paragraphs (a) to (c), the court at Wellington in the case of proceedings that consist of or include 1 or more of the following kinds of action or application:

(i) an application for judicial review under the Judicial Review Procedure Act 2016 that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:

(ii) an application for, or in the nature of, an extraordinary remedy under Part 30 of these rules that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:

(iii) an application under section 35, 47E, or 55 of the Terrorism Suppression Act 2002:

(e) despite paragraphs (a) to (c), the court at Wellington or the court at Auckland in the case of applications under the Immigration Act 2009 in proceedings involving classified information.

(2) Despite subclause (1)(a), if the place where the cause of action sued on, or some material part of it, arose is nearer to the place where the plaintiff or the plaintiff first-named in the statement of claim resides than to the place where the defendant resides, the proper registry of the court for the purposes of subclause (1) is, at the option of the plaintiff or the plaintiff first-named, as the

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case may be, the registry nearest to the residence of the plaintiff or the plaintiff first-named, as the case may be.

(3) If a plaintiff proposes to exercise the option conferred by subclause (2), the plaintiff must file with the statement of claim and notice of proceeding an affidavit by the plaintiff or the plaintiff's solicitor stating the place where the cause of action or the material part of it arose, and that that place is nearer to the place where the plaintiff or the plaintiff first-named in the statement of claim resides than to the place where the defendant resides.

(4) If it appears to a Judge, on application made, that the statement of claim has been filed in the wrong registry of the court, he or she may direct that the statement of claim or all documents filed in the proceeding be transferred to the proper registry.

(5) If it appears to a Judge, on application made, that a different registry of the court would be more convenient to the parties, he or she may direct that the statement of claim or all documents be transferred to that registry and that registry becomes the proper registry.

Compare: 1908 No 89 Schedule 2 r 107

5.1A Filing generally

(1) In this rule and in rule 5.1B,—

electronic address means any method by which a document communicated in electronic form may be directed to the attention of a particular user of an electronic communications or information management, retrieval, or storage system, and includes, without limitation,—

(a) email addresses; and

(b) fax numbers; and

(c) remotely accessible locations in file directories located on computer hard-drives, servers, or internet-based servers

published means having been made available at all reasonable times on an Internet website maintained by or on behalf of a Registrar.

(2) Subject to subclauses (3) to (8), any document required by these rules to be filed may be filed in the proper registry of the court by—

(a) delivering it to that registry by hand during registry hours; or

(b) sending it by mail to a postal address for that registry published by a Registrar; or

(c) sending a copy of that document in electronic form to an electronic address—

(i) to which the person filing the document has been directed by the court or a Registrar to send any documents that are to be filed electronically in a particular proceeding or interlocutory application; or

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(ii) where no such direction has been made in respect of the particular proceeding or interlocutory application to which the document relates, to an electronic address published by a Registrar for the purpose of allowing the electronic filing of documents in the proper registry of the court.

(3) Subclause (4) applies where any copy of any document filed by means of an electronic communication pursuant to these rules contains a signature or other mark or writing intended by the person responsible for the inclusion of that signature or other mark or writing in the document to convey their authorisation, certification, endorsement or authentication of any matter contained within the document copied.

(4) In respect of a copy of a document to which this subclause applies, despite any provision in these rules, or in any enactment, regulation or rule of law to the contrary, that copy of a document, and any matter contained within it, is deemed to have been sufficiently authorised, certified, authenticated, signed, or otherwise endorsed for the purposes of these rules as if the original document had been filed.

(5) *[Revoked]*

(6) A Judge (including an Associate Judge) may, if satisfied that an emergency in the place at which the registry of the court in question is situated means that the filing of documents other than electronically would cause, or risk causing, disruption to the orderly and safe dispatch of the court's business, require that—

(a) any document required to be filed by these rules in the proper registry of the court; or

(b) any document intended by any person to be filed in a given registry of the court—

must not be filed pursuant to the provisions of subclause (2)(a) and must instead be filed pursuant to the provisions of either subclause (2)(b) or (c).

(7) Subject to subclause (8), in the event of any inconsistency between any provision of this rule and any other provision of these rules or any other enactment, this rule prevails.

(8) This rule is subject to rule 5.1B.

5.1B When documents filed

(1) Subject to subclause (2), and despite any other provision of these rules or any other enactment or regulation to the contrary, a document—

(a) delivered by hand to a registry of the court pursuant to rule 5.1A(2)(a) is filed on the day on which it is accepted for filing by the registry and at the time at which the registry receives it:

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(b) sent by mail to a postal address in accordance with rule 5.1A(2)(b) is filed when the registry receives it:

(c) filed by sending it to an electronic address in accordance with rule 5.1A(2)(c)—

(i) is filed when it is received by the relevant electronic communications or information management, retrieval, or storage system, provided the document is received by that system during registry hours; or

(ii) at 9 am on the first day on which the relevant registry of the court is open after the document is received by the relevant electronic communications or information management, retrieval, or storage system.

(2) A document is not filed until the earlier of the time that either—

(a) any fee prescribed for the filing of that document by a provision of the High Court Fees Regulations 2013 has been paid; or

(b) the person responsible for the filing of the document has, in a manner directed by a Registrar, either—

(i) provided a Registrar with a credit card payment authority for a sum equal to the fee payable for the filing of that document; or

(ii) where the court is able to facilitate it, paid a sum equal to the fee payable for the filing of that document by means of electronic bank transfer into an account identified by the Registrar for that purpose; or

(c) in any case where the Registrar accepts it is impracticable for the person presenting the document to effect payment of the fee by any other means, and—

(i) there is a solicitor on the record for the party seeking to file the document, by providing together with the document filed that solicitor's unconditional undertaking to the court to make the payment of the fee for the filing of that document within three working days from the day on which the document has been filed; or

(ii) where the party seeking to file a document is represented by a barrister sole permitted to represent that party without the intervention of an instructing lawyer pursuant to rules 14.4 to 14.12 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, by providing together with the document filed that barrister sole's unconditional undertaking to the court to make payment of the fee for the filing of that document within three working days from the day on which the document has been filed:

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provided that in any case where an undertaking under this paragraph has not been fulfilled within the time provided for payment, the court may order that no reliance can be placed on that document or that the document not be used in the proceeding until the payment is received; or

(d) the Registrar has determined that the document is to be treated as having been filed despite non-payment of the fee:

provided that such a determination may be made only if the court is satisfied that doing so is necessary in the interests of justice, having regard to—

(i) the circumstances of the proceeding or interlocutory application in question; and

(ii) the existence of an emergency in the place at which the registry of the court in question is situated.

Subpart 2—Formal requirements for documents

5.2 Non-complying documents

(1) A document that does not comply with rules 5.3 to 5.16 may be received for filing only by leave of a Judge or the Registrar.

(2) The cost of an application under subclause (1) must be borne by the party making it, and may not be claimed as costs against another party under Part 14.

Compare: 1908 No 89 Schedule 2 r 23

5.3 Paper

(1) The paper used must be of medium weight and good quality.

(2) Each sheet of paper must be of international size A4.

Compare: 1908 No 89 Schedule 2 r 24

5.4 Contents to be typed, etc

(1) The contents of each document must be legible and clearly typewritten, printed, or produced in permanent form by photocopying.

(2) Despite subclause (1), handwriting may be used for the date of the document.

(3) Subclause (1) does not apply to the signature on a document.

Compare: 1908 No 89 Schedule 2 r 25

5.5 Margin

(1) A margin of at least one-quarter of the width of the paper must be left on the left-hand side of each page.

(2) If, however, the reverse side of a page is used, a margin of that width must be left on the right-hand side of that page.

Compare: 1908 No 89 Schedule 2 r 26

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5.6 Signature on documents

If a document is signed, the name of the signatory must appear immediately below the signature and must be—

(a) legibly typed, printed, or stamped; or

(b) legibly written in the style of printed matter.

5.7 Cover sheet, numbering, and fastening of document

(1) The first sheet of a document must be a cover sheet, showing the matters specified in rules 5.8 and 5.11.

(2) The cover sheet must not be numbered, even if the heading is continued on another sheet under rule 5.10(2).

(3) Each page after the cover sheet must be numbered consecutively, starting with the number 1.

(4) All sheets of a document must be securely fastened together at the time of filing and service.

Compare: 1908 No 89 Schedule 2 r 30

5.8 Description of document

(1) The cover sheet must show, immediately below the heading, an accurate description of the document.

(2) The description must include—

(a) words indicating the party by whom or on whose behalf the document is filed; and

(b) the words “application without notice” in the case of an application so made.

Compare: 1908 No 89 Schedule 2 r 31

5.9 Heading generally

All documents presented for filing must have the proper heading of the proceeding.

Compare: 1908 No 89 Schedule 2 r 35

5.10 Format of cover sheet

(1) The cover sheet of an originating document and of a notice of interlocutory application must—

(a) include only—

(i) the heading; and

(ii) the description of the document; and

(iii) if applicable, the next event date; and

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(iv) if applicable, the name of the Judge or Associate Judge to whom the proceeding has been assigned; and

(v) the information required by rule 5.16; and

(b) leave ample space between the description of the document and the information referred to in paragraph (a)(v) for the inclusion of a minute.

(2) The heading may, if necessary, be continued on another sheet.

(3) In subclause (1)(a)(iii), **next event date** means, if allocated, the date and nature of a hearing or conference that is to be held next after the date on which the document is filed.

Compare: 1908 No 89 Schedule 2 r 33

Subpart 3—Heading of court documents

5.11 Heading on statement of claim and counterclaim

(1) The heading of a statement of claim, and of any counterclaim intended to be served upon a person other than the plaintiff, must show—

(a) the number of the proceeding:

(b) the registry of the court in which it is filed, in both English and te reo Māori (*see* form G 1 in Schedule 1, which sets out the name, in both languages, of each registry of the court):

(c) if the statement of claim or counterclaim seeks relief in reliance on jurisdiction conferred by an enactment, the title of that enactment:

(d) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of a will, the name of the testator:

(e) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an instrument other than a will, the name of the maker of, or the names of the parties to, the instrument and its date:

(f) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an enactment, the title and the relevant section or sections of the enactment:

(g) the full name, and the place of residence and occupation, of every plaintiff and defendant, so far as they are known to the party presenting the document for filing.

(2) Form G 1 must be used for the purposes of subclause (1).

(3) The names of parties in the heading of a statement of claim must not be repeated in the heading of a counterclaim, which may, for example, refer to the "Plaintiff and First Counterclaim Defendant".

Compare: 1908 No 89 Schedule 2 r 36

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5.12 Heading on judgment and certain orders

The heading of a judgment and of an order that is required to be registered under any enactment must be the same as the heading on the statement of claim or other document by which the proceeding was commenced.

Compare: 1908 No 89 Schedule 2 r 36A

5.13 Heading on other documents

(1) The heading of a document to which neither rule 5.11 nor 5.12 applies may be abbreviated as follows:

(a) first names of persons may be denoted by initials only, unless full names are necessary to distinguish between persons having the same initials:

(b) if 2 or more persons are joined in the same interest, the name of the first-named person may be set out, followed by the words "and another" or "and others", as the case may be:

(c) places of residence and descriptions of persons (unless necessary to distinguish 2 or more persons required to be named and with the same name) and indications of the interest in which a person is a party must be omitted:

(d) the names of corporations must be set out without abbreviation, but without stating the fact of incorporation or referring to the place of residence or making other addition.

(2) Despite subclause (1), a fuller title may be used upon change of parties or if any party considers that a person has in a previous document been wrongly named or described or for other sufficient reason.

Compare: 1908 No 89 Schedule 2 r 37

5.14 Division into paragraphs

(1) Every document presented for filing must be divided into paragraphs which must be numbered consecutively, starting with the number 1.

(2) Each paragraph must so far as possible be confined to a single topic.

Compare: 1908 No 89 Schedule 2 r 38

5.15 Numbers

Numbers must be expressed in figures and not in words.

Compare: 1908 No 89 Schedule 2 r 39

5.16 Information at foot of cover sheet

(1) The following information must appear at the foot of the cover sheet of every document for filing:

(a) the name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and

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(b) when the document is presented for filing by or on behalf of a solicitor or firm of solicitors,—

(i) the name and telephone number of the principal or employee dealing with the proceeding; and

(ii) the address of any post office box or document exchange used by the solicitor or firm; and

(iii) any fax number and any email address used by the solicitor or firm.

(2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document is prima facie evidence that the document was filed by that solicitor or firm of solicitors.

Compare: 1908 No 89 Schedule 2 r 40

Subpart 4—Pleadings generally

5.17 Distinct matters to be stated separately

(1) Distinct causes of action and distinct grounds of defence, founded on separate and distinct facts, must if possible be stated separately and clearly.

(2) If a party alleges a state of mind of a person, that party must give particulars of the facts relied on in alleging that state of mind.

(3) A state of mind includes a mental disorder or disability, malice, or fraudulent intention but does not include mere knowledge.

Compare: 1908 No 89 Schedule 2 r 181

5.18 Denial of representative character

A denial must be specific if a party wishes to deny the right of another party to claim as executor or administrator or as trustee, or in a representative or other alleged capacity, or the alleged constitution of a partnership firm.

Compare: 1908 No 89 Schedule 2 r 182

5.19 Denial of contract

(1) A bare denial of a contract will be treated as denying only the making of the contract in fact, and a party must specifically plead an assertion as to the legality or enforceability of a contract, whether with reference to section 24 of the Property Law Act 2007 or otherwise, or as to the interpretation of the contract advanced by that party.

(2) A party asserting that a contract is illegal or unenforceable must plead the enactment or rule of law relied on.

(3) A party asserting that the interpretation of a contract advanced by another party is wrong must assert its own interpretation.

Compare: 1908 No 89 Schedule 2 r 183

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5.20 Effect of document to be stated

If a party relies upon any document in whole or in part, it is sufficient to state its effect as briefly as possible, without setting it out, unless the precise words are material.

Compare: 1908 No 89 Schedule 2 r 184

5.21 Notice requiring further particulars or more explicit pleading

(1) A party may, by notice, require any other party—

(a) to give any further particulars that may be necessary to give fair notice of—

(i) the cause of action or ground of defence; or

(ii) the particulars required by these rules; or

(b) to file and serve a more explicit statement of claim or of defence or counterclaim.

(2) A notice must indicate as clearly as possible the points on which the pleading is considered defective.

(3) If the party on whom a notice is served neglects or refuses to comply with the notice within 5 working days after its service, the court may, if it considers that the pleading objected to is defective or does not give particulars properly required by the notice, order a more explicit pleading to be filed and served.

(4) Even if no notice has been given under this rule, the court may on its own initiative order a more explicit pleading to be filed and served.

Compare: 1908 No 89 Schedule 2 r 185

Subpart 5—Notice of proceeding

5.22 Notice of proceeding to be filed with statement of claim

A notice of proceeding must be filed with every statement of claim.

Compare: 1908 No 89 Schedule 2 r 120

5.23 Requirements as to notice of proceeding

(1) The notice of proceeding must—

(a) be signed by the plaintiff or the plaintiff's solicitor:

(b) state the place for the filing of a statement of defence and the time within which the statement of defence is required to be filed, in accordance with these rules:

(c) warn the defendant that if a statement of defence is not filed within the required time, the plaintiff may at once proceed to judgment on the plaintiff's claim and judgment may be given in the absence of the defendant.

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(2) The notice of proceeding must be in form G 2 and must advise the defendant of the defendant's obligations under rule 8.4 (initial disclosure).

(3) If the court has directed that any person other than the defendant named in the title of the proceeding be served, a statement to that effect signed by the Registrar and setting out the name, place of residence, and occupation of that person must be annexed to the notice of proceeding.

(4) A memorandum signed by the Registrar in form G 3, G 4, or G 5 (whichever is appropriate) must be attached to the notice of proceeding.

Compare: 1908 No 89 Schedule 2 r 121

5.24 When not necessary to file notice of proceeding

Despite rule 5.22, a notice of proceeding need not be filed, unless the court so orders,—

(a) if no relief against any person is claimed in the statement of claim (as, for example, in the case of a company's application to be put into liquidation by the court, or a person's application to be adjudicated bankrupt); or

(b) if service of the notice is dispensed with—

(i) by statute; or

(ii) under these rules; or

(iii) by order of the court.

Compare: 1908 No 89 Schedule 2 r 124

Subpart 6—Statement of claim

5.25 Proceeding commenced by filing statement of claim

(1) A proceeding must be commenced by filing a statement of claim in the proper registry of the court.

(2) Subclause (1) does not apply to—

(a) an unopposed application under Part 27:

(b) an appeal under Part 20:

(c) a proceeding commenced by originating application under Part 18, 19, or 26:

(d) an application under Part 31:

(e) a proceeding, commenced in accordance with the Trans-Tasman Proceedings Regulations and Rules 2013, to register under subpart 5 of Part 2 of the Trans-Tasman Proceedings Act 2010 a registrable Australian judgment.

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(3) Despite subclause (1), the statement of claim may be filed in any registry of the court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that registry.

Compare: 1908 No 89 Schedule 2 r 106

5.26 Statement of claim to show nature of claim

The statement of claim—

(a) must show the general nature of the plaintiff's claim to the relief sought; and

(b) must give sufficient particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances to inform the court and the party or parties against whom relief is sought of the plaintiff's cause of action; and

(c) must state specifically the basis of any claim for interest and the rate at which interest is claimed; and

(d) in a proceeding against the Crown that is instituted against the Attorney-General, must give particulars of the government department or officer or employee of the Crown concerned.

Compare: 1908 No 89 Schedule 2 r 108

5.27 Statement of claim to specify relief sought

(1) The statement of claim must conclude by specifying the relief or remedy sought.

(2) If the statement of claim includes 2 or more causes of action, it must specify separately the relief or remedy sought on each cause of action immediately after the pleading of that cause of action.

Compare: 1908 No 89 Schedule 2 rr 109, 114

5.28 Inclusion of several causes of action

(1) A plaintiff may include several causes of action in the same statement of claim.

(2) Despite subclause (1), claims by or against an Official Assignee in bankruptcy, or a liquidator or a receiver of a company, in that capacity, must not, without leave of the court, be joined with any claim by or against that person in any other capacity.

(3) Despite subclause (1), claims by or against an executor or administrator or trustee, in that capacity, must not be joined with claims by or against that person in a personal capacity unless those personal claims are alleged to arise with reference to the estate or trust in respect of which the person sues or is sued as executor or administrator or trustee.

Compare: 1908 No 89 Schedule 2 r 110

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It has no legal status and may contain errors.

5.29 Joint plaintiffs

Claims by plaintiffs jointly may be joined with separate claims by them or any of them against the same defendant.

Compare: 1908 No 89 Schedule 2 r 111

5.30 Joining claims by or against spouses or partners

Claims by or against spouses, civil union partners, or de facto partners may be joined with claims by or against either of those spouses, civil union partners, or de facto partners if the opposite party is the same person.

Compare: 1908 No 89 Schedule 2 r 112

5.31 Specifying relief sought

(1) The relief claimed must be stated specifically, either by itself or in the alternative.

(2) Despite subclause (1), it is not necessary to ask for general or other relief but the court may, if it thinks just, grant any other relief to which the plaintiff is entitled, even though that relief has not been specifically claimed and there is no claim for general or other relief.

Compare: 1908 No 89 Schedule 2 r 115

5.32 Amount of money claim

A statement of claim seeking the recovery of a sum of money must state the amount as precisely as possible.

Compare: 1908 No 89 Schedule 2 r 116

5.33 Special damages

A plaintiff seeking to recover special damages must state their nature, particulars, and amount in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 117

5.34 Set-off

A plaintiff who wishes to allow a set-off or to give up a portion of the plaintiff's claim must show the amount allowed or given up in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 118

5.35 Representative capacity of party

A party to a proceeding who sues or is sued in a representative capacity must show in what capacity the party sues or is sued in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 119

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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Striking out proceeding before service

5.35A Registrar may refer plainly abusive proceeding to Judge before service

(1) This rule applies if a Registrar believes that, on the face of a proceeding tendered for filing, the proceeding is plainly an abuse of the process of the court.

(2) The Registrar must accept the proceeding for filing if it meets the formal requirements for documents set out in rules 5.3 to 5.16.

(3) However, the Registrar may,—

(a) as soon as practicable after accepting the proceeding for filing, refer it to a Judge for consideration under rule 5.35B; and

(b) until a Judge has considered the proceeding under that rule, decline to sign and release the notice of proceeding and attached memorandum for the plaintiff or the applicant (as appropriate) to serve the proceeding.

5.35B Judge's powers to make orders and give directions before service

(1) This rule applies if a Judge to whom a Registrar refers a proceeding under rule 5.35A is satisfied that the proceeding is plainly an abuse of the process of the court.

(2) The Judge may, on his or her own initiative, make an order or give directions to ensure that the proceeding is disposed of or, as the case may be, proceeds in a way that complies with these rules, including (without limitation) an order under rule 15.1 that—

(a) the proceeding be struck out:

(b) the proceeding be stayed until further order:

(c) documents for service be kept by the court and not be served until the stay is lifted:

(d) no application to lift the stay be heard until the person who filed the proceeding files further documents as specified in the order (for example, an amended statement of claim or particulars of claim).

(3) Rule 7.43(3) does not apply. However, if a Judge makes an order on the Judge's own initiative without giving the person who filed the proceeding an opportunity to be heard, the order must contain a statement of that person's right to appeal against the decision.

(4) A copy of a Judge's decision to strike out a proceeding must, if practicable, also be served on the person named as a party or, if more than 1 person is named, those persons named as parties to the proceeding.

(5) *See* rule 2.1(3)(b) concerning the exclusion of the jurisdiction and powers of a Judge under this rule from the jurisdiction and powers of an Associate Judge.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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5.35C Requirement for signature and release of proceeding in certain circumstances

The Registrar must, after a Judge has considered a proceeding under rule 5.35B, release the notice of proceeding and attached memorandum for service if—

(a) the Judge decides not to exercise the discretion in rule 5.35B; or

(b) the Judge makes an order or gives directions under which the proceeding must be released for service.

Subpart 7—Authority of solicitors to act

5.36 Authority to file documents

(1) No solicitor may file a document on behalf of a party unless the solicitor is—

(a) authorised by, or on behalf of, the party to file the document; and

(b) the holder of a current practising certificate as a barrister or as a barrister and solicitor issued under section 39 of the Lawyers and Conveyancers Act 2006.

(2) Subclause (1) does not prevent a person from filing a document on behalf of a party if the person is authorised by, or on behalf of, the party to file the document, and—

(a) is not the holder of a current practising certificate as a barrister or as a barrister and solicitor issued under section 39(1) of the Lawyers and Conveyancers Act 2006; but

(b) is allowed to appear for, or to represent, the party, in connection with the proceedings, under section 27(1)(b)(i) or (ii) of the Lawyers and Conveyancers Act 2006.

(3) The following rules allow certain Australian solicitors to represent a party by filing certain documents:

(a) rule 5.36A (documents in certain trans-Tasman proceedings):

(b) rule 9.62(1)(b) (application to set aside New Zealand subpoena served on witness in Australia).

Compare: 1908 No 89 Schedule 2 r 41

5.36A Authority of certain Australian solicitors in certain trans-Tasman proceedings

(1) This rule applies to a defendant and a solicitor if the defendant is served with an initiating document in Australia under section 13 of the Trans-Tasman Proceedings Act 2010 and the solicitor is—

(a) entitled to practise as a solicitor of a Supreme Court of a State or Territory of Australia; and

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(b) authorised by, or on behalf of, the defendant to file a document for the defendant in respect of, or in, the proceeding to which the initiating document relates.

(2) The solicitor may file the document if the court has under section 38 of the Trans-Tasman Proceedings Act 2010 given the solicitor leave or, as the case requires, he or she is entitled under section 23(4) of that Act, to appear remotely in 1 or more hearings relating to the proceeding.

(3) The solicitor may file the document even though the solicitor has neither sought, nor been given, leave under section 38 of the Trans-Tasman Proceedings Act 2010 or, as the case requires, he or she has neither made, nor had accepted, a request under section 23(4)(c) of that Act, if the document is—

(a) an appearance or response document (as defined in section 17(2) of that Act); or

(b) an application under section 22 of that Act for a stay of the proceeding; or

(c) a request under section 23(4)(c) of that Act to appear remotely in a hearing to determine an application under section 22 of that Act; or

(d) an application for leave under section 38 of that Act; or

(e) a document related to a document, application, or request in any of paragraphs (a) to (d).

(4) A solicitor who files a document under subclause (3) may, even if not the holder of a current practising certificate as a barrister or as a barrister and solicitor issued under section 39(1) of the Lawyers and Conveyancers Act 2006, be the solicitor on the record under rule 5.38 until—

(a) the court declines an application by the solicitor for leave under section 38 of that Act; or

(b) a document to which subclause (3) does not apply is filed in the proceeding by or on behalf of the defendant and, when that document is filed, the court has not given the solicitor leave under section 38 of that Act.

(5) Subclause (4) does not enable the solicitor to appear remotely in a hearing relating to the proceeding without leave under section 38 of that Act or, as the case requires, without being entitled to do so under section 23(4) of that Act.

5.37 Solicitor's warranty as to authorisation to file documents

A solicitor by whom, or on whose behalf, a document is filed in the court is to be treated as warranting to the court and to all parties to the proceeding that he or she is authorised, by the party on whose behalf the document purports to be filed, to file the document.

Compare: 1908 No 89 Schedule 2 r 41B

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5.38 Solicitor on record

(1) The solicitor on the record for a party to a proceeding is the solicitor whose name appears on the memorandum located at the end of the first document filed by the party in accordance with rule 5.44.

(2) This rule is subject to rules 5.36A(4) and 5.42.

Compare: 1908 No 89 Schedule 2 r 42

5.39 Authority to sign documents

(1) A document required, by these rules, to be signed by a party may be signed on behalf of the party by the party's solicitor on the record unless the party's personal signature is expressly required.

(2) Subclause (1) does not limit the authority of counsel to sign documents.

Compare: 1908 No 89 Schedule 2 r 43

5.40 Change of representation or address for service

(1) A party must file and serve on every other party to the proceeding a notice of change of representation if—

(a) the party has acted in person and appoints a solicitor to act for that party; or

(b) the party wishes to change that party's solicitor; or

(c) the party for whom a solicitor has acted wishes to act in person.

(1A) However, a party who has acted in person in a proceeding without a solicitor on the record is not required to file and serve a notice of change of representation if that party wishes to continue to act in person but appoints a lawyer for a limited purpose (other than to file documents in the proceeding). For example, a party may appoint a lawyer to act as the party's advocate in a hearing or to give assistance in drafting, settling, or revising documents for filing in a proceeding.

(2) If the party's address for service after the change of representation will be different from that which applied before the change, the party must also serve a copy of the notice at the address that was, immediately before the change, the party's address for service.

(3) The notice—

(a) must be signed by the party personally or by the party's attorney; and

(b) in the case of a notice under subclause (1)(a) or (b), must contain the information about the new solicitor required by paragraphs (b) to (e) of rule 5.44(1); and

(c) in the case of a party referred to in subclause (1)(c), must state that the party's intention is to act in person.

(4) *[Revoked]*

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(5) A party may change that party's address for service by—

(a) filing a notice of the change showing the new address for service or specifying an address for a method of service set out in rule 6.1(1)(d); and

(b) serving a copy of the notice on every other party.

(6) A change of address for service may be combined with a notice under subclause (1).

(7) *[Revoked]*

(8) Form G 11 may be used.

Compare: 1908 No 89 Schedule 2 r 45

5.41 Withdrawal of solicitor who has ceased to act for party

(1) If the solicitor on the record for a party to a proceeding has ceased to act for the party, the solicitor may apply to the court for an order declaring that the solicitor has ceased to be the solicitor on the record for the party in that proceeding and the court may make the order.

(2) It is not necessary to make an application if—

(a) the party has effected a change of solicitor in accordance with rule 5.40; or

(b) the party—

(i) has filed a notice stating that the party intends to act in person and the party's new address for service; and

(ii) has served a copy of the notice on the solicitor on the record and on every other party to the proceeding who has given an address for service; and

(iii) has filed an affidavit proving that service and attaching and verifying a copy of the notice served.

(3) Unless subclause (2)(a) or (b) applies, the solicitor on the record for a party to a proceeding, for the purposes of that proceeding, is the solicitor on the record for that party until the final conclusion of the proceeding unless and until the solicitor—

(a) obtains an order under subclause (1); and

(b) serves on every party to the proceeding who has given an address for service a copy of the order obtained under that subclause; and

(c) files an affidavit proving that service.

(4) Every application under subclause (1) must be made by interlocutory application and must be supported by an affidavit giving the grounds of the application.

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(5) Unless the court otherwise directs, notice of every application under subclause (1), and a copy of the affidavit in support of the application, must be served on the party for whom the solicitor acted, and that notice must inform the party of the effect that rule 5.42 will have on the party's address for service if the solicitor obtains an order under subclause (1).

(6) An order made under subclause (1) does not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

Compare: 1908 No 89 Schedule 2 r 45A

5.42 Address for service of party whose solicitor has ceased to act

(1) This rule applies whenever the solicitor on the record for a party has obtained an order under rule 5.41 and has complied with rule 5.41(3)(b) and (c).

(2) The last known address of the party, or, when the party is a body corporate, its registered or principal registry is, for the purpose of serving the party with any document not required to be served personally, the party's address for service until the party either—

(a) appoints another solicitor and complies with rule 5.40; or

(b) if entitled to act in person,—

(i) files a notice stating that the party intends to act in person and showing the party's new address for service or specifying an address for a method of service set out in rule 6.1(1)(d); and

(ii) serves on the solicitor who obtained the order under rule 5.41 and on every other party to the proceeding who has given an address for service a copy of that notice; and

(iii) files an affidavit proving that service and attaching and verifying a copy of the notice served.

Compare: 1908 No 89 Schedule 2 r 45B

5.43 Solicitors to inform clients of orders or directions

The solicitor on the record for a party must notify the party of an order or direction that affects that party promptly after it is made.

Compare: 1908 No 89 Schedule 2 r 43A

Subpart 8—Memorandum on first document

5.44 Memorandum at end of first document filed by party

(1) At the end of the first document filed by a party there must be a memorandum stating—

(a) that the document is filed by a party in person, or by the party's solicitor, as the case may be; and

(b) if it is filed by a solicitor,—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(i) the name of the solicitor; and

(ii) if the solicitor is a member of a firm or practises under a firm's name, the name of the firm; and

(c) if it is filed by a solicitor who has another solicitor acting as the solicitor's agent in the proceeding,—

(i) the name of the agent or of the agent's firm (if any); and

(ii) the postal address of the party's solicitor; and

(d) an address for service; and

(e) any post office box address, document exchange box number, fax number, or email address by which the solicitor or the party in person will accept service in the course of the proceeding.

(2) The memorandum may be in one of the paragraphs of form G 10.

Compare: 1908 No 89 Schedule 2 r 44

Subpart 9—Security for costs

5.45 Order for security of costs

(1) Subclause (2) applies if a Judge is satisfied, on the application of a defendant,—

(a) that a plaintiff—

(i) is resident out of New Zealand; or

(ii) is a corporation incorporated outside New Zealand; or

(iii) is a subsidiary (within the meaning of section 5 of the Companies Act 1993) of a corporation incorporated outside New Zealand; or

(b) that there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding.

(2) A Judge may, if the Judge thinks it is just in all the circumstances, order the giving of security for costs.

(3) An order under subclause (2)—

(a) requires the plaintiff or plaintiffs against whom the order is made to give security for costs as directed for a sum that the Judge considers sufficient—

(i) by paying that sum into court; or

(ii) by giving, to the satisfaction of the Judge or the Registrar, security for that sum; and

(b) may stay the proceeding until the sum is paid or the security given.

(4) A Judge may treat a plaintiff as being resident out of New Zealand even though the plaintiff is temporarily resident in New Zealand.

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(5) A Judge may make an order under subclause (2) even if the defendant has taken a step in the proceeding before applying for security.

(6) References in this rule to a **plaintiff** and **defendant** are references to the person (however described on the record) who, because of a document filed in the proceeding (for example, a counterclaim), is in the position of plaintiff or defendant.

Compare: 1908 No 89 Schedule 2 r 60

5.46 Solicitor not to be surety

A party's solicitor may not be accepted as surety for a security that the party is required to give under rule 5.45(2).

Compare: 1908 No 89 Schedule 2 r 61

Subpart 10—Statement of defence and appearance

5.47 Filing and service of statement of defence

(1) A defendant who intends to defend the proceeding must,—

(a) within the number of working days stated in the notice of proceeding, file in the registry of the court named in that notice a statement of defence to the plaintiff's claim; and

(b) serve a copy of the statement of defence on the plaintiff and any other party.

(2) Unless otherwise ordered by the court,—

(a) the place for filing the statement of defence must be the registry of the court in which the statement of claim was filed or into which it has been transferred:

(b) the time within which the statement of defence is required to be filed is ~~25~~ 30 working days after the day on which the statement of claim and notice of proceeding are served on the defendant.

(3) Subclause (2)(b) is subject to rule 6.35 (which, unless the court otherwise orders, requires a defendant who has been served out of New Zealand to file a statement of defence within 30 working days from the date of service).

Compare: 1908 No 89 Schedule 2 rr 122, 129

5.48 Requirements of statement of defence

(1) The statement of defence must either admit or deny the allegations of fact in the statement of claim, but a defendant does not have to plead to an allegation that does not affect that defendant.

(2) A denial of an allegation of fact in the statement of claim must not be evasive. Points must be answered in substance. If for example, it is alleged that the defendant received a sum of money, it is not sufficient to deny receipt of the particular amount. Rather, the defendant must deny receipt of that sum or any

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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part of it, or set out how much was received. When a matter is alleged with circumstances it is not sufficient to deny it as alleged with those circumstances. In all cases a fair and substantial answer must be given.

(3) An allegation not denied is treated as being admitted.

(4) An affirmative defence must be pleaded.

(5) The statement of defence must give particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances sufficient to inform the court, the plaintiff, and any other parties of the defendant's defence.

Compare: 1908 No 89 Schedule 2 r 130

5.49 Appearance and objection to jurisdiction

(1) A defendant who objects to the jurisdiction of the court to hear and determine the proceeding may, within the time allowed for filing a statement of defence and instead of so doing, file and serve an appearance stating the defendant's objection and the grounds for it.

(2) The filing and serving of an appearance does not operate as a submission to the jurisdiction of the court.

(3) A defendant who has filed an appearance may apply to the court to dismiss the proceeding on the ground that the court has no jurisdiction to hear and determine it.

(4) *[Revoked]*

(5) At any time after an appearance has been filed, the plaintiff may apply to the court by interlocutory application to set aside the appearance.

(6) The court hearing an application under subclause (3) or (5) must,—

(a) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss the proceeding; and

(b) if it does not dismiss the proceeding under paragraph (a), set aside the appearance.

(7) To the extent that an application under this rule relates to service of process effected outside New Zealand under rule 6.27 or 6.28, it must be determined under rule 6.29.

(7A) But both this rule and rule 6.29 are subject to section 27(1) of the Trans-Tasman Proceedings Act 2010, which provides that a New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act.

(8) The court, in exercising its powers under this rule, may do so on any terms and conditions the court thinks just and, in particular, on setting aside the appearance it may extend the time within which the defendant may file and serve a statement of defence and may give any directions that appear necessary regarding any further steps in the proceeding.

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(9) If the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 12.2 or 12.3, the court—

(a) must fix the time within which the defendant may file and serve—

(i) a notice of opposition; and

(ii) an affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and

(b) may, under subclause (8), give any other directions that appear necessary regarding any further steps in the proceeding.

Compare: 1908 No 89 Schedule 2 r 131

5.50 Appearance for ancillary purposes

A defendant who does not oppose the plaintiff's claim but who wishes to be heard on any ancillary matter (including costs) may, without filing a statement of defence, file and serve an appearance stating those matters, which must not subsequently be determined without notice to that defendant.

Compare: 1908 No 89 Schedule 2 r 132

5.51 Appearance reserving rights

(1) This rule applies to a defendant who does not oppose the plaintiff's claim but who wishes to reserve the defendant's rights—

(a) in the event that any other person may become a party to the proceeding; or

(b) in the event that any person, already a party, may take some steps in the proceeding adverse to the defendant's interests.

(2) The defendant—

(a) may, without filing a statement of defence, file and serve an appearance reserving those rights; and

(b) is subsequently entitled to be served with all documents relevant to the rights so reserved that are filed in the proceeding by a person who is or becomes a party.

(3) A defendant who has filed an appearance under subclause (2) may at any time, by leave of the court, file and serve a statement of defence and any other document within the time and upon any terms and conditions prescribed by the court when granting leave.

Compare: 1908 No 89 Schedule 2 r 133

5.52 Forms

Form G 7, G 8, or G 9 (whichever is appropriate) may be used for the purpose of entering an appearance under rules 5.49 to 5.51.

Compare: 1908 No 89 Schedule 2 r 134

This is an unofficial prospective consolidation showing
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Subpart 11—Counterclaims

5.53 Counterclaim against plaintiff only

(1) A defendant who intends to raise a counterclaim against the plaintiff only must file a statement of counterclaim in the registry of the court in which the statement of defence must be filed.

(2) This rule is subject to rule 5.54.

Compare: 1908 No 89 Schedule 2 r 145

5.54 Heading of counterclaim

A counterclaim must be headed with the word "Counterclaim" but in all other respects it must conform with rule 5.11 and the rules applying to statements of claim.

Compare: 1908 No 89 Schedule 2 r 147

5.55 Filing and service

A counterclaim must be filed in the court and a copy served on the plaintiff within the time stated in the notice of proceeding for filing a statement of defence or, if no such time is stated, within a time fixed by the court.

Compare: 1908 No 89 Schedule 2 r 148

5.56 Defence to counterclaim

(1) A plaintiff who intends to defend a counterclaim that has been served must, within 25 working days after the day on which the counterclaim is served, file a statement of defence to it and serve a copy on the defendant.

(2) The statement of defence must be headed with the words "Defence to Counterclaim" but in all other respects it must conform with the rules applying to statements of defence.

Compare: 1908 No 89 Schedule 2 r 149

5.57 Counterclaim against plaintiff and another person

(1) A defendant who has a counterclaim against the plaintiff along with any other person (whether a party to the proceeding or not) for any relief relating to or connected with the original subject matter of the proceeding may, within the time allowed for filing a statement of defence, file a statement of the counterclaim and serve a copy on the plaintiff and that other person (to be referred to as a counterclaim defendant).

(2) Subclause (1) is subject to rule 5.61.

(3) A counterclaim defendant must file a statement of defence to a counterclaim within 25 working days after the day on which the counterclaim was served.

(4) A notice of proceeding in form G 2 must be served with each copy of a counterclaim served under subclause (1).

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(5) Rules 5.53 to 5.56 apply with respect to the counterclaim and any defence to it.

(6) The court may at any time order that a counterclaim to which subclause (1) applies be struck out, upon such terms as it thinks just, if it appears—

(a) that, by reason of the counterclaim, the plaintiff is likely to be unduly delayed in obtaining relief; or

(b) that the trial (if a trial is necessary) is to be held at a place where it could not be held if a counterclaim defendant had been made defendant to an independent proceeding by the defendant in respect of the subject matter of the counterclaim; or

(c) that the relief sought in the counterclaim is not related to or connected with the original subject matter of the proceeding.

Compare: 1908 No 89 Schedule 2 r 150

5.58 Place of trial of counterclaim

(1) A counterclaim must be tried at the same place as the statement of claim in the original proceeding and either simultaneously or immediately afterwards.

(2) Despite subclause (1), if it appears to the court that a counterclaim and the statement of claim can more fairly or conveniently be tried separately, it may, subject to such conditions as it thinks fit, make an order that the counterclaim be tried at some other place or time.

(3) Subject to subclauses (1) and (2), after a counterclaim has been served it must proceed in the same manner as if the defendant had commenced an independent proceeding against the plaintiff.

Compare: 1908 No 89 Schedule 2 r 151

5.59 Status of counterclaim if proceeding stayed

If a defendant sets up a counterclaim against the plaintiff, whether alone or along with any other person, and the proceeding of the plaintiff is stayed, discontinued, or dismissed, that defendant may nevertheless proceed with the counterclaim.

Compare: 1908 No 89 Schedule 2 r 152

5.60 Counterclaim by counterclaim defendant

(1) Rules 5.56 to 5.59 apply to a counterclaim by a counterclaim defendant in the same way as if the counterclaim defendant were a defendant in a separate proceeding brought by the defendant.

(2) In a case referred to in subclause (1), the term **defendant** includes the counterclaim defendant and the term **plaintiff** includes the defendant who has joined the counterclaim defendant.

Compare: 1908 No 89 Schedule 2 r 153

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5.61 Restriction when the Crown involved

(1) In a proceeding by the Crown for the recovery of taxes, duties, or penalties, a defendant is not entitled to advance any set-off or counterclaim.

(2) In a proceeding of any nature by the Crown, a defendant is not entitled to advance any set-off or counterclaim arising out of a right or claim to payment in respect of any taxes, duties, or penalties.

(3) In a proceeding by or against the Crown, being a proceeding to which neither subclause (1) nor (2) applies, a defendant is not entitled, without leave of the court, to advance a set-off or counterclaim—

(a) if the Crown sues or is sued either—

(i) in the name of the Attorney-General on behalf of a government department or an officer or employee of the Crown; or

(ii) in the name of a government department or an officer or employee of the Crown; and

(b) if the subject matter of the set-off or counterclaim does not relate to that department or officer.

(4) An application for leave under subclause (3) that is made by a defendant other than the Crown must be served on the Crown not less than 5 working days before the date specified for hearing the application.

Compare: 1908 No 89 Schedule 2 r 146

Subpart 12—Reply

5.62 Duty to file and serve reply

If a statement of defence asserts an affirmative defence or contains any positive allegation affecting any other party, the plaintiff or that other party must, within 10 working days after the day on which that statement of defence is served, file a reply and serve it on the party serving the statement of defence.

Compare: 1908 No 89 Schedule 2 r 169

5.63 Contents of reply

(1) A reply must be limited to answering the affirmative defence or positive allegation and otherwise must comply with the rules governing statements of defence so far as they are applicable.

(2) An affirmative defence or positive allegation in a statement of defence that is not denied is treated as being admitted.

Compare: 1908 No 89 Schedule 2 rr 170, 171

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Subpart 13—Proceedings and actions transferred from District Court

5.64 Application of rules

(1) This subpart applies to every action, counterclaim, and other proceeding transferred to the court from a District Court under an order made under any of sections 86 to 91 of the District Court Act 2016.

(2) However, this subpart does not apply to a proceeding removed to the court by an order made under section 89 of the District Court Act 2016.

Compare: 1908 No 89 Schedule 2 r 228

5.65 Documents to be filed in proper registry

If the registry of the court at which the documents are received from the District Court is not the registry in which, had the action, counterclaim, or other proceeding been commenced in the High Court, the statement of claim would have been filed in accordance with rule 5.25, the Registrar receiving the documents must immediately transmit them to the Registrar at that registry for filing there.

Compare: 1908 No 89 Schedule 2 r 229

5.66 On filing treated as proceeding

(1) Documents filed under rule 5.65 must be treated as documents in a proceeding commenced under these rules.

(2) Subject to subclause (3) and rules 5.67 and 5.68, these rules apply with all necessary modifications.

(3) Any party who has not given an address for service complying with these rules must immediately do so.

Compare: 1908 No 89 Schedule 2 r 230

5.67 Title of documents

All documents filed in the proceeding after it has been filed in the court in accordance with rule 5.65 must be headed as if the proceeding had been commenced in the High Court.

Compare: 1908 No 89 Schedule 2 r 231

5.68 Time for filing statement of defence

If no statement of defence has been filed in the District Court, a statement of defence may be filed within 25 working days from the date when the proceeding is filed in accordance with rule 5.65.

Compare: 1908 No 89 Schedule 2 r 232

5.69 Transfer under section 91 of District Court Act 2016

(1) An application under section 91 of the District Court Act 2016 must be by interlocutory application.

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(2) It must,—

(a) if made by the counterclaimant, be made within 5 working days after the counterclaim or set-off and counterclaim is filed in the District Court:

(b) if made by the party against whom the counterclaim or set-off and counterclaim is made, be made within 5 working days after service on that party.

(3) At any time after an application under subclause (1) has been filed, the court may order the proceedings in the District Court to be stayed pending its disposal.

(4) The order in subclause (3) may be made without notice and subject to any conditions or undertakings that the court thinks just.

(5) If the court orders that the counterclaim or set-off and counterclaim alone be transferred, references in these rules to the plaintiff must be read as references to the counterclaimant and references to the defendant must be read as references to the party against whom the counterclaim or set-off and counterclaim is made.

Compare: 1908 No 89 Schedule 2 r 5.69 (as substituted by 2008 No 90 s 8)

Subpart 14—Service of statement of claim and notice of proceeding

5.70 Service generally

(1) Except as otherwise provided by any Act or these rules or an order made under these rules, a statement of claim and notice of proceeding must be served—

(a) on every defendant named in it; and

(b) on every other person directed to be served with it.

(2) Despite subclause (1), in a civil proceeding against the Crown in which the Attorney-General is named as defendant or is directed to be served on behalf of the Crown or in which the Attorney-General is joined as a party or third or subsequent party, service on the Crown must be effected in accordance with section 16 of the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r 125

5.71 Personal service required

(1) Except when the court directs or these rules require or permit a different mode of service, the statement of claim and notice of proceeding must be served personally.

(2) Rule 5.73(2) overrides subclause (1).

Compare: 1908 No 89 Schedule 2 r 126

5.72 Prompt service required

(1) The statement of claim and notice of proceeding must be served—

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(a) as soon as practicable after they are filed; or

(b) when directions as to service are sought, as soon as practicable after the directions have been given.

(2) Unless service is effected within 12 months after the day on which the statement of claim and notice of proceeding are filed or within such further time as the court may allow, the proceeding must be treated as having been discontinued by the plaintiff against any defendant or other person directed to be served who has not been served.

Compare: 1908 No 89 Schedule 2 r 127

5.73 Extension of time for service

(1) The plaintiff may, before or after the expiration of the period referred to in rule 5.72, apply to the court for an order extending that period in respect of any person (being a defendant or other person directed to be served) who has not been served.

(2) The court, if satisfied that reasonable efforts have been made to effect service on that defendant or person, or for other good reason, may extend the period of service for 6 months from the date of the order and so on from time to time while the proceeding has not been disposed of.

Compare: 1908 No 89 Schedule 2 r 128

5.73A Notice of service to Registrar

(1) 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.

(2) Notification under subclause (1) must be made within 7 working days after service and in writing.

Subpart 15—Registration of users for e-filing purposes

[Revoked]

5.74 Interpretation

[Revoked]

5.75 Registration procedure

[Revoked]

5.76 Effect of registration

[Revoked]

5.77 Renewal of registration

[Revoked]

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Subpart 16—E-filing documents

[Revoked]

5.78 Requirements for e-filing

[Revoked]

5.79 Provisional filing

[Revoked]

5.80 Acceptance of provisionally filed documents

[Revoked]

5.81 Affidavits and formal undertakings

[Revoked]

Part 6
Service

Subpart 1—Methods and proof of service

6.1 Methods of service

(1) Any of the following methods may be used for serving a document that is required by these rules to be served:

(a) personal service:

(b) service at an address for service given in accordance with these rules:

(c) service at an address directed by the court as the address for service for the party or person:

(d) if the solicitor for the party or person, or the party or person, has, under rule 5.40(5)(a), 5.42(2)(b)(i), or 5.44(1)(e), specified a post office box address, document exchange box number, fax number, or email address,—

(i) by posting the document to that post office box address; or

(ii) by leaving the document at a document exchange for direction to that document exchange box number; or

(iii) by transmitting the document electronically to that fax number or email address:

(e) if a defendant has been served in Australia under section 13 of the Trans-Tasman Proceedings Act 2010 with an initiating document for the proceeding, by posting the document to an address for service of the party or person to be served.

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(2) In any case not provided for by these rules, service must be effected by the method and at the place the court directs.

(3) This rule does not apply if an Act or a rule requires a special and exclusive method of service.

(4) This rule is subject to rule 6.1A.

Compare: 1908 No 89 Schedule 2 r 192

6.1A Power to limit acceptable methods of service in emergency

Any contrary provision of these rules notwithstanding, a Judge (including an Associate Judge) may, in respect of a proceeding, if satisfied that the existence of an emergency in any part of New Zealand means the service of documents by other than electronic means would cause or risk causing disruption to the orderly and safe dispatch of the court's business or harm to the health and wellbeing of any person, require that—

(a) any party that has not already done so specify an electronic address by which documents can be served on that party pursuant to rule 6.1(1)(d)(iii); or

(b) any document required by any person to be served on any other person not be served pursuant to rules 6.1(1)(a), (b), (c), or (d)(ii) and must instead be served pursuant to rule 6.1(1)(d)(i) or (iii).

6.2 Service of copies

Unless an Act or a rule expressly requires an original document to be served, service of a true copy is to be treated as service of the document.

Compare: 1908 No 89 Schedule 2 r 193

6.3 Notices

Rules 6.1 and 6.2 and rules 6.4 to 6.25 apply to any notice that by these rules, or by any order made under these rules, is required to be given to any person, whether or not that person is a party or the notice is required to be filed in the court.

Compare: 1908 No 89 Schedule 2 r 194

6.4 Personal service on spouses or partners

(1) This rule applies when defendants to a proceeding are—

(a) a married couple; or

(b) civil union partners; or

(c) de facto partners.

(2) Service on one spouse, civil union partner, or de facto partner is not to be treated as service on the other unless the court so orders.

Compare: 1908 No 89 Schedule 2 r 205

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6.5 Service at address for service

A document may be served at an address for service by leaving the document at that address at any time between 9 am and 5 pm.

Compare: 1908 No 89 Schedule 2 r 206

6.6 Service by means of post office box, document exchange, fax, or email

(1) When a document is served on a party or person in accordance with rule 6.1(1)(d)(i) or (ii), that document must,—

(a) if posted to a post office box address, be treated as served on the earlier of—

(i) the fifth working day after the day on which it was posted; or

(ii) the day on which it was received; and

(b) if left at a document exchange, be treated as served on the earlier of—

(i) the second working day after the day on which it was left; or

(ii) the day on which it was received.

(2) A document served on a party or person in accordance with rule 6.1(1)(d)(iii) must—

(a) be treated as dispatched at the time the electronic communication first enters an information system outside the control of its originator; and

(b) be treated as received,—

(i) in the case of a party who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or

(ii) in any other case, at the time the electronic communication comes to the attention of the party or person being served, or the solicitor or other agent of that party or person.

(3) When a document is transmitted electronically on a day that is not a working day, or after 5 pm on a working day, it must be treated as served on the first subsequent working day.

(4) When a document is served electronically under this rule, the party or person served must, on receiving the document, immediately give to the person who served the document, or that person's solicitor or agent, an acknowledgement in writing or electronically—

(a) that the document has been received; and

(b) of the date and time of receipt.

(5) In this rule, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.

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(6) Subclauses (7) to (11) apply to a document to be served in a proceeding if—

(a) the proceeding is one an initiating document for which is to be or has been served on a defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010; and

(b) the document is one to be served—

(i) by a party in New Zealand and on a party in Australia; or

(ii) by a party in Australia and on a party in New Zealand.

(7) Despite subclause (1), when a document is served in accordance with rule 6.1(1)(d)(i) or (ii) or (e), it is to be treated as served on the earlier of—

(a) the eighth working day after the day on which it was posted; and

(b) the day on which it was received.

(8) Subclause (9) applies to a document that is—

(a) a document in response to a requirement of or under these rules; and

(b) served in accordance with rule 6.1(1)(d)(i) or (ii) or (e).

(9) The party serving the document is entitled to an extra 5 working days within which to comply with that requirement.

(10) Despite subclause (8), subclause (9) does not apply when a rule requires a document to be served a prescribed number of days before a hearing or other specified event.

(11) Despite subclause (3), when a document is, under rule 6.1(1)(d)(iii), transmitted electronically to the fax number or email address of a solicitor in a State or Territory of Australia at a time later than 5 pm in that State or Territory, it is to be treated as having been served on the first subsequent working day.

Compare: 1908 No 89 Schedule 2 r 206A

6.7 Service under agreement

Service by a method agreed to in writing by a party is sufficient service on that party.

Compare: 1908 No 89 Schedule 2 r 210

6.8 Substituted service

(1) If reasonable efforts have been made to serve a document by a method permitted or required under these rules, and either the document has come to the knowledge of the person to be served or it cannot be promptly served, the court may—

(a) direct—

(i) that instead of service, specified steps be taken that are likely to bring the document to the notice of the person to be served; and

(ii) that the document be treated as served on the happening of a specified event, or on the expiry of a specified time:

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(b) when steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be treated as served on that person on a specified date:

(c) subject to any conditions that the court thinks just to impose, dispense with service of a document on a person and give to the party by whom the document is required to be served leave to proceed as if the document had been served.

(2) If a direction is given under subclause (1)(a) in respect of a document, the document must be treated as having been served at the place—

(a) at which the document is likely to have come to the notice of the person to be served; or

(b) where that person was or is likely to have been on the happening of the event or the expiry of the time specified under subclause (1)(a)(ii).

Compare: 1908 No 89 Schedule 2 r 211

6.9 Notices to be given by Registrar

When notice is required to be given by the Registrar to a person, whether a party or not, it may be given,—

(a) if the person is acting by a solicitor, by sending it by ordinary post addressed to the solicitor at the address for service (if given) or at the solicitor's place of business:

(b) if the person is not acting by a solicitor, by sending it by ordinary post addressed to that person at that person's address for service (if given) or last known or usual place of residence or business in New Zealand:

(c) in any other manner the court directs.

Compare: 1908 No 89 Schedule 2 r 195

6.10 Proof of service

(1) The service of a document may be proved on oath before the court or by affidavit in form G 16.

(2) If the service of a document is proved by affidavit in form G 16, it is unnecessary, unless the court otherwise directs, for a copy of that document to be annexed if—

(a) either the original of the document or a copy of the document has, at the time of service, been filed in the registry of the court; and

(b) the affidavit contains a description of the document that—

(i) is sufficient to enable the document to be identified; and

(ii) includes the date of the document (if the document is dated).

Compare: 1908 No 89 Schedule 2 r 196

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6.11 Personal service

A document may be personally served by leaving the document with the person to be served, or, if that person does not accept it, by putting it down and bringing it to the notice of that person.

Compare: 1908 No 89 Schedule 2 r 197

Subpart 2—Corporations, partners, attorneys, and agents

6.12 Personal service on New Zealand corporations

(1) A document may be served on a company incorporated under the Companies Act 1993 in accordance with section 387 of that Act.

(2) A document may be served on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1993—

(a) by service in accordance with rule 6.11 on—

(i) the mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or

(ii) any member, officer, or employee of the corporation at the corporation's head office or principal place of business; or

(b) by leaving the document at the corporation's registered office; or

(c) by serving the document on a member, officer, or employee of the corporation in any manner that the court directs; or

(d) by complying with any enactment that provides for service of a document on a corporation.

Compare: 1908 No 89 Schedule 2 r 198

6.13 Personal service in New Zealand on foreign corporations

(1) An overseas company (within the meaning of section 2 of the Companies Act 1993) that is served in New Zealand must be personally served in accordance with section 389 of the Companies Act 1993.

(2) A corporation (other than an overseas company within the meaning of section 2 of the Companies Act 1993) may be served in New Zealand in accordance with rule 6.11 by service on a person appearing to have control of the business of that corporation at the principal or only place of business of that corporation in New Zealand if the corporation—

(a) is incorporated outside New Zealand; and

(b) has a place or places of business in New Zealand.

Compare: 1908 No 89 Schedule 2 r 199

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6.13A Personal service on Australian corporations, partnerships, and attorneys

A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—

(a) on a company registered in Australia under the Corporations Act 2001 (Aust) in the same way as if it were a company to which section 387 of the Companies Act 1993 applies:

(b) on a corporation incorporated in Australia (other than a company specified in paragraph (a)) in the same way as if it were a corporation to which rule 6.12(2) applies:

(c) on a partnership, or on a person carrying on business in the name of a firm apparently consisting of more than 1 person, by serving it in accordance with rule 6.11 either on any partner or on that person, or—

(i) on any person appearing to have control of the business of the partnership or apparent partnership; and

(ii) at the principal place in Australia of the business of the partnership or apparent partnership:

(d) on a person who is out of Australia and New Zealand by serving, in accordance with rule 6.11, an attorney or agent of that person in Australia if the attorney or agent is authorised—

(i) to transact that person's affairs generally and to defend proceedings; or

(ii) to transact the person's affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

6.13B Personal service in Australia on foreign corporations

(1) A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—

(a) on a foreign company registered under section 601CE of the Corporations Act 2001 (Aust) as follows:

(i) by delivery to a person named in the register kept for the purposes of Division 2 of Part 5B.2 of that Act as a director of the foreign company and who is resident in Australia; or

(ii) by delivery to a person named in that register as being authorised to accept service in Australia of documents on behalf of the foreign company; or

(iii) by delivery to an employee of the foreign company at the foreign company's place of business in Australia or, if the foreign company has more than 1 place of business in Australia, at the foreign company's principal place of business in Australia; or

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(iv) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceeding; or

(v) in accordance with an agreement made with the foreign company:

(b) on a foreign corporation of the kind specified in subclause (2) by serving it in accordance with rule 6.11—

(i) on a person appearing to have control of the business of that corporation; and

(ii) at the principal place of business of that corporation in Australia.

(2) Subclause (1)(b) applies to a foreign corporation that—

(a) is not a foreign company registered under section 601CE of the Corporations Act 2001 (Aust); and

(b) is incorporated but not in Australia and not in New Zealand; and

(c) has a place of business in Australia; and

(d) does not have a place of business in New Zealand.

6.14 Personal service on unincorporated societies

A document may be served on an unincorporated society by serving the president, chairperson, secretary, or any similar officer of the society under rule 6.11.

Compare: 1908 No 89 Schedule 2 r 200

6.15 Personal service on partnership or apparent partnership

A document may be served on a partnership or on a person carrying on business in the name of a firm apparently consisting of more than 1 person by serving it in accordance with rule 6.11—

(a) on any partner or on that person; or

(b) at the principal place in New Zealand of the business of the partnership or apparent partnership, on any person appearing to have control of the business there.

Compare: 1908 No 89 Schedule 2 r 201

6.16 Personal service on attorney or agent of absentee

A document may be served on a person who is out of New Zealand by serving, in accordance with rule 6.11, an attorney or agent of that person in New Zealand if the attorney or agent is authorised—

(a) to transact that person's affairs generally and to defend proceedings; or

(b) to transact the person's affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

Compare: 1908 No 89 Schedule 2 r 202

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6.17 Service on representatives

(1) This rule applies to a person (a **representative**) who—

(a) is appointed by the court to represent any person or persons, or any class of persons; or

(b) sues or defends on behalf of himself or herself and any other person or persons.

(2) Service on the representative is to be treated as service on behalf of all persons for whom the representative has been appointed to represent or on whose behalf the representative sues or defends.

Compare: 1908 No 89 Schedule 2 r 208

6.18 Service on solicitor

A document is treated as served on a person on the date on which the solicitor for that person signs on a copy of the document a note accepting service of it, or a proved earlier date.

Compare: 1908 No 89 Schedule 2 r 209

6.19 Service of statement of claim on certain days void

(1) A statement of claim must not be served on Christmas Day, New Year's Day, or Good Friday.

(2) *[Revoked]*

Compare: 1908 No 89 Schedule 2 r 207

6.20 Failure to give address for service

A party to a contentious proceeding who has not given an address for service is not entitled to be served with notice of any step in the proceeding or with copies of any further documents filed in the proceeding or to address the court.

Compare: 1908 No 89 Schedule 2 r 212

Subpart 3—Foreign process

6.21 Service of foreign process

(1) This subpart applies when a request is made to the court to effect service of a foreign process on a person in New Zealand.

(2) A request may be made to the court to effect service of a foreign process on a person in New Zealand in any manner permitted or required by the provisions of a convention.

(3) Service in New Zealand of a foreign process must be in accordance with a convention if—

(a) the convention contains an express provision governing the service of that process in New Zealand; and

(b) that convention excludes other methods of service.

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(4) When service is in accordance with a convention, no court fees are to be charged for the filing of any document or the doing of any act relating to the service or the certification of service.

(5) A letter of request from a foreign court requesting service of process on any person in New Zealand in connection with any civil matter pending before that foreign court must be forwarded through diplomatic channels to the Secretary of Foreign Affairs and Trade who must send it to the Secretary for Justice for further transmission to the Registrar with an intimation that it is desirable that effect should be given to that request.

(6) A letter of request must be accompanied by—

(a) a translation of it in English if it is not in English; and

(b) 2 copies of the process or citation to be served; and

(c) 2 copies of the process or citation in English or translated into English.

(7) Subclauses (5) and (6) and rules 6.22 to 6.25 apply subject to the provisions of any relevant convention.

(8) In this rule, **convention** means any treaty to which New Zealand is a party that makes provision for service of foreign process in New Zealand.

Compare: 1908 No 89 Schedule 2 r 213

6.22 Sheriff to effect service

Service of the process or citation must be effected by the Sheriff whose registry is nearest to the place where the person to be served resides, or by any officer appointed by that Sheriff.

Compare: 1908 No 89 Schedule 2 r 214

6.23 Method of service

Service must be effected by leaving, in accordance with these rules, a copy of the process or citation and of any translation with the person to be served.

Compare: 1908 No 89 Schedule 2 r 215

6.24 Return as to service

After service of the process or citation has been effected or (if that is the case) attempts to effect service of the process or citation have failed, the Sheriff or the officer effecting or attempting to effect service must return to the Registrar of the court nearest to the place of service or attempted place of service—

(a) 1 copy of the process or citation; and

(b) an affidavit made by the Sheriff or the officer stating when, where, and how the Sheriff or officer effected service or attempted to effect service; and

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(c) a statement of the costs incurred in effecting, or attempting to effect, service.

Compare: 1908 No 89 Schedule 2 r 216

6.25 Certification

The Registrar must give a certificate in form G 17—

(a) identifying the documents annexed, namely the letter of request for service, a copy of the process or citation received with the letter, and a copy of the affidavit referred to in rule 6.24(b); and

(b) certifying—

(i) that the method of service of the process and the proof of service comply with the law and practice of the High Court of New Zealand regulating the service of New Zealand legal process in New Zealand and its proof; or

(ii) if that is the case, that service of the process could not be effected for the reason specified in the certificate; and

(c) certifying the cost of effecting, or attempting to effect, service.

6.26 Sealing and transmission of certificate

The certificate given under rule 6.25 must be sealed with the seal of the court and sent to the Secretary for Justice who must send it to the Secretary of Foreign Affairs and Trade for further transmission through diplomatic channels to the foreign court.

Compare: 1908 No 89 Schedule 2 r 217

Subpart 4—Service out of New Zealand

6.27 When allowed without leave

(1) This rule applies to a document that initiates a civil proceeding, or is a notice issued under subpart 4 of Part 4 (third, fourth and subsequent parties), which under these rules is required to be served but cannot be served in New Zealand under these rules (an **originating document**).

(2) An originating document may be served out of New Zealand without leave in the following cases:

(a) when a claim is made in tort and—

(i) any act or omission in respect of which damage was sustained was done or occurred in New Zealand; or

(ii) the damage was sustained in New Zealand:

(b) when a contract sought to be enforced or rescinded, dissolved, annulled, cancelled, otherwise affected or interpreted in any proceeding, or for

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the breach of which damages or other relief is demanded in the proceeding—

(i) was made or entered into in New Zealand; or

(ii) was made by or through an agent trading or residing within New Zealand; or

(iii) was to be wholly or in part performed in New Zealand; or

(iv) was by its terms or by implication to be governed by New Zealand law:

(c) when there has been a breach in New Zealand of any contract, wherever made:

(d) when the claim is for—

(i) a permanent injunction to compel or restrain the performance of any act in New Zealand; or

(ii) interim relief in support of judicial or arbitral proceedings commenced or to be commenced outside New Zealand:

(e) when the subject matter of the proceeding is land or other property situated in New Zealand, or any act, deed, will, instrument, or thing affecting such land or property:

(f) when the proceeding relates to the carrying out or discharge of the trusts of any written instrument of which the person to be served is a trustee and which ought to be carried out or discharged according to the law of New Zealand:

(g) when any relief is sought against any person domiciled or ordinarily resident in New Zealand:

(h) when any person out of the jurisdiction is—

(i) a necessary or proper party to proceedings properly brought against another defendant served or to be served (whether within New Zealand or outside New Zealand under any other provision of these rules), and there is a real issue between the plaintiff and that defendant that the court ought to try; or

(ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by proceedings in the court:

(i) when the proceeding is for the administration of the estate of any deceased person who at the time of his or her death was domiciled in New Zealand:

(j) when the claim arises under an enactment and either—

(i) any act or omission to which the claim relates was done or occurred in New Zealand; or

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(ii) any loss or damage to which the claim relates was sustained in New Zealand; or

(iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside New Zealand in the circumstances alleged; or

(iv) the enactment expressly confers jurisdiction on the court over persons outside New Zealand (in which case any requirements of the enactment relating to service must be complied with):

(k) when the person to be served has submitted to the jurisdiction of the court:

(l) when a claim is made for restitution or for the remedy of constructive trust and the defendant's alleged liability arises out of acts committed within the jurisdiction:

(m) when it is sought to enforce any judgment or arbitral award.

Compare: 1908 No 89 Schedule 2 r 219

6.28 When allowed with leave

(1) In any proceeding when service is not allowed under rule 6.27, an originating document may be served out of New Zealand with the leave of the court.

(2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.

(3) A sealed copy of every order made under this rule must be served with the document to which it relates.

(4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction under rule 6.29, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is a New Zealand citizen.

(5) The court may grant an application for leave if the applicant establishes that—

(a) the claim has a real and substantial connection with New Zealand; and

(b) there is a serious issue to be tried on the merits; and

(c) New Zealand is the appropriate forum for the trial; and

(d) any other relevant circumstances support an assumption of jurisdiction.

Compare: 1908 No 89 Schedule 2 r 220

6.29 Court's discretion whether to assume jurisdiction

(1) If service of process has been effected out of New Zealand without leave, and the court's jurisdiction is protested under rule 5.49, the court must dismiss the proceeding unless the party effecting service establishes—

(a) that there is—

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(i) a good arguable case that the claim falls wholly within 1 or more of the paragraphs of rule 6.27; and

(ii) the court should assume jurisdiction by reason of the matters set out in rule 6.28(5)(b) to (d); or

(b) that, had the party applied for leave under rule 6.28,—

(i) leave would have been granted; and

(ii) it is in the interests of justice that the failure to apply for leave should be excused.

(2) If service of process has been effected out of New Zealand under rule 6.28, and the court's jurisdiction is protested under rule 5.49, and it is claimed that leave was wrongly granted under rule 6.28, the court must dismiss the proceeding unless the party effecting service establishes that in the light of the evidence now before the court leave was correctly granted.

(3) When service of process has been validly effected within New Zealand, but New Zealand is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 15.1.

(4) This rule is subject to section 27(1) of the Trans-Tasman Proceedings Act 2010 (*see* rule 5.49(7A)).

Compare: 1908 No 89 Schedule 2 r 220

6.30 Service of other documents outside New Zealand

Any document other than an originating document required by any rule to be served personally may be served abroad with the leave of the court, which may be given with any directions that the court thinks just.

6.31 Notice to defendant served outside New Zealand

(1) Subclause (2) applies if either of the following is required to be served on a defendant who is out of New Zealand:

(a) a notice of proceeding with an attached memorandum in form G 3, G 4, or G 5:

(b) an originating application that has attached at the end a memorandum (which may be in form G 10) stating the matters set out in rule 5.44.

(2) The memorandum referred to in subclause (1)(a) or (b) must include a notice, which may be in form G 6, informing the defendant of—

(a) the scope of the jurisdiction of the court in respect of claims against persons who are not resident in New Zealand; and

(b) the grounds alleged by the plaintiff in relying on that jurisdiction; and

(c) the defendant's right to enter an appearance and objection to the jurisdiction of the court under rule 5.49.

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6.32 Service outside New Zealand

(1) An originating document permitted under these rules to be served outside New Zealand may be served by a method—

(a) specified in rule 6.1; or

(b) permitted by the law of the country in which it is to be served; or

(c) provided for in rules 6.33 and 6.34.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) When a convention relating to service of process is in force between New Zealand and the country where service is to be effected, service must be effected in accordance with a method provided for, or permitted by, that convention.

(4) No service outside New Zealand is valid if effected contrary to the law of the country where service is effected.

Compare: 1908 No 89 Schedule 2 r 222

6.33 Service through official channels

(1) When a party seeks service outside New Zealand through official channels, the request must be sent by the Registrar to the Secretary for Justice who must forward it to the Secretary of Foreign Affairs and Trade for further transmission to the appropriate authorities in the foreign country.

(2) Proof of service must be returned to the Registrar through the same channels.

(3) In respect of each person to be served, the request for service must be accompanied by—

(a) the document to be served; and

(b) a copy of the document to be exhibited to the evidence verifying service; and

(c) when the language of the person to be served is not English,—

(i) a translation of the document into the language (verified as correct to the satisfaction of the Registrar) of the person to be served for service with the document; and

(ii) a copy of that translation, which must be exhibited to the evidence verifying service.

(4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a New Zealand consular officer, is sufficient proof of that fact and date.

(5) This rule is subject to any relevant convention that requires or permits any other method of service through official channels.

Compare: 1908 No 89 Schedule 2 r 223

6.34 Service in convention countries

(1) This rule applies when—

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(a) a convention is in force between New Zealand and any other country relating to the service of documents in proceedings in the courts of the respective countries; and

(b) a party to a proceeding in New Zealand desires to take advantage of any provision made in the convention for service in that other country by official means.

(2) When this rule applies, the party seeking service may file a request in form G 18 stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.

(3) Subclause (2) is subject to the provisions of the convention.

(4) In respect of each person to be served, the request for service must be accompanied by—

(a) the document to be served; and

(b) a copy of it exhibited to the evidence verifying service; and

(c) when the language of the person to be served is not English,—

(i) a translation of the document into his or her language (verified as correct to the satisfaction of the Registrar) for service with the document; and

(ii) a copy of that translation to be exhibited to the evidence verifying service.

(5) The document and translation to be served must be sealed by the Registrar with the seal of the court and the documents required to accompany the request for service forwarded by the Registrar to the Secretary for Justice for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.

(6) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a British or New Zealand consular officer, and transmitted by the Secretary for Justice to the Registrar is sufficient proof of that service.

(7) A certificate filed by the Registrar is equivalent to an affidavit of service of the documents referred to in the certificate.

Compare: 1908 No 89 Schedule 2 r 224

6.35 Time for filing defence

Except when the court otherwise orders, a defendant who has been served out of New Zealand must file a statement of defence or appearance within 30 working days from the date of service.

Compare: 1908 No 89 Schedule 2 r 225

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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6.36 Subpart does not apply to service in Australia of documents for or in certain trans-Tasman proceedings

This subpart (which contains rules on service out of New Zealand) does not apply to service in Australia of an initiating document for, or of any other document to be served in or for, a proceeding an initiating document for which may be served in Australia under subpart 1 of Part 2 of the Trans-Tasman Proceedings Act 2010.

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.

[*Graphic: Overview of commencement, case management, and preparation for trial of ordinary proceedings.*]

Part 7
Case management, Judicial issues conference, interlocutory applications, and interim relief

Subpart 1—Case management

~~**7.1AA Outline of case management procedures for different types of proceedings**~~

~~(1) An ordinary defended proceeding or a complex defended proceeding—~~

~~(a) is subject to a first case management review (*see* rule 7.3):~~

~~(aa) may be subject to a first case management conference (*see* rule 7.3A):~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(b) may be the subject of 1 or more further case management conferences (*see* rule 7.4):~~

~~(c) may also be the subject of an issues conference (*see* rule 7.5):~~

~~(d) 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) 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 different provisions (*see* rules 7.14 and 7.15).~~

~~(3) A proceeding commenced by originating application is subject to limited case management through the ability of the parties to seek directions (*see* rules 19.11 and 7.43A).~~

~~(4) *[Revoked]*~~

~~(5) An application for judicial review may be subject to case management under section 13 of the Judicial Review Procedure Act 2016 and any rules relating to the case management of those proceedings.~~

~~(6) The following proceedings are not subject to case management:~~

~~(a) undefended proceedings:~~

~~(b) an application under Part 24 (Insolvency) or Part 31 (Companies: Liquidation).~~

~~(7) This rule operates only as a guide, and if any other provision of these rules or any other enactment is inconsistent with this rule, that other provision or enactment prevails.~~

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

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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.

~~7.1~~ ~~Proceedings subject of case management~~

~~(1) Case management in accordance with this subpart will be applied to the following proceedings in order to promote their just, speedy, and inexpensive determination:~~

~~(a) ordinary or complex defended hearings:~~

~~(b) an application for leave to appeal, or an appeal, under Part 20 (Appeals), Part 21 (Cases stated), or Part 26 (Arbitration Act 1996):~~

~~(c) a proceeding under Part 30.~~

~~(2) *[Revoked]*~~

~~(3) The purpose of a case management conference is to enable the Judge to assist the parties—~~

~~(a) to identify, define, and refine the issues requiring judicial resolution; and~~

~~(b) to determine what steps need to be taken in order to prepare the proceeding for hearing or trial; and~~

~~(c) to decide how best to facilitate the conduct of the hearing or trial; and~~

~~(d) to ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.~~

~~(4) In this rule,—~~

~~**complex defended proceeding** means one that, in a Judge's opinion, needs intensive case management and therefore needs more than 1 case management conference before a fixture is allocated~~

~~**ordinary defended proceeding** means one that, in a Judge's opinion, does not require intensive case management and therefore does not need more than 1 case management conference before a fixture is allocated.~~

~~(5) For the purposes of this subpart, a proceeding must be classified as—~~

~~(a) an ordinary defended proceeding; or~~

~~(b) a complex defended proceeding; or~~

~~(c) an application under Part 24 (Insolvency) or Part 31 (Companies: Liquidation); or~~

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(d) an application for leave to appeal, or an appeal, under Part 20 (Appeals), Part 21 (Cases stated), or Part 26 (Arbitration Act 1996); or

(e) an undefended proceeding; or

(f) an application commenced by originating application under Part 19 (originating applications); or

(g) *[Revoked]*

(h) a proceeding under Part 30.

(6) The proper classification of a proceeding as either an ordinary defended proceeding or a complex defended proceeding in terms of subclause (5) must be—

(a) resolved by a Judge not later than the date of the first case management conference; and

(b) promptly advised to the parties.

(7) A Judge may at any time review the classification assigned under subclause (5) and decide whether to maintain or alter it.

(8) Proceedings under subclause (5)(f) and (g) are subject to limited case management through the ability of the parties to seek directions.

(9) The following proceedings are not subject to case management:

(a) undefended hearings:

(b) an application under Part 24 (Insolvency) or Part 31 (Companies: Liquidation).

Compare: 1908 No 89 Schedule 2 r 7.1 prior to 1 February 2013

7.2 Case management conferences generally

(1) A Judge may hold a case management conference at any time.

(2) A case management conference may be held by a Judge on the Judge's own initiative or on the application of 1 or more of the parties.

(3) At any case management conference, the Judge may give directions to secure the just, speedy, and inexpensive determination of the proceedings, including the fixing of timetables and directing how the hearing or trial is to be conducted.

Compare: 1908 No 89 Schedule 2 r 7.2 prior to 1 February 2013

7.3 First case management review

Application

(1) This rule applies unless—

(a) no statement of defence has been filed in a proceeding; or

(b) the proceeding is an appeal that falls within rule 7.14.

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~~*Requirements for joint memorandum or separate memoranda*~~

~~(2) Not later than 15 working days after the first statement of defence is filed, the parties must file a joint memorandum or each party must file a separate memorandum addressing the following matters:~~

~~(a) the Schedule 5 matters; and~~

~~(b) the making of a discovery order under rule 8.5; and~~

~~(c) the hearing and, if practicable, the disposal of any outstanding interlocutory application; and~~

~~(d) the fixing of —~~

~~(i) a close of pleadings date; and~~

~~(ii) a trial or hearing date for a proceeding that is classified as an ordinary defended proceeding and the making of appropriate trial directions; and~~

~~(iii) a date and arrangements for any further case management conference, issues conference, or pre-trial conference; and~~

~~(e) other appropriate matters that the parties have already discussed.~~

~~*Requirements for separate memoranda*~~

~~(3) The following provisions apply if each party files a separate memorandum:~~

~~(a) the plaintiff must file the first memorandum not later than 15 working days after the statement of defence is filed:~~

~~(b) the plaintiff's memorandum must state the plaintiff's position on each of the matters specified in subclause (2):~~

~~(c) each other party to the proceeding must, not later than 5 working days after the plaintiff files the first memorandum, file a memorandum stating —~~

~~(i) whether the party agrees or disagrees with the plaintiff's statement on each matter; and~~

~~(ii) in each case where the party disagrees, the reasons for disagreeing and the different position that the party contends for on the matter.~~

~~(4) Separate memoranda filed under subclause (2) may also address matters that fall within subclause (2)(e).~~

~~*Judge's powers on consideration of memorandum or memoranda*~~

~~(5) The Registrar must, as soon practicable after receiving the joint memorandum or separate memoranda, refer the memorandum or memoranda to a Judge to consider whether each document meets the requirements in subclause (2).~~

~~(6) The Judge may, if the Judge is satisfied that the memorandum or memoranda meet the requirements in subclause (2), —~~

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(a) allocate a trial date, in which case the Judge may also give the directions required (if any) to ready the proceeding for trial; or

(b) direct that a case management conference or issues conference be held and that there is no requirement for a first case management conference.

(7) A case management conference or issues conference under subclause (6)(b) must be held—

(a) on the date that the Judge directs; or

(b) if the Judge does not give a direction as to the date on which the conference is to be held, within 25 working days after the date on which the Judge directs the Registrar to convene the conference.

(8) *[Revoked]*

7.3A First case management conference

(1) This rule applies if the Judge, after considering the joint memorandum or separate memoranda under rule 7.3, is not satisfied that the memorandum or memoranda meet the requirements in rule 7.3(2).

(2) The Judge may direct the Registrar to convene a first case management conference.

(3) The Registrar must arrange for the first case management conference to be held not later than 15 working days after the Judge directs the Registrar to convene the conference.

(4) The agenda for the first case management conference is the matters specified in rule 7.3(2).

7.4 Further case management conferences

(1) The Judge at the first case management conference of any defended proceeding may require a further case management conference or order one on the application of a party.

(2) The agenda for a conference under this rule—

(a) will be set out in the order directing the conference, but a party may add a further matter or matters (if practicable, giving advance notice to the other parties); and

(b) will include or adapt the Schedule 5 matters; and

(c) may prescribe steps to be taken in preparation for the conference.

(3) The parties must file either a joint memorandum or separate memoranda addressing the matters in subclause (2).

(4) A joint memorandum under subclause (3) must be filed not later than 10 working days before the conference.

(5) The following provisions apply if each party files a separate memorandum under subclause (3):

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~~(a) the plaintiff must, not later than 10 working days before the conference, file and serve the first memorandum stating the plaintiff's position on each of the matters in subclause (2):~~

~~(b) each other party must, not later than 5 working days after the plaintiff serves the first memorandum, file and serve a memorandum stating—~~

~~(i) whether the party agrees or disagrees with the plaintiff's position on each matter; and~~

~~(ii) in each case where the party disagrees, the reasons for disagreeing and the different position that the party contends for on the matter.~~

~~(6) Rule 7.3(5) to (8) applies to any memorandum filed under subclause (3), with any necessary modifications.~~

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

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(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):

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(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.)

~~**7.5 Issues conferences**~~

~~(1) The Judge may at any time, on the Judge's own initiative or if the parties agree, order an issues conference for any defended proceeding to advance the identification and refinement of the issues, and set the date and agenda for that issues conference.~~

~~(2) The Judge may issue a direction before an issues conference that requires 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, their senior officers or authorised representatives).~~

~~(3) If any conflict arises between the pleadings and the issues as identified and refined before or at an issues conference, the pleadings prevail.~~

~~Compare: 1908 No 89 Schedule 2 r 7.3 prior to 1 February 2013~~

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.

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(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:

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(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:

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(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

7.6 Allocation of key dates

(1) If it appears to the Judge at ~~the first case management~~ a judicial conference that a proceeding can be readied for hearing or trial, the Judge must immediately allocate a date for hearing or trial.

(2) If a proceeding has not been allocated a hearing or trial date at ~~the first case management~~ a judicial conference, the Judge must allocate a date for its hearing or trial when the Judge is satisfied that it can be readied for hearing or trial.

(3) A proceeding can be readied for hearing or trial for the purpose of subclauses (1) and (2) if it is reasonably anticipated that it will be able to proceed to hearing or trial without the need for—

(a) any significant amendment of the pleadings; or

(b) any significant interlocutory application; or

(c) any significant refinement of the issues in the proceeding.

(4) In addition to allocating a hearing or trial date under subclause (1) or (2), the Judge must fix a close of pleadings date.

(4A) If the Judge does not fix a date for the close of pleadings under subclause (4), the close of pleadings date is the later of—

(a) the date that is 60 working days before the hearing or trial date allocated; and

(b) the date on which the hearing or trial date is allocated.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(5) It is the duty of all parties to a proceeding for which a date for hearing or trial has been allocated to notify the Registrar, without delay, if the proceeding is settled.

Compare: 1908 No 89 Schedule 2 rr 7.13, 7.17 prior to 1 February 2013

7.7 Steps after close of pleadings date restricted

(1) No statement of defence or amended pleading or affidavit may be filed, and no interlocutory application may be made or step taken, after the close of pleadings date without the leave of a Judge.

(2) Subclause (1) does not apply to—

(a) an application for leave under that subclause; or

(b) a pleading or an affidavit that merely brings up to date the information before the court; or

(c) an application for amendment of a defect or an error under rule 1.9.

Compare: 1908 No 89 Schedule 2 r 7.18 prior to 1 February 2013

7.8 Pre-trial conferences

(1) The Judge or Registrar may order a pre-trial conference for a proceeding that is being or has been allocated a hearing or trial date.

(2) Any matter may be considered at a pre-trial conference, including—

(a) whether background facts can be agreed to avoid hearing uncontested evidence:

(b) the size, contents, and format of the agreed bundle of documents:

(c) the amount of detail in any chronology of facts:

(d) whether it will be helpful to direct the provision of lists of enactments and cases likely to be referred to:

(e) whether any oral evidence direction should be made under rule 9.10.

(3) The Judge at a pre-trial conference may give directions ~~to secure the just, speedy, and inexpensive determination of the proceeding~~ that they consider will best achieve the overriding objective in rule 1.2, including directions as to how the hearing or trial is to be conducted.

~~7.9 Cancellation of conference~~

~~A Judge may cancel a case management or issues conference if, after reading the memoranda prepared for the conference, the Judge is satisfied that the parties have achieved the goals of this subpart and, in particular, that they have—~~

~~(a) identified, defined, and refined the issues requiring judicial resolution; and~~

~~(b) completed all steps needed to prepare the proceeding for hearing or trial; and~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(c) devised an efficient way of conducting the hearing or trial that is proportionate to the subject matter.~~

~~Compare: 1908 No 89 Schedule 2 r 7.6 prior to 1 February 2013~~

7.10 Limitation of right of appeal

(1) The parties may agree to exclude or limit any right of appeal from any judgment or order made in the proceeding.

(2) Any agreement under subclause (1) may be recorded on the court file in any form the Judge directs.

Compare: 1908 No 89 Schedule 2 r 7.8 prior to 1 February 2013

7.11 Timetable and monitoring obligations

The Registrar must—

~~(a) arrange the date of the first case management conference under rule 7.3(2):~~

(b) remind parties or their counsel of the timetable obligations associated with any ~~case management~~ judicial or pre-trial conference:

(c) communicate with parties or their counsel who have a duty to file a memorandum or other documents and remind them of that duty.

7.12 Lists of proceedings

The Registrar must cause the following lists to be kept:

(a) a list of proceedings that have been allocated a hearing or trial date under rule 7.6(1) or (2); and

(b) a list of proceedings that have had ~~their first case management~~ a judicial conference but have not been allocated a date for hearing or trial.

Compare: 1908 No 89 Schedule 2 r 7.15 prior to 1 February 2013

7.13 Registrar's functions in relation to hearing dates

(1) After a Judge has allocated a hearing or trial date for a proceeding under rule 7.6(1) or (2), the Registrar must promptly—

(a) record the proceeding in the list kept under rule 7.12(a); and

(b) record the hearing date and the close of pleadings date in that list; and

(c) give written confirmation of both dates to all parties to the proceeding.

(2) The performance of the Registrar's functions under this rule is subject to any direction by a Judge.

Compare: 1908 No 89 Schedule 2 r 7.16 prior to 1 February 2013

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.14 Case management conferences for appeals

(1) In the case of an appeal under Part 20 or 26, the Registrar must make arrangements for a case management conference to be held on the first available date that is 15 working days after any of the following dates:

(a) the date on which a notice of appeal under rule 20.6 or an originating application under rule 26.3 is filed:

(b) the date on which leave to appeal is granted on an application under rule 20.3 or 26.15.

(2) A case management conference under this rule may be held as part of an appeals list.

(3) The appellant must, as soon as practicable after being notified of the date of the case management conference, give notice of that date to everyone who has been, or is to be, served with a copy of the notice of appeal or the originating application.

(4) The parties must, not later than 2 working days before the case management conference,—

(a) file a joint memorandum; or

(b) each file a memorandum.

(5) Any memorandum filed must—

(a) address the matters set out in Schedule 6; and

(b) specify any directions in Schedule 6 that should be deleted or modified, and why; and

(c) set out any additional directions sought, and why; and

(d) set out the issues raised by the appeal if they are not fully set out, or are different from those set out, in the notice of appeal.

(6) The directions set out in Schedule 6 apply except to the extent that those directions are modified by directions given by the Judge.

Compare: 1908 No 89 Schedule 2 r 7.5 prior to 1 February 2013

7.15 Directions for conduct of appeal

(1) At a case management conference held under rule 7.14, the Judge will give directions for the conduct of the appeal that may, without limitation, include directions—

(a) as to service of the notice of appeal or the originating application, including service on persons not currently parties:

(b) about any cross-appeal, including directions as to service:

(c) in the case of an appeal under Part 20, as to how and when any application to adduce further evidence on appeal is to be dealt with:

(d) in the case of an appeal under Part 26,—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(i) as to the preparation of the record in accordance with rule 26.10 or in any other manner the Judge thinks fit:

(ii) as to the transcription of the evidence in accordance with rule 26.11:

(e) on any other matter for the purpose of best ~~securing the just, speedy, and inexpensive determination of the appeal~~ achieving the overriding objective in rule 1.2.

(2) In the case of an appeal or reference by way of case stated under Part 21, this rule and rule 7.14 apply as if the appeal or reference were an appeal under Part 20, except that the references in rule 7.14(5) and (6) to Schedule 6 must be read as references to Schedule 7.

Compare: 1908 No 89 Schedule 2 r 7.5 prior to 1 February 2013

7.16 Jury notice

If either party to a proceeding to which section 16 of the Act applies requires the proceeding to be tried before a Judge and a jury, the party must give notice to that effect to the court and to the other party not later than—

(a) 5 working days before the close of pleadings date for the proceeding; or

(b) a date fixed by a Judge for the purpose.

Compare: 1908 No 89 Schedule 2 r 7.14 prior to 1 February 2013

7.17 Case management conferences for proceedings under Part 30

(1) A Registrar must convene a case management conference for a proceeding under Part 30 if a Judge makes a direction that a case management conference be held.

(2) The Registrar must arrange for the conference management conference to be held as soon as practicable after the direction is made.

(3) The plaintiff must, as soon as practicable after being notified of the date of the case management conference, give notice of that date to everyone who has been, or is to be, served with a copy of the notice of proceeding and statement of claim.

(4) The parties must, not later than 2 working days before the case management conference,—

(a) file a joint memorandum; or

(b) each file a memorandum.

(5) A memorandum must address the issues set out in Schedule 10.

(6) At a case management conference, the Judge holding the conference will make orders and give directions relating to the proceeding that they consider will best achieve the overriding objective in rule 1.2.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.18 No steps after setting down date without leave

[Revoked]

Subpart 2—Interlocutory applications and interlocutory orders

7.19 Contents, form, and filing of interlocutory application

(1) An interlocutory application must—

(a) state the relief sought and the grounds justifying that relief; and

(b) refer to any particular enactments or principles of law or judicial decisions on which the applicant relies.

(2) The application need not ask for general or other relief.

(3) The application is made by filing it in the court.

(4) The application must be in form G 31 or G 32.

(5) This subpart applies to the application.

Compare: 1908 No 89 Schedule 2 r 237(1)–(3)

7.20 Affidavit to be filed with application

Any affidavit in support of the application must be filed at the same time as the application.

Compare: 1908 No 89 Schedule 2 r 241

7.21 Filing by post

(1) *[Revoked]*

(2) *[Revoked]*

(3) The Registrar must acknowledge the receipt of all documents sent by post and notify the applicant of the hearing date (if any) allocated for the application.

(4) If the application is made without notice and does not require any attendance by or on behalf of the applicant, the Registrar must notify the applicant of the result of the application.

Compare: 1908 No 89 Schedule 2 r 237(4), (5)

7.22 Service of application and supporting affidavit

(1) After filing an application and any affidavit in support of it, the applicant must promptly serve a copy of the application and affidavit on every party.

(2) After the applicant is notified of the hearing date for the application, the applicant must promptly notify every respondent of the hearing date.

(3) This rule does not apply to an application made without notice in accordance with rule 7.23.

Compare: 1908 No 89 Schedule 2 r 243

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.23 Application without notice

(1) A person who wants to make an application to the court and have the application determined without any other party having been served (in these rules referred to as an **application without notice**) must use form G 32.

(2) An application without notice may be made only—

(a) on 1 or more of the following grounds:

(i) that requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant:

(ii) that the application affects only the applicant:

(iii) that the application relates to a routine matter:

(iv) that an enactment expressly permits the application to be made without serving notice of the application:

(v) that the interests of justice require the application to be determined without serving notice of the application; and

(b) if the applicant has made all reasonable inquiries and taken all reasonable steps to ensure that the application and supporting documents contain all material that is relevant to the application, including any defence that might be relied on by any other party and any facts that would support the position of any other party.

(3) An applicant who makes an application without notice must, if the application is of a kind that is likely to be contested if it were made on notice, file a memorandum with the application that sets out—

(a) the background to the proceeding (including the material facts that relate to the proceeding); and

(b) the grounds on which each order is sought; and

(c) an explanation of the grounds on which each order is sought without notice; and

(d) all information known to the applicant that is relevant to the application, including any known grounds of opposition or defence that any other party might rely on, or any facts that would support opposition to the application or defence of the proceeding by any other party.

(4) Failure to disclose all relevant matters to the court or to comply with subclause (3) may result in the court—

(a) dismissing the application; or

(b) if 1 or more orders have been made by the court in reliance on the application, rescinding those orders.

(5) This rule does not apply to an application for a grant of administration without notice (*see* rule 27.4).

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.24 Notice of opposition to application

(1) A respondent who intends to oppose an application must file and serve on every other party a notice of opposition to the application—

(a) before the end of the tenth working day after being served with the application; and

(b) no less than 3 working days before the hearing date.

(2) The notice of opposition must—

(a) state the respondent's intention to oppose the application and the grounds of opposition; and

(b) refer to any particular enactments or principles of law or judicial decisions on which the respondent relies.

(3) The notice of opposition must be in form G 33.

Compare: 1908 No 89 Schedule 2 r 244

7.25 Affidavit to be filed with notice of opposition

Any affidavit setting out evidence in support of the notice of opposition must be filed and served at the same time as the notice of opposition.

Compare: 1908 No 89 Schedule 2 r 245

7.26 Affidavit in reply

(1) Any reply by the applicant to the respondent's notice of opposition or affidavit must be by affidavit, which must be filed and served within—

(a) the period of 5 working days after service of the notice of opposition; or

(b) if the hearing date for the application is within that period, 1 pm on the working day before that hearing date.

(2) The affidavit in reply must be limited to new matters raised in the notice of opposition or in an affidavit filed by the respondent.

Compare: 1908 No 89 Schedule 2 r 246

7.27 Evidence normally given by affidavit

(1) Evidence relating to interlocutory applications is given by affidavit.

(2) Despite subclause (1), in special circumstances, a Judge may accept oral evidence.

Compare: 1908 No 89 Schedule 2 r 253(1)

7.28 Cross-examination of maker of affidavit

A Judge may in special circumstances, on the application of a party, order the attendance for cross-examination of a person who has made an affidavit in support of, or in opposition to, an interlocutory application.

Compare: 1908 No 89 Schedule 2 r 253(2)

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.29 Rules governing affidavits

Rules 9.75 to 9.88 apply, with all necessary modifications, to affidavits filed for interlocutory applications.

Compare: 1908 No 89 Schedule 2 r 249(1)

7.30 Statements of belief in affidavits

(1) A Judge may accept statements of belief in an affidavit in which the grounds for the belief are given if—

(a) the interests of no other party can be affected by the application; or

(b) the application concerns a routine matter; or

(c) it is in the interests of justice.

(2) Subclause (1) overrides rule 7.29.

Compare: 1908 No 89 Schedule 2 r 249(2)

7.31 When admissions binding

An admission of a fact expressly made only for the purpose of an application binds the party only for the application.

Compare: 1908 No 89 Schedule 2 r 247

7.32 Previous affidavits and agreed statements of fact

(1) Affidavits already filed in the court and agreed statements of fact, if made in the same proceeding or, with the leave of a Judge, in any other proceeding between the same parties, may be used on the disposal of any application if—

(a) prior notice of the intention to use them has been given to the opposite party (whether in the notice of application or in the notice of opposition or otherwise); or

(b) in the case of an application without notice, they are referred to in the notice of application.

(2) Subclause (1) does not apply to an affidavit or to an agreed statement to the extent that the affidavit or statement contains any admission of the kind described in rule 7.31.

Compare: 1908 No 89 Schedule 2 r 248

~~7.33 Allocation of hearing date~~

~~On or following the filing of an application (other than an application without notice), the Registrar must allocate a hearing date for the application.~~

~~Compare: 1908 No 89 Schedule 2 r 242(1)~~

~~7.34 Mode of hearing~~

~~(1) An interlocutory application for which a hearing is required must be heard in chambers unless a Judge otherwise directs.~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(2) On the Judge's own initiative or on the application of 1 or more of the parties, the Judge may conduct a hearing in chambers by telephone or video link.~~

~~Compare: 1908 No 89 Schedule 2 r 251(2), (3), (5)~~

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.

(1) 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.

7.35 Publication about hearing in chambers

Particulars of the hearing in chambers of an interlocutory application or of the decision or both (including the reasons for the decision) may be published unless a Judge or Registrar, exercising jurisdiction in chambers, otherwise directs.

Compare: 1908 No 89 Schedule 2 r 72A

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.36 Application for summary judgment to be heard in open court

~~Despite rule 7.34(1), every~~ Every application for summary judgment must be heard in open court.

Compare: 1908 No 89 Schedule 2 r 251(1)

~~7.37 No hearing required if respondents consent or do not oppose~~

~~(1) Subclause (2) applies if each respondent to an interlocutory application has stated on the application or in a memorandum filed in the court that the respondent consents to, or does not oppose, the orders sought in the application.~~

~~(2) A Judge may—~~

~~(a) make the orders sought without holding a hearing; or~~

~~(b) direct that the application be heard on the hearing date allocated under rule 7.33.~~

~~(3) If the Judge makes the orders without holding a hearing, the Registrar must promptly advise the parties of the orders made and the cancellation of the hearing date.~~

~~Compare: 1908 No 89 Schedule 2 r 250(1), (2)~~

7.38 Respondent who consents, or who does not oppose, need not attend hearing

(1) If a hearing of an interlocutory application is held, a respondent need not attend the hearing if the respondent consents to, or does not oppose, the application and has notified the court in writing.

(2) Subclause (1) does not apply if, on the hearing date allocated for the interlocutory application, a ~~case management~~ judicial conference is also due to be held.

Compare: 1908 No 89 Schedule 2 r 250(3), (4)

7.39 Synopsis of argument

(1) This rule applies to a defended interlocutory application unless, or to the extent that, a Judge directs otherwise.

(2) The applicant must file and serve a synopsis of argument (a **synopsis**) on every other party at least 2 working days before the hearing of the interlocutory application.

(3) The applicant's synopsis must—

(a) identify the general nature of the case:

(b) include a chronology of the material facts:

(c) outline the applicant's principal submissions:

(d) be accompanied by or have annexed to it—

(i) an indexed and paginated set of relevant documents; and

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(ii) a list of authorities.

(4) The material required to be included in the applicant's synopsis under subclause (3)(a) to (c) must not exceed 10 pages.

(5) The respondent must, at least 1 working day before the hearing, file and serve a synopsis on every other party.

(6) The respondent's synopsis must—

(a) identify any material facts that are not referred to in the applicant's synopsis:

(b) state any facts that are disputed:

(c) outline the respondent's principal submissions:

(d) be accompanied by or have annexed to it—

(i) an indexed and paginated set of any relevant documents not included in the applicant's synopsis; and

(ii) a list of any authorities not included in the applicant's synopsis.

(7) The material required to be included in the respondent's synopsis under subclause (6)(a) to (c) must not exceed 10 pages.

Compare: 1908 No 89 Schedule 2 r 251A

7.40 Failure to attend

(1) If a party is neither present nor represented at the hearing of an application, the Judge may—

(a) determine the application in the party's absence in any manner that appears just; or

(b) adjourn the application; or

(c) strike out the application.

(2) If an order determining an application is made in the absence of a party, a Judge may, if the Judge thinks it just to do so, recall the order at any time before a formal record of it has been drawn up and sealed.

(3) A Judge may, in any manner that the Judge thinks just, reinstate an application that has been struck out for non-appearance.

(4) A Judge may make a determination referred to in subclause (2) or (3) on the Judge's own initiative or on the application of a party.

(5) Notice of an application under subclause (4) must be filed and served,—

(a) if it is made by a party who was present or represented at the hearing, within 5 working days after the hearing:

(b) if it is made by a party who was neither present nor represented, within 5 working days after receipt by the party of notice of the decision given at the hearing.

Compare: 1908 No 89 Schedule 2 r 252

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.41 Certain applications may be made orally at hearing

(1) At a hearing, the Judge may agree to hear an oral application for an interlocutory order if—

(a) all parties interested consent to the order sought; or

(b) these rules permit the application to be made without filing a notice of the application; or

(c) the order sought has been ~~outlined in~~ outlined in a position paper filed for a judicial issues conference or a memorandum filed for a case management conference, and no party will be unduly prejudiced by the absence of a formal notice of the application; or

(d) because of the nature of the order sought, no party will be unduly prejudiced by the absence of a formal notice.

(2) If the Judge agrees to hear an oral application, the Judge may make any interlocutory order or grant any interlocutory relief the Judge could have made or granted on a formal notice of the application.

(3) This rule overrides rule 7.19.

Compare: 1908 No 89 Schedule 2 r 254

7.42 Adjournment

The hearing of an application may, from time to time, be adjourned on any terms that the Judge thinks just.

Compare: 1908 No 89 Schedule 2 r 255

7.42A Judge's powers to make orders and give directions on interlocutory applications

(1) This rule applies if a Judge considering an interlocutory application is satisfied that the application is plainly an abuse of the process of the court.

(2) The Judge may, on the Judge's own initiative, make an order or give directions to ensure that the interlocutory application is disposed of or, as the case may be, proceeds in a way that complies with these rules, including (without limitation) an order under rule 15.1 that the application be struck out, stayed, or stayed on conditions.

(3) Rule 7.43(3) does not apply.

(4) A copy of a Judge's decision to strike out an interlocutory application must, if practicable, also be served on the person named as a party or, if more than 1 person is named, those persons named as parties to the proceeding.

7.43 Making of interlocutory orders

(1) A Judge may make any interlocutory order that—

(a) is provided for in these rules; or

(b) may be made under rule 1.6.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) An interlocutory order may be made—

(a) on the interlocutory application of a party; or

(b) on a Judge's own initiative.

(3) Before making an order under subclause (2)(b), the Judge must give the parties an opportunity to be heard.

Compare: 1908 No 89 Schedule 2 r 234

7.43A Directions as to conduct of proceedings

(1) A Judge may, by interlocutory order,—

(a) fix the time by which a step in a proceeding must be taken:

(b) fix the time by which all interlocutory steps must be completed:

(c) direct the steps that must be taken to prepare a proceeding for a substantive hearing:

(d) direct how the hearing is to be conducted:

(e) make any other direction or order that the court may make under these rules.

(2) A party or intended party may apply without notice to a Judge for directions if in doubt about—

(a) whether it is correct or appropriate to join a person as a party; or

(b) the proper court in which to commence or take a step in a proceeding; or

(c) the correct method of proceeding under these rules.

7.44 Power to grant interlocutory order or interlocutory relief

A Judge may make any interlocutory order or grant any interlocutory relief the Judge thinks just, even though the order or relief has not been specifically claimed and there is no claim for general or other relief.

Compare: 1908 No 89 Schedule 2 r 235

7.45 Interlocutory orders may be made subject to conditions

A Judge may make an interlocutory order subject to any just terms or conditions, including, without limitation, any condition that—

(a) a party give an undertaking:

(b) the order operate only for a specified period.

Compare: 1908 No 89 Schedule 2 r 236

7.46 Determination of application without notice

(1) The Registrar must refer an application without notice to a Judge for direction or decision.

(2) The Judge, on receiving an application without notice, must determine whether the application can properly be dealt with without notice.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(3) The Judge may determine that an application can properly be dealt with without notice only if the Judge is satisfied that—

(a) requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant; or

(b) the application affects only the applicant; or

(c) the application relates to a routine matter; or

(d) an enactment expressly permits the application to be made without serving notice of the application; or

(e) the interests of justice require the application to be determined without serving notice of the application.

(4) If the Judge determines that the application can properly be dealt with without notice, the Judge may—

(a) make the order sought in the application; or

(b) make any other order that the Judge thinks just in the circumstances; or

(c) dismiss the application.

(5) If the Judge determines that the application cannot properly be dealt with without notice, the Judge may—

(a) give directions as to service and adjourn the determination of the application until the application has been served on persons who are affected by the application; or

(b) if the Judge considers that the application has no chance of success, dismiss the application.

Compare: 1908 No 89 Schedule 2 rr 242(2), 256

7.47 Drawing up and sealing interlocutory order

(1) A party may draw up an interlocutory order and submit it to the Registrar for sealing.

(2) Despite subclause (1), a party who obtains an interlocutory order must draw up the order and submit it to the Registrar for sealing if the order—

(a) affects a person who is not a party; or

(b) joins a person as a party; or

(c) directs that it be served on a person.

(3) If a party elects to have an order sealed, or is required by the court or by these rules to have an order sealed, the following provisions apply:

(a) the party must file an original order together with sufficient copies so that the party and the other parties who have given an address for service can each receive a duplicate sealed order:

(b) the order must be in form G 34:

(c) the order must specify the date on which it was made:

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(d) the Registrar, when satisfied with the form of the order, must sign and seal the original and every copy:

(e) the Registrar must mark every copy with the word "duplicate":

(f) the Registrar must retain the original on the file:

(g) the party who submitted the order for sealing must promptly serve a sealed copy on every other party who has given an address for service and on any person affected by the order.

Compare: 1908 No 89 Schedule 2 r 257

7.48 ~~Enforcement of interlocutory order~~ Enforcement of orders and requirements of rules

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

(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.

(2) The Judge may, for example, order—

(a) that any pleading of the party in default be struck out in whole or in part:

(b) that judgment be sealed:

(c) that the proceeding be stayed in whole or in part:

(d) that the party in default be fined, ordered to do community work, or committed to prison under section 16 of the Contempt of Court Act 2019:

(e) if any property in dispute is in the possession or control of the party in default, that the property be sequestered:

(f) that any fund in dispute be paid into court:

(g) the appointment of a receiver of any property or of any fund in dispute.

(3) An interlocutory order may only be enforced by the following (in accordance with subpart 4 of Part 2 of the Contempt of Court Act 2019):

(a) an order imposing a fine or community work:

(b) a warrant committing the person to prison:

(c) a sequestration order.

Compare: 1908 No 89 Schedule 2 r 258

7.49 Order may be varied or rescinded if shown to be wrong

(1) A party affected by an interlocutory order (whether made on a Judge's own initiative or on an interlocutory application) or by a decision given on an interlocutory application may, instead of appealing against the order or deci-

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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sion, apply to the court to vary or rescind the order or decision, if that party considers that the order or decision is wrong.

(2) A party may not apply under subclause (1) if the order or decision was made or given—

(a) with the consent of the parties; or

(b) on an interlocutory application for summary judgment under rule 12.4.

(c) *[Revoked]*

(3) Notice of an application under subclause (1) must be filed and served,—

(a) if it is made by a party who was present or represented when the order was made or the decision given, within 5 working days after the order was made or the decision was given:

(b) if it is made by a party who was not present and not represented, within 5 working days after receipt by the party of notice of the making of the order or the giving of the decision, and of its terms.

(4) The application does not operate as a stay unless a Judge so orders.

(5) Unless a Judge otherwise directs, the application must be heard by the Judge who made the order or gave the decision.

(6) The Judge may,—

(a) if satisfied that the order or decision is wrong, vary or rescind the order or decision; or

(b) on the Judge's own initiative or on the application of a party, transfer the application to the Court of Appeal.

Compare: 1908 No 89 Schedule 2 r 259

7.50 Order relating to management of proceeding may be varied if circumstances change

(1) This rule applies to an order or direction (a **determination**) that—

(a) relates to the management of a proceeding; and

(b) has been made by a Judge in chambers.

(2) If there has been a change in circumstances affecting a party or the party's solicitor or counsel since the making of a determination, a Judge may, on application, vary the determination.

(3) Despite subclause (2), a Judge may, on application or on the Judge's own initiative, direct that—

(a) an application under subclause (2) to vary a determination made by an Associate Judge in chambers be heard as a review of an order made by an Associate Judge in chambers under section 26P of the Act and these rules:

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) an application under subclause (2) to vary a determination made by a Judge in chambers be heard as an application under rule 7.49(1) or be transferred to the Court of Appeal.

Compare: 1908 No 89 Schedule 2 r 260

7.51 Order may be rescinded if fraudulently or improperly obtained

(1) A Judge may rescind any order that has been fraudulently or improperly obtained.

(2) The Judge may grant any further relief by way of costs that the interests of justice require.

(3) This rule does not limit any other remedies of a party who has been adversely affected by an order that has been fraudulently or improperly obtained.

Compare: 1908 No 89 Schedule 2 r 261

7.52 Limitation as to second interlocutory application

(1) A party who fails on an interlocutory application must not apply again for the same or a similar order without first obtaining the leave of a Judge.

(2) A Judge may grant leave only in special circumstances.

(3) This rule does not apply to a second interlocutory application for summary judgment, in which case rule 12.4(2AA) applies.

Compare: 1908 No 89 Schedule 2 r 262

Subpart 3—Interim relief

7.53 Application for injunction

(1) An application for an interlocutory injunction may be made by a party before or after the commencement of the hearing of a proceeding, whether or not an injunction is claimed in the party's statement of claim, counterclaim, or third party notice.

(2) The plaintiff may not make an application for an interlocutory injunction before the commencement of the proceeding except in case of urgency, and any injunction granted before the commencement of the proceeding—

(a) must provide for the commencement of the proceeding; and

(b) may be granted on any further terms that the Judge thinks just.

Compare: 1908 No 89 Schedule 2 r 238(1), (2)

7.54 Undertaking as to damages

(1) An applicant for an interlocutory injunction under rule 7.53 must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the other party for any damage sustained through the injunction.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.

Compare: 1908 No 89 Schedule 2 r 238(3), (4)

7.55 Preservation of property

(1) A Judge may at any stage in a proceeding make orders, subject to any conditions specified by the Judge, for the detention, custody, or preservation of any property.

(2) An order may authorise a person to enter any land or to do any other thing for the purpose of giving effect to the order.

(3) The Judge may order that a fund be paid into court or otherwise secured if the proceeding concerns the right of a party to the fund.

(4) The Judge may treat an application under this rule as an application for directions under rule 7.43A and give directions accordingly.

Compare: 1908 No 89 Schedule 2 rr 331, 335, 336

7.56 Sale of perishable property before hearing

(1) A Judge may, on application, make an order authorising a person to sell property (other than land) in a manner and subject to any conditions stated in the order if—

(a) the proceeding concerns the property or raises, or may raise, questions about the property; and

(b) the property—

(i) is perishable or likely to deteriorate; or

(ii) should for any other reason be sold before the hearing.

(2) The Judge may treat an application under this rule as an application for directions under rule 7.43A and give directions accordingly.

Compare: 1908 No 89 Schedule 2 rr 332, 335

7.57 Order to transfer part of property to person with interest in property

(1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that a part of the property be transferred or delivered to a person who has an interest in the property.

(2) The order may be made if the Judge is satisfied—

(a) that the part of the property transferred or delivered is not required for the provision that ought to be made to meet the claims on the property; and

(b) that the order is necessary or desirable—

(i) to exclude the part of the property from an injunction or other order; or

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(ii) to protect the person who is to transfer or deliver the property.

Compare: 1908 No 89 Schedule 2 r 333

7.58 Interim payment of income to person with interest in income

(1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that the whole or part of the income from the property be paid, during a period stated in the order, to 1 or more persons who have an interest in the income.

(2) The order may be made if the Judge is satisfied—

(a) that the income stated in the order is not required for any provision that ought to be made to meet the claims on the property or its income; and

(b) that the order is necessary or desirable—

(i) to exclude the income from a freezing injunction or other order; or

(ii) to protect the person who is to pay the income.

Compare: 1908 No 89 Schedule 2 r 334

Subpart 4—Receivers

7.59 Application

Rules 7.60 to 7.67 apply to a receiver appointed under an order of the court to the extent that the order does not expressly provide otherwise.

Compare: 1908 No 89 Schedule 2 r 337

7.60 Address for service

The receiver must, within 5 working days after appointment, file a notice specifying an address for service.

Compare: 1908 No 89 Schedule 2 r 338

7.61 Receiver must give security

(1) A Judge may give directions as to the security that the receiver is required to give in accordance with this rule.

(2) If a Judge directs that a receiver be appointed, no appointment may be made until the person to be appointed has given security in accordance with this rule.

(3) Any security given under this rule must be approved by the Registrar.

(4) The Registrar must be satisfied that the security is sufficient to ensure that the receiver will—

(a) account for everything received in his or her capacity as receiver; and

(b) comply with any direction given by a Judge.

(5) A Judge may vary any directions given and may, in particular, order that the security be varied or discharged.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(6) Subclauses (1) and (2) are subject to any enactment.

Compare: 1908 No 89 Schedule 2 r 339

7.62 Remuneration of receiver

(1) A receiver must be paid the remuneration fixed by a Judge.

(2) A Judge may, in the order appointing a receiver or in a later order, name the party or parties who must pay the remuneration and, if more than 1 party is named, the proportion to be paid by each party.

(3) A Judge may order any party or parties to give security for the receiver's remuneration.

(4) Subclause (3) does not affect subclause (2).

Compare: 1908 No 89 Schedule 2 r 340

7.63 Accounts of receiver

A receiver must file accounts at the intervals or on the dates specified in directions given by a Judge.

Compare: 1908 No 89 Schedule 2 r 341

7.64 Examination of accounts

(1) The receiver must—

(a) on filing the accounts, request the Registrar to examine the accounts and to allocate a date and time for that examination; and

(b) serve on each party interested who has given an address for service in the proceeding—

(i) a copy of the accounts; and

(ii) a notice of the date and time allocated for the examination of the accounts.

(2) The receiver must, unless a Judge otherwise orders, attend at the examination of the accounts.

Compare: 1908 No 89 Schedule 2 r 342

7.65 Default by receiver

(1) A Judge may make any orders and give any directions that the Judge thinks fit if a receiver does not comply with a requirement, under these rules or an order or a direction,—

(a) to file any accounts or an affidavit; or

(b) to attend at the examination of the accounts; or

(c) to do any other thing.

(2) Orders and directions made under subclause (1) may include orders and directions for—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) the discharge of the receiver; and

(b) the appointment of another receiver; and

(c) the payment of costs.

(3) If a receiver does not comply with a requirement under these rules or an order or direction of a Judge to pay into court a sum shown by the accounts as due from the receiver, a Judge may order the receiver to pay interest calculated in accordance with (or on a basis that ensures it does not exceed interest calculated in accordance with) Schedule 2 of the Interest on Money Claims Act 2016.

(4) This rule does not limit the powers of the court to enforce orders.

(5) Subclause (3) does not limit subclause (1) or (2).

Compare: 1908 No 89 Schedule 2 r 343

7.66 Powers of receiver

(1) A Judge may authorise a receiver to do (either in the receiver's own name or in that of 1 or more parties) any act or thing that 1 or more parties could do if of full age and capacity.

(2) An authority given under subclause (1)—

(a) may apply generally or be limited to a particular instance; and

(b) has effect even if 1 or more parties are not of full age and capacity.

(3) This rule does not limit the powers of a Judge to authorise a receiver to do any act or thing.

Compare: 1908 No 89 Schedule 2 r 344

7.67 Accounts on death of receiver

(1) If the receiver in any proceeding dies, a Judge may, on application, make any orders the Judge thinks fit for the filing and examining of accounts by the personal representatives of the deceased receiver and for the payment into court of any amount shown to be due.

(2) A Judge may not make any order under subclause (1) unless notice of the application has been served on the personal representatives.

(3) Notice of the application may be served in any manner in which a statement of claim may be served.

Compare: 1908 No 89 Schedule 2 rr 345, 346

Subpart 5—Interim payments

7.68 Interpretation

In rules 7.69 to 7.76, **interim payment** means a payment on account of any damages, debt, or other sum (excluding costs) that the defendant in a proceed-

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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ing may be held liable to pay to, or for the benefit of, the plaintiff in that proceeding.

Compare: 1908 No 89 Schedule 2 r 346A

7.69 Application for interim payment

(1) The plaintiff in a proceeding may, at any time after the time for the filing of a statement of defence by the defendant has expired, apply to the court for an order requiring the defendant to make an interim payment.

(2) An application under subclause (1) must be supported by an affidavit—

(a) stating the amount of the damages, debt, or other sum to which the application relates and the reasons for making the application; and

(b) attaching any documentary evidence relied on by the plaintiff in support of the application.

(3) The application and a copy of the affidavit in support and any documents annexed to it must be served on the defendant against whom the order is sought at least 10 working days before the date allocated for the hearing of the application.

(4) A second or subsequent application for an interim payment may be made if it is shown to be justified, even if such an order has previously been made or refused.

Compare: 1908 No 89 Schedule 2 r 346B

7.70 Order for interim payment in respect of damages

(1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge is satisfied that—

(a) the defendant against whom the order is sought has admitted liability for the plaintiff's damages; or

(b) the plaintiff has a judgment against the defendant for damages to be assessed; or

(c) on a trial of the proceeding, the plaintiff would obtain judgment for substantial damages against the defendant or, if there are several defendants, against 1 or more of them.

(2) A Judge may, within the limits in subclause (3), order the defendant to make an interim payment of an amount that the Judge thinks just.

(3) The amount must not exceed a reasonable proportion of the damages the plaintiff is, in the opinion of the Judge, likely to recover after taking into account—

(a) any relevant contributory negligence; and

(b) any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

Compare: 1908 No 89 Schedule 2 r 346C

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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7.71 Order for interim payment in respect of sums other than damages

(1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge is satisfied—

(a) that the plaintiff has obtained an order for an account to be taken as between the plaintiff and the defendant and for the payment of any amount certified to be payable on the basis of that account; or

(b) in the case of a claim for the possession of land, that even if the proceeding was finally determined in favour of the defendant, the defendant would still be required to compensate the plaintiff for the defendant's use and occupation of the land before the determination of the proceeding; or

(c) that, on the trial of the proceeding, the plaintiff is likely to obtain judgment against the defendant for a substantial sum of money apart from any damages or costs.

(2) A Judge may order that the defendant pay an amount the Judge thinks just, after taking into account any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

(3) The order does not prejudice any contentions of the parties as to the nature or character of the sum to be paid by the defendant.

Compare: 1908 No 89 Schedule 2 r 346D

7.72 Method of payment

(1) The amount of any interim payment ordered to be made must be paid to the plaintiff unless the order provides for it to be paid into court.

(2) If the amount is paid into court, a Judge may, on the application of the plaintiff, order the whole or any part of it to be paid out to the plaintiff at a time or times the Judge thinks just.

(3) If the person entitled to an interim payment or to a part of an interim payment belongs to a class of persons stated in subclause (4), acceptance of the interim payment is subject to the approval of a Judge and payment out of court may not be made without the leave of a Judge.

(4) The classes are—

(a) minors (not including a minor to whom rule 4.31(2) applies):

(b) persons subject to a property order under the Protection of Personal and Property Rights Act 1988:

(c) incapacitated persons within the meaning of rule 4.29.

(5) An application under subclause (2) for money in court to be paid out may be made without notice, but a Judge hearing the application may direct that notice of the application be served on the other party.

(6) An interim payment may be ordered to be made in 1 sum or by any instalments a Judge thinks just.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(7) If a payment is ordered in respect of the defendant's use and occupation of land, the order may provide for periodical payments to be made while the proceeding awaits determination.

(8) Subclause (1) is subject to subclause (3).

Compare: 1908 No 89 Schedule 2 r 346E

7.73 Directions on interim payment application

When an application is made under rule 7.69, a Judge may give any directions as to the further conduct of the proceeding that the Judge thinks just, and may, in particular, order an early trial of the proceeding.

Compare: 1908 No 89 Schedule 2 r 346F

7.74 Non-disclosure of interim payment

(1) The fact that an order has been made under rule 7.70(2) or 7.71(2) must not be pleaded.

(2) The fact that the order has been made or that an interim payment has been made, whether voluntarily or under an order, must not be disclosed at the trial, or hearing, of any question or issue as to liability or damages.

(3) Subclause (2) does not prevent the disclosure of any fact—

(a) to the extent that the defendant consents to, or a Judge directs, the disclosure; or

(b) after all questions of liability and amount have been determined.

Compare: 1908 No 89 Schedule 2 r 346G

7.75 Adjustment on final judgment or order or on discontinuance

(1) A Judge may, on the application of a party, make an order with respect to an interim payment made under an order or voluntarily that the Judge thinks just.

(2) A Judge may, in particular, make an order for—

(a) the repayment by the plaintiff of all or part of the interim payment; or

(b) the variation or discharge of the interim payment; or

(c) the payment by another defendant of part of the interim payment, if the defendant who made the interim payment is entitled to recover from the other defendant an amount—

(i) by way of contribution or indemnity; or

(ii) in respect of a remedy or relief relating to, or connected with, the plaintiff's claim.

(3) A Judge may make an order under this rule—

(a) when giving or making a final judgment or order; or

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) when granting the plaintiff leave to discontinue the proceeding or to withdraw the claim in respect of which the interim payment has been made; or

(c) at any other stage of the proceeding.

Compare: 1908 No 89 Schedule 2 r 346I

7.76 Counterclaims and other proceedings

Rules 7.68 to 7.75 apply, with all necessary modifications, to any counterclaim or proceeding in which one party seeks an order for an interim payment from another.

Compare: 1908 No 89 Schedule 2 r 346J

Subpart 6—Amendment of pleading

7.77 Filing of amended pleading

(1) A party may before trial file an amended pleading and serve a copy of it on the other party or parties.

(2) An amended pleading may introduce, as an alternative or otherwise,—

(a) relief in respect of a fresh cause of action, which is not statute barred; or

(b) a fresh ground of defence.

(3) An amended pleading may introduce a fresh cause of action whether or not that cause of action has arisen since the filing of the statement of claim.

(4) If a cause of action has arisen since the filing of the statement of claim, it may be added only by leave of the court. If leave is granted, the amended pleading must be treated, for the purposes of the law of limitation defences, as having been filed on the date of the filing of the application for leave to introduce that cause of action.

(5) Subclause (4) overrides subclause (1).

(6) If an amended pleading introduces a fresh cause of action, the other party must file and serve that party's defence to it within 10 working days after the day on which the amended pleading is actually served on the other party.

(7) When an amended pleading does not introduce a fresh cause of action, the other party may, within 5 working days after the day on which the amended pleading is served on that other party, file and serve an amended defence to it.

(8) If an amended pleading has been filed under this rule, the party filing the amended pleading must bear all the costs of and occasioned by the original pleading and any application for amendment, unless the court otherwise orders.

(9) This rule does not limit the powers conferred on the court by rule 1.9.

(10) This rule is subject to rule 7.7 (which prohibits steps after the close of pleadings date without leave).

Compare: 1908 No 89 Schedule 2 r 187

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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Subpart 7—Recovery of specific property subject to lien

7.78 Recovery of specific property subject to lien or other security

(1) This rule applies if a party (**A**) seeks to recover specific property other than land and the party from whom recovery is sought (**B**) does not dispute the title of A, but claims to retain the property by virtue of a lien or otherwise as security for a sum of money.

(2) The court may order that A may pay into court the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the court directs, and money so paid in must be held by the court until the result of the proceeding is known.

(3) If payment into court is made, the court may order that the property claimed be delivered to its claimant.

(4) Subclause (1) is applicable as soon as the claim to retain the property appears from the statement of defence or otherwise.

Compare: 1908 No 89 Schedule 2 r 180

Subpart 8—Negotiations for settlement

7.79 Court may assist in negotiating for settlement

(1) A Judge may, at any time before the hearing of a proceeding, convene a conference of the parties in chambers for the purpose of negotiating for a settlement of the proceeding or of any issue, and may assist in those negotiations.

(2) A Judge who presides at a conference under subclause (1) may not preside at the hearing of the proceeding unless—

(a) all parties taking part in the conference consent; and

(b) the Judge is satisfied there are no circumstances that would make it inappropriate for the Judge to do so.

(3) A Judge may, at any time during the hearing of a proceeding, with the consent of the parties, convene a conference of the parties for the purpose of negotiating for a settlement of the proceeding or of any issue.

(4) A Judge who convenes a conference under subclause (3) may not assist in the negotiations, but must arrange for an Associate Judge or another Judge to do so unless—

(a) the parties agree that the Judge should assist and continue to preside at the hearing; and

(b) the Judge is satisfied there are no circumstances that would make it inappropriate for the Judge to do so.

(5) A Judge may, with the consent of the parties, make an order at any time directing the parties to attempt to settle their dispute by the form of mediation

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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or other alternative dispute resolution (to be specified in the order) agreed to by the parties.

(6) The parties, and a Judge or Associate Judge who presides at a conference or assists in negotiations under this rule, must not disclose any statement made during a conference, either—

(a) in court; or

(b) otherwise.

(7) This rule must be read with subpart 8 of Part 2 of the Evidence Act 2006 (privilege).

Compare: 1908 No 89 Schedule 2 r 442

7.80 Arbitration by consent

(1) The parties to a proceeding may agree to arbitration of their dispute or any part of it under the Arbitration Act 1996 at any time during the course of the proceeding.

(2) If an arbitration agreement entered into during the course of a proceeding relates to all the matters in dispute in the proceeding, the court must, on application by a party, stay the proceeding.

(3) If an arbitration agreement entered into during the course of a proceeding relates to some but not all of the matters in dispute in the proceeding, the court must, on application by a party, stay those parts of the proceeding to which the arbitration agreement relates.

(4) The court may make the stay on terms as to costs or other ancillary matters.

(5) Subclauses (2) and (3) do not apply if the court finds that the agreement has no effect or is inoperative or incapable of being performed.

Compare: 1908 No 89 Schedule 2 r 383A

Subpart 9—Interim relief in respect of overseas proceedings

7.81 Interim relief in support of overseas proceedings

(1) On the application of a party or an intended party to judicial proceedings commenced or to be commenced outside New Zealand (**overseas proceedings**), the court may, if the court thinks it just to do so, give interim relief in support of the overseas proceedings.

(2) These rules apply to an application under subclause (1) as if the overseas proceedings for which support is sought had been commenced under these rules.

(3) Subclause (1) does not apply to—

(a) an application for an interim payment under subpart 5:

(b) an application for ~~discovery under subpart 3 of Part 8~~ disclosure under Part 8:

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(c) an application in relation to evidence under Part 9:

(d) an application for a freezing order under Part 32.

(4) Before making an order under this rule, the court must be satisfied that there is a real connecting link between the subject matter of the interim relief and the territorial jurisdiction of the court.

(5) An order under subclause (1) must not be inconsistent with interim relief granted in the overseas proceedings by the court outside New Zealand.

(6) This rule does not apply to a civil proceeding commenced or to be commenced in an Australian court.

Part 8
~~Discovery and inspection~~ Disclosure and interrogatories

Subpart 1—~~Discovery~~ Disclosure and inspection

~~8.1 Interpretation~~

~~In this subpart,—~~

~~**discovery order** means an order that requires each party to a proceeding to discover the existence of documents to every other party~~

~~**standard discovery** means discovery that complies with rule 8.7~~

~~**tailored discovery** means discovery that complies with rule 8.8.~~

~~8.2 Co-operation~~

~~(1) The parties must co-operate to ensure that the processes of discovery and inspection are—~~

~~(a) 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 reduce the scope and burden of discovery; and~~

~~(b) achieve reciprocity in the electronic format and processes of discovery and inspection; and~~

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

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

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—

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(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.

8.3 Preservation of documents

(1) As soon as a proceeding is reasonably contemplated, a party or prospective party must take all reasonable steps to preserve documents that are, or are reasonably likely to be, ~~discoverable in the proceeding~~ subject to disclosure obligations under these rules.

(2) Without limiting the generality of subclause (1), documents in electronic form which are potentially ~~discoverable~~ subject to disclosure obligations must be preserved in readily retrievable form even if they would otherwise be deleted in the ordinary course of business.

8.4 Initial disclosure

~~(1) After filing a pleading, a party must, unless subclause (2) applies, serve on the other parties, at the same time as the service of that pleading, a bundle consisting of—~~

~~(a) all the documents referred to in that pleading; and~~

~~(b) 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.~~

~~(2) A party need not comply with subclause (1) if—~~

~~(a) the circumstances make it impossible or impracticable to comply with subclause (1); and~~

~~(b) a certificate to that effect, setting out the reasons why compliance is impossible or impracticable, and signed by counsel for that party, is filed and served at the same time as the pleading.~~

~~(3) A party acting under subclause (2) must, unless the other parties agree that initial disclosure is not required, or that a longer period is acceptable, either serve the bundle referred to in subclause (1) within 10 working days from the service of the pleading or apply for a variation of that requirement within that period.~~

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

(4) If a party fails to comply with ~~subclause (1) or (3)~~ subclauses (1) to (1B), a Judge may make any of the orders specified in rule 7.48.

(5) Despite subclause (1), a party does not need to disclose any document in which the party claims privilege or that a party claims to be confidential.

(6) Despite subclause (1), a party does not need to disclose any document that either—

(a) is the subject of a claim of public interest immunity; or

(b) is reasonably apprehended by the party to be the subject of such a claim.

(7) Despite subclause (1), a party does not need to include in a bundle served by that party any document contained in a bundle already served by any party or any document attached to an affidavit already filed in court.

(8) The bundle of documents may be served either electronically or as a bundle of copies in hard copy form.

(9) If an amended pleading is filed ~~prior to the making of a discovery order~~, this rule applies to that amended pleading if it either—

(a) refers to documents not referred to in any earlier pleading filed by the party who files the amended pleading; or

(b) pleads additional facts.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(10) *See* rule 8.18 for continuing obligations to give disclosure.

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.)

~~**8.5 Discovery orders**~~

~~(1) A Judge must make a discovery order for a proceeding unless he or she considers that the proceeding can be justly disposed of without any discovery.~~

~~(2) An order under subclause (1) must be made at the first case management review that is held for the proceeding under rule 7.3, unless there is good reason for making the order later.~~

~~(3) *[Revoked]*~~

~~**8.6 Two kinds of discovery**~~

~~Discovery orders made under this subpart may direct either—~~

~~(a) standard discovery; or~~

~~(b) tailored discovery.~~

~~**8.7 Standard discovery**~~

~~Standard discovery requires each party to disclose the documents that are or have been in that party's control and that are—~~

~~(a) documents on which the party relies; or~~

~~(b) documents that adversely affect that party's own case; or~~

~~(c) documents that adversely affect another party's case; or~~

~~(d) documents that support another party's case.~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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8.8 Tailored discovery

Tailored discovery must be ordered when the interests of justice require an order involving more or less discovery than standard discovery would involve.

8.9 Presumption as to tailored discovery

It is to be presumed, unless the Judge is satisfied to the contrary, that the interests of justice require tailored discovery in proceedings—

(a) where the costs of standard discovery would be disproportionately high in comparison with the matters at issue in the proceeding; or

(b) *[Revoked]*

(c) that involve 1 or more allegations of fraud or dishonesty; or

(d) in which the total of the sums in issue exceeds $2,500,000; or

(e) in which the total value of any assets in issue exceeds $2,500,000; or

(f) in which the parties agree that there should be tailored discovery.

8.10 Obligation of party ordered to make tailored discovery

Tailored discovery requires a party against whom it is ordered to disclose the documents that are or have been in that party's control either in categories as indicated in clause 3(2) of Part 1 of Schedule 9 or under some other method of classification that facilitates the identification of particular documents.

8.11 Preparation for first case management review

(1) Subclause (1A) applies before the parties file the joint memorandum or separate memoranda under rule 7.3.

(1A) The parties must discuss and endeavour to agree on an appropriate discovery order, and the manner in which inspection will subsequently take place, having addressed the matters in the discovery checklist in accordance with Part 1 of Schedule 9.

(2) The joint memorandum, or separate memoranda, filed under rule 7.3 must, in addition to the matters required to be addressed under rule 7.3(2), set out the terms of the discovery order that the Judge is requested to make and the reasons for a discovery order in those terms.

(3) If the parties agree to vary the listing and exchange protocol set out in Part 2 of Schedule 9, they need advise the Judge only that variation has been agreed, not the details of that variation.

8.12 Orders that may be made

(1) The Judge may, under rule 8.5, make—

(a) an order dispensing with discovery; or

(b) an order for standard discovery; or

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(c) an order for tailored discovery, setting out categories (by, for example, subject headings and date periods) or another method of classification by which documents are to be identified.~~

~~(2) The discovery order may—~~

~~(a) incorporate the listing and exchange protocol set out in Part 2 of Schedule 9; or~~

~~(b) vary that protocol; or~~

~~(c) contain other obligations that are considered appropriate.~~

~~(3) The discovery order may include specific directions as to the manner of discovery.~~

~~(4) A discovery order does not require a party to discover electronically stored information that is not primary data.~~

~~(5) Despite subclause (4), the Judge may order a party to discover electronically stored information that is not primary data if the Judge is satisfied that the need for, and the relevance and materiality of, the non-primary data sought justify the cost and burden of retrieving and producing that data.~~

~~(6) For the purposes of this rule, **primary data** means active data and readily retrievable archival data.~~

8.13 Solicitor's ~~discovery~~ disclosure obligations

As soon as practicable after a party becomes bound to comply with a ~~discovery order~~ disclosure obligation, the solicitor who acts for the party in the proceeding must take reasonable care to ensure that the party—

(a) understands the party's obligations ~~under the order~~; and

(b) fulfils those obligations.

~~8.14 Extent of search~~

~~(1) A party must make a reasonable search for documents within the scope of the discovery order.~~

~~(2) What amounts to a reasonable search depends on the circumstances, including the following factors:~~

~~(a) the nature and complexity of the proceeding; and~~

~~(b) the number of documents involved; and~~

~~(c) the ease and cost of retrieving a document; and~~

~~(d) the significance of any document likely to be found; and~~

~~(e) the need for discovery to be proportionate to the subject matter of the proceeding.~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~8.15~~ ~~Affidavit of documents~~

~~(1)~~ ~~Each party must file and serve an affidavit of documents that complies with this rule, subject to any modifications or directions contained in a discovery order.~~

~~(2)~~ ~~In the affidavit of documents, the party must—~~

~~(a)~~ ~~refer to the discovery order under which the affidavit is made; and~~

~~(b)~~ ~~state that the party understands the party's obligations under the order; and~~

~~(c)~~ ~~give particulars of the steps taken to fulfil those obligations; and~~

~~(d)~~ ~~state the categories or classes of documents that have not been searched, and the reason or reasons for not searching them; and~~

~~(e)~~ ~~list or otherwise identify the documents required to be discovered under the order in a schedule that complies with rule 8.16 and Part 2 of Schedule 9; and~~

~~(f)~~ ~~state any restrictions proposed to protect the claimed confidentiality of any document.~~

~~(3)~~ ~~The affidavit may be in form G 37.~~

~~(4)~~ ~~Each party must file and serve the affidavit of documents within such time as the court directs or, if no direction is made, within 20 working days after the date on which the discovery order is made.~~

~~Compare: 1908 No 89 Schedule 2 r 8.20 prior to 1 February 2012~~

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

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(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).

8.16 Schedule appended to affidavit ~~of documents~~ for further or particular disclosure

(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.

(1) ~~The schedule referred to in rule 8.15(2)(e) must, in accordance with that discovery order,~~ The schedule must list or otherwise identify documents that—

(a) are in the control of the party giving ~~discovery~~ disclosure and for which the party does not claim privilege or confidentiality:

(b) are in the control of the party giving ~~discovery~~ disclosure for which privilege is claimed, stating the nature of the privilege claimed:

(c) are in the control of the party giving ~~discovery~~ disclosure for which confidentiality is claimed, stating the nature and extent of the confidentiality:

(d) have been, but are no longer, in the control of the party giving ~~discovery~~ disclosure, stating when the documents ceased to be in that control, and the person who now has control of them:

(e) have not been in the control of the party giving ~~discovery~~ disclosure but which that party knows would ~~be discoverable~~ need to be disclosed if that party had control of them.

(2) ~~Subject to Part 2 of Schedule 9,~~ Part 2 of Schedule 9 applies to a schedule under this rule, except that documents of the same nature falling within subclause (1)(b), (d), or (e) may be described as a group or groups.

(3) The description of documents for which privilege is claimed under subclause (1)(b) must be sufficient to inform the other parties of the basis on which each document is included in a group under subclause (2).

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(4) The schedule must include documents that have previously been disclosed under rule 8.4.~~

(5) The schedule need not include—

(a) documents filed in court; or

(b) ~~correspondence~~ any documents that may reasonably be assumed to be in the possession of all parties.

Compare: 1908 No 89 Schedule 2 r 8.21 prior to 1 February 2012

~~8.17 Variation of discovery order~~

~~(1) Subject to rule 7.7, a party may apply for an order varying the terms of a discovery order.~~

~~(2) The variation may be granted by a Judge on the ground that—~~

~~(a) compliance or attempted compliance with the terms of the order has revealed a need for a variation; or~~

~~(b) there has been a change of circumstances that justifies reconsideration.~~

~~Compare: 1908 No 89 Schedule 2 r 8.22 prior to 1 February 2012~~

~~8.18 Continuing obligations~~

~~(1) Each party against whom a discovery order is made has a continuing obligation to give discovery and offer inspection at all stages of the proceeding, even if that party has filed and served an affidavit of documents that complies with this subpart.~~

~~(2) A party must discover a document if, in the course of complying with an order for tailored discovery, that party becomes aware of a document that is not required to be discovered under the order, but that—~~

~~(a) adversely affects that party's own case; or~~

~~(b) adversely affects another party's case; or~~

~~(c) supports another party's case.~~

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.

8.19 Order for particular ~~discovery~~ disclosure against party after proceeding commenced

(1) If at any stage of the proceeding it appears to a Judge, from evidence or from the nature or circumstances of the case or from any document filed in the proceeding, that there are grounds for believing that a party has not ~~discovered~~

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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disclosed 1 or more documents or a group of documents that should have been ~~discovered~~ disclosed, the Judge may order that party—

(a) to file an ~~affidavit~~ affidavit in a form directed by the Judge stating—

(i) whether the documents are or have been in the party's control; and

(ii) if they have been but are no longer in the party's control, the party's best knowledge and belief as to when the documents ceased to be in the party's control and who now has control of them; and

(b) to serve the affidavit on the other party or parties; and

(c) if the documents are in the person's control, to make those documents available for inspection, in accordance with rule 8.27, to the other party or parties.

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

Compare: 1908 No 89 Schedule 2 r 8.24 prior to 1 February 2012

8.20 Order for particular ~~discovery~~ disclosure before proceeding commenced

(1) This rule applies if it appears to a Judge that—

(a) a person (the **intending plaintiff**) is or may be entitled to claim in the court relief against another person (the **intended defendant**) but that it is impossible or impracticable for the intending plaintiff to formulate the intending plaintiff's claim without reference to 1 or more documents or a group of documents; and

(b) there are grounds to believe that the documents may be or may have been in the control of a person (the **person**) who may or may not be the intended defendant.

(2) The Judge may, on the application of the intending plaintiff made before any proceeding is brought, order the person—

(a) to file an ~~affidavit~~ affidavit in a form directed by the Judge stating—

(i) whether the documents are or have been in the person's control; and

(ii) if they have been but are no longer in the person's control, the person's best knowledge and belief as to when the documents ceased to be in the person's control and who now has control of them; and

(b) to serve the affidavit on the intending plaintiff; and

(c) if the documents are in the person's control, to make those documents available for inspection, in accordance with rule 8.27, to the intending plaintiff.

(3) An application under subclause (2) must be by interlocutory application made on notice—

(a) to the person; and

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) to the intended defendant.

(4) The Judge may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

Compare: 1908 No 89 Schedule 2 r 8.25 prior to 1 February 2012

8.21 Order for particular ~~discovery~~ disclosure against non-party after proceeding commenced

(1) This rule applies if it appears to a Judge that a person who is not a party to a proceeding may be or may have been in the control of 1 or more documents or a group of documents that the person would have had to ~~discover~~ disclose if the person were a party to the proceeding.

(2) The Judge may, on application, order the person—

(a) to file an ~~affidavit~~ affidavit in a form directed by the Judge stating—

(i) whether the documents are or have been in the person's control; and

(ii) if the documents have been but are no longer in the person's control, the person's best knowledge and belief as to when the documents ceased to be in the person's control and who now has control of them; and

(b) to serve the affidavit on a party or parties specified in the order; and

(c) if the documents are in the control of the person, to make those documents available for inspection, in accordance with rule 8.27, to the party or parties specified in the order.

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

(3) An application for an order under subclause (2) must be made on notice to the person and to every other party who has filed an address for service.

Compare: 1908 No 89 Schedule 2 r 8.26 prior to 1 February 2012

8.22 Costs of ~~discovery~~ disclosure

(1) If it is manifestly unjust for a party to have to meet the costs of complying with an order made under this subpart, a Judge may order that another party meet those costs, either in whole or in part, in advance or after the party has complied.

(2) Despite subclause (1), the court may subsequently discharge or vary an order made under that subclause if satisfied that a different allocation of those costs would be just.

(3) If an order is made under rule 8.20(2) or 8.21(2), the Judge may, if the Judge thinks it just, order the applicant to pay to the person from whom ~~discovery~~ disclosure is sought the whole or part of that person's expenses (including

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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solicitor and client costs) incurred in relation to the application and in complying with any order made on the application.

Compare: 1908 No 89 Schedule 2 r 8.27 prior to 1 February 2012

8.23 Incorrect affidavit ~~of documents~~ for disclosure to be amended

If, by reason of any change of circumstances or an error or omission, an affidavit ~~of documents~~ for disclosure filed ~~in response to a discovery order~~ to meet a disclosure obligation appears to the person ~~making discovery~~ making disclosure to be defective or erroneous, the person must promptly file and serve an affidavit that corrects or supplements the affidavit ~~of documents~~ for disclosure.

Compare: 1908 No 89 Schedule 2 r 8.28 prior to 1 February 2012

~~8.24 Who may swear affidavit of documents~~

~~(1) When a Judge makes a discovery order, the Judge may—~~

~~(a) specify by name or otherwise the person who has to make the affidavit of documents; or~~

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

~~(2) If the Judge does not specify the person or the group or class of persons, the affidavit of documents may be made as follows:~~

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

~~(b) if the person required to make discovery 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 discovery is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a government department, by an officer of the Crown.~~

~~Compare: 1908 No 89 Schedule 2 r 8.30 prior to 1 February 2012~~

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:

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(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.

8.25 Challenge to privilege or confidentiality claim

(1) If a party challenges a claim to privilege or confidentiality made in an affidavit ~~of documents~~ for disclosure, the party may apply to the court for an order setting aside or modifying the claim.

(2) In considering the application, a Judge may require the document under review to be produced to the Judge and may inspect it for the purpose of deciding the validity of the claim.

(3) The Judge may—

(a) set aside the claim to privilege or confidentiality; or

(b) modify the claim to privilege or confidentiality; or

(c) dismiss the application; or

(d) make any other order with respect to the document under review that the Judge thinks just.

Compare: 1908 No 89 Schedule 2 r 8.31 prior to 1 February 2012

8.26 Crown documents and public interest

An order made under section 27(1) of the Crown Proceedings Act 1950 must be construed as not requiring disclosure of the existence of any document if—

(a) the Prime Minister certifies that the disclosure of the existence of that document would be likely to prejudice—

(i) the security or defence of New Zealand or the international relations of the Government of New Zealand; or

(ii) any interest protected by section 7 of the Official Information Act 1982; or

(b) the Attorney-General certifies that the disclosure of the existence of that document would be likely to prejudice the prevention, investigation, or detection of offences.

Compare: 1908 No 89 Schedule 2 r 8.32 prior to 1 February 2012

8.27 Inspection of documents

(1) As soon as a party who is required to make ~~discovery~~ disclosure has filed and served an affidavit ~~of documents~~ for disclosure, that party must, subject to rule

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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8.28, make the documents that are listed in the affidavit and that are in that party's control available for inspection by way of exchange.

(2) Documents must be exchanged in accordance with the listing and exchange protocol in Part 2 of Schedule 9.

(3) ~~If a discovery order exempts a party from giving discovery~~ If a party is exempted from giving disclosure and inspection electronically, that party must make the documents listed in the affidavit ~~of documents~~ for disclosure available for inspection in hard copy form, and must promptly make those documents available for copying if requested.

(4) A party who has received a document electronically under this rule may, on giving reasonable notice in writing, require the person giving ~~discovery~~ disclosure to produce the original document for inspection.

(5) This rule also applies to documents listed in an affidavit filed and served under rule 8.20 or 8.21.

~~(6) This rule is subject to the terms of any discovery order made under rule 8.5.~~

Compare: 1908 No 89 Schedule 2 r 8.33 prior to 1 February 2012

8.28 Privilege and confidentiality

(1) A party is not required to make privileged documents available for inspection.

(2) If a document contains both privileged and non-privileged information, a party must make the document available for inspection, but may redact the privileged information by rendering the privileged information in the document unreadable.

(3) A party may limit inspection of confidential documents to the persons specified in the affidavit ~~of documents~~ for disclosure, subject to the restrictions proposed in the affidavit.

8.29 Order facilitating inspection

(1) A Judge may, on application, make any order the Judge thinks appropriate to facilitate the efficient inspection of documents.

(2) An order under subclause (1) may, for example, require the person who is to produce the documents for inspection to do either or both of the following:

(a) arrange the documents in a stated manner or order:

(b) assist the party inspecting the documents to locate and identify particular documents or groups of documents.

Compare: 1908 No 89 Schedule 2 r 8.34 prior to 1 February 2012

8.30 Use of documents disclosed in the proceeding

(1) A party to whom a document has been made available electronically or is produced for inspection under rule 8.27 or 8.29 may make copies of the document.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) On the application of a party to whom a document is produced for inspection under rule 8.27 or 8.29, a Judge may order the person who has control of the document to give the applicant a legible copy.

(3) An order under subclause (2) may be made on any terms the Judge thinks just, and, in particular, the Judge may order that—

(a) the applicant pay the reasonable expenses of the other party:

(b) the document be marked to the effect that it is a copy given for purposes of inspection only.

(4) A party who obtains a document by way of ~~inspection~~ disclosure or who makes a copy of a document under this rule—

(a) may use that document or copy only for the purposes of the proceeding; and

(b) except for the purposes of the proceeding, must not make it available to any other person (unless it has been read out in open court).

Compare: 1908 No 89 Schedule 2 r 8.36 prior to 1 February 2012

~~8.31 Effect of failure to include document~~

~~A document that should have been included in a party's affidavit of documents may be produced in evidence at the hearing only with the consent of the other party or parties or the leave of the court.~~

~~Compare: 1908 No 89 Schedule 2 r 8.37 prior to 1 February 2012~~

8.32 Notice to produce documents or things

(1) A party to a proceeding may serve on another party a notice requiring the other party to produce a document or thing for the purpose of evidence at the hearing of the proceeding, or before a Judge, an officer, an examiner, or other person who has authority to take evidence in the proceeding.

(2) If the document or thing is in the control of the party who is served with the notice, the party must, unless a Judge otherwise orders, produce the document or thing in accordance with the notice, without the need for a subpoena for production.

(3) The notice must be treated as an order of the court to produce the document or thing specified in the notice.

Compare: 1908 No 89 Schedule 2 r 8.39 prior to 1 February 2012

~~8.33 Enforcement of order~~

~~(1) A discovery order or other 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.~~

~~(2) 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.~~

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

Subpart 2—Interrogatories

8.34 Interrogatories by notice

(1) After a statement of defence has been filed, a party who has filed a pleading may file and serve on another party who has filed a pleading a notice requiring that party to answer specified interrogatories relating to any matter in question in the proceeding between the interrogating party and the party served.

(2) The notice may require that the answers be verified even if the interrogating party has not previously required any answers to interrogatories to be verified.

(3) The notice must be in form G 35.

Compare: 1908 No 89 Schedule 2 r 8.1 prior to 1 February 2012

8.35 Duties of party served

(1) A party required by notice under rule 8.34 to answer interrogatories must answer the interrogatories within the period specified in the notice.

(2) The period specified commences on the first working day after the day on which the notice under rule 8.34 is served and may not be less than 10 working days (or, if the party is resident out of New Zealand, 20 working days).

(3) The party required to answer the interrogatories must file and serve on the party requiring the answers—

(a) if the answers do not have to be verified, a statement in accordance with rule 8.39; or

(b) if the answers do have to be verified, an affidavit verifying the statement together with the statement verified unless it has already been filed and served.

(4) This rule is subject to rule 8.36.

Compare: 1908 No 89 Schedule 2 r 8.2 prior to 1 February 2012

8.36 Limitation of interrogatories by notice

(1) A Judge may, on the application of a party required to answer interrogatories, order that answers to interrogatories under rule 8.34 by that party—

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(a) are not required; or

(b) need to be given only to specified interrogatories or classes of interrogatories or to specified matters that are in question in the proceeding.

(2) The application may be made before or after the party has been served with a notice under rule 8.34.

(3) In determining the application, the Judge must make any orders required to prevent unnecessary or oppressive interrogatories or unnecessary answers to interrogatories.

Compare: 1908 No 89 Schedule 2 r 8.3 prior to 1 February 2012

8.37 Multiple parties

If there are more than 2 parties, a party who is required under rule 8.34 to answer interrogatories must serve the documents required to be served under that rule on every party who has given an address for service.

Compare: 1908 No 89 Schedule 2 r 8.4 prior to 1 February 2012

8.38 Order to answer

(1) A Judge may, at any stage of any proceeding, order any party to file and serve on any other party (whether the interrogating party or not) a statement prepared in accordance with rule 8.39 in answer to interrogatories specified or referred to in the order.

(2) The interrogatories must relate to matters in question in the proceeding.

(3) The order may require the statement to be verified by affidavit.

(4) The Judge must not make an order under subclause (1) unless satisfied that the order is necessary at the time when it is made.

Compare: 1908 No 89 Schedule 2 r 8.5 prior to 1 February 2012

8.39 Contents of statement

(1) A statement in answer to interrogatories must, unless a Judge otherwise orders, comply with this rule.

(2) A statement in answer to interrogatories must deal with each interrogatory specifically, either—

(a) by answering the substance of the interrogatory without evasion; or

(b) by objecting to answer the interrogatory on 1 or more of the grounds mentioned in rule 8.40(1) and briefly stating the facts on which the objection is based.

(3) The statement must set out above or opposite to each answer or objection the interrogatory to which it relates.

Compare: 1908 No 89 Schedule 2 r 8.6 prior to 1 February 2012

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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8.40 Objection to answer

(1) A party may object to answer an interrogatory on the following grounds only:

(a) that the interrogatory does not relate to a matter in question between the parties involved in the interrogatories:

(b) that the interrogatory is vexatious or oppressive:

(c) that the information sought is privileged:

(d) that the sole object of the interrogatory is to ascertain the names of witnesses.

(2) It is not a sufficient objection that the answer to an interrogatory will determine a substantial issue in the proceeding.

(3) On an application under rule 8.36 in respect of an interrogatory, a Judge may—

(a) require the applicant to specify on what grounds the applicant objects to answer that interrogatory; and

(b) determine the sufficiency of the objection.

(4) If the Judge determines that the objection is not sufficient, the application is not entitled to object to answer the interrogatory.

Compare: 1908 No 89 Schedule 2 r 8.7 prior to 1 February 2012

8.41 Who may swear affidavit verifying statement in answer to interrogatories

(1) An affidavit verifying a statement of a party in answer to interrogatories may be made as follows:

(a) by the person required to make the statement:

(b) if the person required to make the statement is a minor (other than a minor to whom rule 4.31(2) applies) or is an incapacitated person within the meaning of rule 4.29, by the person's litigation guardian:

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

(d) if the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a government department, by an officer of the Crown.

(2) Despite subclause (1), if paragraph (c) or (d) of that subclause applies, and if the affidavit is to be filed and served in accordance with an order, a Judge may—

(a) specify by name or otherwise the person who has to make the affidavit; or

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(b) specify by description or otherwise a group or class of persons, any 1 of whom may make the affidavit.

Compare: 1908 No 89 Schedule 2 r 8.8 prior to 1 February 2012

8.42 Insufficient answer

If a party fails to answer an interrogatory sufficiently, a Judge may, in addition to acting under rule 7.48,—

(a) if the party has made an insufficient answer, order the party to make a further answer verified by affidavit in accordance with rule 8.38; or

(b) order the party, or any of the persons mentioned in rule 8.41(1)(b) to (d), as the case requires, to attend to be orally examined.

Compare: 1908 No 89 Schedule 2 r 8.9 prior to 1 February 2012

8.43 Incorrect answer to be amended

(1) If, by reason of a change of circumstances or an error or omission, a statement filed in response to a notice given or order made under rule 8.34, 8.38, or 8.42 appears to the party who filed it or on whose behalf it was filed to be defective or erroneous, that party must promptly file and serve a further statement that corrects or supplements the original statement.

(2) If the original statement was verified, the further statement must also be verified.

Compare: 1908 No 89 Schedule 2 r 8.10 prior to 1 February 2012

8.44 Answers as evidence

(1) A party may give in evidence—

(a) 1 or more answers to interrogatories without giving the others:

(b) part of an answer to an interrogatory without giving the whole of the answer.

(2) If a party proposes to give in evidence an answer (or part of an answer) to an interrogatory (**answer A**), the Judge may look at the other answers, and if the Judge considers that answer A is so connected with another answer (**answer B**) that answer A ought not to be received without answer B, the Judge may refuse to receive answer A unless answer B is also given in evidence.

Compare: 1908 No 89 Schedule 2 r 8.11 prior to 1 February 2012

8.45 Public interest

The rules that relate to interrogatories do not affect any rule of law that authorises or requires the withholding of a matter on the ground that its disclosure would be injurious to the public interest.

Compare: 1908 No 89 Schedule 2 r 8.12 prior to 1 February 2012

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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8.46 Defamation proceedings

If, in a proceeding for defamation, the defendant pleads that the words or matters complained of are honest opinion on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief may be allowed unless the interrogatories are necessary in the interests of justice.

Compare: 1908 No 89 Schedule 2 r 8.13 prior to 1 February 2012

Subpart 3—Notice to admit facts

8.47 Notice to admit facts

(1) A party who is entitled to serve a notice under rule 8.34 may at any time serve on another party a notice requiring the party to admit, for the purpose of the proceeding only, the facts specified in the notice.

(2) The notice must be in form G 36.

(3) An admission made in compliance with a notice under subclause (1)—

(a) may be amended or withdrawn by the party by whom it was made at any time if a Judge so allows, and this may be done on any terms the Judge thinks just:

(b) must not be used against the party by whom it was made in a proceeding or interlocutory application other than the proceeding or interlocutory application for which it was made.

(4) If the party on whom a notice to admit facts has been served under subclause (1) refuses or neglects to admit the facts within 5 working days after the day of service or within any longer time allowed by a Judge, the costs of proving the facts must be paid by that party, unless a Judge otherwise orders.

Compare: 1908 No 89 Schedule 2 r 8.14 prior to 1 February 2012

8.48 Judgment on admission of facts

A judgment or order may be made on an admission of facts under rule 15.15.

Compare: 1908 No 89 Schedule 2 r 8.15 prior to 1 February 2012

Part 9
Evidence

Subpart 1—~~Briefs~~Witness statements, oral evidence directions, common bundles, and chronologies

9.1 ~~Objective~~ Overriding objective and scope

(1) When applying the rules in this subpart to a proceeding, the court and the parties must ~~pursue the just, speedy, and inexpensive determination of that~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~proceeding~~ act in a manner that will best achieve the overriding objective of these rules in rule 1.2.

(2) The parties must also ensure that the ~~briefs~~ witness statements and the common bundle are commensurate with the goal of keeping the cost of the proceeding proportionate to the subject matter of the proceeding.

(3) The documents to be produced at the trial or hearing and the evidence-in-chief of witnesses must be prepared, produced, and led in accordance with this subpart.

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.

~~9.2 Exchange of documents and index~~

~~(1) In this rule, **documents to be relied upon** means—~~

~~(a) documents referred to in a brief or to be referred to by a witness; and~~

~~(b) documents intended to be put to witnesses called by another party; and~~

~~(c) documents to be referred to in opening.~~

~~(2) When a party discloses documents to be relied upon at the trial or hearing, that party must supply a list of those documents incorporating any list previously supplied, so that the other parties always have an up-to-date list of the documents that party intends to rely upon. The list may be in any format and is to be labelled and referred to as that party's index.~~

~~(3) Documents to be relied upon at the trial or hearing but additional to those already disclosed may be disclosed at any time, but not later than a date fixed by the court at a case management, issues, or pre-trial conference.~~

~~(4) Subclause (3) does not affect a party's ongoing obligations in relation to discovery.~~

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—

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

9.3 Timing

~~(1) Unless otherwise ordered by the court, a common bundle of documents must not be prepared until all the briefs of the parties have been served.~~

(2) The common bundle must be prepared by the plaintiff (or a different party, if the court so orders) and filed and served by a date fixed by the court at ~~a case management, issues,~~ the judicial issues or pre-trial conference.

~~9.4 Preparation of 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—~~

~~(a) advising the plaintiff or the plaintiff's counsel promptly, after the date when the last brief of any party is served under rule 9.7, of the documents that the party requires the plaintiff to include in the common bundle; 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 as to the format of the common bundle and, in particular, whether an electronic format of the common bundle is appropriate.~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(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 the court:~~

~~(b) number each page of the common bundle 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) use a format that is, so far as possible, compatible with that used by the parties when listing documents under rule 8.16 (schedule appended to affidavit of documents).~~

~~(5A) 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.~~

~~(6) Unless the court directs otherwise, the common bundle must be served not later than 15 working days after the date when the last brief of any party is served under rule 9.7.~~

~~Compare: 1908 No 89 Schedule 2 r 9.13 prior to 1 February 2013~~

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.

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

~~9.5 Consequences of incorporating document in common bundle~~

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

~~(a) to be admissible; and~~

~~(b) to be accurately described in the common bundle index; and~~

~~(c) to be what it appears to be; and~~

~~(d) to have been signed by any apparent signatory; and~~

~~(e) to have been sent by any apparent author and to have been received by any apparent addressee; and~~

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

~~(2) If a party objects to the admissibility of a document included in the common bundle, or to the application of any of subclause (1)(b) to (f) to a document, the~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~objection must, if practicable, be recorded in the common bundle, and must be determined by the court at the hearing or at any prior time that the court directs.~~

~~(3) The fact that a document has been included in the common bundle is not relevant to the determination under subclause (2) of an objection that relates to the document.~~

~~(4) A document in the common bundle is automatically received into evidence (subject to the resolution of any objection to admissibility) when a witness refers to it in evidence or when counsel refers to it in submissions (made otherwise than in a closing address).~~

~~(5) A document in the common bundle may not be received in evidence except under subclause (4).~~

~~(6) The court may direct that this rule or any part of it is not to apply to a particular document.~~

~~Compare: 1908 No 89 Schedule 2 r 9.14 prior to 1 February 2013~~

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).

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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.

9.6 Consequence of not incorporating document in common bundle

(1) A document not incorporated in the common bundle may be produced at the trial or hearing only with the leave of the court.

(2) The court may grant leave to produce a ~~discovered~~ disclosed document not so incorporated unless its production would cause an injustice.

(3) The court may refuse leave to produce a document not so incorporated and not ~~discovered~~ disclosed if its production might cause an injustice.

Compare: 1908 No 89 Schedule 2 r 9.15 prior to 1 February 2013

~~9.7 Requirements in relation to briefs~~

~~(1) In this subpart, **brief**, in relation to the evidence of a witness to be called by a party, means a written statement setting out evidence proposed to be given by that witness.~~

~~(2) The date by which the parties must complete and serve briefs upon each other, simultaneously or sequentially, must be determined by the court at a case management or issues conference, having regard to the needs of the case.~~

~~(3) Whether or not some evidence is directed to be led orally, the brief must contain the testimony intended to be taken from that witness on that subject.~~

~~(4) Every brief—~~

~~(a) *[Revoked]*~~

~~(b) must be in the words of the witness and not in the words of the lawyer involved in drafting the brief:~~

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

~~(d) must not contain any material in the nature of a submission:~~

~~(e) must avoid repetition:~~

~~(f) must avoid the recital of the contents or a summary of documents that are to be produced in any event:~~

~~(g) must be confined to the matters in issue.~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(5) If the brief does not comply with the requirements of subclause (4) the court, prior to or during the trial, may direct that it not be read in whole or in part, and may make such order as to costs as the court sees fit.~~

~~(6) A party intending to call a person as a witness must, if that person has not provided a brief,—~~

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

~~(b) include the following information in the notice:~~

~~(i) the name of the intended witness:~~

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

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

~~(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.~~

~~(7) At the trial or hearing, the person called as a witness must give his or 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.~~

~~(8) The party serving a brief or a notice under subclause (6) must, as soon as practicable after the brief or notice is served, advise the Registrar of what the party has served, on whom it was served, and the date of service.~~

~~Compare: 1908 No 89 Schedule 2 r 9.4 prior to 1 February 2013~~

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:

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

9.8 Supplementary ~~briefs~~ witness statements

(1) A party wishing to offer a supplementary ~~brief~~ witness statement must serve it as soon as possible.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) The acceptance and use of the supplementary ~~brief~~ witness statement in court will be at the discretion of the trial Judge after taking account of the overriding objective in rule 1.2.

Compare: 1908 No 89 Schedule 2 r 9.5 prior to 1 February 2013

~~9.9 Exchange of chronology of facts intended to be relied upon at trial or hearing~~

~~(1) The plaintiff must, not later than 15 working days after the common bundle has been served, file and serve a chronology of the facts it intends to rely upon at the trial or hearing.~~

~~(2) In preparing the chronology, the plaintiff must—~~

~~(a) set out the facts in chronological order; and~~

~~(b) cross-reference the facts to—~~

~~(i) 1 or more documents; or~~

~~(ii) 1 or more statements in written briefs; and~~

~~(c) include, when available, common bundle index references or page references.~~

~~(3) The other parties must, not later than 15 working days after service of the plaintiff's chronology, file and serve their responses to it, identifying which facts they dispute, and adding any other facts they intend to rely upon.~~

~~(4) In preparing their responses, the other parties must—~~

~~(a) cross-reference disputed facts to different or contradictory facts in the plaintiff's chronology; and~~

~~(b) list any additional facts; and~~

~~(c) comply with subclause (2)(b).~~

~~(5) The court may modify the requirements of this rule at a conference under rule 7.5.~~

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:

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

9.10 Oral evidence directions

~~(1) After the preparation and service of the chronologies of facts, the parties must bring significant facts that are disputed to the attention of the court.~~

~~(2) The obligation in subclause (1) may be discharged at a case management or issues or pre-trial conference, or at another time, but must, in any event, be discharged not later than 15 working days after service of the chronologies of fact has been completed.~~

(3) The court may, before the giving of evidence, and either before or at the trial or hearing, direct that evidence be given orally (an **oral evidence direction**).

9.11 Compliance with Evidence Act 2006

(1) Any challenge to the admissibility of a ~~brief~~ witness statement, in whole or in part, must be notified to the party or parties concerned within 20 working days after receipt of the ~~brief~~ witness statement by the challenging party.

(2) If the issue is not resolved between counsel in a further 10 working days, notice that there is an admissibility issue must be given to the court by the challenging party.

~~9.12 Evidence-in-chief at trial~~

~~(1) A brief by a witness—~~

~~(a) must, subject to the terms of an oral evidence direction made under rule 9.10, be read by the witness at the trial as the witness's evidence-in-chief; and~~

~~(b) is, when read by the witness at the trial, the evidence-in-chief given by the witness at the trial; and~~

~~(c) must, after being read by the witness at the trial, be endorsed by or on behalf of the Registrar with the words "Given in evidence on [*date*]".~~

~~(2) Any portion of the brief that is the subject of an oral evidence direction under rule 9.10 becomes part of the evidence-in-chief of the witness only if and when it is given orally.~~

~~Compare: 1908 No 89 Schedule 2 r 9.6 prior to 1 February 2013~~

9.12 Evidence-in-chief at trial

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

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

9.13 ~~Briefs~~ Witness statements not given in evidence

(1) If, by the time that a party opens the party's case, the ~~brief~~ witness statement of another party's witness has not been given in evidence, the party may, in opening, refer to that ~~brief~~ witness statement only with the leave of the trial Judge.

(2) When any part of the evidence contained in a ~~brief~~ witness statement is not given in evidence at the trial by the person to whose evidence that ~~brief~~ witness statement relates, any other party to the proceeding may, unless the trial Judge otherwise directs, put that part of the evidence to that person in cross-examination.

Compare: 1908 No 89 Schedule 2 rr 9.8, 9.9 prior to 1 February 2013

9.14 Privilege and admissibility not affected by ~~briefs~~ witness statements

Nothing in this subpart—

(a) deprives any party of that party's right to treat any communication as privileged; or

(b) changes inadmissible evidence into admissible evidence; or

(c) changes admissible evidence into inadmissible evidence; or

(d) deprives any party of that party's right to cross-examine any party to a proceeding on a ~~brief~~ witness statement, served under these rules, that is inconsistent with a statement previously made by that party; or

(e) allows a ~~brief~~ witness statement, served under these rules, to be made available, before it is given in evidence, for use for another purpose or proceeding.

Compare: 1908 No 89 Schedule 2 r 9.10 prior to 1 February 2013

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~9.15 Cross-examination duties~~

~~The exchange of briefs under this subpart does not affect the cross-examination duties referred to in section 92 of the Evidence Act 2006.~~

~~Compare: 1908 No 89 Schedule 2 r 9.11 prior to 1 February 2013~~

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.

~~9.16 Plaintiff's synopsis of opening~~

~~The plaintiff must, not later than 2 working days before the trial or hearing, file in the court and serve on every other party to the proceeding a copy of the plaintiff's opening.~~

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.

Subpart 2—Evidence by depositions

9.17 Order for examination of witness or for letters of request

(1) When, in a proceeding or on an interlocutory application, a party desires to have the evidence of a person or persons taken otherwise than at the trial or the hearing of that interlocutory application, the court may, on application by that party, make orders on any terms the court thinks just—

(a) for the examination of a person on oath before a Judge, Registrar, or Deputy Registrar or before a person that the court appoints (in rules 9.18 to 9.23 referred to as the **examiner**) at any place whether in or out of New Zealand; or

(b) for the sending of a letter of request to the judicial authorities of another country, to take, or cause to be taken, the evidence of a person.

(2) On the application of an opposite party, the court may, if it is satisfied that the party who obtained the order under subclause (1) is not implementing the order

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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with due diligence, rescind the order and may make any other order justice requires.

Compare: 1908 No 89 Schedule 2 r 369

9.18 Security for costs for taking evidence outside New Zealand

The court may, as a condition of making an order under rule 9.17 for the taking of evidence outside New Zealand, require the party applying to give security for—

(a) the estimated fees and expenses of the examiner, or other person by or before whom the evidence is to be taken; and

(b) the costs of any opposite party of and incidental to the taking of the evidence, for the amount the court thinks just, but not exceeding the estimated reasonable indemnity costs and disbursements of that opposite party.

Compare: 1908 No 89 Schedule 2 r 370

9.19 Documents for examiner

(1) The party obtaining an order for examination before an examiner must, unless the examination is conducted by the Registrar or Deputy Registrar at the court where the file of the proceeding is held, furnish the examiner with copies of those documents in the proceeding that are necessary to inform the examiner of the matters to which the examination is to relate.

(2) If the documents in the proceeding are not sufficient to inform the examiner of the matters to which the examination is to relate, the court must, in the order for examination or in a later order, state those matters.

Compare: 1908 No 89 Schedule 2 r 371

9.20 Procedure for examination before examiner

(1) On receipt of a copy of the order for examination, the examiner must appoint a time and place for the examination and notify all parties of the time and place.

(2) The examiner may adjourn the examination from time to time and from place to place as is necessary or expedient.

(3) The examiner may administer an oath to each witness examined and each witness may be examined, cross-examined, and re-examined as at the trial of a proceeding.

(4) The examiner must ensure that evidence given at the examination is recorded, together with notes of any objections to the evidence.

(5) The depositions so taken must be signed on each page by the witness and by the examiner.

(6) The depositions when taken must be securely fastened together and must, together with the exhibits and the report of the examiner, be sent without delay

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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to the registry of the court in which the file of the proceeding is for the time being held.

(7) The examiner may send to the registry of the court in which the file of the proceeding is for the time being held a certificate stating that—

(a) at the time and place appointed for the examination or at any adjournment, there was no appearance by or on behalf of the party obtaining the order; or

(b) the witness did not attend at that time and place; or

(c) at that time and place, the applicant intimated that it was not intended to proceed with the taking of the evidence.

(8) On application to the Registrar a party may inspect any depositions taken under this rule and make copies of them or extracts from them.

Compare: 1908 No 89 Schedule 2 r 372

9.21 Examination of additional persons

(1) The examiner may, with the consent in writing of all parties to the proceeding, take the examination of a person in addition to the person named or referred to in the order for examination.

(2) The consent of each of the parties must be attached to the deposition of that person.

Compare: 1908 No 89 Schedule 2 r 373

9.22 Objection to question

When objection is taken to a question to a person being examined before an examiner, or a witness takes objection to answering a question or to producing a document or a thing,—

(a) the examiner must give the parties the examiner's opinion on the objection, but must not rule on it; and

(b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) to the question must be set out in the deposition of the witness or in a statement attached to the deposition; and

(c) the court may, on application by a party, decide the validity of the objection.

Compare: 1908 No 89 Schedule 2 r 374

9.23 Form of report

The report of the examiner may be in form G 19.

Compare: 1908 No 89 Schedule 2 r 375

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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9.24 Depositions as evidence

Depositions taken in accordance with these rules under an order under rule 9.17 may be produced as evidence at the trial of the proceeding and must be received subject to any objection on the ground of admissibility.

Compare: 1908 No 89 Schedule 2 r 376

9.25 Letters of request where convention exists

When a convention is in force between a country and New Zealand relating to the taking of evidence in that country for use in New Zealand, rules 9.26 to 9.28 apply subject to any special provisions contained in the convention.

Compare: 1908 No 89 Schedule 2 r 377

9.26 Issue of letters of request

(1) When an order has been made for the issue of a letter of request, the party obtaining the order must—

(a) lodge with the Registrar—

(i) a form of the appropriate letter of request; and

(ii) the interrogatories and cross-interrogatories (if any) to accompany the letter of request; and

(iii) where required by the convention, a translation of each of the documents mentioned in subparagraphs (i) and (ii) into the language, or an appropriate language, of the country concerned; and

(b) file—

(i) a copy of each of the documents mentioned in paragraph (a); and

(ii) a personal undertaking by the party obtaining the order or the party's solicitor to be responsible for all expenses in respect of the execution of the letter of request incurred by the court or by any person at the request of the court, and, on being given notice of the amount of those expenses, to pay the amount forthwith into a Crown Bank Account and produce evidence of the payment to the Registrar.

(2) The correctness of every translation must be certified or otherwise verified to the satisfaction of the Registrar.

(3) The Registrar may require security of a reasonable amount instead of an undertaking under subclause (1)(b)(ii).

(4) The letter of request must be in such form as the court approves and be issued under the hand of a Judge and the seal of the court.

Compare: 1908 No 89 Schedule 2 r 378

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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9.27 Agents of parties

The party who obtains an order for the issue of a letter of request must file a statement of the names and addresses of the parties' agents in the country in which the letter of request is to be executed.

Compare: 1908 No 89 Schedule 2 r 379

9.28 Consequences of non-compliance with undertaking as to expenses

When a party who has given an undertaking under rule 9.26(1)(b)(ii) does not, within 5 working days after being served with notice of the amount of the expenses concerned, pay that amount to the Registrar, the court may, on application by the Registrar,—

(a) order the party to pay the amount of the expenses to the Registrar; and

(b) until payment, stay the proceeding as far as concerns the whole or any part of any claim for relief by that party; and

(c) strike out any pleading filed by that party.

Compare: 1908 No 89 Schedule 2 r 380

9.29 Application by Solicitor-General on letters of request from abroad

(1) The Registrar must transmit to the Solicitor-General a letter of request received if—

(a) the letter relates to a proceeding to which sections 184 and 185 of the Evidence Act 2006 apply; and

(b) it appears that the letter is not to be given effect by an application by a party to the proceeding.

(2) The Solicitor-General may then make an application and take any steps that are necessary to give effect to the letter.

Compare: 1908 No 89 Schedule 2 r 381

Subpart 3—Medical examinations

9.30 Order for medical examination

(1) An order under section 44 of the Act may be made—

(a) at any time after the time for filing a statement of defence to the plaintiff's statement of claim has expired, on the application of any party to the proceeding; or

(b) by the court on its own initiative.

(2) The time and place of the examination must be fixed by the order.

Compare: 1908 No 89 Schedule 2 r 318

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

When an order is made under section 44 of the Act the court may require a medical practitioner making the examination—

(a) to furnish to the court, within the time specified in the order, a report in writing setting out—

(i) the medical practitioner's clinical findings; and

(ii) the medical practitioner's opinion of the physical condition or mental condition or both of the person examined, so far as relevant; and

(iii) if appropriate, the medical practitioner's prognosis in respect of the condition; and

(b) to deliver, within the same time, a copy of the report to the party (if any) who applied for the order.

Compare: 1908 No 89 Schedule 2 r 319

9.32 Service of report

(1) Unless the court otherwise directs, the party to whom the copy of the report is delivered under rule 9.31(b) must immediately serve a copy of the report on the person examined or that person's solicitor and the other parties.

(2) If the order under section 44(1) of the Act was made by the court on its own initiative, the Registrar must, as soon as practicable after the report is furnished to the court, serve a copy of the report on the parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r 320

9.33 Evidence of medical practitioner when medical examination ordered

If the parties do not agree to accept a report obtained under an order under section 100(1) of the Act, the court—

(a) may summon the medical practitioner named in the order to attend at the trial; and

(b) may, at any appropriate stage of the trial before counsels' addresses, examine the medical practitioner on the report; and

(c) may permit any party to cross-examine the medical practitioner on the evidence then given.

Compare: 1908 No 89 Schedule 2 r 321

Subpart 4—Inspection and testing

9.34 Order for inspection, etc

(1) The court may, for the purpose of enabling the proper determination of any matter in question in a proceeding, make orders, on terms, for—

(a) the inspection of any property:

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) the taking of samples of any property:

(c) the observation of any property:

(d) the measuring, weighing, or photographing of any property:

(e) the conduct of an experiment on or with any property:

(f) the observation of a process.

(2) An order may authorise a person to enter any land or do anything else for the purpose of getting access to the property.

(3) In this rule, **property** includes any land and any document or other chattel, whether in the control of a party or not.

Compare: 1908 No 89 Schedule 2 r 322

9.35 Notice of application

A party applying for an order under rule 9.34 must, so far as practicable, serve notice of the application on each person who would be affected by the order if made.

Compare: 1908 No 89 Schedule 2 r 323

Subpart 5—Experts

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

9.36 Appointment of court expert

(1) In a proceeding that is to be tried by Judge alone and in which a question for an expert witness arises, the court may at any time, on its own initiative or on the application of a party, appoint an independent expert, or, if more than 1 such question arises, 2 or more such experts, to inquire into and report upon any question of fact or opinion not involving questions of law or of construction.

(2) An expert appointed under subclause (1) is referred to in this rule and in rules 9.37 to 9.42 as a **court expert**.

(3) A court expert in a proceeding must, if possible, be a person agreed upon by the parties and, failing agreement, the court must appoint the court expert from persons named by the parties.

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(4) A person appointed as ~~an independent expert in a proceeding under rule 9.44(3)~~ the independent person who will convene a conference of expert witnesses under rule 9.44 may not be appointed as a court expert unless the parties agree.

(5) In this rule, **expert**, in relation to a question arising in a proceeding, means a person who has the knowledge or experience of, or in connection with, that question that makes that person's opinion on it admissible in evidence.

Compare: 1908 No 89 Schedule 2 r 324

9.37 Submission of question to court expert

The question to be submitted to the court expert and the instructions (if any) given to the court expert must, failing agreement between the parties, be settled by the court.

Compare: 1908 No 89 Schedule 2 r 325

9.38 Report of court expert

(1) The court expert must send his or her report to the court, together with whatever number of copies the court directs.

(2) The Registrar must send copies of the report to the parties or their solicitors.

(3) The court may direct the court expert to make a further or supplemental report.

(4) Any part of the court expert's report not accepted by all the parties must be treated as information furnished to the court and given appropriate weight.

Compare: 1908 No 89 Schedule 2 r 326

9.39 Experiments and tests

(1) If the court expert is of the opinion that an experiment or test of any kind (other than one of a trifling character) is necessary for the making of a satisfactory report, the court expert—

(a) must inform the parties or their solicitors; and

(b) must, if possible, make an arrangement with the parties or their solicitors about—

(i) the expenses involved; and

(ii) the persons to attend the experiment or test; and

(iii) any other relevant matters.

(2) The court must settle any matters on which the parties or their solicitors are unable to agree.

Compare: 1908 No 89 Schedule 2 r 327

9.40 Cross-examination of court expert

(1) Any party may, within 10 working days after receiving a copy of the court expert's report, apply to the court for an order under subclause (2).

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) On an application under subclause (1), the court must make an order for the cross-examination of the court expert by all parties, either—

(a) at the trial; or

(b) before an examiner at such time and place as may be specified in the order.

Compare: 1908 No 89 Schedule 2 r 328

9.41 Remuneration of court expert

(1) The remuneration of the court expert must be fixed by the court and include—

(a) a fee for the report; and

(b) a proper sum for each day during which he or she is required to be present either in court or before an examiner.

(2) The court may, by the order appointing the court expert or subsequently, make any order it thinks just for and incidental to the payment of the remuneration of the court expert including either or both of the following:

(a) an order directing that the remuneration of the court expert must be paid by 1 or more of the parties and, if more than 1, in the proportions the court thinks just:

(b) an order that any party or parties give security, on any terms the court thinks just, for the remuneration of the court expert.

(3) When the court appoints the court expert on its own initiative, the court, instead of making an order under subclause (2), may, by the order appointing the expert or subsequently, order that the remuneration of the court expert must be paid by the chief executive of the Ministry of Justice out of money appropriated by Parliament for the purpose.

(4) Subclauses (2) and (3) do not affect the power of the court to make an order providing for the payment of the court expert's remuneration as part of the costs of the proceeding.

Compare: 1908 No 89 Schedule 2 r 329

~~9.42 Calling of expert witnesses~~

~~(1) If a court expert is appointed in a proceeding or an interlocutory application, a party may call 1 expert witness, or with leave, more than 1, to give evidence on the question reported on by the court expert, if the party gives notice of the intention to do so a reasonable time before the trial.~~

~~(2) The court must not grant leave under subclause (1) unless the circumstances are exceptional.~~

~~Compare: 1908 No 89 Schedule 2 r 330~~

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Expert witnesses code of conduct

9.43 Expert witness to comply with code of conduct

(1) A party to a proceeding who engages an expert witness must give the expert witness a copy of the code of conduct set out in Schedule 4.

(2) An expert witness must—

(a) state in any written statement of the proposed evidence of the witness ~~served under rule 9.2 or 9.3~~, or at the time of giving any oral evidence, or in any affidavit containing the evidence of the expert witness, that the expert witness has read the code of conduct and agrees to comply with it:

(b) comply with the code of conduct in preparing any written statement of the proposed evidence of the witness ~~to be served under rule 9.2 or 9.3~~ or in giving any oral or affidavit evidence in any proceeding.

(3) The evidence of an expert witness who has not complied with subclause (2)(a) may be offered only with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 330A

~~9.44 Court may direct conference of expert witnesses~~

~~(1) The court may, on its own initiative or on the application of a party to a proceeding, direct expert witnesses to—~~

~~(a) confer on specified matters:~~

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

~~(c) try to reach agreement on matters in issue 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 the joint witness statement without the assistance of the legal advisers of the parties.~~

~~(2) The court must not give a direction under subclause (1)(b) or (e) unless the parties agree.~~

~~(3) The court may, on its own initiative or on the application of a party to the proceeding,—~~

~~(a) appoint an independent expert to convene and conduct the conference of expert witnesses:~~

~~(b) give any directions for convening and conducting the conference the court thinks just.~~

~~(4) The court may not appoint an independent expert or give a direction under subclause (3) unless the parties agree.~~

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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~~(5) Subject to any subsequent order of the court as to costs, the court may determine the remuneration of an independent expert and the party by whom it must be paid.~~

~~(6) The matters discussed at the conference of the expert witnesses must not be referred to at the hearing unless the parties by whom the expert witnesses have been engaged agree.~~

~~(7) An independent expert appointed under subclause (3) may not give evidence at the hearing unless the parties agree.~~

~~Compare: 1908 No 89 Schedule 2 r 330B~~

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.

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9.45 Status of joint witness statement by expert witnesses

(1) A joint witness statement prepared by expert witnesses under rule 9.44—

(a) must be circulated by the parties to the proceeding by whom the expert witnesses have been engaged to every other party who has given an address for service; and

(b) may be produced in evidence by any expert witness who signed the statement; and

(c) may, if the parties to the proceeding agree, be produced in evidence without the need to call any of the expert witnesses who signed the statement.

(2) Rules 9.4 to 9.11 apply, with all necessary modifications, to a joint witness statement as if the statement were a written statement ~~under rule 9.2 or 9.3~~.

(3) An expert witness is not precluded from giving evidence on any matter at the hearing simply because the expert witness has participated in the preparation of a joint witness statement under rule 9.44 or because the witness statement is evidence at the hearing under rule 9.6.

Compare: 1908 No 89 Schedule 2 r 330C

9.46 Evidence of expert witnesses at trial

The court may, at the hearing, direct that the evidence of expert witnesses is given after all or certain factual evidence is given or in a sequence the court thinks best suited to the circumstances of the proceeding.

Compare: 1908 No 89 Schedule 2 r 330D

Subpart 6—Preserving evidence

9.47 Right to preserve evidence

A person may apply by originating application for an order for the examination of a witness whose evidence may be material for establishing a right or claim—

(a) to any estate or interest in property, or to any other relief, to which the person would, in the circumstances alleged to exist, become entitled, on the happening of a future event; and

(b) that cannot be established before the happening of the future event.

Compare: 1908 No 89 Schedule 2 r 443

9.48 Procedures in which the Crown may have interest

If the Crown may have an estate or interest in the property or in the right or claim, the applicant may join the Crown as a respondent.

Compare: 1908 No 89 Schedule 2 r 444

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9.49 Examination of witness

An application under rule 9.47 is not to be set down for hearing but the court may make an appropriate order under rules 9.17 to 9.19 for the examination of a witness (whether offered by the applicant or another party).

Compare: 1908 No 89 Schedule 2 r 445

9.50 Subsequent admissibility

Evidence taken under rule 9.49 may subsequently be offered at the trial of a proceeding to enforce the claim or interest to which it relates and is admissible unless it is inadmissible in whole or in part under the Evidence Act 2006.

Compare: 1908 No 89 Schedule 2 r 446

Subpart 7—Evidence at trial

9.51 Evidence to be given orally

Unless otherwise directed by the court or required or authorised by these rules or by an Act, disputed questions of fact arising at the trial of any proceeding must be determined on evidence given by means of witnesses examined orally in open court.

Compare: 1908 No 89 Schedule 2 r 496

9.52 Issue of subpoenas

(1) Orders of subpoena in form G 25 to require the attendance of witnesses at the trial to testify or to produce documents, or both, may be obtained by any party, at any time after the filing of the statement of claim.

(2) A party requiring the issue of an order of subpoena must file a written request to obtain it.

(3) The names of more than 1 witness may be included in an order of subpoena, but it is not necessary to show the names on the written request.

(4) Upon receiving a written request under this rule the Registrar must forthwith issue the order or orders of subpoena requested.

Compare: 1908 No 89 Schedule 2 r 497

9.53 Service of subpoena

The order of subpoena must be served on the witness personally, by leaving a sealed copy of it with the witness, together with any allowances and travelling expenses required by section 41 of the Act.

Compare: 1908 No 89 Schedule 2 r 498

9.54 Evidence of person in custody

An application for an order under section 65 of the Corrections Act 2004 may be made without notice.

Compare: 1908 No 89 Schedule 2 r 499

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9.55 Affidavit evidence by agreement

(1) In a proceeding heard by a Judge alone, the parties may file an agreement signed by the parties, that the evidence, or any part of the evidence, is to be given by affidavit.

(2) Despite an agreement filed under subclause (1), the court may direct that evidence of any disputed fact or issue be given in accordance with rule 9.51.

Compare: 1908 No 89 Schedule 2 r 500

9.56 Affidavit evidence under order of court

(1) The court may, even though no agreement for the giving of evidence by affidavit has been made, at any time for sufficient reason order, on reasonable conditions,—

(a) that any particular fact or facts may be proved by affidavit; or

(b) that the evidence of any witness may be given by affidavit read at the trial or on any application for judgment.

(2) Despite subclause (1), an order must not be made authorising the evidence of the witness to be given by affidavit if—

(a) an opposite party desires the production of a witness for cross-examination; and

(b) the witness can be produced.

(3) Subclause (2) is subject to any order made under ~~rule 7.2~~ rule 7.5 or 7.8, as the case requires.

Compare: 1908 No 89 Schedule 2 r 501

9.57 Agreed statement of facts

(1) If the parties so agree, the evidence at the trial of any proceeding heard by a Judge alone, or any issue in that proceeding, may be given, without examining any witnesses or filing any affidavits, by a statement of facts agreed upon by the parties.

(2) Despite the agreement, the court may direct that evidence of any fact or matter be given in accordance with rule 9.51 or 9.56.

(3) Every agreement under subclause (1) must be in writing signed by the parties and must be filed.

(4) The agreement must set out the facts agreed upon and the court is entitled to draw any necessary inferences from the agreed facts.

Compare: 1908 No 89 Schedule 2 r 502

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Subpart 8—Evidence in Trans-Tasman proceedings

9.58 Interpretation

In rules 9.59 to 9.67, unless the context otherwise requires, terms that are defined in the Evidence Act 2006 have the meanings given to them by that Act.

Compare: 1908 No 89 Schedule 2 r 502A

9.59 Issue of subpoenas by High Court for service in Australia

(1) An order of subpoena of the High Court for service on a witness in Australia that requires the witness to testify, whether or not it also requires the witness to produce documents or things, must be in form G 26.

(2) An order of subpoena of the High Court for service on a witness in Australia that requires the witness to produce documents or things, but does not require the witness to testify, must be in form G 27.

(3) An order of subpoena referred to in subclause (1) or (2) may be obtained in the same manner and subject to the same conditions as an order of subpoena under rule 9.52.

Compare: 1908 No 89 Schedule 2 r 502B

9.60 Leave to serve New Zealand subpoena on witness in Australia

(1) An application for leave to serve a New Zealand subpoena on a witness in Australia must be made without notice by originating application and Part 19 applies, with all necessary modifications, to the application.

(2) Every application for leave to serve a New Zealand subpoena on a witness in Australia must be accompanied by an affidavit containing the following matters:

(a) the name, occupation, and residential address of the witness:

(b) proof that the witness has attained the age of 18 years:

(c) if the subpoena requires the witness to testify and to attend at the New Zealand court, whether consideration has been given to requiring the witness to testify from Australia by remote appearance medium and the reason it is not considered appropriate that the witness do so:

(d) the latest date proposed for service of the subpoena:

(e) if the subpoena requires the witness to attend at the New Zealand court or at any other place,—

(i) the availability of suitable means of transport to enable the witness to comply with the subpoena:

(ii) an estimate of the length of time that the witness will be required to attend at the court or other place:

(iii) an estimate of the cost of transport and accommodation likely to be incurred by the witness in complying with the subpoena:

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(f) the amounts or the amounts represented by vouchers, as the case may be, proposed to be paid or tendered to the witness to enable the witness to comply with the subpoena:

(g) if the applicant is aware of any fact or circumstance that may constitute a ground for setting the subpoena aside under section 160 of the Evidence Act 2006, the fact or circumstance.

(3) A Judge may direct that a New Zealand subpoena be served in Australia on a body corporate by serving the subpoena on a member, officer, or employee of the body corporate in the manner the Judge directs.

(4) The file relating to an application must be kept separate from the file relating to the proceeding to which the subpoena relates.

(5) As provided in rule 3.12(4), no document relating to an application under this rule may be searched, inspected, or copied without the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 502C

9.61 Service of subpoena on witness in Australia

Every statement that, in accordance with section 156 of the Evidence Act 2006, is required to accompany a subpoena that is served on a witness in Australia must be in form G 28.

Compare: 1908 No 89 Schedule 2 r 502D

9.62 Application to set aside New Zealand subpoena

(1) An application to set aside a New Zealand subpoena served on a witness in Australia may be filed by—

(a) a person who is entitled to file documents under these rules; or

(b) a person who is entitled to practise as a solicitor of a Supreme Court of a State or Territory of Australia.

(2) The application—

(a) may state (for the purposes of rule 9.64(1)) that a hearing is required to determine the application.

(b) *[Revoked]*

(3) Every application must be made by way of interlocutory application.

(4) The heading on the application may be the same as the heading on the order granting leave to serve the subpoena.

(5) Every application—

(a) must state an address in New Zealand or Australia that is the applicant's address for service:

(b) may state a fax number in New Zealand or Australia to which documents relating to the application may be sent to the applicant.

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(6) *[Revoked]*

Compare: 1908 No 89 Schedule 2 r 502E

9.63 Service of documents on applicant

(1) A document relating to an application to set aside a New Zealand subpoena may be served on the applicant by—

(a) leaving it at, or posting it to, the address for service of the applicant stated in the application; or

(b) if a fax number is stated in the application, sending it by fax to that number.

(1A) If a document relating to the application is served on the applicant by post in accordance with subclause (1)(a), it is to be treated as having been served on the earlier of—

(a) the eighth working day after the day on which it was posted; and

(b) the day on which it was received.

(2) If a document relating to the application is served on the applicant by fax, the document must, subject to subclauses (3) and (4), be treated as having been served on the day on which it was sent.

(3) If a document is sent by fax to a fax number in a State or Territory of Australia at a time later than 5 pm in that State or Territory, the document must, subject to subclause (4), be treated as having been served on the first working day after the day on which it was sent.

(4) A document sent to a fax number in Australia must, unless the contrary is proved, be treated as having been received in a complete and legible condition.

Compare: 1908 No 89 Schedule 2 r 502F

9.64 Hearing of application

(1) Despite any other rule, if neither the applicant for an order to set aside a New Zealand subpoena nor the person at whose request the subpoena was issued states that a hearing is required, the court may determine an application to set the subpoena aside without a hearing.

(2) For the purposes of determining an application, the court may, if it thinks fit, hold a hearing by remote appearance medium under section 168 of the Evidence Act 2006.

(3) Subject to the Evidence Act 2006, the court must hold a hearing by remote appearance medium if the applicant requests, either in the application or within a reasonable time after the filing of the application, that a hearing be held by remote appearance medium.

Compare: 1908 No 89 Schedule 2 r 502G

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9.65 Failure to comply with subpoena

A certificate under section 161 of the Evidence Act 2006 must be in form G 29.

Compare: 1908 No 89 Schedule 2 r 502H

9.66 Transmission of documents or things to Australian Court

(1) Every person who produces a document or thing at a registry of the court in compliance with an Australian subpoena must provide the Registrar with a copy of the subpoena.

(2) When a document or thing is produced at a registry of the court, the Registrar must, on compliance with subclause (1),—

(a) issue a receipt for the document or thing that states the date and time of its production; and

(b) send to the Registrar of the Australian Court that issued the subpoena, by fax or other means of communication, a copy of the receipt and of the subpoena; and

(c) send the document or thing together with a copy of the subpoena, without delay, to the Australian Court by means enabling it to be received before the date on which it is required to be produced to that court.

Compare: 1908 No 89 Schedule 2 r 502I

9.67 Evidence and submissions by remote appearance medium from Australia

(1) An application under section 168 of the Evidence Act 2006 for a direction that evidence be given from Australia or submissions be made from Australia by remote appearance medium may be made without notice. Except in the case of an application under section 160 of that Act, the application must be accompanied by an affidavit stating—

(a) the nature of the evidence or the submissions:

(b) the place in Australia from which the evidence is to be given or the submissions are to be made:

(c) if it is proposed that evidence be given or submissions be made by audiovisual link, particulars of the audiovisual link facilities available at the courtroom or other place where the court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:

(d) if it is proposed that evidence be given or submissions be made by audio link, particulars of the audio link facilities available at the courtroom or other place where the court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:

(e) in a case where evidence is proposed to be given, an estimate of the time the evidence will take:

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(f) whether issues of character or credibility are likely to be raised:

(g) in a case in which submissions are proposed to be made, an estimate of the time required to make the submissions.

(2) When the court gives a direction under section 168 of the Evidence Act 2006, it must instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions that the court may make.

(3) Without limiting subclause (2), the court may—

(a) direct that the evidence be given or the submissions be made at an Australian court or at another place in Australia:

(b) request that an officer of an Australian court or other person approved by the Judge be present to assist in the transmission of evidence or submissions, and in particular to—

(i) introduce witnesses giving evidence or a barrister or solicitor (or both) making submissions:

(ii) assist with the administration of oaths:

(iii) assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions.

(4) In this rule, **evidence** includes the related examination of a person giving evidence.

Subpart 9—Procedure when evidence given by affidavit

9.68 Application of rules 9.69 to 9.74

(1) Rules 9.69 to 9.74 apply subject to a direction by the court and to any rule affecting a particular kind of proceeding.

(2) In this subpart, **taker** means the person before whom an affidavit is sworn or an affirmation is made.

Compare: 1908 No 89 Schedule 2 r 503

9.69 Time for filing plaintiff's affidavits

(1) In this rule, **the prescribed date** means,—

(a) if the parties have agreed under rule 9.55 that evidence be given by affidavit, the date when the agreement was filed:

(b) when these rules provide that the evidence be given by affidavit, the close of pleadings date fixed under rule 7.6.

(2) Within 10 working days after the prescribed date the plaintiff must, subject to rule 19.11, file the plaintiff's affidavits and serve copies on the other parties.

Compare: 1908 No 89 Schedule 2 r 504

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9.70 Time for filing defendant's affidavits

The defendant must, within 10 working days after service of the plaintiff's affidavits, file the defendant's affidavits and serve copies of them on the plaintiff and on any other party.

Compare: 1908 No 89 Schedule 2 r 505

9.71 Time for filing affidavits in reply

Within 10 working days after service on the plaintiff of the defendant's affidavits, the plaintiff must file the plaintiff's affidavits in reply and serve copies of them on the defendant and on any other party.

Compare: 1908 No 89 Schedule 2 r 506

9.72 Use of affidavits

(1) No affidavit may be read or used until it has been filed.

(2) When an affidavit has been filed, it may be used by any party.

(3) An affidavit may not be taken off the file without the leave of the court.

Compare: 1908 No 89 Schedule 2 r 507

9.73 Swearing of affidavits

(1) Subject to subclauses (4) to (6), an affidavit may be read and used in a proceeding or in respect of an interlocutory application only if it complies with subclause (2) or (3).

(2) A sworn affidavit must be sworn—

(a) in accordance with the Oaths and Declarations Act 1957; and

(b) before a person authorised to administer oaths under that Act or under rule 9.85 or 9.86.

(3) An affirmed affidavit must comply with the Oaths and Declarations Act 1957.

(4) Subject to subclause (5), a Judge or Registrar may direct that an affidavit that does not comply with either subclause (2) or (3) may—

(a) be accepted for filing in respect of a proceeding or interlocutory application; and

(b) nonetheless be read and used in a proceeding or interlocutory application.

(5) A Judge may make an order, and a Registrar may make a direction, under subclause (4) in respect of an affidavit only if—

(a) satisfied that, due to the existence of an emergency in any part of New Zealand, requiring the affidavit to comply with either subclause (2) or (3) would—

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(i) cause an unacceptable delay in the resolution of the proceeding, having regard to the nature and urgency of that proceeding or any application connected with it; or

(ii) endanger the health and wellbeing of any person; and

(b) the affidavit is presented for filing together with a memorandum of counsel—

(i) confirming that the document contains the same evidentiary matter as the affidavit complying with either subclause (2) or (3) that the intending deponent would have sworn to or affirmed had an emergency not existed; and

(ii) undertaking that an affidavit complying with either subclause (2) or (3) containing the same evidentiary matter as that presented for filing will be filed as soon as circumstances reasonably permit; and

(c) the affidavit contains, or there is attached to or covering the affidavit a document containing, a statement from the intending deponent to the effect that the matters stated in the affidavit are to the best of his or her knowledge true and correct.

(6) For the avoidance of doubt, in the event of any inconsistency between subclauses (4) and (5) and any other provisions of these rules, subclauses (4) and (5) prevail.

9.74 Cross-examination of person who has sworn affidavit

(1) A party desiring to cross-examine a person who has sworn or affirmed an affidavit on behalf of an opposite party may serve on that opposite party a notice in writing (which may be by letter addressed to the opposite party's solicitor) requiring the production of that person for cross-examination before the court at the trial.

(2) The notice must be served, and copies of it filed in the court and delivered to all other parties who have taken any step in the proceeding, not less than 3 working days before the day fixed for the trial.

(3) The affidavit of a person who is not produced must not be used as evidence unless the evidence is routine, or there are exceptional circumstances, and in either case the court grants leave.

(4) The party to whom the notice is given is entitled to compel the attendance of the person who has sworn an affidavit for cross-examination in the same way as that party might compel the attendance of a witness to be examined.

Compare: 1908 No 89 Schedule 2 r 508

9.75 Person refusing to make affidavit

(1) If a person having information relevant to a proceeding or an interlocutory application refuses to make an affidavit as to that information, a party may

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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apply for an order directing the person to appear and be examined on oath before the court, or any person the court appoints, as to that information.

(2) The court may—

(a) make any orders the court thinks just for the attendance of that person before the court, or before the person named in the order, for the purpose of being examined, and for the production of any documents specified in the order; and

(b) impose any terms the court thinks just, as to the examination and the costs of and incidental to the application and examination.

Compare: 1908 No 89 Schedule 2 r 509

9.76 Form and contents of affidavits

(1) An affidavit—

(a) must be expressed in the first person; and

(b) must state the full name, occupation, and place of residence of the person making it; and

(c) must either—

(i) be signed by that person; or

(ii) if that person cannot write, have that person's mark set to it by that person; and

(d) must be confined—

(i) to matters that would be admissible if given in evidence at trial by the deponent; and

(ii) if in reply, to matters strictly in reply.

(2) The court—

(a) may refuse to read an affidavit that—

(i) unnecessarily sets forth any argumentative matter or copies of or extracts from documents; or

(ii) being in reply, introduces new matter; and

(b) may order that the costs incurred in respect of or occasioned by an affidavit to which paragraph (a) applies be paid by the party filing the affidavit.

(3) The taker must sign the affidavit after the signature of the person making it, and must state the date and place of swearing or affirming the affidavit and the taker's qualification (in this subpart referred to as the **statement by the taker**).

(4) If an affidavit has more than 1 page,—

(a) the deponent must initial or set the deponent's mark on each page (not including the cover sheet) that precedes the page on which the statement by the taker in accordance with subclause (3) appears; and

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) the taker must initial each of those pages.

(5) This rule does not limit the extent to which subpart 2 of Part 5 applies in respect of affidavits.

Compare: 1908 No 89 Schedule 2 r 510

9.77 Exhibits to affidavits

(1) Exhibits to an affidavit—

(a) must be marked, in each case, with a distinguishing letter or number; and

(b) must be annexed to the affidavit at the time of filing and service—

(i) if this is practicable; and

(ii) if none of them exceed international size A4; and

(c) must, in each case, be identified by a note made on it and signed by the taker.

(2) Exhibits that are not annexed to the affidavit must, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle must—

(a) be securely bound at the time of filing and service; and

(b) include a sheet bearing a proper heading, endorsement, and subscription.

(3) If the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1)(b) or (2), that exhibit must have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.

Compare: 1908 No 89 Schedule 2 r 511

9.78 Interlineation, alteration, or erasure in affidavit

An affidavit having in the statement by the taker or its contents an interlineation, alteration, or erasure must not, without leave of the court, be read or made use of in a proceeding unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the taker, or, in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are rewritten and signed or initialled in the margin of the affidavit by the taker.

Compare: 1908 No 89 Schedule 2 r 513

9.79 Irregularity in form of affidavit

The court may receive any affidavit sworn or affirmed for the purpose of being used in any proceeding, despite any defect by misdescription of parties in the title or statement by the taker, or any other irregularity in its form, and may direct that a note be made on the document that it has been so received.

Compare: 1908 No 89 Schedule 2 r 514

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9.80 Service copies of affidavits

Every service copy of an affidavit must be legible and, when practicable, include legible copies of all exhibits.

Compare: 1908 No 89 Schedule 2 r 515

9.81 Affidavit may be sworn on Sunday

An affidavit may be sworn or affirmed on any day, including Sunday.

Compare: 1908 No 89 Schedule 2 r 516

9.82 Affidavits made on behalf of corporation

A person may make an affidavit on behalf of a corporation or body of persons empowered by law to sue or to be sued (whether in the name of the body or in the name of the holder of an office) if the person—

(a) knows the relevant facts; and

(b) is authorised to make the affidavit.

Compare: 1908 No 89 Schedule 2 r 517

9.83 Affidavit by 2 or more persons

In an affidavit made by 2 or more persons, the names of each of those persons must be inserted in the statement by the taker. If, however, the affidavit of those persons is sworn (or affirmed) at the same time before the same person, it is sufficient to state that it was sworn (or affirmed) by both (or all) of the "persons named above".

Compare: 1908 No 89 Schedule 2 r 518

9.84 Affidavit by blind or illiterate person

If it appears to the taker that the person making the affidavit is wholly or partially blind, or (whether because of physical handicap or otherwise) is unable to read or has severe difficulty in reading, the taker must certify in the affidavit—

(a) that the affidavit was read and explained by him or her to the person; and

(b) that the person appeared perfectly to understand the affidavit; and

(c) that the person wrote his or her signature or made his or her mark in the presence of the taker.

Compare: 1908 No 89 Schedule 2 r 519

9.85 Authority to take affidavits in New Zealand

(1) An affidavit may be sworn in New Zealand before a lawyer or a Registrar or a Justice of the Peace.

(2) An affidavit that is sworn before a lawyer who lacks, or may appear to lack, the necessary independence may not be read or used without the leave of the court, except if the affidavit is sworn in respect of a non-contentious proceeding.

(3) Subclause (2) overrides subclause (1).

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(4) In this rule, **Registrar** includes—

(a) a Deputy Registrar of the High Court:

(b) a Registrar of the District Court:

(c) a Deputy Registrar of the District Court.

Compare: 1908 No 89 Schedule 2 r 521

9.86 Authority to take affidavits in places outside New Zealand

(1) An affidavit may be sworn in a place outside New Zealand before—

(a) a Commissioner of the High Court of New Zealand who has authority in that place; or

(b) a person who is authorised to administer oaths by the law of that place; or

(c) a person who is authorised by a Judge to administer the oath required for the affidavit.

(2) The person administering an oath under subclause (1) must state in the affidavit which qualification that person has.

(3) An affidavit that appears to comply with subclauses (1) and (2) must be taken to have been properly sworn unless the court requires verification by evidence or other means of any matter relating to compliance with either of those subclauses.

(4) Nothing in this rule affects the administering of oaths under the Oaths and Declarations Act 1957.

Compare: 1908 No 89 Schedule 2 r 522

9.87 Meaning of authenticated deposition

In rules 9.88 and 9.89, **authenticated deposition** means a written statement—

(a) made in a place outside New Zealand before a court or a judicial or other authority or person; and

(b) the maker of which is, under the law in force in the place in which the statement is made, liable to punishment if the statement is false; and

(c) that purports to be—

(i) signed by a person holding judicial office or by an official exercising authority under the law in force in the place in which the statement is made; or

(ii) sealed with an official or public seal or with the seal of a Minister of State, or with the seal of a department or an official of the government exercising authority in the place in which the statement is made; or

(iii) endorsed with or accompanied by a certificate, given by a person having authority under the law in force in the place in which

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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the statement is made to give the certificate, that the statement complies with the requirements of the law in force in that place and that, under that law, the maker of the statement is liable to punishment if the statement is false.

Compare: 1908 No 89 Schedule 2 r 523

9.88 Admissibility of authenticated deposition

Evidence that may, under these rules, be given by affidavit, may be given in an authenticated deposition.

Compare: 1908 No 89 Schedule 2 r 524

9.89 Application of other rules

(1) Rules 9.69 to 9.75 apply, with any necessary modifications, in relation to an authenticated deposition as if the deposition were an affidavit.

(2) Rule 9.88 and this rule do not affect rules 9.17 to 9.29.

Compare: 1908 No 89 Schedule 2 r 524A

Part 10
Trial

Subpart 1—Place

10.1 Venue and changing it

(1) The place of trial is the town where the registry of the court in which the statement of defence is to be filed is situated.

(2) Despite subclause (1), if that registry is in Masterton, the place of trial is Wellington.

(3) Despite subclause (1), if that registry is in Tauranga, the court may direct at any time that the place of trial is either Hamilton or Rotorua.

(4) Despite subclauses (1) to (3), the court may at any time order that the proceeding be tried at a place—

(a) that the parties consent to; or

(b) where the proceeding can be more conveniently or more fairly tried.

(5) When the court orders a change of venue, it may direct that all subsequent steps in the proceeding be taken at the place where the trial is to take place.

Compare: 1908 No 89 Schedule 2 rr 123, 479

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Subpart 2—Adjournments, methods of trial, and verdicts

10.2 Adjournment of trial

The court may, before or at the trial, if it is in the interests of justice, postpone or adjourn the trial for any time, to any place, and upon any terms it thinks just.

Compare: 1908 No 89 Schedule 2 r 480

10.3 Method of trial

A proceeding must be tried either before a Judge alone or before a Judge and a jury.

Compare: 1908 No 89 Schedule 2 r 481

10.4 Court may order separate trials

When justice requires, the court may order separate trials of causes of action and it may also direct the sequence of the separate trials and make any supplementary order that is just.

Compare: 1908 No 89 Schedule 2 r 113

10.5 Existence or accuracy of record

In any proceeding tried before a Judge and a jury, any question as to the existence or accuracy of a record of the court must be determined by the Judge and not by the jury.

Compare: 1908 No 89 Schedule 2 r 482

10.6 When neither party appears

(1) If neither party appears when the proceeding is called, the court may order it to be struck out.

(2) The court may order it to be reinstated on good cause shown by either party and on any terms it thinks just.

Compare: 1908 No 89 Schedule 2 r 483

10.7 When only plaintiff appears

If the plaintiff appears and the defendant does not, the plaintiff must prove the cause of action so far as the burden of proof lies on the plaintiff.

Compare: 1908 No 89 Schedule 2 r 484

10.8 When only defendant appears

If the defendant appears but the plaintiff does not, the defendant,—

(a) if the claim is not admitted, is entitled to judgment dismissing the proceeding; and

(b) if there is a counterclaim, must prove it so far as the burden of proof lies on the defendant.

Compare: 1908 No 89 Schedule 2 r 485

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10.9 Judgment following non-appearance may be set aside

Any verdict or judgment obtained when one party does not appear at the trial may be set aside or varied by the court on any terms that are just if there has, or may have been, a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r 486

10.10 When both parties appear

(1) If both the plaintiff and the defendant appear, the plaintiff or any other party that has the right to begin must open the case and offer any evidence in support of it.

(2) When the party who begins has closed that party's case, the other party must state his or her case and offer any evidence in support of it.

(3) After the evidence has been given, the party who did not begin may address the court generally on the case, and then the other party may address the court in reply.

(4) If, however, the party who did not begin has not offered evidence, the sequence stated in subclause (3) is reversed.

(5) This rule applies subject—

(a) to any directions given under ~~rule 7.2~~ rule 7.5 or 7.8, as the case requires; and

(b) to the provisions of any Act.

Compare: 1908 No 89 Schedule 2 r 487

10.11 When proceeding tried with jury

(1) When the proceeding is tried with a jury, the Judge must, after the conclusion of counsels' addresses, direct the jury on the evidence given in the case and on any relevant points of law.

(2) The Judge may leave the case to the jury generally to find for either party, or may ask the jury to answer the issues the Judge has settled, and take the verdict of the jury on those issues only.

(3) The jury may, instead of finding a verdict for either party, state the facts as they find them to have been proved.

(4) The statement must be put into writing and signed by the foreman of the jury before the jury is discharged.

(5) The jury may give a verdict for either party, subject to a special case to be stated by the parties.

(6) This rule applies subject to the provisions of any Act.

Compare: 1908 No 89 Schedule 2 r 488

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Subpart 3—Consolidation of proceedings

10.12 When order may be made

The court may order that 2 or more proceedings be consolidated on terms it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them, if the court is satisfied—

(a) that some common question of law or fact arises in both or all of them; or

(b) that the rights to relief claimed therein are in respect of or arise out of—

(i) the same event; or

(ii) the same transaction; or

(iii) the same event and the same transaction; or

(iv) the same series of events; or

(v) the same series of transactions; or

(vi) the same series of events and the same series of transactions; or

(c) that for some other reason it is desirable to make an order under this rule.

Compare: 1908 No 89 Schedule 2 r 382

10.13 Application of rule 10.12

Rule 10.12 applies even though—

(a) the relief claimed in the proceedings is not the same; or

(b) 1 or more of the proceedings—

(i) is pending in the court in the exercise of its admiralty jurisdiction; or

(ii) is brought under the provisions of an Act conferring special jurisdiction on the court.

Compare: 1908 No 89 Schedule 2 r 383

Subpart 4—Separate decision of questions

10.14 Definition of question

In rules 10.15 to 10.21, **question** includes any question or issue in any proceeding, whether of fact or of law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties, or otherwise.

Compare: 1908 No 89 Schedule 2 r 417

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10.15 Orders for decision

The court may, whether or not the decision will dispose of the proceeding, make orders for—

(a) the decision of any question separately from any other question, before, at, or after any trial or further trial in the proceeding; and

(b) the formulation of the question for decision and, if thought necessary, the statement of a case.

Compare: 1908 No 89 Schedule 2 r 418

10.16 Removal into Court of Appeal

If the court orders the separate decision of a question of law under rule 10.15, it may further order that it be removed into the Court of Appeal.

Compare: 1908 No 89 Schedule 2 r 419

10.17 Agreed result

(1) The parties to a proceeding in which an order is sought or has been made under rule 10.15 may agree that, on any question being decided in the sense specified in the agreement, a specified direction for entry of judgment or a specified order will be made.

(2) On that question being so decided, the court may make the agreed direction or order.

(3) Where an agreement is made under subclause (1) before a case is stated, the terms of the agreement must be set out in the case stated.

Compare: 1908 No 89 Schedule 2 r 420

10.18 Record, etc, of decision

When any question is decided under an order made under rule 10.15, the court must, subject to rule 10.19, either—

(a) cause the decision to be recorded; or

(b) direct the entry of an appropriate declaratory judgment or order.

Compare: 1908 No 89 Schedule 2 r 421

10.19 Disposal of proceeding if proceeding substantially affected by decision of question

(1) This rule applies if a decision of a question under an order made under rule 10.15—

(a) substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or

(b) renders unnecessary any trial or further trial in the proceeding or on the whole or any part of any claim for relief in the proceeding.

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(2) The court, at the time of deciding the question or at any subsequent time, may, as appropriate,—

(a) dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or

(b) direct the entry of any judgment; or

(c) make any other order.

Compare: 1908 No 89 Schedule 2 r 422

10.20 Form and contents of case

A case stated under an order under rule 10.15—

(a) must be divided into paragraphs numbered consecutively; and

(b) must state concisely any facts, and attach any documents that are necessary to enable the court to hear and decide the questions arising on the case stated; and

(c) must state the questions and matters to be decided.

Compare: 1908 No 89 Schedule 2 r 423

10.21 Insufficient case or disputed facts or documents

If a case stated does not state the facts and documents sufficiently to enable the court to decide the questions arising, or otherwise to hear and determine the questions and matters on the case stated, or in any case in which any relevant fact or document is disputed, the court may,—

(a) with the consent of all parties interested, amend the case stated; or

(b) receive evidence, make findings of fact, and amend the case stated in accordance with the findings of fact of the court.

Compare: 1908 No 89 Schedule 2 r 424

Subpart 5—Counsel assisting

10.22 Counsel assisting

At the request of the court, the Solicitor-General must appoint counsel to appear and be heard as counsel assisting the court.

Compare: 1908 No 89 Schedule 2 r 438A

Subpart 6—Hearings by video link

10.23 Interpretation

In this subpart,—

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

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

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

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

10.24 Judge may preside at hearing of certain matters by video link

(1) A Judge may, by video link, preside at the hearing of any matter referred to in section 20 of the Act.

(2) A Judge may direct that a matter be heard by video link on the application of 1 or more parties or on the Judge's own initiative.

(3) This rule is subject to rule 10.25.

(4) This rule does not limit or affect the inherent jurisdiction of the court.

10.25 Requirements for hearing by video link

A Judge must not preside at the hearing of a matter by video link under rule 10.24 unless he or she is satisfied that—

(a) the judicial location and every remote location is equipped with facilities that will—

(i) enable all eligible persons at every remote location to see and hear the Judge and all eligible persons at the judicial location; and

(ii) enable the Judge and all eligible persons at the judicial location to see and hear all eligible persons at every remote location; and

(iii) enable any document necessary for the purposes of the hearing to be viewed at both the judicial location and every remote location; and

(b) use of a video link is, in all the circumstances, consistent with fairness and the interests of justice.

10.26 Incidental directions

(1) A Judge presiding at the hearing of a matter by video link under rule 10.24 may give directions concerning the procedure for the hearing as he or she thinks fit.

(2) Without limiting subclause (1), the Judge may—

(a) direct that an officer of the court, or other person approved by the court, be present to operate video equipment:

(b) direct that an officer of the court, or other person approved by the court, be present to assist in the hearing, and in particular to—

(i) introduce persons appearing or witnesses giving evidence:

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(ii) assist with the administration of oaths and affirmations:

(iii) assist with the implementation of any directions or requests given or made by the Judge:

(c) direct seating arrangements at a remote location to ensure all participants in the hearing can be seen and heard:

(d) direct when the video link must be operational in relation to his or her own entry to, or rising from, the judicial location.

Subpart 7—Disruptive behaviour

10.27 Disruptive behaviour relating to court proceedings

(1) A warrant committing an offender to prison under section 11(5)(b)(i) of the Contempt of Court Act 2019 must be in form E 9A.

(2) An order imposing a fine on an offender under section 11(5)(b)(ii) of that Act must be in form E 9B.

(3) An order requiring an offender to do community work under section 11(5)(b)(iii) of that Act must be in form E 9C.

Part 11
Judgment

Subpart 1—General provisions

11.1 Interpretation

In this Part,—

delivery time has the meaning set out in rule 11.5

judgment includes a decree or order of the court

reasons for judgment means—

(a) the written reasons given by a Judge for his or her decision; or

(b) when the Judge gives reasons orally, means a report, approved by the Judge, of those reasons.

Compare: 1908 No 89 Schedule 2 r 539

11.2 Types of judgment

A judgment may—

(a) be interim; or

(b) be final; or

(c) deal with any question or issue; or

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(d) order any accounts, inquiries, acts, or steps that the court considers necessary.

Compare: 1908 No 89 Schedule 2 r 531(1)

11.3 How judgment given

(1) A Judge may give a judgment—

(a) in writing; or

(b) orally—

(i) if the conditions in subclause (2) apply; or

(ii) on an application without notice.

(2) The conditions are that the affected parties or their counsel have been given a reasonable opportunity—

(a) to be present when the judgment is given; or

(b) to hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.

Compare: 1908 No 89 Schedule 2 r 540(1), (2)

11.4 Time judgment given

(1) A judgment is given orally when the Judge pronounces it, with or without reasons.

(2) A written judgment is given at the delivery time directed or nominated under rule 11.5.

Compare: 1908 No 89 Schedule 2 r 540(3), (4)

11.5 Delivery time of written judgment

The **delivery time** of a written judgment is—

(a) the date and time directed by the Judge responsible for it; or

(b) if no direction is given under paragraph (a), a date and time nominated by the Registrar under rule 11.14.

Compare: 1908 No 89 Schedule 2 r 540(4), (5)

11.6 Form of judgment

(1) Judgments must be drawn up in a form approved by the Registrar.

(2) Forms J 1 to J 4 must be used, as appropriate.

Compare: 1908 No 89 Schedule 2 r 541(1), (2)

11.6A General court order

(1) This rule applies to any order of the court, other than an order on an interlocutory application or an order that under these rules must or may be drawn up in a particular form.

(2) When this rule applies, the order of the court must be in form G 40.

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11.7 Duplicate judgments

Duplicates of a judgment, with the word duplicate on the front page, may be issued to any party.

Compare: 1908 No 89 Schedule 2 r 541A

11.8 Death or incapacity of Judge before judgment

(1) A Judge or the Registrar may give a judgment or deliver the reasons for a judgment signed by a Judge who becomes incapable or dies after signing and before giving the judgment or delivering the reasons.

(2) A decision is the judgment of the court, if—

- (a) subclause (1) does not apply; and
- (b) a court of 3 or more Judges sitting without a jury completes the trial of a proceeding or issue; and
- (c) 1 of the Judges becomes incapable of giving judgment or dies; and
- (d) a majority of the Judges who constituted the court when the trial began concur in the decision on the proceeding or issue.

(3) A proceeding or issue must be retried if—

- (a) neither subclause (1) nor (2) applies; and
- (b) a Judge who is sitting without a jury on the trial of the proceeding or issue becomes incapable of giving judgment or dies.

(4) A Judge or the Registrar must discharge the jury and order a new trial if another Judge sitting with a jury on the trial of the proceeding or issue dies or becomes incapable of acting for any other reason before the jury retires to consider its verdict.

(5) A Judge may do any 1 or more of the following if another Judge sitting with a jury on the trial of a proceeding or issue dies or becomes incapable of acting for any other reason after the jury retires to consider its verdict and before judgment is given:

- (a) give any further directions required by the jury:
- (b) take the verdict and give judgment on it:
- (c) discharge the jury without verdict:
- (d) do whatever is necessary, up to and including the sealing of judgment.

Compare: 1908 No 89 Schedule 2 r 543

11.8A Further submissions after end of hearing but before judgment

(1) This rule applies after a proceeding or an application has been heard but before judgment has been given.

(2) A party may file a memorandum seeking leave to make further submissions.

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(3) The Judge responsible for the judgment may grant leave to a party to make further submissions.

11.9 Recalling judgment

A Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed.

Compare: 1908 No 89 Schedule 2 r 542(3)

11.10 Correction of accidental slip or omission

(1) A judgment or order may be corrected by the court or the Registrar who made it, if it—

(a) contains a clerical mistake or an error arising from an accidental slip or omission, whether or not made by an officer of the court; or

(b) is drawn up so that it does not express what was decided and intended.

(2) The correction may be made by the court or the Registrar, as the case may be,—

(a) on its or his or her own initiative; or

(b) on an interlocutory application.

Compare: 1908 No 89 Schedule 2 r 12

Subpart 2—Sealing and notification

11.11 Judgments to be sealed, dated, and served

(1) A Registrar must seal judgments with the seal of the court.

(2) A judgment must be sealed—

(a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or

(b) if no direction is given, at any time after the judgment is given.

(3) Except with the leave of the court, a judgment must not be sealed until any application under rule 11.9 for the recall of the judgment is determined.

(4) A sealed judgment must state—

(a) the date on which the judgment is given; and

(b) *[Revoked]*

(5) A party who has a judgment sealed must immediately serve a sealed copy of it on—

(a) every other party who has given an address for service; and

(b) any other person who, although not a party, is affected by the judgment.

Compare: 1908 No 89 Schedule 2 r 541(1), (3)–(5)

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11.12 When judgment takes effect

(1) A judgment takes effect when it is given.

(2) Rule 11.13 overrides subclause (1).

Compare: 1908 No 89 Schedule 2 r 542(1), (5)(a)

11.13 Steps before judgment sealed

(1) A step may be taken on a judgment before it is sealed only with the leave of a Judge.

(2) A party may appeal under rule 31 of the Court of Appeal (Civil) Rules 2005 against a judgment before it is sealed but must take steps to ensure the judgment is sealed without delay after the appeal is brought.

Compare: 1908 No 89 Schedule 2 r 542(2), (4)

11.14 Registrar's role on receipt of judgment

(1) The Registrar must endorse a written judgment with the delivery time when the Registrar receives it from the Judge responsible for it.

(2) The date and time nominated by the Registrar under rule 11.5(b) must not be earlier than the date and time the Registrar endorses the judgment under subclause (1).

(3) The Registrar must attempt to notify the parties of the delivery time, by telephone or otherwise, immediately after endorsing a judgment.

(4) A party may request the Registrar to—

(a) send the party a copy of the written judgment by email or fax immediately after the delivery time; or

(b) make a copy of the written judgment available for collection from the court registry immediately after the delivery time.

(5) The Registrar must, immediately after the delivery time, post a copy of the written judgment to a party that—

(a) has given an address for service; and

(b) does not make a request under subclause (4).

(6) A failure by the Registrar to comply with any of subclauses (3) to (5) does not affect a judgment's validity or its delivery time.

Compare: 1908 No 89 Schedule 2 r 540(4), (6)–(9)

Subpart 3—Judgment if proceeding tried with jury

11.15 Judgment after proceeding tried with jury

After a Judge takes the jury's verdict in a proceeding, he or she may—

(a) give judgment immediately; or

(b) adjourn the proceeding for further consideration; or

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(c) give judgment for either party and reserve leave for either party to apply—

(i) to set aside the judgment; and

(ii) for another judgment.

Compare: 1908 No 89 Schedule 2 r 525

11.16 Leave to apply to set aside judgment

A party to whom leave is reserved under rule 11.15(c) and who wishes to apply must do so—

(a) within the time fixed by the court for the purpose; or

(b) if paragraph (a) does not apply, within 10 working days after leave is reserved.

Compare: 1908 No 89 Schedule 2 r 526

11.17 Judgment not in accordance with verdict

(1) Either party to a proceeding tried with a jury may apply to set aside the judgment and for another judgment, on the ground that the judgment given is not in accordance with the verdict of the jury.

(2) An application under subclause (1)—

(a) may be made without leave reserved; and

(b) must be made within 10 working days after judgment is given.

Compare: 1908 No 89 Schedule 2 r 527

11.18 Application for judgment on special verdict or subject to special case

(1) Either party may apply for the judgment to which the party considers the party is entitled within 10 working days after the jury states the facts or finds a verdict subject to a special case.

(2) A copy of the case must be filed in court with the notice of application if it is on a special case.

Compare: 1908 No 89 Schedule 2 r 529

11.19 Application for judgment by both parties

Applications for judgment by 2 or more parties must be heard together, unless the court thinks it preferable to hear them separately.

Compare: 1908 No 89 Schedule 2 r 530

Subpart 4—Giving effect to judgments

11.20 Conduct of proceedings after judgment

The court may give the conduct of the proceeding after judgment to whichever party the court thinks proper, if the court makes an order under rule 11.2(d).

Compare: 1908 No 89 Schedule 2 r 531(2)

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11.21 Applying for dismissal because of inactivity

(1) A party may apply to dismiss the proceeding if the opposite party has the conduct of the proceeding and does not—

(a) proceed with the accounts, inquiries, acts, or steps ordered; or

(b) take all necessary steps to have them completed.

(2) On an application under subclause (1), the court may make any 1 or more of the following orders it considers just:

(a) an order as to the prosecution of the account, inquiries, acts, or steps:

(b) an order for the dismissal of the proceeding:

(c) an order giving the conduct of the proceeding to another party.

Compare: 1908 No 89 Schedule 2 r 532

11.22 Judgment directing sale of property

(1) Property to be sold because of a direction in a judgment or order must be sold in a way that ensures that the best price is obtained for it, unless the court directs otherwise.

(2) The court may do any 1 or more of the following, when giving the judgment or making the order or at a later time:

(a) give directions about the method of the sale:

(b) give directions about the terms and conditions of sale:

(c) if the sale is by auction,—

(i) fix a reserve price, if appropriate; and

(ii) define the rights of parties to bid at the sale.

(3) All parties must co-operate in effecting the sale of the property and do everything necessary to give effect to the sale, including signing any documents required to transfer or convey the property to the purchaser.

(4) To effect the sale of the property, the court may—

(a) give all necessary directions, including directions in relation to the transfer or conveyance of the property sold; and

(b) appoint a person to sign any documents required to transfer or convey to the purchaser the property sold.

Compare: 1908 No 89 Schedule 2 r 533

11.23 Judgment for balance of claim over counterclaim

The plaintiff is entitled to judgment on the cause of action for the balance of his or her claim, after deducting the amount of the counterclaim proved by the defendant, if a counterclaim is proved to an amount less than that recovered on the cause of action.

Compare: 1908 No 89 Schedule 2 r 534

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11.24 Judgment for balance of counterclaim

The defendant is entitled to judgment for the excess if a counterclaim is proved to an amount exceeding that recovered on the cause of action.

Compare: 1908 No 89 Schedule 2 r 535

11.25 Cross judgments

(1) Cross judgments may be set off against each other by leave of the court if they are between the same parties and for any 1 or more of the following:

(a) money:

(b) costs:

(c) debt:

(d) damages.

(2) Leave must not be granted under subclause (1) if the set-off would prejudice any solicitor's lien for costs in the particular proceeding against which the set-off is sought.

Compare: 1908 No 89 Schedule 2 r 536

11.26 Judgment if third party defends

(1) The court may do the following if a third party files a statement of defence to a third party notice:

(a) order judgment to be entered for or against the defendant giving the notice against or for the third party; and

(b) grant to the defendant or to the third party any relief or remedy that might properly have been granted if the defendant had instituted a proceeding against the third party; and

(c) make another appropriate order, instead of or in addition to the orders in paragraphs (a) and (b).

(2) The court may act under subclause (1)—

(a) at or after the trial; or

(b) on application, whether the proceeding is decided by trial or otherwise.

(3) This rule applies, with all necessary modifications, whenever a fourth or subsequent party notice is issued.

Compare: 1908 No 89 Schedule 2 r 537

11.27 Interest as part of judgment debt

Interest must be awarded in a money judgment in accordance with the Interest on Money Claims Act 2016.

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
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It has no legal status and may contain errors.

11.28 Satisfaction of judgment

(1) As soon as a judgment is satisfied by payment, levy, or in another way, the party against whom the judgment was given is entitled to have satisfaction of that judgment formally entered.

(2) For the purposes of subclause (1), the party against whom the judgment was given must produce and file in the registry of the court an acknowledgment of satisfaction signed by or on behalf of the party obtaining judgment.

(3) Despite subclause (2), the court may order satisfaction to be entered upon proof that the judgment has been satisfied.

Compare: 1908 No 89 Schedule 2 r 544

Part 12
Summary judgment

12.1 Application of summary judgment procedure

Rules 12.2 to 12.16 apply to all proceedings except—

(a) a proceeding under Part 19, 20, or 21; or

(b) an application for a writ of habeas corpus; or

(c) an application for administration in common form under Part 27.

Compare: 1908 No 89 Schedule 2 r 135

12.2 Judgment when there is no defence or when no cause of action can succeed

(1) The court may give judgment against a defendant if the plaintiff satisfies the court that the defendant has no defence to a cause of action in the statement of claim or to a particular part of any such cause of action.

(2) The court may give judgment against a plaintiff if the defendant satisfies the court that none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: 1908 No 89 Schedule 2 r 136

12.3 Summary judgment on liability

The court may give judgment on the issue of liability, and direct a trial of the issue of amount (at the time and place it thinks just), if the party applying for summary judgment satisfies the court that the only issue to be tried is one about the amount claimed.

Compare: 1908 No 89 Schedule 2 r 137

12.4 Interlocutory application for summary judgment

(1) Application for judgment under rule 12.2 or 12.3 must be made by interlocutory application.

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(2) An application by a plaintiff ~~may be made either at the time the statement of claim is served on the defendant~~ must be made by the time required by rule 7.4(3), or later with the leave of the court.

(2AA) The court may grant leave in respect of a second or subsequent application for summary judgment in the same proceeding if special circumstances exist.

(2A) ~~If an application by a plaintiff is made at the time that the statement of claim is served on the~~ For proceedings served on a defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010, the hearing date allocated (under rule 7.33) for the application must be after the period (under section 17(1)(a) or (b) of that Act) within which the defendant may file an appearance or response document.

(3) An application by a defendant ~~may be made either at the time the statement of defence is served on the plaintiff~~ must be made by the time required by rule 7.4(3), or later with the leave of the court.

(4) The party making the application must file and serve on the other party the following documents:

(a) an interlocutory application on notice in form G 31:

(b) a supporting affidavit:

~~(c) if the party is a plaintiff applying at the time the statement of claim is served,—~~

~~(i) a notice of proceeding in form G 13; and~~

~~(ii) a statement of claim:~~

~~(d) if the party applying is a defendant applying at the time the statement of defence is served, a statement of defence.~~

(5) The affidavit—

(a) must be by or on behalf of the person making the application:

(b) if given by or on behalf of the plaintiff, must verify the allegations in the statement of claim to which it is alleged that the defendant has no defence, and must depose to the belief of the person making the affidavit that the defendant has no defence to the allegations and set out the grounds of that belief:

(c) if given by or on behalf of the defendant, must show why none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: 1908 No 89 Schedule 2 r 138

12.5 Service out of New Zealand

A plaintiff who makes an application under rule 12.2 or 12.3 must serve the documents referred to in rule 12.4(4) on a defendant who is overseas not less than 25 working days before the date for hearing the application.

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12.6 Requirements as to notice of proceeding

Rule 5.23 does not apply to a proceeding under Part 12.

Compare: 1908 No 89 Schedule 2 r 139

12.7 Time for service

(1) The documents specified in rule 12.4(4) must be served on the other party to the proceeding not less than 25 working days before the date for hearing the application.

(2) Rule 12.5 overrides this rule.

Compare: 1908 No 89 Schedule 2 r 140

12.8 Postponement of hearing

If the documents specified in rule 12.4(4) have not been served within the time prescribed by rule 12.7(1), or rule 12.5 if applicable, the Registrar, on request, may postpone the hearing by—

(a) deleting the original date of hearing shown in the notice of interlocutory application; and

(b) inserting a new date; and

(c) initialling the new date in the margin opposite the alteration.

Compare: 1908 No 89 Schedule 2 r 140A

12.9 Notice of opposition and affidavit in answer

(1) A party who intends to oppose an application for judgment under rule 12.2 or 12.3 must, at least 3 working days before the date for hearing the application, file in the court and serve on the applicant—

(a) a notice of opposition in form G 33; and

(b) an affidavit by or on behalf of the party intending to oppose the application in answer to the affidavit by or on behalf of the applicant.

(2) For the purposes of subclause (1), **in answer to** means,—

(a) in the case of a defendant, setting out the defence to the cause or causes of action that are subject to the summary judgment application; or

(b) in the case of a plaintiff, setting out the reasons why the defendant's defences do not succeed against the plaintiff's cause or causes of action.

(3) If an opposing party does not file and serve the documents required by subclause (1), the party may not be heard in opposition to the application without the leave of the court.

(4) Rule 7.24(2) and (3) apply, with all necessary modifications, to a notice of opposition filed under subclause (1)(a).

Compare: 1908 No 89 Schedule 2 r 141

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12.10 Statement of defence

A defendant who has filed both a notice of opposition and an affidavit under rule 12.9 may, in addition, file a statement of defence in the registry of the court in which the notice of opposition and the affidavit were filed.

Compare: 1908 No 89 Schedule 2 r 141A

12.11 Affidavits in reply

(1) An affidavit may be filed by or on behalf of the party making the application in reply to an affidavit filed by or on behalf of the party opposing the application.

(2) Every affidavit filed under subclause (1)—

(a) must be limited to new matters in the affidavit of the party opposing the application; and

(b) must be filed in the court and served on the party opposing the application not later than 1 pm on the last working day before the date for hearing the application.

Compare: 1908 No 89 Schedule 2 r 141B

12.12 Disposal of application

(1) If the court dismisses an application for judgment under rule 12.2 or 12.3, the court must give directions as to the future conduct of the proceeding as may be appropriate.

(2) If it appears to the court on an application for judgment under rule 12.2 or 12.3 that the defendant has a counterclaim that ought to be tried, the court—

(a) may give judgment for the amount that appears just on any terms it thinks just; or

(b) may dismiss the application and give directions under subclause (1).

Compare: 1908 No 89 Schedule 2 r 142

12.13 Time for filing statement of defence on dismissal of plaintiff's application

(1) The statement of defence in the proceeding, if not already filed, must be filed within 10 working days after the date on which any application by a plaintiff for judgment under rule 12.2 or 12.3 is dismissed in whole or in part.

(2) Rule 12.12(1) overrides this rule.

Compare: 1908 No 89 Schedule 2 r 142A

12.14 Setting aside judgment

A judgment given against a party who does not appear at the hearing of an application for judgment under rule 12.2 or 12.3 may be set aside or varied by the court on any terms it thinks just if it appears to the court that there has been or may have been a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r 143

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12.15 Discontinuance

(1) The party making the application may, at any time before an application for judgment under rule 12.2 or 12.3 is heard, discontinue the application—

(a) by filing in the registry of the court in which the application is filed a memorandum of discontinuance; and

(b) by serving a copy of the memorandum on the other party to the application.

(2) The court may give directions about the future conduct of the proceeding after an application for judgment under rule 12.2 or 12.3 is discontinued.

Compare: 1908 No 89 Schedule 2 r 143A

12.16 Application to counterclaims and claims against third parties

Rules 12.1 to 12.15 apply, with all necessary modifications, to counterclaims and to claims against third parties.

Compare: 1908 No 89 Schedule 2 r 144

Part 13
Summary proceeding for recovery of land

13.1 Interpretation

In this Part, **unlawful occupier** means a person who—

(a) occupies or continues to occupy land of the plaintiff without the licence or consent of the plaintiff or the plaintiff's predecessor in title; and

(b) is not a tenant or subtenant holding over after the termination of a tenancy or subtenancy.

Compare: 1908 No 89 Schedule 2 r 134A(1)

13.2 Application of Part

(1) This Part applies to every proceeding in which the plaintiff claims the recovery of land that is occupied solely by 1 or more unlawful occupiers.

(2) This Part does not affect the application of Part 12 (summary judgment) to a proceeding for the recovery of land.

Compare: 1908 No 89 Schedule 2 r 134A

13.3 Defendants

(1) The plaintiff must name as a defendant in the statement of claim each unlawful occupier who is known to the plaintiff.

(2) If no unlawful occupier is known to the plaintiff by name, the statement of claim need not name any person as defendant.

(3) Subclause (1) is subject to subclause (2).

Compare: 1908 No 89 Schedule 2 r 134B

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13.4 Affidavit in support

The plaintiff must file with the statement of claim an affidavit that—

(a) states the interest of the plaintiff in the land; and

(b) states the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and

(c) if no person is named as defendant in the statement of claim, states that the plaintiff does not know the name of any of the unlawful occupiers.

Compare: 1908 No 89 Schedule 2 r 134C

13.5 Service

(1) The plaintiff must serve the following documents on each defendant, if any, and on each unlawful occupier who is not a defendant:

(a) the statement of claim:

(b) the notice of proceeding:

(c) a copy of the affidavit required by rule 13.4:

(d) a copy of any exhibit referred to in that affidavit.

(2) In the case of a defendant, service must be effected in accordance with rule 5.71.

(3) In the case of an unlawful occupier who is not a defendant, service (unless the court directs or permits a different method of service) must be effected—

(a) by affixing to some conspicuous part of the land the documents required to be served under subclause (1); and

(b) if practicable, by leaving in the letterbox or other receptacle for mail on the land the documents required to be served under subclause (1) (those documents must be enclosed in a sealed envelope addressed to "The Occupiers").

Compare: 1908 No 89 Schedule 2 r 134D

13.6 Time for filing statement of defence

Despite rule 5.47(2)(b), if service is effected in accordance with rule 13.5(3), the statement of defence must be filed within 25 working days after the day on which that service is effected.

Compare: 1908 No 89 Schedule 2 r 134E

13.7 Power of court to make unlawful occupiers defendants

A Judge may order that an unlawful occupier who is not a defendant be made a defendant or be added as a defendant.

Compare: 1908 No 89 Schedule 2 r 134F

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13.8 Judgment for possession

Rule 15.8 (which allows the plaintiff to seal judgment immediately upon certain defaults by the defendant) does not apply to proceedings to which this Part applies.

Compare: 1908 No 89 Schedule 2 r 134G

13.9 Possession order

(1) Once 3 months have elapsed after the date on which a judgment is given in a proceeding to which this Part applies, a possession order to enforce the judgment may issue only with the leave of the court.

(2) An application for leave under subclause (1) may be made without notice unless a Judge otherwise directs.

Compare: 1908 No 89 Schedule 2 r 134H

Part 14
Costs

Subpart 1—Costs generally

14.1 Costs at discretion of court

(1) All matters are at the discretion of the court if they relate to costs—

(a) of a proceeding; or

(b) incidental to a proceeding; or

(c) of a step in a proceeding.

(2) Rules 14.2 to 14.10 are subject to subclause (1).

(3) The provisions of any Act override subclauses (1) and (2).

Compare: 1908 No 89 Schedule 2 r 46

14.2 Principles applying to determination of costs

(1) The following general principles apply to the determination of costs:

(a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:

(b) an award of costs should reflect the complexity and significance of the proceeding:

(c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:

(d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:

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(e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs:

(f) an award of costs should not exceed the costs incurred by the party claiming costs (not being a party acting in person):

(g) so far as possible the determination of costs should be predictable and expeditious.

(2) Despite subclause (1)(f), costs for legal professional services provided in relation to a proceeding may be awarded to a party under this Part even though the services are provided under a conditional fee agreement.

(2A) In subclause (1)(f), **party acting in person**—

(a) means a party who is without a solicitor on the record and who represents their own personal interests; and

(b) includes a party who is a lawyer and who represents their own personal interests.

(3) In subclause (2), **conditional fee agreement** means an agreement under which a party to a proceeding and a person who provides legal professional services agree that the party to the proceeding is liable for payment of some or all of the person's fees and expenses depending on the outcome of the proceeding.

Compare: 1908 No 89 Schedule 2 r 47

14.3 Categorisation of proceedings

(1) For the purposes of rule 14.2(1)(b), proceedings must be classified as falling within one of the following categories:

Category 1 proceedings	Proceedings of a straightforward nature able to be conducted by counsel considered junior in the High Court
Category 2 proceedings	Proceedings of average complexity requiring counsel of skill and experience considered average in the High Court
Category 3 proceedings	Proceedings that because of their complexity or significance require counsel to have special skill and experience in the High Court

(2) The court may at any time determine in advance a proceeding's category, which applies to all subsequent determinations of costs in the proceeding, unless there are special reasons to the contrary.

Compare: 1908 No 89 Schedule 2 r 48

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14.4 Appropriate daily recovery rates

For the purposes of rule 14.2(1)(c), the appropriate daily recovery rates for the categories referred to in rule 14.3—

(a) are the rates specified in Schedule 2; and

(b) must be applied to those categories.

Compare: 1908 No 89 Schedule 2 r 48A

14.5 Determination of reasonable time

(1) For the purposes of rule 14.2(1)(c), a reasonable time for a step is—

(a) the time specified for it in Schedule 3; or

(b) a time determined by analogy with that schedule, if Schedule 3 does not apply; or

(c) the time assessed as likely to be required for the particular step, if no analogy can usefully be made.

(2) A determination of what is a reasonable time for a step under subclause (1) must be made by reference—

(a) to band A, if a comparatively small amount of time is considered reasonable; or

(b) to band B, if a normal amount of time is considered reasonable; or

(c) to band C, if a comparatively large amount of time for the particular step is considered reasonable.

Compare: 1908 No 89 Schedule 2 r 48B

14.6 Increased costs and indemnity costs

(1) Despite rules 14.2 to 14.5, the court may make an order—

(a) increasing costs otherwise payable under those rules (**increased costs**); or

(b) that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (**indemnity costs**).

(2) The court may make the order at any stage of a proceeding and in relation to any step in it.

(3) The court may order a party to pay increased costs if—

(a) the nature of the proceeding or the step in it is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or

(b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in it by—

(i) failing to comply with these rules or with a direction of the court; or

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(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to admit facts, evidence, documents, or accept a legal argument; or

(iv) failing, without reasonable justification, to comply with ~~an order for discovery~~ disclosure obligations, a notice for further particulars, a notice for interrogatories, or other similar requirement under these rules; or

(v) failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or

(c) the proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring it or participate in it in the interests of those affected; or

(d) some other reason exists which justifies the court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

(4) The court may order a party to pay indemnity costs if—

(a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or

(b) the party has ignored or disobeyed an order or direction of the court or breached an undertaking given to the court or another party; or

(c) costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or

(d) the person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to it; or

(e) the party claiming costs is entitled to indemnity costs under a contract or deed; or

(f) some other reason exists which justifies the court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: 1908 No 89 Schedule 2 r 48C

14.7 Refusal of, or reduction in, costs

Despite rules 14.2 to 14.5, the court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if—

(a) the nature of the proceeding or the step in a proceeding is such that the time required by the party claiming costs would be substantially less than the time allocated under band A; or

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(b) the property or interests at stake in the proceeding were of exceptionally low value; or

(c) the issues at stake were of little significance; or

(d) although the party claiming costs has succeeded overall, that party has failed in relation to a cause of action or issue which significantly increased the costs of the party opposing costs; or

(e) the proceeding concerned a matter of public interest, and the party opposing costs acted reasonably in the conduct of the proceeding; or

(f) the party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in it by—

(i) failing to comply with these rules or a direction of the court; or

(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to admit facts, evidence, or documents, or accept a legal argument; or

(iv) failing, without reasonable justification, to comply with ~~an order for discovery~~ disclosure obligations, a notice for further particulars, a notice for interrogatories, or other similar requirement under these rules; or

(v) failing, without reasonable justification, to accept an offer of settlement whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or

(g) some other reason exists which justifies the court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: 1908 No 89 Schedule 2 r 48D

14.8 Costs on interlocutory applications

(1) Costs on an opposed interlocutory application, unless there are special reasons to the contrary,—

(a) must be fixed in accordance with these rules when the application is determined; and

(b) become payable when they are fixed.

(2) Despite subclause (1), the court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.

(3) This rule does not apply to an application for summary judgment.

Compare: 1908 No 89 Schedule 2 r 48E

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14.9 Costs may be determined by different Judge or Associate Judge

Costs may be determined by a Judge or an Associate Judge other than the one who heard the matter to which the costs relate, if he or she is not available conveniently to make the determination.

Compare: 1908 No 89 Schedule 2 r 48F

14.10 Written offers without prejudice except as to costs

(1) A party to a proceeding may make a written offer to another party at any time that—

(a) is expressly stated to be without prejudice except as to costs; and

(b) relates to an issue in the proceeding.

(2) The fact that the offer has been made must not be communicated to the court until the question of costs is to be decided.

Compare: 1908 No 89 Schedule 2 r 48G

14.11 Effect on costs

(1) The effect (if any) that the making of an offer under rule 14.10 has on the question of costs is at the discretion of the court.

(2) Subclauses (3) and (4)—

(a) are subject to subclause (1); and

(b) do not limit rule 14.6 or 14.7; and

(c) apply to an offer made under rule 14.10 by a party to a proceeding (**party A**) to another party to it (**party B**).

(3) Party A is entitled to costs on the steps taken in the proceeding after the offer is made, if party A—

(a) offers a sum of money to party B that exceeds the amount of a judgment obtained by party B against party A; or

(b) makes an offer that would have been more beneficial to party B than the judgment obtained by party B against party A.

(4) The offer may be taken into account, if party A makes an offer that—

(a) does not fall within paragraph (a) or (b) of subclause (3); and

(b) is close to the value or benefit of the judgment obtained by party B.

Compare: 1908 No 89 Schedule 2 r 48GA

14.12 Disbursements

(1) In this rule,—

disbursement, in relation to a proceeding,—

(a) means an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from legal professional services in a solicitor's bill of costs; and

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(b) includes—

(i) fees of court for the proceeding:

(ii) expenses of serving documents for the purposes of the proceeding:

(iii) expenses of photocopying documents required by these rules or by a direction of the court:

(iv) expenses of conducting a conference by telephone or video link; but

(c) does not include counsel's fee.

(2) A disbursement must, if claimed and verified, be included in the costs awarded for a proceeding to the extent that it is—

(a) of a class that is either—

(i) approved by the court for the purposes of the proceeding; or

(ii) specified in paragraph (b) of subclause (1); and

(b) specific to the conduct of the proceeding; and

(c) reasonably necessary for the conduct of the proceeding; and

(d) reasonable in amount.

(3) Despite subclause (2), a disbursement may be disallowed or reduced if it is disproportionate in the circumstances of the proceeding.

(4) A Judge or an Associate Judge may direct a Registrar to exercise the powers of the court under subclause (2) or (3).

(5) When considering whether a disbursement paid or payable for an expert witness's fee or expenses is reasonable for the purposes of subclause (2)(d), a Judge or an Associate Judge may—

(a) call for a report or an assessment from a professional organisation or otherwise; and

(b) make any incidental order considered just, including an order as to the cost of that report or assessment.

(6) Where an expert witness provides services in relation to a proceeding, disbursements in respect of the witness's fees and expenses may be included in costs awarded under this Part even though the services are provided under a conditional fee agreement.

(7) In subclause (6), **conditional fee agreement** has the same meaning as in rule 14.2(3), except that the reference to legal professional services must be read as if it were a reference to expert witness services.

(8) Nothing in subclause (6) affects the application of subclauses (3) to (5).

Compare: 1908 No 89 Schedule 2 r 48H

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14.13 Proceedings within jurisdiction of District Court

Costs ordered to be paid to a successful plaintiff must not exceed the costs and disbursements that the plaintiff would have recovered in the District Court if the proceeding could have been brought there, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 49

14.14 Joint and several liability for costs

The liability of each of 2 or more parties ordered to pay costs is joint and several, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 50

14.15 Defendants defending separately

The court must not allow more than 1 set of costs, unless it appears to the court that there is good reason to do so, if—

(a) several defendants defended a proceeding separately; and

(b) it appears to the court that all or some of them could have joined in their defence.

Compare: 1908 No 89 Schedule 2 r 51

14.16 Claim and counterclaim both established

The court must award costs as if each party had succeeded in an independent proceeding, unless, in the court's opinion, the justice of the case otherwise requires, if—

(a) the plaintiff succeeds in his or her proceeding; and

(b) the defendant succeeds in a counterclaim.

Compare: 1908 No 89 Schedule 2 r 52

14.17 Set-off if costs allowed to both parties

If opposite parties are awarded costs against each other, their respective costs must be set off and the lesser sum must be deducted from the greater, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 53

Subpart 2—Taxation of costs between parties

14.18 Appointment to tax costs

(1) Any party entitled to costs subject to taxation may obtain from the Registrar an appointment for taxation of the costs.

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(2) The party entitled to the costs must serve a copy of the appointment on the party liable to pay the costs at least 2 working days before the day appointed if the party liable to pay the costs has given an address for service.

Compare: 1908 No 89 Schedule 2 r 54

14.19 Taxation of disbursements

(1) On taxation, all disbursements claimed must be proved to the satisfaction of the Registrar.

(2) Only disbursements that may be included in an award of costs under rule 14.12(2) may be claimed under subclause (1).

Compare: 1908 No 89 Schedule 2 r 55

14.20 No charge allowed for bill of costs

No charge is allowed on taxation for the preparation or service of the bill of costs or of any copy of it.

Compare: 1908 No 89 Schedule 2 r 56

14.21 Registrar sole judge of questions of fact

The Registrar is the sole judge of all questions of fact that may arise on taxation, and his or her decision is final.

Compare: 1908 No 89 Schedule 2 r 57

14.22 Direction to Registrar to ascertain expenses

Without ordering taxation of costs, the court may direct the Registrar to ascertain what amount should be allowed in respect of witnesses' expenses and other disbursements to a party to whom costs are awarded.

Compare: 1908 No 89 Schedule 2 r 58

14.23 Review of taxation

The court may, on the application of a party dissatisfied with the Registrar's decision, refer a matter back to the Registrar with any necessary directions, or may itself make any amendments that appear necessary, if—

(a) the Registrar has ascertained or fixed the amount of costs or disbursements or the head under which costs are allowed; and

(b) the Registrar's actions referred to in paragraph (a) were done under these rules or by a direction of the court; and

(c) it appears that the Registrar acted erroneously as to amount or principle.

Compare: 1908 No 89 Schedule 2 r 59

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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Part 15
Disposal other than by trial

Subpart 1—Dismissal or stay without trial

15.1 Dismissing or staying all or part of proceeding

(1) The court may strike out all or part of a pleading if it—

(a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or

(b) is likely to cause prejudice or delay; or

(c) is frivolous or vexatious; or

(d) is otherwise an abuse of the process of the court.

(2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.

(3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as are considered just.

(4) This rule does not affect the court's inherent jurisdiction.

Compare: 1908 No 89 Schedule 2 rr 186, 477

15.2 Dismissal for want of prosecution

Any opposite party may apply to have all or part of a proceeding or counterclaim dismissed or stayed, and the court may make such order as it thinks just, if—

(a) the plaintiff fails to prosecute all or part of the plaintiff's proceeding to trial and judgment; or

(b) the defendant fails to prosecute all or part of the defendant's counterclaim to trial and judgment.

Compare: 1908 No 89 Schedule 2 r 478

Subpart 2—Judgment by default

15.3 Application where appearance

(1) If the defendant has filed an appearance under rule 5.49, rules 15.7 and 15.8 do not apply.

(2) If the defendant has filed an appearance under rule 5.50 or 5.51, rules 15.7 and 15.8 apply subject to that appearance.

Compare: 1908 No 89 Schedule 2 r 15.3 prior to 1 February 2013

15.4 Affidavits to be filed

Before judgment by default can be sealed, there must be filed—

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(a) an affidavit of service of the statement of claim and notice of proceeding; and

(b) if the statement of claim and notice of proceeding have not been served personally on the defendant or on a solicitor accepting service on the defendant's behalf, an affidavit verifying the statement of claim.

Compare: 1908 No 89 Schedule 2 r 15.4 prior to 1 February 2013

15.5 When several causes of action

The plaintiff may proceed separately under rule 15.7 or 15.8 in respect of each cause of action to which no pleading by way of defence in a statement of defence has been filed.

Compare: 1908 No 89 Schedule 2 r 15.5 prior to 1 February 2013

15.6 When several defendants

The plaintiff may proceed against any 1 or more defendants under rule 15.7 or 15.8 and may, despite any judgment given under those rules, continue the proceeding against any other defendant against whom the cause of action subsists.

Compare: 1908 No 89 Schedule 2 r 15.6 prior to 1 February 2013

15.7 Liquidated demand

(1) If the relief claimed by the plaintiff is payment of a liquidated demand in money and the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, the plaintiff may seal judgment in accordance with this rule for a sum not exceeding the sum claimed in the statement of claim and—

(a) interest (if any) payable as of right calculated up to the date of judgment (if interest has been specifically claimed in the statement of claim); and

(b) costs and disbursements as fixed by the Registrar.

(2) If the plaintiff claims costs and disbursements, the plaintiff must file a memorandum setting out the amount claimed and how that amount is calculated, together with any submissions in support of the claim.

(3) A Judge or a Registrar may authorise the sealing of a judgment under subclause (1) if satisfied that the relief claimed by the plaintiff falls within this rule.

(4) A Registrar has the jurisdiction and powers of the court under these rules to fix costs and disbursements under subclause (1)(b).

(5) For the purpose of this rule and rule 15.9, **liquidated demand** means a sum that—

(a) has been quantified in, or can be precisely calculated on the basis of, a contract relied on by the plaintiff; or

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(ab) is quantified in, or can be precisely calculated on the basis of, or by reference to, an enactment relied on by the plaintiff; or

(b) has been determined by agreement, mediation, arbitration, or previous litigation between the same parties; or

(c) is a reasonable price for goods supplied or services rendered (when no contract quantifies the price).

Compare: 1908 No 89 Schedule 2 r 15.7 prior to 1 February 2013

15.8 Recovery of land or chattels

(1) If the relief claimed by the plaintiff is the recovery of land or chattels and the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, the plaintiff may seal judgment that the person whose title is asserted in the statement of claim recover possession of the land or the chattels together with costs and disbursements as fixed by the Registrar.

(2) A Registrar has the jurisdiction and powers of the court under these rules to fix costs and disbursements.

Compare: 1908 No 89 Schedule 2 rr 15.8, 15.9 prior to 1 February 2013

15.9 Formal proof for other claims

(1) This rule applies if, or to the extent that, the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, and the plaintiff seeks judgment by default for other than a liquidated demand.

(2) The proceeding must be listed for formal proof and no notice is required to be given to the defendant.

(3) After a proceeding is listed for a formal proof hearing, no statement of defence may be filed without the leave of a Judge granted on the ground that there will or may be a miscarriage of justice if judgment by default is entered, and on such terms as to time or otherwise as the Judge thinks just.

(4) The plaintiff must, before or at the formal proof hearing, file affidavit evidence establishing, to a Judge's satisfaction, each cause of action relied on and, if damages are sought, providing sufficient information to enable the Judge to calculate and fix the damages.

(5) If the Judge before or at the formal proof hearing considers that any deponent of an affidavit filed under subclause (4) should attend to give additional evidence, the Judge may direct accordingly and adjourn the hearing for that purpose.

Compare: 1908 No 89 Schedule 2 rr 15.10, 15.11, 15.12 prior to 1 February 2013

15.9A When amended pleading filed but not served

(1) This rule applies if—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) the plaintiff in a proceeding files an amended pleading before trial; and

(b) the amended pleading is not served on the defendant in reliance on rule 6.20.

(2) Leave of the court is required before judgment is sealed under rule 15.7 or 15.8, or entered under rule 15.9.

15.10 Judgment may be set aside or varied

Any judgment obtained by default under rule 15.7, 15.8, or 15.9 may be set aside or varied by the court on such terms as it thinks just, if it appears to the court that there has been, or may have been, a miscarriage of justice.

Compare: 1908 No 89 Schedule 2 r 15.13 prior to 1 February 2013

15.11 Overseas service cases

(1) When a document has been served on a party outside New Zealand under rule 6.27 and that party has not appeared, judgment by default against that party must not be sealed without the leave of the court.

(2) Leave must not be granted unless the court is satisfied that—

(a) the party applying for leave was entitled to effect service without leave under rule 6.27; and

(b) there is no reason to believe that the service was effected, or may have been effected, contrary to the law of the country concerned relating to the method of serving documents in domestic actions on persons in that country; and

(c) the service was effected in sufficient time to enable that party to appear.

Compare: 1908 No 89 Schedule 2 r 15.14 prior to 1 February 2013

15.12 Other proceedings

[Revoked]

15.13 Judgment may be set aside or varied

[Revoked]

15.14 Overseas service cases

[Revoked]

Subpart 3—Judgment on admission

15.15 Judgment on admission of facts

(1) If a party admits facts (in the party's pleadings or otherwise), any other party to the proceeding may apply to the court for any judgment or order upon those admissions the other party may be entitled to, without waiting for the determination of any other question between the parties, and the court may give any judgment or order on the application as it thinks just.

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(2) This rule is not affected by rules 15.16 and 15.17.

Compare: 1908 No 89 Schedule 2 r 292

15.16 Admission of cause of action

(1) At any time after a party has been served with a notice of proceeding, that party may file and serve (separately from the party's pleadings) an admission of all, some, or part of the alleged causes of action on all other parties to the proceeding.

(2) An admission can be withdrawn only with the leave of the court.

(3) When an admission is filed and served under subclause (1), a party on whom the admission is served may seal judgment on the cause of action admitted, without prejudice to that party's right (if any) to proceed on any other cause of action.

(4) An admission under subclause (1) relating to any cause of action in which a sum of money is claimed must state the exact amount admitted.

(5) Any judgment entered on an admission filed and served under subclause (1) may, upon application, be set aside by the court if—

(a) the plaintiff, being under a duty or obligation to the defendant not to enter judgment on the admission, acted contrary to that duty or obligation in entering judgment; or

(b) the plaintiff, in entering judgment, acted fraudulently, unconscionably, or in wilful or reckless disregard of the defendant's rights.

(6) Upon an application under subclause (5), the court may direct that a proceeding be brought to determine whether judgment was wrongfully entered.

(7) This rule does not affect rule 8.48.

Compare: 1908 No 89 Schedule 2 rr 471, 473

15.17 Admission of defence

(1) When a party's original or amended statement of defence alleges any ground of defence that goes to the whole of any cause of action alleged by the other party, the other party may file and serve an admission of that ground of defence.

(2) If the admitted ground of defence arose after the filing of the pleading containing the cause of action to which it refers, the party filing and serving the admission is entitled to an order for that party's costs in respect of the cause of action to which the admission applies, up to the time of filing the statement of defence, unless the court otherwise orders.

(3) Subject to subclause (2), a party on whom an admission has been served under subclause (1) may at any time afterwards seal judgment upon the cause of action to which the admission relates.

(4) This rule does not affect rule 8.48.

Compare: 1908 No 89 Schedule 2 rr 472, 473

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Subpart 4—Discontinuance

15.18 Interpretation

For the purposes of rules 15.19 to 15.25, a reference to discontinuing a proceeding means discontinuing a proceeding against 1 or more defendants.

Compare: 1908 No 89 Schedule 2 r 474

15.19 Right to discontinue proceeding

(1) At any time before the giving of judgment or a verdict, a plaintiff may discontinue a proceeding by—

(a) filing a notice of discontinuance and serving a copy of the notice on every other party to the proceeding; or

(b) orally advising the court at the hearing that the proceeding is discontinued.

(2) A notice of discontinuance under subclause (1)(a) must be in form G 24.

(3) This rule is subject to rule 15.20.

Compare: 1908 No 89 Schedule 2 r 475

15.20 Restrictions on right to discontinue proceeding

(1) A plaintiff may discontinue a proceeding only with the leave of the court if—

(a) the court—

(i) has granted an interim injunction; or

(ii) made an interim order under rule 30.4; or

(iii) made an interim order under section 15 of the Judicial Review Procedure Act 2016; or

(iv) has directed that the leave of the court must be obtained to discontinue the proceeding; or

(b) a party to the proceeding has given an undertaking to the court.

(2) A plaintiff to whom an interim payment has been made, whether voluntarily or under an order made under rule 7.70 or 7.71, may discontinue the proceeding only with the written consent of the party by whom the payment was made or with the leave of the court.

(3) A plaintiff may discontinue a proceeding in which there is more than 1 plaintiff only with the consent of every other plaintiff or with the leave of the court. If the plaintiff files a notice of discontinuance under rule 15.19(1)(a), the consent of every other plaintiff must be in writing.

(4) If there is more than 1 defendant in a proceeding, a plaintiff may discontinue a proceeding against a particular defendant only with the consent of every other defendant or with the leave of the court. If the plaintiff files a notice

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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of discontinuance under rule 15.19(1)(a), the consent of every other defendant must be in writing.

Compare: 1908 No 89 Schedule 2 r 476

15.21 Effect of discontinuance

(1) A proceeding ends against a defendant or defendants on—

(a) the filing and service of a notice of discontinuance under rule 15.19(1)(a); or

(b) the giving of oral advice of the discontinuance at the hearing under rule 15.19(1)(b); or

(c) the making of an order under rule 15.20.

(2) The discontinuance of a proceeding does not affect the determination of costs.

(3) Rule 15.22 overrides this rule.

Compare: 1908 No 89 Schedule 2 r 476A

15.22 Court may set discontinuance aside

(1) The court may, on the application of a defendant against whom a proceeding is discontinued, make an order setting the discontinuance aside if it is satisfied that the discontinuance is an abuse of the process of the court.

(2) An application under subclause (1) must be made within 25 working days after discontinuance under rule 15.19.

Compare: 1908 No 89 Schedule 2 r 476B

15.23 Costs

Unless the defendant otherwise agrees or the court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

Compare: 1908 No 89 Schedule 2 r 476C

15.24 Restriction on subsequent proceedings

A plaintiff who discontinues a proceeding (**proceeding A**) against a defendant may not commence another proceeding (**proceeding B**) against the defendant if proceeding B arises out of facts that are the same or substantially the same as those relating to proceeding A, unless the plaintiff has paid any costs ordered to be paid to the defendant under rule 15.23 relating to proceeding A.

Compare: 1908 No 89 Schedule 2 r 476D

15.25 Certain remedies not affected

If a plaintiff discontinues a proceeding in which a defendant has issued a third party notice under rules 4.9 to 4.17 or has filed a notice under rules 4.18 to

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4.21, the discontinuance does not affect the continuation of the proceeding in relation to the third party notice or the notice filed under rules 4.18 to 4.21.

Compare: 1908 No 89 Schedule 2 r 476E

Part 16
Accounts and inquiries

16.1 Interpretation

In this Part,—

account-taker has the meaning set out in rule 16.6

accounting party means—

(a) the party required by an order for the taking of an account to account to the other party; and

(b) in a case coming within rule 16.5, each party.

Compare: 1908 No 89 Schedule 2 r 390

16.2 Orders for accounts and inquiries

The court may, on the application of any party, before, at, or after the trial of a proceeding, order an account or an inquiry, whether or not it has been claimed in that party's pleading.

Compare: 1908 No 89 Schedule 2 r 384

16.3 Directions

(1) At the time of ordering an account or an inquiry, or at another time, the court may—

(a) give directions or further directions about the account or inquiry:

(b) order additional accounts or inquiries:

(c) direct that the relevant books of account are prima facie evidence of the truth of the matters contained in them.

(2) An order or direction under subclause (1) overrides rules 16.6 to 16.21.

Compare: 1908 No 89 Schedule 2 r 385

16.4 Summary order for accounts

(1) If a party's pleading claims an account or makes a claim that involves taking an account, the court may, on application by that party at any stage of the proceeding, order—

(a) an account; and

(b) that any amount certified on the account as due to any party be paid to that party.

(2) The court must not make an order under subclause (1)—

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(a) if there is some preliminary question to be determined; or

(b) against a defendant who has not filed a statement of defence or an appearance, until the time for filing a statement of defence has expired.

Compare: 1908 No 89 Schedule 2 r 386

16.5 Mutual accounts

(1) The court may order that each party account to the other if it considers that each is accountable to the other because of—

(a) the relationship between the parties; or

(b) their course of dealing; or

(c) any other reason.

(2) At the time of making an order under subclause (1), or at any time afterwards, the court may direct—

(a) that the result of the account be certified as the net balance found to be due to 1 party; or

(b) that the certificate show the amounts found to be due to each party.

(3) An order under this rule overrides rules 16.6 to 16.21.

Compare: 1908 No 89 Schedule 2 r 387

16.6 Account-taker

(1) The court may order accounts to be taken before an **account-taker** who may be—

(a) the Registrar; or

(b) an accountant; or

(c) the Registrar and an accountant.

(2) Unless otherwise ordered, an accountant who takes an account must be a qualified statutory accountant (within the meaning of section 5(1) of the Financial Reporting Act 2013).

Compare: 1908 No 89 Schedule 2 r 388

16.7 Direction as to evidence

The court may direct that any evidence relevant to the account be given to the account-taker, with any incidental order the court thinks just.

16.8 Remuneration of accountant

(1) The court must fix the remuneration of an accountant who is an account-taker. The order doing so may cover incidental matters including (for example) 1 or more of the following:

(a) that the remuneration be paid by 1 or more of the parties in any proportions:

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(b) that 1 or more of the parties give security for the remuneration of the accountant, on terms the court thinks just.

(2) Subclause (1) does not limit the court's power to make an order providing for the payment of the remuneration as part of the costs of the proceeding.

Compare: 1908 No 89 Schedule 2 r 389

16.9 Form and verification of account

(1) The items on each side of an account must be numbered consecutively.

(2) An accounting party must verify the account by affidavit, and must attach the account as an exhibit.

Compare: 1908 No 89 Schedule 2 r 391

16.10 Filing and service of account

Within 10 working days after the order to account has been served on an accounting party, that party must—

(a) file the account and verifying affidavit; and

(b) serve a copy of the account and verifying affidavit on each other party.

Compare: 1908 No 89 Schedule 2 r 392

16.11 Notice of receipt that is not admitted

A party who alleges an accounting party has received an amount that is not admitted in the accounting party's account must, within 10 working days after being served with the account, notify the accounting party of the allegation, stating (as far as possible) the amount and brief particulars.

Compare: 1908 No 89 Schedule 2 r 393

16.12 Notice of error

A party who alleges that any item in an accounting party's account is erroneous in amount or otherwise must, within 10 working days after being served with the account, notify the accounting party of the allegation, stating the grounds for alleging the error.

Compare: 1908 No 89 Schedule 2 r 394

16.13 Admission of items

Except to the extent shown in a notice given under rule 16.11 or 16.12, all items in the account must be treated as correct.

Compare: 1908 No 89 Schedule 2 r 395

16.14 Appointment and notice for taking accounts

As soon as possible after the accounting party has filed the account, the account-taker must—

(a) appoint a time (no less than 15 working days after the filing date) and a place for taking the account (the **account hearing**); and

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(b) give notice of that time and place to the parties no less than 5 working days before the account hearing date.

Compare: 1908 No 89 Schedule 2 r 396

16.15 Parties to attend account hearing

(1) The parties or their solicitors or counsel must attend the account hearing.

(2) If the account-taker is satisfied that notice of the time and place has been given and received, the account-taker may proceed with the account hearing, even if any party is absent.

Compare: 1908 No 89 Schedule 2 r 397

16.16 Adjournment of account hearing

The account-taker may adjourn the time and place of the account hearing as necessary or expedient.

Compare: 1908 No 89 Schedule 2 r 398

16.17 Power of summary decision

(1) The account-taker may decide all disputed items of account summarily.

(2) Despite subclause (1),—

(a) any item may be referred for the decision of the court by—

(i) any party; or

(ii) the account-taker; and

(b) all items of account in respect of which the Registrar and an accountant disagree must be referred for the decision of the court.

Compare: 1908 No 89 Schedule 2 r 399

16.18 Examination of accounting party

If an item has been referred to the court under rule 16.17(2), the court may, on the application of a party who has given a notice under rule 16.11 or 16.12, order that the accounting party appear before the court to be examined orally about the disputed item of account.

Compare: 1908 No 89 Schedule 2 r 400

16.19 Production of documents

The accounting party must, when required by written notice, produce all invoices, statements of account, receipts, and any other documents in that party's possession or power relating to any disputed item of account specified in the notice at—

(a) the taking of the account; or

(b) the examination of the accounting party under rule 16.18.

Compare: 1908 No 89 Schedule 2 r 401

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16.20 Interest on debts of deceased person

A court ordering an account of the debts of a deceased person may order—

(a) which debts carry interest; and

(b) the date from which the debts carry interest (for example, from the date of the order); and

(c) the rate of interest for each debt, which may be—

(i) the rate prescribed by the instrument or instruments creating the debt or debts; or

(ii) if no rate is prescribed by the instrument or instruments creating the debt or debts, interest calculated in accordance with (or on a basis that ensures it does not exceed interest calculated in accordance with) Schedule 2 of the Interest on Money Claims Act 2016.

Compare: 1908 No 89 Schedule 2 r 402

16.21 Interest on legacies

A court ordering an account of legacies may order interest to be paid—

(a) at the rate prescribed by or under section 39 of the Administration Act 1969 from the end of 1 year after the death of the deceased; or

(b) at any rate of interest and time of payment directed by the will.

Compare: 1908 No 89 Schedule 2 r 403

16.22 Accounting and estimates

(1) Any amount which has been paid or credited must be brought into account.

(2) If there is no material before the account-taker which enables an amount to be ascertained with certainty, the account-taker may estimate the amount which in all the circumstances should reasonably be included.

Compare: 1908 No 89 Schedule 2 r 404

16.23 Directions for inquiries

The court may direct the Registrar or any other person to make inquiries (in any manner and within any time period) about—

(a) next of kin:

(b) creditors:

(c) other claimants:

(d) any other similar matters.

Compare: 1908 No 89 Schedule 2 r 405

16.24 Powers of persons taking accounts or making inquiries

The account-taker or the person whom the court directs to make an inquiry may—

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(a) issue advertisements; and

(b) summon parties and witnesses; and

(c) administer oaths; and

(d) receive affidavits and acknowledgments; and

(e) examine parties and witnesses either by interrogatories or by hearing them in person.

Compare: 1908 No 89 Schedule 2 r 406

16.25 Duty of persons summoned to attend

(1) A person must attend an account-taker or a person taking an inquiry—

(a) in accordance with a summons; and

(b) at any other time required without a further summons.

(2) A person who fails to attend after being summoned is liable to the same extent as if he or she had disobeyed a court order.

Compare: 1908 No 89 Schedule 2 r 407

16.26 Time for proving claims

(1) The court must fix and advertise the time within which persons must prove their claims (for example, as creditors or next of kin).

(2) The time must not be less than 25 working days after the date on which the advertisement is first published.

Compare: 1908 No 89 Schedule 2 r 408

16.27 Statement of claim to be filed

A person claiming as a creditor, next of kin, or otherwise must file a statement of claim verified by an affidavit.

Compare: 1908 No 89 Schedule 2 r 409

16.28 Failure to claim within time

(1) A person who does not prove a claim within the advertised time is excluded from the benefit of the judgment or order directing accounts or inquiries.

(2) Sections 135 and 136 of the Trusts Act 2019 override subclause (1).

Compare: 1908 No 89 Schedule 2 r 410

16.29 Result to be certified

The result of any account or inquiry must be stated in a short certificate to the court, unless the court orders the result to be recorded in a formal report.

Compare: 1908 No 89 Schedule 2 r 411

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16.30 Party may ask for court's decision

At any time before the end of 10 working days after a certificate or report has been completed, but before it has been signed by a Judge, any party may ask for the court's decision on any particular point or on the result.

Compare: 1908 No 89 Schedule 2 r 413

16.31 Certificate when approved to be signed by Judge

(1) A Judge must sign a certificate or report stated or recorded under rule 16.29 when he or she has approved it.

(2) The Registrar must file the signed certificate or report in the court.

Compare: 1908 No 89 Schedule 2 r 412

16.32 Effect of certificate when filed

(1) A certificate or report that has been filed in the court is binding on all parties to the proceeding, unless discharged or varied by the court after an application made within 25 working days.

(2) Subclause (1) does not prevent the court from re-opening a certificate or report at any time on the grounds of fraud, surprise, or mistake.

Compare: 1908 No 89 Schedule 2 r 414

16.33 Distribution before all persons entitled are ascertained

The court may order the immediate payment of a party's share to that party—

(a) even if the other persons who are entitled to shares are not ascertained and there is likely to be difficulty or delay in ascertaining those others; and

(b) without reserving any part of the share to meet the subsequent costs of ascertaining those others.

Compare: 1908 No 89 Schedule 2 r 415

16.34 Payment of share carried over to separate trust account

(1) If the rights or circumstances of the parties at the time of judgment do not enable the court to order absolutely that payment be made to the persons entitled, the court may order any party's share that has not become absolute to be carried over on trust to a separate account.

(2) A party that becomes entitled to a share held in trust under subclause (1) may apply for payment of the share on notice to the other persons interested in the matter, and the court may order payment to that party.

Compare: 1908 No 89 Schedule 2 r 416

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Part 17
Enforcement

Subpart 1—General provisions

17.1 Interpretation

In this Part, unless the context otherwise requires,—

enforcement process includes every order referred to in rule 17.3

enforcing officer means the court officer to whom an enforcement process is issued, and includes any court officer who may carry out any functions, duties, or powers provided for in this Part in the course of his or her employment duties

entitled party means—

(a) a judgment creditor; or

(b) a party other than a judgment creditor entitled to relief against another party under a judgment; or

(c) a party entitled to issue a charging order because the party may obtain judgment for—

(i) the payment of a sum of money; or

(ii) the return of the property the party seeks to charge

judgment creditor means the party entitled to enforce a judgment for the recovery or payment of a sum of money

judgment debtor means the party liable under a judgment to return or pay a sum of money or the party whose estate, right, title, or interest in property is liable to be charged under a charging order

liable party means—

(a) a judgment debtor; or

(b) a party who is liable to another party under a judgment, though not a judgment debtor; or

(c) the party whose estate, right, title, or interest in property is liable to be charged under a charging order

personal property has the same meaning as in section 16(1) of the Personal Property Securities Act 1999

register means the personal property securities register kept under the Personal Property Securities Act 1999

secured party has the same meaning as in section 16(1) of the Personal Property Securities Act 1999.

Compare: 1908 No 89 Schedule 2 r 545

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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17.2 Method of enforcing orders

A court order, except an order made on an interlocutory application, may be enforced in the same way as a judgment in the proceeding to the same effect.

Compare: 1908 No 89 Schedule 2 r 546

17.3 Method of enforcing judgments

(1) A judgment may be enforced by 1 or more of the following enforcement processes:

- (a) an attachment order:
- (b) a charging order:
- (c) a sale order:
- (d) a possession order:
- (e) an arrest order:
- (ea) a committal warrant, or an order imposing a fine or community work, made in accordance with subpart 4 of Part 2 of the Contempt of Court Act 2019:
- (f) a sequestration order.

(2) Subclause (1) is subject to the rules in this Part.

(3) No enforcement process may be issued until any period specified in the judgment for payment or performance has expired.

Compare: 1908 No 89 Schedule 2 r 547; Civil Procedure Rules 1998 r 70.2 (UK)

17.4 No excessive recovery

(1) An entitled party is not entitled to recover a greater sum than the amount owing under the judgment or order, the costs and expenses of and incidental to issuing and effecting an enforcement process, and any interest due under the judgment or order.

(2) A claim that excessive recovery has occurred, or may occur, may be resolved by the Judge on application.

17.5 No enforcement against the Crown

(1) No enforcement process can be issued to enforce satisfaction of any judgment, order, decree, rule, award, or declaration given or made in any civil proceedings under the Crown Proceedings Act 1950 against—

- (a) the Crown; or
- (b) the Attorney-General; or
- (c) any government department; or
- (d) any officer of the Crown.

(2) Subclause (1) does not limit section 24 of the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r 553

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17.6 Enforcement by or against non-parties

(1) A non-party is entitled to the same enforcement process as a party to the proceeding if—

(a) the non-party obtains an order; or

(b) an order is made in the non-party's favour.

(2) A non-party is liable to the same enforcement process as a party to the proceeding if—

(a) a judgment is given against the non-party; or

(b) an order is made against the non-party.

Compare: 1908 No 89 Schedule 2 r 554

17.7 Enforcement against partners or alleged partners

(1) A judgment against partners sued in the name of the firm may be enforced without the court's leave—

(a) against any property of the partners:

(b) against any person who—

(i) has admitted in pleadings that he or she is a partner; or

(ii) has been held by the court to be a partner:

(c) against any person who has been served as a partner with the notice of proceeding and has failed to file and serve a statement of defence.

(2) Subclause (1) is subject to rule 17.8.

(3) A judgment against partners sued in the name of the firm may be enforced against any person as a partner of that firm with the court's leave in any case not covered by subclause (1).

(4) On an application under subclause (3), the court,—

(a) if liability is not disputed by the person against whom the applicant claims to be entitled to issue enforcement, may grant leave; or

(b) if liability is disputed by the person against whom the applicant claims to be entitled to issue enforcement, may order that the liability of that person be tried and determined as it thinks just.

Compare: 1908 No 89 Schedule 2 r 555

17.8 Issuing enforcement process as of right

(1) An enforcement process may be issued as of right unless leave is required under rule 17.9.

(2) An enforcement process is issued under subclause (1) by the entitled party, or that party's solicitor, filing—

(a) a written request that a particular enforcement process should be issued; and

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) an affidavit stating that none of paragraphs (c) to (e) of rule 17.9(2) apply.

(3) The court may set aside an enforcement process issued under subclause (1) if it is satisfied that any of paragraphs (c) to (e) of rule 17.9(2) applied when the enforcement process was issued.

Compare: 1908 No 89 Schedule 2 r 556

17.9 When leave to issue enforcement process necessary

(1) The court's leave is required before issuing an arrest order or a sequestration order.

(2) The court's leave is required to issue an enforcement process—

(a) if judgment has not been sealed; or

(b) if 6 years have elapsed since the date of the judgment (which for a judgment that is an arbitral award entered as a judgment has the meaning given to it by subclause (2A)); or

(c) if any change has taken place (whether by death or otherwise) in the parties entitled or liable to enforcement under the judgment; or

(d) if the judgment is against the assets of a deceased person, enforcement is sought against those assets, and that person's executor or administrator has taken possession of those assets after the date of the judgment; or

(e) if a person is entitled to relief under the judgment only if that person has fulfilled a condition, and that person alleges that condition has been fulfilled; or

(f) if goods sought to be seized under an enforcement process are in the possession of—

(i) a receiver appointed by the court; or

(ii) a sequestrator.

(2A) **Date of the judgment** in subclause (2)(b) for a judgment that is an arbitral award entered as a judgment means the date on which the award became enforceable by action in New Zealand.

(3) If the court grants leave to issue an enforcement process (under this rule or otherwise) and the process is not issued within 1 year after the date of the order granting leave, that order expires but that does not prevent the making of a new order granting leave.

Compare: 1908 No 89 Schedule 2 r 556

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Subpart 2—Obtaining information from liable party for enforcement purposes

17.10 Notice to liable party to complete financial statement

(1) An entitled party may serve on the liable party a notice in form E 1 with 2 copies of form E 2.

(2) A notice in form E 1 requires the liable party to complete and serve on the entitled party a statement in form E 2 of the liable party's—

(a) receipts and payments for the preceding 52 weeks; and

(b) assets and liabilities; and

(c) income and expenditure; and

(d) means of satisfying the judgment.

(3) The liable party must serve the statement in form E 2 on the entitled party within 10 working days after the date on which the notice in form E 1 is served on the liable party.

Compare: 1908 No 89 Schedule 2 r 620

17.11 Interpretation

In rules 17.12 to 17.20, unless the context otherwise requires,—

examinee means the party to be examined under rule 17.12 (or if the party is a corporation, an officer of the corporation)

examining party means a party seeking the recovery or payment of money in a proceeding who applies for an order for examination under rule 17.12.

17.12 Order for examination

(1) Whether or not a notice has been served under rule 17.10, an examining party may apply for an order—

(a) at any time after the proceeding has commenced, if that party seeks a charging order under subpart 5 of this Part; and

(b) in all other cases, at any time after judgment is sealed.

(2) An examining party may apply to the court for an order requiring the examinee to attend the court or a person whom the court appoints, and to be orally examined on oath about—

(a) the standard issues in subclause (3); and

(b) any additional issues suggested by the examining party that the court considers are necessary.

(3) The standard issues are—

(a) if judgment has been given, about the examinee's—

(i) receipts and payments for the preceding 52 weeks; and

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(ii) assets and liabilities; and

(iii) income and expenditure; and

(iv) means of satisfying the judgment:

(b) if judgment has not been given, about any matters that are relevant to the issue of a charging order.

(4) When granting the application, the court may order the production of documents at the examination and may impose terms and conditions it thinks just in respect of the conduct of the examination or otherwise.

(5) An application under this rule may be made without notice, and may be granted by a Judge without a hearing.

(6) An order under this rule must contain a notice in the following terms:

"You must obey this order. If you do not, you may be arrested and brought before the court. The order may then be enforced against you under subpart 4 of Part 2 of the Contempt of Court Act 2019 and you may be fined, sent to prison, or ordered to do community work for not complying with the order of the court."

Compare: 1908 No 89 Schedule 2 r 621; Civil Procedure Rules 1998 rr 71.2, 71.6 (UK); Practice Direction Supplementing Part 71 of the Civil Procedure Rules 1998 paras 4.1, 5.1 (UK)

17.13 Service of order for examination

(1) Unless the court otherwise orders, an order to attend court for examination must be served on the examinee not less than 10 working days before the examination.

(2) The examining party must inform the court not less than 5 working days before the date of the hearing if the order has not been served.

Compare: Civil Procedure Rules 1998 r 71.3 (UK)

17.14 Examining party's affidavit

At the examination, the examining party must file an affidavit or affidavits—

(a) by the person who served the order (unless it was served by an enforcing officer) giving details of how and when it was served; and

(b) stating how much remains unpaid of the amount for which the examining party may obtain or has obtained judgment.

Compare: Civil Procedure Rules 1998 r 71.5 (UK)

17.15 Procedure for examination

(1) The examinee—

(a) must appear personally:

(b) may be represented by counsel, who may examine the examinee and be heard on the matter of the examinee's means:

(c) may be cross-examined by the examining party.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) A witness who is not the examinee may be cross-examined by or on behalf of the examinee or the examining party.

Compare: 1947 No 16 s 84D; Civil Procedure Rules 1998 r 71.6 (UK)

17.16 Adjournment of hearing

If the hearing is adjourned, the court must give directions about the manner in which notice of the new hearing is to be served on the examinee.

Compare: Civil Procedure Rules 1998 r 71.7 (UK)

17.17 Orders by court

(1) After an examination is completed, a Judge may, after giving the examining party and the examinee an opportunity to be heard, do any 1 or more of the following:

(a) direct that 1 or more of the processes referred to in rule 17.3 be commenced or continued, direct any steps to be taken in those processes, and issue any warrant or summons or make any order for the purpose of those processes:

(b) make an order that the money owing under the judgment be paid by instalments payable at times fixed by the court:

(c) stay any processes for the enforcement of the judgment:

(d) make an order varying any order relating to the enforcement of the judgment.

(2) The Judge may do any 1 or more of the things referred to in subclause (1), even though—

(a) no application was made for the particular direction, order, or stay; or

(b) that application was made for a different direction, order, or stay.

Compare: 1947 No 16 s 84E

17.18 Failure to comply with order for examination

(1) A Judge may make an arrest order against an examinee who—

(a) fails to attend the examination; or

(b) refuses at the examination to take the oath or to answer any question; or

(c) fails to comply with the order for examination in any other way.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) An arrest order for failing to attend the examination must not be made unless the examining party has filed the affidavit required by rule 17.14.

(4) If an arrest order is made, the Judge must direct that—

(a) the order is suspended provided the examinee—

(i) attends the court or any person whom the court has appointed for examination at a time and place specified in the order; and

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(ii) complies with all the terms of the arrest order and the order for examination; and

(b) if the examinee fails to comply with any term on which the arrest order is suspended, the examinee may be brought before a Judge so that the Judge may consider whether to impose a sanction under subpart 4 of Part 2 of the Contempt of Court Act 2019, which may result in the Judge imposing a fine, a term of imprisonment, or a period of community work on the examinee.

Compare: Civil Procedure Rules 1998 r 71.8 (UK)

17.19 Certification of breach of arrest order

(1) If an examinee who has been served with an arrest order fails to attend the examination or fails to comply with any other term on which the arrest order was suspended, an enforcing officer may issue a certificate to that effect.

(2) The certificate need not be served on the examinee.

(3) After seeing a certificate under subclause (1), a Judge or enforcing officer may issue a warrant to bring the examinee before a Judge.

Compare: Civil Procedure Rules 1998 r 71.8 (UK)

17.20 Discharge of arrest order

(1) When an examinee is brought before a Judge on a warrant under rule 17.19(3), the Judge must discharge the arrest order unless the Judge is satisfied beyond reasonable doubt that the requirements of section 16(3)(b)(i) to (iii) of the Contempt of Court Act 2019 are met in respect of both—

(a) the original order to attend court; and

(b) the terms on which the arrest order was suspended.

(2) If the Judge does not discharge the arrest order, the Judge may issue a warrant, impose a fine, or make an order under section 16(4) of the Contempt of Court Act 2019.

Subpart 3—Preparation and issue of enforcement process

17.21 Enforcement process to conform with judgment

An enforcement process must strictly conform with the judgment or order it is enforcing or state why it does not.

Compare: 1908 No 89 Schedule 2 r 557

17.22 Preparation and issue of enforcement processes

(1) An entitled party issuing an enforcement process must also file an original order for the particular enforcement process sought, and a copy for the court.

(2) The Registrar must seal the original order and give it to an enforcing officer.

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(3) An enforcement process is issued at the time when the original sealed order is given to an enforcing officer under subclause (2).

Compare: 1908 No 89 Schedule 2 r 558

17.23 Date of enforcement process

The date of an enforcement process is the date it is issued.

Compare: 1908 No 89 Schedule 2 r 559

17.24 Currency and renewal of enforcement processes (except for charging orders)

(1) An enforcement process that is not executed expires 1 year after the date it is issued.

(2) Subclauses (3) and (7) override subclause (1).

(3) An enforcement process may be renewed with the leave of a Judge once only for 1 year from the original expiry date.

(4) Leave under subclause (3) may be given before or after the enforcement process expires.

(5) When an enforcement process is renewed, it retains its original priority unless a Judge orders otherwise.

(6) The Registrar must note the fact and date of renewal on the enforcement process, and that is sufficient evidence of its having been renewed.

(7) Nothing in this rule applies in respect of a charging order.

Compare: 1908 No 89 Schedule 2 r 560

17.25 Expenses of enforcement

(1) An entitled party is entitled to the costs and expenses in respect of and incidental to issuing and effecting an enforcement process, and may levy those costs and expenses from the liable party.

(2) Subclause (1) is subject to rule 17.26.

Compare: 1908 No 89 Schedule 2 r 561

17.26 Concurrent enforcement processes

(1) Two or more enforcement processes (of the same or different kinds) may be issued to 1 or more places and addressed to different enforcing officers.

(2) The costs and expenses of more than 1 concurrent enforcement process may be allowed to a party only with the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 562

17.27 Return of enforcement process

The enforcing officer must return an enforcement process as soon as possible to the court registry it was issued from with a memorandum stating,—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) if the officer succeeded in enforcing it, the way in which it was enforced; or

(b) if the officer did not succeed in enforcing it, despite reasonable attempts, the reason why it was not enforced.

Compare: 1908 No 89 Schedule 2 r 563

17.28 Reissue of enforcement process

If an enforcement process is returned unenforced and there are grounds for believing it can be successfully enforced, the entitled party may request that it be issued again to an enforcing officer.

Compare: 1908 No 89 Schedule 2 r 564

17.29 Stay of enforcement

A liable party may apply to the court for a stay of enforcement or other relief against the judgment upon the ground that a substantial miscarriage of justice would be likely to result if the judgment were enforced, and the court may give relief on just terms.

Compare: 1908 No 89 Schedule 2 r 565

17.30 Enforcement process may be set aside

The court may set aside an enforcement process if it is issued contrary to—

(a) any order of the court; or

(b) the agreement of the entitled party; or

(c) good faith.

Compare: 1908 No 89 Schedule 2 r 566

Subpart 4—Attachment orders

17.31 Interpretation

In this subpart, unless the context otherwise requires,—

employer, in relation to a liable party, includes—

(a) a person by whom a retiring allowance or pension or other payment of a similar nature is payable to the liable party:

(b) the Accident Compensation Corporation in respect of weekly compensation payable to the liable party under the Accident Compensation Act 2001:

(c) the chief executive of the department for the time being responsible for the administration of the Social Security Act 1964 in respect of a benefit payable to the liable party:

(d) a person for whom work is performed under a contract for services

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protected earnings amount means an amount specified in an attachment order below which the net earnings or benefit paid to the liable party must not be reduced

salary or wages includes—

(a) a retiring allowance or pension or other payment of a similar nature:

(b) a bonus or an incentive payment:

(c) a payment of commission:

(d) a payment in consideration of work performed under a contract for services:

(e) all payments of weekly compensation made under the Accident Compensation Act 2001 by the Accident Compensation Corporation:

(f) a benefit within the meaning of the Social Security Act 1964.

Compare: 1947 No 16 s 84F

17.32 Effect of attachment order

(1) An attachment order directs that money due under a judgment is a charge on any salary or wages that are due and payable by an employer to the liable party.

(2) The charge—

(a) accrues from week to week on the day of the week specified in the attachment order; and

(b) accrues by way of weekly payments of the amount specified in the attachment order; and

(c) attaches to all salary or wages that become due by the employer to the liable party at any time while the attachment order is in force, whether or not the contract of employment or contract for services under which the salary or wages become due existed at the date of the attachment order.

Compare: 1947 No 16 s 84I

17.33 When attachment order may be issued

(1) If the liable party has been examined under rule 17.15, the court, on the written or oral application of the entitled party, may make an attachment order at any time after judgment is sealed.

(2) An attachment order—

(a) may be made against a person who the court is satisfied is an employer of the liable party:

(b) may be made for a fixed period or until the judgment debt has been fully paid:

(c) must specify the person to whom the amounts to be deducted must be paid:

(d) must specify the protected earnings amount.

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(3) Form E 3 must be used.

Compare: 1947 No 16 s 84G

17.34 Attachment order to be served on employer

(1) A copy of an attachment order must be served on the employer to whom it relates—

(a) personally; or

(b) by leaving it at the employer's place of residence or business; or

(c) by sending it by post, addressed to the employer at the employer's place of residence or business.

(2) In the absence of proof to the contrary, any order served by post is deemed to have been served on the sixth working day after the day on which it was posted.

(3) To prove service it is sufficient to prove that the letter was properly addressed and posted.

(4) Every attachment order takes effect when a copy of the order is served on the employer in accordance with this rule.

Compare: 1947 No 16 s 84H

17.35 Priority of attachment order

(1) The charge under an attachment order is subject to the following charges, adjustments, and deductions (whether the charge was created or the adjustment or deduction was authorised before or after the making of the attachment order under this subpart):

(a) a charge created by an attachment order or deduction notice made under the Family Proceedings Act 1980:

(b) a charge created by an attachment order made under the Summary Proceedings Act 1957:

(c) a deduction notice issued under the Child Support Act 1991:

(d) a deduction notice issued under section 157 of the Tax Administration Act 1994 (as applied by section 193 of the Student Loan Scheme Act 2011):

(e) a deduction from or adjustment to a benefit under section 86 of the Social Security Act 1964.

(2) Subclause (3) applies if the liable party assigns or charges the liable party's salary or wages before or after the making of the attachment order.

(3) The attachment order has the same effect as it would have if the assignment or charge had not occurred.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(4) Section 84 of the Social Security Act 1964 does not apply to an attachment order under this rule.

Compare: 1947 No 16 ss 84G, 84I

17.36 Protected earnings amount

(1) The sum of an amount charged under an attachment order and any other amounts described in subclause (2) must not reduce the net earnings or any benefit of the liable party below the protected earnings amount, and if necessary the amount to be deducted under an attachment order must be reduced or cancelled accordingly.

(2) For the purposes of subclause (1), **other amounts** means the amounts stated in any or all of the following:

(a) an attachment order under another Act; and

(b) a deduction notice made under the Family Proceedings Act 1980 or issued under section 86 or 86A of the Social Security Act 1964.

Compare: 1947 No 16 s 84G

17.37 Liability of employer

(1) While an attachment order remains in force and whenever any salary or wages become due and payable by an employer to the liable party, the employer must—

(a) deduct from the salary or wages a sufficient amount to satisfy the charge on the money that has accrued before the day on which the salary or wages becomes due and payable; and

(b) not later than the 20th day of the next month after the month in which the deduction is made, pay the deducted amount to the person specified in the attachment order.

(2) All sums deducted are treated as having been paid by the employer in satisfaction of the salary or wages payable by the employer to the liable party.

(3) All sums deducted are treated as having been paid by the liable party in satisfaction of the liable party's liability to pay the judgment debt.

(4) The employer must notify a court officer within 5 working days if the liable party leaves or is dismissed from the employer's employment.

(5) If an employer defaults in paying any money in satisfaction of a charge under an attachment order, that money becomes a debt due by the employer to the entitled party, and may be recovered by the entitled party in any court of competent jurisdiction.

(6) Subclause (1) is subject to rule 17.36.

Compare: 1947 No 16 s 84J

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17.38 Attachment orders in State services

(1) In this rule,—

employee has the same meaning as in the State Sector Act 1988

State services has the same meaning as in the State Sector Act 1988.

(2) This subpart binds the Crown to the extent of and subject to subclauses (3) and (4).

(3) If the liable party is an employee in the State services, an attachment order may be made against the employer of that employee, and—

(a) the order must be served on the chief executive of the employee's department or agency or other instrument of the Crown, and also on any officer of the Crown specified in the order; and

(b) the order must be served in accordance with rule 17.34.

(4) When service is effected by post, it is sufficient if the letter is addressed to the person to be served by that person's official title or any sufficient description.

(5) If the liable party is entitled to a benefit within the meaning of the Social Security Act 1964, an attachment order may be made against the chief executive of the department for the time being responsible for the administration of that Act.

(6) If subclause (5) applies, the order must be served by leaving a copy of the order at, or sending a copy of the order by post to,—

(a) the district office of that department nearest to the liable party's place of residence; or

(b) an address notified by the chief executive of that department to the chief executive of the Ministry of Justice.

Compare: 1947 No 16 s 84L

17.39 Variation, suspension, and discharge of attachment orders

(1) An entitled party or a liable party may apply to a Judge for relief under this rule at any time.

(2) If a Judge is satisfied that there is a good reason to do so, he or she may—

(a) vary or suspend the order; or

(b) discharge the order.

(3) The variation, suspension, or discharge takes effect when notice of it is served on the employer in accordance with rule 17.34.

(4) The powers of the Judge under this rule are in addition to the court's powers under rule 7.49.

Compare: 1947 No 16 s 84M

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Subpart 5—Charging orders

17.40 Effect of charging order

(1) A charging order charges the estate, right, title, or interest of the liable party in the property described in the order with payment of the amount for which the entitled party may obtain or has obtained judgment.

(2) A charging order may be in form E 4, E 5, or E 6.

Compare: 1908 No 89 Schedule 2 r 548

17.41 Leave to issue charging order

Leave to issue a charging order before judgment may be granted only on proof that the liable party, with intent to defeat either his or her creditors or the entitled party or both,—

(a) is removing, concealing, or disposing of the liable party's property; or

(b) is absent from or about to leave New Zealand.

Compare: 1908 No 89 Schedule 2 r 567

17.42 Issue of charging order without leave after judgment

After judgment is sealed, the entitled party may issue a charging order without leave.

Compare: 1908 No 89 Schedule 2 r 568

17.43 Charging order where amount involved small

If the amount involved is so small that the issue of a charging order is vexatious or worthless, the court may—

(a) refuse the application for a charging order; or

(b) if the charging order has been issued (whether as of right or on application), revoke the charging order.

Compare: 1908 No 89 Schedule 2 r 569

17.44 Application for relief by persons prejudicially affected

(1) At any time, a person alleging that he or she is prejudicially affected by a charging order may apply to the court for relief.

(2) The court may—

(a) vary or rescind the order; or

(b) cancel the registration or modify the effect of registration of any order affecting land.

(3) The powers of the court under this rule are in addition to its powers under rule 7.49.

Compare: 1908 No 89 Schedule 2 r 570

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17.45 Claim of third party on property charged

(1) For the purposes of this rule, **interested third party** means a person other than the entitled party or liable party who allegedly—

(a) owns the charged property; or

(b) has a lien, charge, or other claim on the charged property.

(2) The court may order an interested third party to attend the court and state the nature and details of the third party's interest in the charged property.

(3) An interested third party may attend and state the nature and particulars of that party's claim to the court without the court's leave at the hearing of—

(a) an application to make the charging order final:

(b) an application to set aside or vary the charging order.

(4) An interested third party must give 24 hours' notice to the court and all affected parties of an intention to attend the court under subclause (3).

Compare: 1908 No 89 Schedule 2 r 571

17.46 Apportionment when more than 1 charging order

(1) Subclause (2) applies if more than 1 charging order has been issued against the same liable party.

(2) The court may, on the application of the liable party or any other person claiming to be affected, determine how much or what part of the relevant property is for the separate use of each entitled party who has obtained a charging order.

Compare: 1908 No 89 Schedule 2 r 572

17.47 Charging order for land final when issued

(1) A charging order may charge an estate, right, title, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in any land held in the liable party's own name.

(2) A charging order issued under this rule is a final charging order when it is issued.

Compare: 1908 No 89 Schedule 2 r 573

17.48 Registration of charging order under Land Transfer Act 1952

(1) A final charging order in respect of land that is under the Land Transfer Act 1952 must be registered under that Act against the land's certificate of title.

(2) The charging order must sufficiently refer to the affected land so as to identify that land by—

(a) a description of the land; or

(b) a reference to a certificate of title or other instrument containing a description of the land.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(3) Unless the land is the whole of the land comprised in a certificate or certificates of title, or is shown separately on a plan deposited under the Land Transfer Act 1952, the charging order must have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

(4) The entitled party must deposit a duplicate of the charging order with the District Land Registrar (unless that Registrar has dispensed with the production of duplicate instruments in accordance with the Land Transfer Act 1952).

Compare: 1908 No 89 Schedule 2 r 574

17.49 Registration of charging order not under Land Transfer Act 1952

(1) A final charging order in respect of land that is not under the Land Transfer Act 1952 must be registered with the district Registrar of Deeds under the Deeds Registration Act 1908 or otherwise in accordance with the current law about the registration of deeds.

(2) The charging order must sufficiently refer to the affected land so as to identify that land by—

(a) a description of the land; or

(b) a reference to a Crown grant or other instrument containing a description of the land.

(3) The charging order must have drawn on it or annexed to it a plan of the land showing its extent, boundaries, and relative position.

Compare: 1908 No 89 Schedule 2 r 575

17.50 Sale before registration of charging order

An unregistered charging order has no effect against a purchaser for valuable consideration.

Compare: 1908 No 89 Schedule 2 r 576

17.51 Discharge of land from charging order

Land subject to a final charging order is discharged from that order on registration with the District Land Registrar or Registrar of Deeds of—

(a) a memorandum of satisfaction of the judgment in the proceeding in which the charging order has been issued or other sufficient evidence of satisfaction; or

(b) an order of the court to the effect that the land is discharged from the charging order; or

(c) the consent of the person who registered the charging order to the discharge of the land from the charging order.

Compare: 1908 No 89 Schedule 2 r 577

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17.52 Lapse of charging order after 2 years

(1) A charging order no longer binds the land affected and is treated as discharged after 2 years from the date of the charging order unless it is extended under subclause (2).

(2) The court may within that period, if it thinks just, extend the effect of a charging order for any necessary period.

(3) Subclause (1) does not apply if the charging order has led to a sale order, and a person registers any of the following in relation to the land under that sale order:

(a) an instrument of transfer:

(b) a deed of conveyance:

(c) an assignment.

Compare: 1908 No 89 Schedule 2 r 578

17.53 Personal property may be charged

A charging order may charge all personal property, including—

(a) debts payable by or accruing due from the Crown to the liable party that are not excepted by section 26 of the Crown Proceedings Act 1950:

(b) a debt or sum of money due or accruing due to the liable party, including money—

(i) due or accruing due to the liable party by a public body; or

(ii) standing to the credit of the liable party in a proceeding or interlocutory application; or

(iii) standing to the credit of the liable party in the possession of a Sheriff or court officer:

(c) the right or interest of the liable party in a partnership:

(d) shares held by the liable party in any company that—

(i) is incorporated in New Zealand; or

(ii) has a registry in New Zealand in which transfers of shares may be registered:

(e) the estate, right, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in any land, or in any money, shares, or other personal property, held under or because of any express or implied trust for the liable party.

Compare: 1908 No 89 Schedule 2 r 579

17.54 Interim charging order in first instance

(1) A charging order under rule 17.53—

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(a) is a limited charging order until the court discharges or finalises it in accordance with these rules; and

(b) is called an **interim charging order** in this rule and in rules 17.55 to 17.60.

(2) An interim charging order must be served—

(a) on the person it is intended to affect; or

(b) on any person the court directs, if money is—

(i) due by the Crown or a public body; or

(ii) standing to the credit of a liable party in a proceeding or interlocutory application.

(3) If an interim charging order is intended to affect an estate, right, or interest in land under or because of any trust,—

(a) that interim charging order may also be registered against the land; or

(b) a caveat may be lodged against the land in respect of the interim charging order.

Compare: 1908 No 89 Schedule 2 r 580

17.55 Effect of interim charging order

A person served with an interim charging order may not, except under rules 17.56 to 17.61 or with the leave of the court,—

(a) pay over any debt, income, interest, dividends, bonus, profits, or other money due or accruing due to the liable party named in the interim charging order; or

(b) make, concur in making, or permit any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of the liable party named in the interim charging order.

Compare: 1908 No 89 Schedule 2 r 581

17.56 Liability of persons breaching interim charging order

(1) If a person who has been served with an interim charging order breaches rule 17.55, the court may order that person to pay the entitled person either of the following:

(a) the amount of the money paid or the value of the property disposed of in breach of that rule; or

(b) a sufficient part of the money paid or the value of the property disposed of in breach of that rule to satisfy any judgment the entitled party may obtain or may have obtained in the proceeding.

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(2) The court's orders under subclause (1) may be in addition to or instead of a penalty that may be imposed by or under another rule.

Compare: 1908 No 89 Schedule 2 r 582

17.57 Money may be paid into court

(1) A person served with an interim charging order may pay the money affected by the order into court.

(2) The money paid into court must be paid out in accordance with the result of the proceeding or an order of the court.

Compare: 1908 No 89 Schedule 2 r 583

17.58 Court may order sale of property affected

(1) On an application by the entitled party or by the person affected by the order, the court may do 1 or more of the following:

(a) order that any property affected be sold:

(b) give directions about the sale as the court thinks just:

(c) order that the net proceeds of the sale be paid into court, to be paid out later in accordance with the result of the proceeding or an order of the court.

(2) The court may act under subclause (1) when making an interim charging order or at any later time before judgment.

Compare: 1908 No 89 Schedule 2 r 584

17.59 Application to make final charging order after judgment

(1) The entitled party may apply to the court to have an interim charging order made final at any time after judgment is sealed.

(2) The court may make orders and give directions for the disposal of money paid into court under rule 17.57 or 17.58.

Compare: 1908 No 89 Schedule 2 r 585

17.60 Execution after charging order made final

After a charging order has been made final, the entitled party may do either or both of the following:

(a) if a person is affected by an interim charging order because he or she owes any money due or accruing due to the liable party,—

(i) issue a sale order under rules 17.62 to 17.82 against that person's property; and

(ii) execute the sale order as if judgment had been sealed by the liable party against that person:

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(b) sell any property referred to in paragraphs (c) to (e) of rule 17.53 under a sale order in the same way (as nearly as possible) as a sale of land under rules 17.62 to 17.82.

Compare: 1908 No 89 Schedule 2 r 586

17.61 Discharge of person served with order

(1) A person served with a final charging order who pays money under it to a court officer (whether because of an enforcement process or otherwise) is discharged from that person's obligation to the liable party to the extent of the amount paid.

(2) Subclause (1) applies even if the court sets aside or reverses—

(a) the final charging order; or

(b) the judgment in the proceeding in which the final charging order was obtained.

Compare: 1908 No 89 Schedule 2 r 587

Subpart 6—Sale orders and possession orders

17.62 Effect of sale order

(1) A sale order authorises and requires an enforcing officer to seize all the liable party's personal property except—

(a) necessary tools of trade to a value not exceeding $5,000; and

(b) necessary household furniture and effects to a value not exceeding $10,000 (necessary household furniture and effects includes the clothes of the liable party and his or her family).

(2) An enforcing officer must take the actions described in subclause (3) if money seized under a sale order is not enough to—

(a) discharge any claims which by law are entitled to be paid in priority to the entitled party's claim; and

(b) pay the costs and expenses of executing the order; and

(c) satisfy the amount of the judgment and interest payable to the entitled party.

(3) In the situation described in subclause (2), an enforcing officer must—

(a) receive and recover the sum or sums—

(i) payable under any cheques, bills of exchange, and promissory notes; or

(ii) secured by bonds or other securities for money; and

(b) sell, in accordance with rules 17.63 to 17.82, the seized chattels and the liable party's estate, right, title, or interest in any land (whether it is in possession, remainder, reversion, or expectancy).

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(4) A sale order may be in form E 7.

Compare: 1908 No 89 Schedule 2 r 549

17.63 When sale order may be issued

An entitled party may issue a sale order at any time after judgment for a sum of money is sealed.

Compare: 1908 No 89 Schedule 2 r 588

17.64 Execution for less than full amount of judgment

(1) An entitled party must endorse the sale order with the amount claimed.

(2) The amount claimed must reflect any of the following that apply:

(a) money paid on account of the judgment:

(b) the entitled party's wish to waive—

(i) any part of the money due on account of the judgment; or

(ii) payment of the entitled party's costs or any part of those costs:

(c) that the judgment has been given for a larger amount than is due.

(3) If the amount due under a judgment is less than the amount of the judgment and the entitled party has not endorsed that on the sale order as required by this rule, the court may set aside or vary the order and make whatever restitutionary or incidental orders are thought just.

Compare: 1908 No 89 Schedule 2 r 589

17.65 Recovery of money owing on cheques and other securities

(1) If money seized under a sale order is not the full amount required by the sale order, the enforcing officer may seize any of the following as security for the balance of the full amount:

(a) cheques:

(b) bills of exchange:

(c) promissory notes:

(d) bonds:

(e) other securities for money.

(2) The officer may sue the issuer of the security in the officer's own name for the sum or sums secured by it in accordance with the terms of the particular security seized.

(3) The officer need not sue under subclause (2) unless the entitled party enters into a bond with 2 sufficient guarantors that indemnifies the officer against—

(a) all costs and expenses of suing; and

(b) all costs and expenses to which the officer may become liable as a result of the suit.

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(4) The expenses of the bond referred to in subclause (3) must be deducted out of any money recovered in the proceeding.

Compare: 1908 No 89 Schedule 2 r 590

17.66 Discharge of person paying on cheque or other security

A person liable to the liable party under a security seized under rule 17.65 who pays money under the security to a court officer (whether because of an enforcement process or otherwise) is discharged from liability to the liable party to the extent of the amount paid.

Compare: 1908 No 89 Schedule 2 r 591

17.66A Personal property securities register must be checked

(1) If personal property has been, or is to be, seized under a sale order, the entitled party must, before or after the property is seized, and in accordance with the directions (if any) of a Registrar,—

(a) take all necessary steps to determine whether a financing statement relating to the property has been registered on the register; and

(b) if a financing statement has been registered,—

(i) promptly notify its content and the secured party's registered name and address to the Registrar; and

(ii) authorise the Registrar to serve the secured party at the address provided.

(2) When the Registrar is notified, the Registrar must promptly notify the person named as the secured party in that statement—

(a) that the enforcing officer may sell the property, in accordance with rules 17.63 to 17.79, if—

(i) the judgment debt remains unpaid; and

(ii) no claim has been made in respect of the property by a person other than the liable party; and

(iii) no court order directs otherwise; and

(b) that the secured party has the rights set out in rule 17.66B.

17.66B Claim by secured party

(1) A secured party who has received a notification under rule 17.66A(2) may, by interlocutory application made not later than 10 working days after the notification, apply for a court order protecting the secured party's security interest in the personal property.

(2) The secured party must serve a copy of the application on the entitled party, the liable party, and the enforcing officer who seized the property.

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(3) For the sole purpose of service under subclause (2), the Registrar may release to the secured party, free of charge, the address for service of the entitled party and the liable party as recorded on the court file.

(4) If the court file does not include an address for service for the liable party, the secured party may serve the liable party at the last known address of that party as recorded on the register.

(5) The filing of an application under subclause (1) stays any proceeding in the High Court or any other court in respect of the claim, or of any damage arising out of the enforcement of the sale order, other than under rule 17.66C(c) or (d).

17.66C Court's power to deal with claim

A Judge may, on application under rule 17.66B(1),—

(a) order a sale of the whole or part of the personal property on any payment terms the Judge thinks just; and

(b) direct the application of the proceeds of the sale in the manner and on the terms the Judge thinks just; and

(c) hear and determine any dispute between the entitled party and the secured party or between either of them and the enforcing officer relating to any claim for damages arising, or capable of arising, out of the enforcement of the sale order; and

(d) make whatever order in respect of the claim and the costs of the application as the Judge thinks just.

17.66D Purchaser of personal property obtains good title

The purchaser of personal property sold by order of the court under rule 17.66C(a), or sold when the secured party has not applied for an order under rule 17.66B(1), obtains good title to the property free of all ownership interests and other proprietary interests held in the property before the sale.

17.67 Disposal of proceeds

(1) The order in which an enforcing officer must apply the proceeds of the sale order is—

(a) discharging all claims that have priority over the entitled party's claim:

(b) paying the costs and expenses of executing the sale order:

(c) paying the entitled party a sufficient sum to satisfy the amount required by the sale order:

(d) paying any surplus to the liable party.

(2) This rule is subject to—

(a) sections 108 to 112 of the Insolvency Act 2006; and

(b) sections 251 and 252 of the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 rr 592, 605

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17.68 Not necessary to seize land

An enforcing officer need not seize land before selling the land.

Compare: 1908 No 89 Schedule 2 r 593

17.69 Moving seized chattels

(1) An enforcing officer must move chattels seized under a sale order to an appropriate selling place as soon as possible.

(2) The liable party may consent in writing to the chattels—

(a) remaining in the place where they were seized; and

(b) being kept in the custody of a person the officer considers appropriate; and

(c) being sold in that place.

(3) Subclause (2) is an exception to subclause (1).

Compare: 1908 No 89 Schedule 2 r 594

17.70 Place of sale

(1) An enforcing officer must sell seized chattels in the place he or she considers best.

(2) With the written consent of the liable party, the officer may—

(a) sell chattels at the place of seizure; and

(b) sell land to be sold on the land itself.

Compare: 1908 No 89 Schedule 2 r 595

17.71 Advertising of notice of sale

(1) An enforcing officer must give notice of the sale of seized chattels in whichever newspaper or newspapers the officer considers sufficient.

(2) The notice must be first published,—

(a) for a land sale, at least 15 working days before the date of the intended sale:

(b) for any other sale, at least 5 working days before the date of the intended sale.

(3) The notice may be republished in the same or other newspaper or newspapers in the way and to the extent the officer considers sufficient.

(4) The notice—

(a) must contain the information specified in rule 17.73; and

(b) must be in the form and give the particulars the officer considers sufficient.

Compare: 1908 No 89 Schedule 2 r 596

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17.72 Service of notice of sale on liable party

At least 7 working days before the sale, an enforcing officer must serve a copy of the notice referred to in rule 17.71 on the liable party—

(a) at the liable party's address for service; or

(b) if the liable party has not filed an address for service, at the liable party's last known residential address.

Compare: 1908 No 89 Schedule 2 r 597

17.73 Contents of notice of sale

The notice referred to in rule 17.71—

(a) must state that the sale is made on behalf of the entitled party; and

(b) must specify—

(i) the chattels, or the right or interest in the chattels, or the land, or the estate, right, title, or interest in the land, intended to be sold; and

(ii) the name of the enforcing officer; and

(iii) the name of the solicitor (if any) for the entitled party.

Compare: 1908 No 89 Schedule 2 r 598

17.74 Method and conditions of sale

(1) All sales under a sale order must be—

(a) by public auction on terms and conditions approved by the Registrar; or

(b) by private treaty—

(i) with the parties' consent; or

(ii) by order of the court made on the application of either party.

(2) An enforcing officer may choose whether to sell property seized under a sale order in 1 lot or in several lots.

(3) Unless the court directs otherwise, all sales—

(a) must be for cash on delivery, assignment, or transfer; and

(b) must be of the estate, right, title, or interest only of the liable party in the chattels or land put up for sale.

Compare: 1908 No 89 Schedule 2 r 599

17.75 Powers of enforcing officer in relation to sale by auction

An enforcing officer—

(a) may sell property seized under a sale order by public auction without an auctioneer's licence (despite anything in any Act to the contrary); and

(b) may place a reserve on the property; and

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(c) may put the property up for sale as often as required until it is sold.

Compare: 1908 No 89 Schedule 2 r 600

17.76 Power of enforcing officer to seize title deeds

(1) The enforcing officer may require the liable party—

(a) to provide (if they are in the liable party's possession) the certificate of title and any title deeds for land that is to be sold; and

(b) to disclose—

(i) the name of any person who has possession of the certificate of title and any title deeds for land that is to be sold; and

(ii) the address where those documents are kept.

(2) If the person who possesses the documents referred to in subclause (1) refuses to give them to the officer, the officer may seize those documents.

(3) The officer may give copies of the certificate of title and any title deeds to an intending purchaser.

Compare: 1908 No 89 Schedule 2 r 601

17.77 Order of sale of land and chattels

(1) An enforcing officer must sell chattels first if both land and chattels were seized from a liable party under the same sale order unless another sequence is—

(a) preferred by the liable party; or

(b) directed by the court.

(2) Despite any preferences of the liable party, the court may direct under subclause (1)(b) that the land be sold—

(a) before the chattels; or

(b) at the same time as a specified chattel or a specified class of chattels.

(3) If the proceeds of the sale of the chattels or of the land or of the land and some of the chattels are insufficient to satisfy the amount required by the sale order, the enforcing officer must sell the remaining seized property.

Compare: 1908 No 89 Schedule 2 r 602

17.78 Power of liable party or mortgagee to give directions concerning sale of land

(1) A liable party whose interest in land is to be sold or a mortgagee of that interest may by notice require that any specified portions of the land that may lawfully be sold separately be sold first.

(2) A notice under subclause (1) must be—

(a) in writing; and

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(b) delivered to an enforcing officer at least 10 working days before the date of the sale.

(3) If the liable party and a mortgagee deliver conflicting requirements under subclause (1), the mortgagee's requirement prevails.

(4) An enforcing officer must sell the specified portions first in accordance with a notice under subclause (1) or any prevailing mortgagee's requirement under subclause (3).

(5) If the sum realised by the sale of the specified portions is sufficient to satisfy the execution, interest, costs, and expenses, the officer may not sell any other part of the land.

(6) Unless subclause (5) applies, the officer must, after selling the specified portions, proceed with the sale of the remainder.

Compare: 1908 No 89 Schedule 2 r 603

17.79 Transfers, etc, to purchaser

(1) A valid instrument of transfer, deed of conveyance, or assignment to the purchaser of the estate, right, title, or interest of the liable party in any land or chattels sold—

(a) must be prepared by the purchaser at the purchaser's own expense; and

(b) must be left for approval with the enforcing officer 4 working days before it is to be executed.

(2) The officer must (if required by the purchaser) execute the instrument if and when the officer approves it.

(3) The instrument, when executed by the officer,—

(a) is equally effective for all purposes as if it had been executed by the liable party; and

(b) is prima facie evidence of—

(i) the existence of a valid judgment and sale order supporting the seizure by the officer; and

(ii) all necessary notices having been given and published; and

(iii) a valid seizure; and

(iv) a sale having taken place according to law.

Compare: 1908 No 89 Schedule 2 r 604

17.80 Effect of possession order

(1) A possession order authorises and requires an enforcing officer to deliver possession of the land or chattels described in the order to the person named in the order.

(2) For the purpose described in subclause (1), the officer may—

(a) eject any other person from land; or

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(b) seize and take possession of the chattels.

(3) A possession order may be in form E 8.

Compare: 1908 No 89 Schedule 2 r 550

17.81 When possession order may be issued

If a judgment orders a party to deliver possession of land or chattels to another party, that other party may issue a possession order.

Compare: 1908 No 89 Schedule 2 r 606

17.82 Combined sale and possession order

If a judgment orders a party to pay a sum of money and to deliver possession of land or chattels to another party, that other party may issue a sale and possession order.

Compare: 1908 No 89 Schedule 2 r 607

Subpart 7—Arrest orders and sequestration orders

17.83 Effect of arrest order

(1) An arrest order authorises and requires an enforcing officer to arrest any person named in the order and to bring that person before the court at the time and place specified in the order, and until then, to keep the person in safe custody.

(2) An arrest order may be in form E 9.

Compare: 1908 No 89 Schedule 2 r 551

17.84 Power to issue arrest order

(1) In this subpart,—

enforceable undertaking means an undertaking described in subpart 4 of Part 2 of the Contempt of Court Act 2019

original court order has the same meaning as court order in subpart 4 of Part 2 of the Contempt of Court Act 2019.

(2) If a person has applied to the court to enforce an original court order or an enforceable undertaking and that person is entitled to make an application under section 16(2) of the Contempt of Court Act 2019, a Judge may issue an order arresting the non-complying party if,—

(a) in the case of an application to enforce an original court order, the Judge is satisfied that the non-complying party has been served with the order and has not complied with it; or

(b) in the case of an application to enforce an undertaking, the Judge is satisfied that the non-complying party had knowledge or proper notice of the terms of the enforceable undertaking and has not complied with it.

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17.85 Court may impose sanctions for non-compliance with original court order or enforceable undertaking

(1) Where a party is brought before the court on an arrest order, the court may, if satisfied beyond reasonable doubt that the requirements of section 16(3)(b)(i) to (iii) of the Contempt of Court Act 2019 are met, impose a sanction under section 16(4) of that Act unless the party complies with the original court order or enforceable undertaking.

(2) A warrant committing a person to prison under section 16(4)(a)(i) of that Act must be in form E 9D.

(3) An order imposing a fine on a person under section 16(4)(a)(ii) of that Act must be in form E 9E.

(4) An order requiring a person to do community work under section 16(4)(a)(iii) of that Act must be in form E 9F.

(5) A sequestration order issued under section 16(4)(b) of that Act must be in form E 10.

17.86 Effect of sequestration order

(1) A sequestration order authorises and requires the sequestrator to enter and take possession of all the real and personal property of the party against whom it is directed.

(2) The sequestrator must obtain the rents and profits from the property until—

(a) the party complies with the original court order or the enforceable undertaking or an order to pay money into court in the way specified in the order or undertaking; or

(b) the court orders otherwise.

(3) A sequestration order may be in form E 10.

Compare: 1908 No 89 Schedule 2 r 552

17.87 Court may issue sequestration order

(1) Where the court is satisfied beyond reasonable doubt that the requirements of section 16(3)(b)(i) to (iii) of the Contempt of Court Act 2019 have been met, the court may issue a sequestration order against the property of the non-complying party.

(2) The court can issue a sequestration order under subclause (1) only on notice to the non-complying party.

(3) The court must appoint a sequestrator of the property and the provisions of rules 7.61 to 7.67 apply, with all necessary modifications, as if the sequestrator were a receiver.

Compare: 1908 No 89 Schedule 2 r 610

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Subpart 8—Absconding debtors and imprisonment for debt

17.88 Arrest of absconding debtor

(1) The plaintiff may make an application without notice for an order to arrest and imprison a defendant under section 40 of the Act.

(2) The defendant may at any time before or after arrest apply to the court to rescind or vary the order or to be discharged from custody, or for other relief.

(3) The court may make any order that is just on an application under subclause (2).

Compare: 1908 No 89 Schedule 2 r 611(1)–(3)

17.89 Process for order to arrest and imprison defendant

(1) An order to arrest and imprison a defendant under section 40 of the Act of the Act must be—

(a) in form E 11; or

(b) if section 55(3) of the Act applies, in form E 12.

(2) Concurrent orders may be issued for arrest in different places.

(3) The order must be endorsed with the address for service of the plaintiff before it is delivered to the Sheriff.

(4) The Sheriff or other enforcing officer must endorse the actual date of the arrest on the order within 2 working days after the arrest.

Compare: 1908 No 89 Schedule 2 r 611(4)–(7)

17.90 Security by absconding debtor

(1) The security to be given by a defendant to discharge an order to arrest and imprison him or her under section 40 of the Act of the Act may be—

(a) a deposit in court of the amount mentioned in the order; or

(b) a bond to the plaintiff by the defendant and 2 sufficient sureties; or

(c) with the plaintiff's consent, any other form of security.

(2) Within 4 working days of receiving details of the names and addresses of the proposed sureties and the form of the proposed bond, the plaintiff may give a notice of objection to the sureties and form of bond, with details of the reasons for objection.

(3) If the plaintiff gives a notice under subclause (2), the Registrar must determine the sufficiency of the security, and the Registrar has the power to award the costs of the reference to either party.

Compare: 1908 No 89 Schedule 2 r 612

17.91 Orders about security

The court may, at any time, order—

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(a) that the whole or part of a sum of money paid or secured under rule 17.90 be paid to the plaintiff; or

(b) that any security given under rule 17.90 by the defendant be enforced.

Compare: 1908 No 89 Schedule 2 r 613

17.92 Discharge on payment

(1) An enforcing officer must give a receipt for the payment into court of the amount required by an order under rule 17.91.

(2) The plaintiff or the plaintiff's solicitor must give a certificate of receipt of the bond or other security required by an order under rule 17.91.

(3) The defendant is entitled to be discharged out of prison when a receipt or certificate under this rule is given to the Sheriff.

Compare: 1908 No 89 Schedule 2 r 614

Part 18
Applications in equity and under statutes

Subpart 1—Application

18.1 Types of proceedings

This Part applies to the following types of proceedings:

Equitable jurisdiction

(a) proceedings in which the relief claimed is wholly within the equitable jurisdiction of the court, such as—

(i) the determination of a claim to an entitlement as beneficiary under a will or trust or on the intestacy of a deceased person, or as creditor of a deceased person, whether the claim is made by the person claiming to be entitled or by that person's assignee or successor:

(ii) the ascertainment of a class of creditors, beneficiaries under a will, or persons entitled on the intestacy of a deceased person, or of beneficiaries under a trust:

(iii) the giving of particular accounts by executors, administrators, or trustees:

(iv) the payment into court of money held by executors, administrators, or trustees:

(v) the giving of directions to persons in their capacity as executors, administrators, trustees, or beneficiaries to do or abstain from doing a particular act:

(vi) the approval of a sale, purchase, compromise, or other transaction by executors, administrators, or trustees:

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(vii) the carrying-on of a business authorised to be carried on by any deed or instrument creating a trust or by the court:

(viii) the interpretation of a deed or instrument creating a trust:

(ix) the determination of a question that arises in the administration of an estate or trust or whose determination is necessary or desirable to protect the executors, administrators, or trustees:

Determinations by court under statutes

(b) proceedings in which the relief is claimed solely under the following enactments:

(i) the Care of Children Act 2004:

(ii) the Charitable Trusts Act 1957:

(iii) the Companies Act 1993 (not being a proceeding properly brought under Part 19 or 31 of these rules):

(iv) the Corporations (Investigation and Management) Act 1989:

(v) the Declaratory Judgments Act 1908:

(vi) the Family Protection Act 1955:

(vii) the Incorporated Societies Act 1908:

(viii) the Industrial and Provident Societies Act 1908:

(ix) the Insolvency Act 2006 and the Insolvency (Cross-border) Act 2006:

(x) sections 140, 143, 144, 145, 145A, and 148 of the Land Transfer Act 1952 (which relate to caveats):

(xi) the Law Reform (Testamentary Promises) Act 1949:

(xii) the Mental Health (Compulsory Assessment and Treatment) Act 1992:

(xiii) the Trusts Act 2019:

(xiv) any repealed enactment to which Part 4 of the High Court Rules applied immediately before the commencement of these rules if the enactment continues to apply to the plaintiff:

Declarations of inconsistency under the New Zealand Bill of Rights Act 1990

(ba) proceedings (other than appeals) in which the sole relief claimed is a declaration that an enactment is inconsistent with the New Zealand Bill of Rights Act 1990:

Contracts for sale of land

(c) any proceeding by a party to, or an assignee of, a contract for the sale of the freehold or leasehold in any land, for relief in respect of—

(i) any requisitions or objections; or

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(ii) any claim for compensation; or

(iii) any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract):

Mortgages and charges over land

(d) any proceeding by a person affected by a mortgage or charge (whether legal or equitable) of an interest in land for the purpose of determining—

(i) the person's rights or obligations under the mortgage or charge; or

(ii) the exercise or purported or threatened exercise of any right or power alleged to arise out of the mortgage or charge:

Proceedings directed by court

(e) any other proceeding to which the court directs that this Part is to apply.

Compare: 1908 No 89 Schedule 2 rr 447, 448, 448B, 448C, 449

18.2 Limited application of this Part to proceedings under Property (Relationships) Act 1976

Rule 18.14 (which relates to joinder of claims and consolidation) and rule 18.15 (which relates to evidence) apply to proceedings transferred to the court by order of a Family Court Judge under section 22(3) of the Property (Relationships) Act 1976, but no other rule in this Part applies to proceedings under that Act.

Compare: 1908 No 89 Schedule 2 r 448D

18.3 This Part subject to rules under other Acts

The application of this Part to a proceeding brought under an Act is subject to any rules in force under that Act.

Compare: 1908 No 89 Schedule 2 r 448(2)

18.4 Commencement of proceedings

(1) A proceeding under this Part must be—

(a) commenced by statement of claim; and

(b) accompanied by an application for directions as to service and representation under rule 18.7.

(2) The application of this Part to a proceeding does not prevent the commencement of that proceeding by originating application if it is eligible to be so commenced under Part 19, in which event this Part does not apply.

(3) *[Revoked]*

Compare: 1908 No 89 Schedule 2 r 449A

18.4A Case management

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

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(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.

Subpart 2—Special provisions concerning pleadings, directions, and affidavits

18.5 Naming of defendants in cases involving deceased estates or trusts

(1) This rule applies to a proceeding that—

(a) involves a deceased estate or a trust; and

(b) is not commenced by the personal representative of the deceased person or the trustee of the trust.

(2) The only defendant that may be named in the statement of claim is the personal representative or the trustee.

(3) In proceedings under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, the only defendant that may be named in the statement of claim is the personal representative of the deceased person against whose estate the claim is brought.

Compare: 1908 No 89 Schedule 2 r 450(1), (2)

18.6 Persons served by direction of court need not be named as defendant

A person who becomes a defendant to a proceeding by being served under a direction of the court need not be named as defendant.

Compare: 1908 No 89 Schedule 2 r 450(3)

18.7 Applications for directions as to service

(1) This rule applies when—

(a) the law requires the making of an application for directions as to service; or

(b) the plaintiff is in doubt regarding the persons on whom the statement of claim should be served; or

(c) an order is sought that any person represent any other person or class of persons who should be served; or

(d) the proceeding is under the Companies Act 1993 and is not a proceeding in the liquidation of a company or an application to set aside a statutory demand under section 290 of that Act; or

(e) the court directs that the plaintiff should apply to the court under this rule.

(2) The plaintiff must apply to the court without notice for directions as to service and for any orders for representation that may be required.

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(3) In support of the application, the plaintiff must provide (by affidavit or otherwise) the information that may be necessary to enable the court to decide what persons or classes of persons are interested in, or may be adversely affected by, the relief sought by the plaintiff and by what means the interests of each such person or class of persons may be adequately represented.

(4) In the case of claims under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949, the information required by subclause (3) includes—

(a) the date of death of the deceased and the date of grant of probate or letters of administration:

(b) whether the deceased died testate or intestate, and, if testate, a copy of his or her last will with codicils (if any):

(c) the value of the estate, so far as it is known to the plaintiff:

(d) the names, addresses, occupations, and ages of the beneficiaries under the will or persons entitled on intestacy, as the case may be:

(e) the names, addresses, occupations, and ages of the persons of each class entitled to claim under the Family Protection Act 1955:

(f) any other information that is relevant.

(5) The application must specify the directions sought and be accompanied by a memorandum by the plaintiff's solicitor or counsel stating why the directions are sought.

Compare: 1908 No 89 Schedule 2 r 451(1)–(4)

18.8 Orders giving directions as to service

(1) On an application under rule 18.7, the Judge may make any orders for service or representation that the Judge thinks just.

(2) If, in a proceeding involving an incapacitated person or minor, the Judge considers it is not necessary to appoint a litigation guardian, the Judge may make orders with regard to the representation of that person, without the appointment of a litigation guardian under rule 4.35.

(3) The effect of every order for directions as to service or for representation made under this rule must be set out in the notice of proceeding in accordance with rule 5.23.

Compare: 1908 No 89 Schedule 2 r 451(5), (6)

18.9 Proceeding without service

(1) This rule applies to a statement of claim that need not be served because of an enactment or a direction of a Judge.

(2) The facts alleged in the statement of claim must be verified by or on behalf of the plaintiff by an affidavit (which may be appended to the statement of claim or filed separately) stating that, so far as they relate to matters within the

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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personal knowledge of the person making the affidavit, they are true, and, so far as they relate to matters not within that person's personal knowledge, the person believes them to be true.

(3) Despite subclause (2), the Judge may require any fact not within the personal knowledge of the person to be proved by the affidavit of a person who has such personal knowledge.

Compare: 1908 No 89 Schedule 2 r 452

18.10 Time for serving claimant's affidavit in proceedings under Family Protection Act 1955

A claimant against the estate of a deceased person under the Family Protection Act 1955 must, at the time of serving his or her statement of claim, serve his or her own affidavit in support of his or her statement of claim.

Compare: 1908 No 89 Schedule 2 r 456

18.11 Time for serving affidavit in support of appearance

(1) If a defendant in any proceeding to which this Part applies files an appearance in lieu of a statement of defence, the defendant may, at the time of serving the defendant's appearance, without leave, and at any time afterwards with leave of the court, serve the defendant's affidavits in support of any matters referred to in the appearance.

(2) These rules apply to affidavits filed under subclause (1) as though they were affidavits filed by a plaintiff in support of a statement of claim.

Compare: 1908 No 89 Schedule 2 r 457

18.12 Statement of defence to be filed

(1) No affidavit may be filed by a defendant in opposition to the claim of the plaintiff or of any claimant under rule 18.13 unless the defendant has filed and served a statement of defence to the claim or an appearance.

(2) Affidavits filed by any party after a statement of defence or appearance has been filed must be confined to matters put in issue by pleadings or by the appearance.

(3) Subclause (1) is subject to rule 18.11.

Compare: 1908 No 89 Schedule 2 r 458

Subpart 3—Multiple claims, joinders, and consolidations of claims

18.13 Joining in proceedings under Family Protection Act 1955 and Law Reform (Testamentary Promises) Act 1949

(1) A person who is a defendant in a proceeding under the Family Protection Act 1955 or the Law Reform (Testamentary Promises) Act 1949 (**party A**) must make any claim against the same estate by filing a statement of claim in the proceeding, and, when that statement of claim is filed, these rules apply as if—

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(a) party A were a plaintiff; and

(b) the plaintiff were a defendant.

(2) When a statement of claim is filed under subclause (1), it is not necessary for party A to apply for directions for service or to file or serve a notice of proceeding but party A must serve party A's statement of claim and affidavits—

(a) on the personal representative; and

(b) on the plaintiff; and

(c) on all other persons (except party A) whom the plaintiff has been directed to serve.

(3) A person, who has not been directed to be served in a proceeding under the Acts specified in subclause (1), must make any claim under those Acts against the same estate by filing a statement of claim in the proceeding, and, when that statement of claim is filed, subclauses (1) and (2) apply as if that person were party A.

Compare: 1908 No 89 Schedule 2 r 453

18.14 Joinder of claims and consolidation

(1) Claims under the Family Protection Act 1955 and the Law Reform (Testamentary Promises) Act 1949 may be joined in 1 statement of claim, whether or not the claims are made in the alternative.

(2) Separate proceedings against the estate of the same deceased person may be consolidated under rules 10.12 and 10.13 if they are—

(a) proceedings under the Family Protection Act 1955; or

(b) proceedings under the Law Reform (Testamentary Promises) Act 1949; or

(c) proceedings under the Property (Relationships) Act 1976, transferred to the court by order of a Family Court Judge under section 22(3) of that Act.

Compare: 1908 No 89 Schedule 2 r 454

18.14A Procedure under section 174 of Companies Act 1993

(1) In a proceeding under section 174 of the Companies Act 1993,—

(a) the statement of claim must be in form C 2; and

(b) the notice of proceeding must be in form C 3; and

(c) an appearance in support or in opposition must be in form C 9.

(2) Subpart 2 of Part 7, which relates to interlocutory applications, applies to applications to the court that relate to a company in respect of which an application under section 174 of the Companies Act 1993 is pending.

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18.14B Service of order made under section 174 of Companies Act 1993

(1) When an order is made under section 174 of the Companies Act 1993, a registry copy of the order must, unless the court otherwise orders, be served by the plaintiff on—

(a) the defendant company in accordance with the Companies Act 1993; and

(b) the Registrar of Companies.

(2) If the order involves an alteration of the constitution of the company, the Companies Act 1993 applies as the court directs.

Subpart 4—Evidentiary requirements

18.15 Evidence generally by agreed statement of facts or affidavit

(1) Unless a Judge otherwise directs, evidence in a proceeding to which this Part applies must be given—

(a) by means of an agreed statement of facts in accordance with rule 9.57; or

(b) by affidavit in accordance with rules 9.72 to 9.89.

(2) Unless a Judge otherwise directs, evidence must be given orally in a proceeding—

(a) under the Law Reform (Testamentary Promises) Act 1949:

(b) in which relief by way of specific performance is sought.

(3) Subclause (1) applies to a proceeding in respect of which a direction has been given under subclause (2).

Compare: 1908 No 89 Schedule 2 r 455

Part 19
Originating applications

Subpart 1—Proceedings eligible to be commenced by originating application

19.1 Meaning of originating application

In these rules, **originating application** means an application made in accordance with this Part.

19.2 Applications under certain enactments

Applications to the court under the following enactments must be made by originating application:

(a) the Arbitration Act 1996 (other than article 35 of Schedule 1 and clause 5 of Schedule 2 of that Act):

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(b) section 21(1)(a) and (b) and Parts 3, 4, and 5 of the Charitable Trusts Act 1957:

(c) sections 228(1)(d), 233(1)(c), 233(2)(c), 236, 290, 294(5), 295, 299, and 329, and Part 15A of the Companies Act 1993:

(ca) section 16(2) of the Contempt of Court Act 2019:

(d) sections 34, 41, 75, 95, 97, and 126 of the Coroners Act 2006:

(e) sections 58 and 59 of the Corporations (Investigation and Management) Act 1989:

(ea) sections 32 and 33 of the Cultural Property (Protection in Armed Conflict) Act 2012:

(f) section 166E of the Customs and Excise Act 1996:

(g) section 89 of the District Court Act 2016:

(h) the Habeas Corpus Act 2001:

(i) section 23A of the Incorporated Societies Act 1908:

(j) section 10A of the Industrial and Provident Societies Act 1908:

(k) section 172 of the Senior Courts Act 2016:

(l) sections 132 and 133 of the Land Transfer Act 1952 and sections 142, 143, 146, 175, and 180 of the Land Transfer Act 2017:

(m) sections 30, 37, 52, 166, 180, and 182 of the Lawyers and Conveyancers Act 2006:

(n) section 9A(3) of the Law Reform Act 1936:

(na) sections 100 and 111 of the Marine and Coastal Area (Takutai Moana) Act 2011:

(o) section 12(1)(a) of the Minors' Contracts Act 1969:

(p) section 112 of the Patents Act 2013 (subject to Part 22 of these rules):

(q) sections 128, 131, 167, 168, 179, 181, 182, and 186 of the Personal Property Securities Act 1999:

(r) the Criminal Proceeds (Recovery) Act 2009:

(s) sections 126, 136, 244, 248, 253, 254, 258, 261, 319, and 357 of the Property Law Act 2007:

(t) the Protection of Personal and Property Rights Act 1988:

(ta) section 76 of the Public Trust Act 2001:

(u) the Reciprocal Enforcement of Judgments Act 1934:

(v) section 44C(2) and (8) of the Securities Act 1978:

(w) section 47E of the Terrorism Suppression Act 2002:

(x) section 136 of the Trusts Act 2019:

(xaa) section 8 of the Trustee Companies Act 1967:

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(xa) section 14 or 31 of the Wills Act 2007:

(y) rule 7.81, 9.60, 24.11, 24.35, 24.44, 24.56, 28.4, or 32.2 of these rules:

(z) any repealed enactment if—

(i) the application under that enactment could have been made by originating application immediately before the commencement of these rules; and

(ii) the enactment continues to apply to the applicant:

(za) sections 74, 140, 141, 165, 187, 193, 196, 197, 210, 211, and 214 of the Unit Titles Act 2010.

Compare: 1908 No 89 Schedule 2 r 458D(1)(a)

19.3 Application of this Part to certain kinds of proceeding

This Part applies to the following kinds of proceeding:

(a) an originating proceeding for contempt of court:

(b) an originating proceeding for relief against forfeiture for non-payment of rent.

Compare: 1908 No 89 Schedule 2 r 458D(1)(b), (c)

19.4 Certain directions may be sought by originating application

The following office holders may seek the directions of the court by originating application:

(a) a liquidator:

(b) a receiver:

(c) a judicial manager appointed under Part 1A of the Life Insurance Act 1908:

(d) a statutory manager appointed under the Corporations (Investigation and Management) Act 1989:

(e) a statutory manager appointed under the Reserve Bank of New Zealand Act 1989:

(f) a trustee seeking directions as to whether or not to bring or defend a proceeding in their capacity as a trustee (a **Beddoe application**).

Compare: 1908 No 89 Schedule 2 r 458D(1)(d)

19.4A Application under rule 19.4(f)

(1) A Beddoe application may initially be made without notice and must be accompanied by the following:

(a) a memorandum—

(i) describing the proceeding in respect of which directions are sought and explaining its significance to the trust estate; and

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(ii) stating all other relevant matters relating to the content or conduct of the application, such as whether a stay of the proceeding is sought pending the determination of the application; and

(b) an affidavit containing evidence of—

(i) the value and nature of the trust assets; and

(ii) the estimated costs likely to be incurred by the trust, directly or indirectly, in the proceeding and any other expected adverse impact of the proceeding on the trust; and

(iii) the advice of an appropriately qualified lawyer as to the prospects of success of the proceeding and whether bringing or defending the proceeding is in the best interests of the trust; and

(iv) all other relevant matters; and

(c) an application for directions as to service giving reasons (if applicable) why it is proposed that—

(i) any beneficiary should not be served with the application; and

(ii) any part of the evidence prescribed in this rule should be withheld from being served on any person; and

(iii) any person should be excluded from any part of the hearing.

(2) This rule is subject to rule 7.46.

19.5 Court may permit proceeding to be commenced by originating application

(1) The court may, in the interests of justice, permit any proceeding not mentioned in rules 19.2 to 19.4 to be commenced by originating application.

(2) The court's permission may be sought without notice.

(3) The proposed originating application must be filed with an application for permission under this rule.

Compare: 1908 No 89 Schedule 2 r 458D(1)(e)

19.5A Directions as to filing of statement of claim and defence

A Judge may, by interlocutory order, on the Judge's own initiative direct the parties to file a statement of claim and a statement of defence respectively.

19.6 Certain proceedings must be commenced by interlocutory application

(1) This rule applies if—

(a) an application under the Arbitration Act 1996 or the Personal Property Securities Act 1999 has been made by originating application; and

(b) a party to the application wishes to make another application in respect of the same arbitration or the same security.

(2) The other application must be made by an interlocutory application that relates to the proceeding commenced by the originating application.

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(5) This rule overrides rule 19.2(a) and (q).

Compare: 1908 No 89 Schedule 2 r 458D(5), (6)

Subpart 2—Procedure for originating applications

19.7 Commencement of proceeding

(1) A proceeding that may be commenced by originating application is commenced when the originating application is filed in the proper registry of the court, as determined in accordance with rule 5.1, or when the court gives permission under rule 19.5(1).

(2) This rule—

(a) prevails over rule 5.25 and Part 18; but

(b) is subject to the special rules for company liquidations in Part 31.

Compare: 1908 No 89 Schedule 2 r 458E(1), (5)

19.8 Memorandum relating to filing and address for service

(1) At the end of the originating application there must be a memorandum stating the matters set out in rule 5.44.

(2) The memorandum may be in one of the paragraphs of form G 10.

Compare: 1908 No 89 Schedule 2 r 458E(3)

19.9 Heading of documents

(1) The heading of a document presented for filing in a proceeding commenced by originating application must be in form G 1.

(2) However, if there is neither a defendant nor a respondent to the proceeding, the heading must be in the following form:

In the matter of [*title of enactment*]

And

In the matter of an application by

[*full name, place of residence, occupation*] for an order that [*specify nature of the order(s) being sought*].

Compare: 1908 No 89 Schedule 2 r 458E(4)

19.10 Application of rules relating to interlocutory applications

(1) The following rules concerning interlocutory applications apply with all necessary modifications to proceedings commenced by originating application:

(a) rule 7.19 (contents, form, and filing of interlocutory application):

(b) rule 7.20 (affidavit to be filed with application):

(c) *[Revoked]*

(d) rule 7.22 (service of application and supporting affidavit):

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(e) rule 7.23 (application without notice):

(f) rule 7.24 (notice of opposition to application):

(g) rule 7.25 (affidavit to be filed with notice of opposition):

(h) rule 7.26 (affidavit in reply):

(i) rule 7.29 (rules governing affidavits):

(j) rule 7.30 (statements of belief in affidavits):

(k) rule 7.40 (failure to attend):

(l) rule 7.42 (adjournment):

(m) rule 7.45 (interlocutory orders may be made subject to conditions):

(n) rule 7.46 (determination of application without notice):

(o) rule 7.47 (drawing up and sealing interlocutory order).

(2) Subclause (1) is subject to the rules in this Part.

(3) Despite subclause (1), rule 7.45, in its application to a proceeding commenced by originating application, is subject to the Act under which the originating application is made.

Compare: 1908 No 89 Schedule 2 r 458F

19.11 Directions as to parties and conduct of applications

Rule 7.43A applies, with all necessary modifications, to an originating application.

19.12 Originating applications relating to certain proceedings under Companies Act 1993

(1) Despite rule 19.7, an originating application under section 294(5) or 295 of the Companies Act 1993 must be filed in the same office of the court in which the notice under section 294(1) of that Act was filed.

(2) An originating application under section 299 of the Companies Act 1993 must be filed in the proper office of the court, as determined in accordance with rule 31.38.

(3) The affidavit filed in support of an originating application under section 294(5) or 295 of the Companies Act 1993 must have attached to it a copy of the notice under section 294(1) of that Act.

Compare: 1908 No 89 Schedule 2 r 458EA

19.12A Special provisions for service of applications to remove caveats or set aside statutory demands

(1) An originating application under section 142 of the Land Transfer Act 2017 for the removal of a caveat may be served, in accordance with rule 6.5, at the address for service stated in the caveat.

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(2) An originating application under section 290 of the Companies Act 1993 to set aside a statutory demand may be served, in accordance with rule 6.5, at the address shown in the statutory demand as the creditor's address or the address for payment.

Subpart 3—Evidence in originating applications

19.13 Evidence

Despite rules 7.20 and 7.25 (as applied by rule 19.10), in a proceeding commenced by originating application evidence may be taken orally on oath if the court, on application before or at the hearing, so directs.

Compare: 1908 No 89 Schedule 2 r 458L

19.14 Cross-examination of person making affidavit

Rule 9.74 applies to a proceeding commenced by originating application.

Compare: 1908 No 89 Schedule 2 r 458M

Part 20
Appeals

Subpart 1—Preliminary provisions

20.1 Application of this Part

(1) This Part applies to appeals to the court under any enactment other than—

(a) the Criminal Procedure Act 2011:

(b) the Arbitration Act 1996:

(c) the Bail Act 2000:

(d) appeals by way of case stated under Part 21 of these rules.

(2) For the purposes of subclause (1)(a), appeals under an enactment that incorporates provisions (whether modified or not) of the Criminal Procedure Act 2011 are not appeals under the Criminal Procedure Act 2011.

(3) This Part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

Compare: 1908 No 89 Schedule 2 r 701

20.2 Interpretation

In this Part,—

administrative office means the registry or office at which the decision-maker gave the decision appealed against

administrative officer means the Registrar, secretary, or other officer responsible for the administration of the administrative office

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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decision includes a finding, order, or judgment made by a decision-maker

decision-maker means a court, tribunal, person, or body of persons—

(a) that exercises a power of decision from which there is, or may be, a right of appeal to the court; and

(b) against the decision of which an appeal is brought or sought to be brought

registry means the registry of the court—

(a) at which an appeal is required to be filed under rule 20.8(1); or

(b) to which documents relating to an appeal are transferred under rule 20.8(3).

Compare: 1908 No 89 Schedule 2 r 702

Subpart 2—Application for leave to appeal

20.3 Application for leave to appeal to court

(1) An application for leave to appeal in a case when an enactment provides that an appeal to the court against a decision may not be brought without leave must be made—

(a) to the decision-maker or, as the case requires, the court; and

(b) within 20 working days after the decision is given.

(2) An application for leave to appeal must be made within 20 working days after the refusal of the decision-maker if—

(a) an enactment provides that the court may grant leave to appeal to it against a decision after the decision-maker refuses leave; and

(b) the decision-maker refuses leave.

(3) The appeal must be brought—

(a) by the date fixed when the decision-maker or the court grants leave; or

(b) within 20 working days after the grant of leave, if the decision-maker or the court does not fix a date.

(4) Any date fixed by the decision-maker is to be treated as a determination for the purposes of rule 7.50.

(5) The decision-maker or, as the case requires, the court, may, on application, extend the period for bringing an application under this rule, if the enactment under which the appeal is sought to be brought—

(a) permits the extension; or

(b) does not limit the time prescribed for making the application.

(6) A party may apply for the extension of a period before or after the period expires.

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(7) An application under this rule must be made on notice to every party affected by the proposed appeal and, if made to the court, must be made by interlocutory application.

(8) In this rule, **leave** includes special leave.

Compare: 1908 No 89 Schedule 2 r 703

Subpart 3—Commencement of appeal

20.4 Time for appeal if there is right of appeal

(1) This rule applies if a party has a right of appeal to the court.

(2) An appeal must be brought—

(a) within the specified period if the enactment that confers the right of appeal specifies a period within which the appeal must be brought; or

(b) in every other case, within 20 working days after the decision appealed against is given.

(3) By special leave, the court may extend the time prescribed for appealing if the enactment that confers the right of appeal—

(a) permits the extension; or

(b) does not limit the time prescribed for bringing the appeal.

(4) An application for an extension—

(a) must be made by an interlocutory application on notice to every other party affected by the appeal; and

(b) may be made before or after the expiry of the time for appealing.

Compare: 1908 No 89 Schedule 2 r 704

20.5 Commencement of periods in rules 20.3 and 20.4

For the purposes of rules 20.3 and 20.4, a period begins when the decision to which it relates is given, whether or not—

(a) reasons for the decision are given then or later; or

(b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

Compare: 1908 No 89 Schedule 2 r 705

20.6 When appeal brought

(1) An appeal is brought when the appellant—

(a) files a notice of appeal in the court; and

(b) files a copy of the notice of appeal in the administrative office; and

(c) serves a copy of the notice of appeal on every other party directly affected by the appeal.

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(2) Service at the address for service stated in the proceedings to which the appeal relates is sufficient service for the purposes of subclause (1).

Compare: 1908 No 89 Schedule 2 r 706

20.7 Power to dispense with service

Despite rule 20.6(1)(c), the court may dispense with service on a party of a notice of appeal on any terms the court thinks just.

Compare: 1908 No 89 Schedule 2 r 707

20.8 Filing notice of appeal

(1) Subject to any contrary enactment, a notice of appeal must be filed in—

(a) the registry of the court nearest to the place where the hearing took place of the matter under appeal; or

(b) if no hearing took place, in the registry of the court nearest to the place where the decision appealed against was given; or

(c) any other registry of the court in which the parties agree that the notice of appeal may be filed.

(2) If subclause (1)(c) applies, the parties must endorse on, or file with, the notice of appeal a memorandum recording their agreement to the filing of the notice of appeal in the registry of the court in which it is filed.

(3) The court may on application or on its own initiative in the circumstances set out in subclause (4) direct as follows:

(a) the notice of appeal must be filed in another registry of the court; or

(b) the documents relating to the appeal must be transferred to another registry of the court.

(4) The circumstances are that it appears to the court that—

(a) a notice of appeal has been filed in the wrong registry of the court; or

(b) another registry of the court would be more appropriate.

(5) Filing a notice of appeal in the wrong registry of the court does not invalidate an appeal.

20.9 Contents of notice of appeal

(1) Unless the court otherwise directs, a notice of appeal must—

(a) have a heading stating the full name and description of each party and referring to the enactment under which the appeal is brought; and

(b) specify the decision or part of the decision appealed against; and

(c) specify the grounds of the appeal in sufficient detail to fully inform the court, the other parties to the appeal, and the decision-maker of the issues in the appeal; and

(d) specify the relief sought.

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(2) *[Revoked]*

(3) *[Revoked]*

(4) An appellant may amend a notice of appeal at any time with the leave of a Judge.

(5) If the notice of appeal does not attach a copy of the decision against which the appeal is brought, the appellant must file a copy of that decision immediately it becomes available.

Compare: 1908 No 89 Schedule 2 r 709

20.9A When to name decision-maker as respondent to appeal

(1) The appellant must name the decision-maker as a respondent to the appeal unless the decision-maker exercised a purely adjudicative function (for example, the decision-maker is the District Court or the Environment Court).

(2) If the decision-maker exercised a purely adjudicative function, the appellant—

(a) must name the decision-maker as a respondent if directed to do so by the court or if the decision-maker is required by law to be a respondent; and

(b) otherwise, must not name the decision-maker as a respondent.

(3) The court may direct the extent to which a decision-maker is to participate in the appeal.

20.10 Stay of proceedings

(1) An appeal does not operate as a stay—

(a) of the proceedings appealed against; or

(b) of enforcement of any judgment or order appealed against.

(2) Despite subclause (1), the decision-maker or the court may, on application, do any 1 or more of the following pending determination of an appeal:

(a) order a stay of proceedings in relation to the decision appealed against:

(b) order a stay of enforcement of any judgment or order appealed against:

(c) grant any interim relief.

(3) An order made or relief granted under subclause (2) may—

(a) relate to enforcement of the whole of a judgment or order or to a particular form of enforcement:

(b) be subject to any conditions for the giving of security the decision-maker or the court thinks just.

Compare: 1908 No 89 Schedule 2 r 710

20.11 Cross-appeal

(1) A respondent wishing to contend at the hearing of an appeal that the decision appealed against should be varied must—

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(a) file a notice of cross-appeal in the registry of the court; and

(b) file a copy of the notice in the administrative office; and

(c) serve a copy of the notice on every other party directly affected by the cross-appeal.

(2) A notice of cross-appeal must be filed no later than 2 working days before the case management conference relating to the appeal, except with the leave of the court.

(3) A notice of cross-appeal must specify—

(a) the decision or part of the decision to which the cross-appeal relates; and

(b) the grounds of the cross-appeal in sufficient detail to fully inform the court, the other parties to the appeal, and the decision-maker of the issues in the cross-appeal; and

(c) the relief sought.

(4) The court may, despite a respondent's failure to file and serve a notice of cross-appeal,—

(a) allow the respondent to contend at the hearing that the decision appealed against should be varied; or

(b) adjourn the hearing to allow the respondent time to file and serve a notice; or

(c) make any other order the court thinks just, including an order for the payment of costs.

(5) A respondent may amend a notice of cross-appeal at any time with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 711

20.12 Dismissal or stay or abandonment of appeal or cross-appeal

(1) The court may, on application, dismiss or stay an appeal or a cross-appeal if the court is satisfied that the appellant or the respondent has failed to proceed with it, or has failed to comply with a direction under rule 7.15.

(2) The appeal is taken to have been dismissed, subject to the respondent's right to apply for an order as to costs, if the appellant signs, files, and serves on every other party a statement to the effect that the appellant abandons the appeal.

(3) The cross-appeal is taken to have been dismissed, subject to the appellant's right to apply for an order as to costs, if the respondent signs, files, and serves on every other party a statement to the effect that the respondent abandons the cross-appeal.

Compare: 1908 No 89 Schedule 2 r 712

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20.13 Security for appeal

(1) This rule applies to an appeal other than an appeal for which the appellant has been granted legal aid under the Legal Services Act 2011.

(2) The Judge must fix security for costs at the case management conference relating to the appeal, unless the Judge considers that in the interests of justice no security is required.

(3) The amount of security must be fixed in accordance with the following formula, unless the Judge otherwise directs:

$$(a \div 2) \times b$$

where—

a is the daily recovery rate for the proceeding as classified by the Judge under rule 14.4; and

b is the number of half days estimated by the Judge as the time required for the hearing.

(4) Security must be paid to the Registrar at the registry of the court no later than 10 working days after the case management conference, unless the Judge otherwise directs.

(5) Except in the case of an appeal under the District Court Act 2016; and (where non-compliance with the security order results in a deemed abandonment of the appeal under section 126 of that Act), if the security is not paid within the time specified under subclause (4), the respondent may apply for an order dismissing the appeal.

(6) The Judge must defer the fixing of security until the application for legal aid has been determined if—

(a) an appellant has applied for legal aid under the Legal Services Act 2011; and

(b) at the time of the case management conference, the application has not been determined.

Compare: 1908 No 89 Schedule 2 r 713

Subpart 4—Matters leading up to hearing

20.14 Order for transcript of evidence

(1) The court may order, on application, that—

(a) a transcript be made of all or part of the evidence given at the hearing before the decision-maker; and

(b) the transcript be sent to the Registrar at the registry of the court.

(2) An application under subclause (1) must be filed no later than the first of the following dates:

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(a) the date that is 20 working days after the date on which notice of appeal is filed in the court:

(b) the working day before the date of the case management conference.

(3) The Registrar of the court must give notice in writing to the administrative officer of any order under subclause (1).

(4) The administrative officer must—

(a) arrange for the transcript to be made; and

(b) certify that the transcript is correct; and

(c) send the certified copy of the transcript to the Registrar at the registry of the court.

(5) The court may order, on application by the administrative officer, that a party to the appeal pay some or all of the costs of making the transcript.

(6) An order made under subclause (1) or (5) may be made on any conditions the court thinks just.

Compare: 1908 No 89 Schedule 2 r 714

20.15 Report by decision-maker

(1) The decision-maker must, if the court directs, provide to the Registrar at the registry of the court a report setting out—

(a) any considerations, other than findings of fact, not set out in the decision but to which the decision-maker had regard in making the decision appealed against:

(b) any information about the effect that the decision might have on the general administration of the enactment under which the decision was made:

(c) any other matters relevant to the decision or to the general administration of the enactment under which the decision was made that should be drawn to the attention of the court.

(2) The Registrar must provide a copy of the report to every party to the appeal.

(3) Every party to the appeal is entitled to be heard, and tender evidence, on any matter referred to in the report.

Compare: 1908 No 89 Schedule 2 r 715

20.16 Further evidence

(1) Without leave, a party to an appeal may adduce further evidence on a question of fact if the evidence is necessary to determine an interlocutory application that relates to the appeal.

(2) In all other cases, a party to an appeal may adduce further evidence only with the leave of the court.

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(3) The court may grant leave only if there are special reasons for hearing the evidence. An example of a special reason is that the evidence relates to matters that have arisen after the date of the decision appealed against and that are or may be relevant to the determination of the appeal.

(4) Further evidence under this rule must be given by affidavit, unless the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 716

Subpart 5—Conduct of appeal

20.17 Decision-maker entitled to be heard on appeal

[Revoked]

20.18 Appeal is rehearing

Appeals are by way of rehearing.

Compare: 1908 No 89 Schedule 2 r 718

20.19 Powers of court on appeal

(1) After hearing an appeal, the court may do any 1 or more of the following:

(a) make any decision it thinks should have been made:

(b) direct the decision-maker—

(i) to rehear the proceedings concerned; or

(ii) to consider or determine (whether for the first time or again) any matters the court directs; or

(iii) to enter judgment for any party to the proceedings the court directs:

(c) make any order the court thinks just, including any order as to costs.

(2) The court must state its reasons for giving a direction under subclause (1)(b).

(3) The court may give the decision-maker any direction it thinks fit relating to—

(a) rehearing any proceedings directed to be reheard; or

(b) considering or determining any matter directed to be considered or determined.

(4) The court may act under subclause (1) in respect of a whole decision, even if the appeal is against only part of it.

(5) Even if an interlocutory or similar decision in the proceedings has not been appealed against, the court—

(a) may act under subclause (1); and

(b) may set the interlocutory or similar decision aside; and

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(c) if it sets the interlocutory or similar decision aside, may make in its place any interlocutory or similar decision the decision-maker could have made.

(6) The powers given by this rule may be exercised in favour of a respondent or party to the proceedings concerned, even if the respondent or party did not appeal against the decision concerned.

Compare: 1908 No 89 Schedule 2 r 718A

20.20 Repayment of judgment sum and interest

(1) Subclause (2) applies when—

(a) a party to proceedings before a decision-maker (**party A**) has, in accordance with a judgment or order of the decision-maker, paid an amount to another party to the proceedings (**party B**); and

(b) on appeal to the court, the effect of the court's determination is that some or all of the amount did not need to be paid.

(2) When this subclause applies, the court—

(a) may order party B to repay to party A some or all of the amount paid by party A; and

(b) may also order party B to pay to party A interest, calculated in accordance with (or on a basis that ensures it does not exceed interest, calculated in accordance with) Schedule 2 of the Interest on Money Claims Act 2016, on the sum ordered to be repaid.

Compare: 1908 No 89 Schedule 2 r 718B

20.21 Registrar to notify result of appeal

On the determination of an appeal, the Registrar must—

(a) give notice in writing to the administrative officer of the result of the appeal; and

(b) return to the administrative officer any documents and exhibits filed in accordance with any direction given at a case management conference relating to the appeal.

Compare: 1908 No 89 Schedule 2 r 718C

Subpart 6—Appeals to Court of Appeal

20.22 Applications for leave

(1) This rule applies when an enactment provides that a decision of the court may be appealed to the Court of Appeal with leave of the court.

(2) If this rule applies, an application for leave to appeal must be made to the court within 20 working days after the decision is given.

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(3) A respondent who wishes to cross-appeal must apply for leave to cross-appeal within 10 working days after the date on which a copy of the application under subclause (2) is served on the respondent.

(4) An application for leave to appeal under subclause (2) or to cross-appeal under subclause (3) must be made by interlocutory application.

Compare: 1908 No 89 Schedule 2 rr 718E, 718F

Part 21
Cases stated

21.1 Application

(1) This Part applies to—

(a) appeals to the court under any Act by way of case stated for a decision on a question of law or fact (or both):

(b) other references to the court under any Act by way of case stated for a decision on a question of law or fact (or both).

(2) This Part does not apply to cases stated by an order under rule 10.15.

(3) This Part applies subject to any express provision in the enactment under which the appeal is brought or sought to be brought.

Compare: 1908 No 89 Schedule 2 r 719

21.2 Some rules in Part 20 apply

The following rules apply, with all necessary modifications, to every appeal to which this Part applies:

(a) rule 20.4(3) and (4) (extension of time for appeal):

(b) rule 20.7 (power to dispense with service):

(c) rule 20.10 (stay of proceedings).

Compare: 1908 No 89 Schedule 2 r 722

21.3 Interpretation

In this Part, unless the context otherwise requires,—

appropriate officer, in relation to a tribunal, means the Registrar, secretary, clerk, or any other officer of the tribunal who is responsible for the administration of the tribunal

appropriate registry means the registry of the court where the appeal or reference is to be filed

decision includes any order made by a tribunal or person

tribunal includes any—

(a) Minister of the Crown

(b) government department or officer

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(c) any other person or body that may be required, or is authorised, by or under any Act to state or refer a case for the opinion of the court.

Compare: 1908 No 89 Schedule 2 r 721

21.4 Method of commencing appeal or reference

(1) An appellant must commence an appeal to which this Part applies by—

(a) giving a notice of appeal to the appropriate officer of the tribunal by which the decision was made, or if there is no such officer, to the person who made the decision; and

(b) filing a copy of the notice of appeal in the appropriate registry of the court; and

(c) serving a copy of the notice of appeal on every party to the matter in which the decision was given (either before or immediately after the giving and filing of the notice of appeal).

(2) References to which this Part applies that are not appeals (except for references on a tribunal's own initiative) commence in accordance with the tribunal's direction made on application by a party to the matter in which the question of law or fact (or both) arose.

(3) A reference under subclause (2) must comply with rule 21.9(1).

(4) A reference by a tribunal on its own initiative must be commenced by filing a case stated, which is signed by the chairman or other authorised officer of the tribunal, and complies with rule 21.9(1).

Compare: 1908 No 89 Schedule 2 rr 723(1), (2), 724

21.5 Time for appeal

A notice of appeal must be given to the tribunal and filed within 20 working days after the date of the decision to which the appeal relates.

Compare: 1908 No 89 Schedule 2 r 724A

21.6 Notice of appeal

Unless otherwise provided by any enactment, every notice of appeal must specify—

(a) the decision or the part of the decision appealed from; and

(b) the error of law alleged by the appellant (if any); and

(c) the question of law or fact (or both) to be resolved; and

(d) the relief sought.

Compare: 1908 No 89 Schedule 2 r 724B

21.7 Place for filing notice

(1) The appropriate registry in which to file a notice of appeal is—

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(a) the registry of the court nearest to the place where the matter was or is being heard; or

(b) any other registry of the court in which the parties agree that the notice or case may be filed.

(2) If subclause (1)(a) applies, the court may direct that the notice of appeal be filed in another registry of the court if it appears to the court (on an application by a party) that—

(a) the notice of appeal has been filed in the wrong registry of the court; or

(b) another registry of the court would be more convenient to the parties.

(3) If subclause (2)(b) applies, the parties must endorse on or file with the notice of appeal a memorandum of their agreement.

Compare: 1908 No 89 Schedule 2 r 724C

21.8 Lodging of draft case stated

(1) Every person who gives a notice of appeal must, as soon as practicable after giving that notice, lodge a draft case with—

(a) the appropriate officer of the tribunal by which the decision was made or, if there is no such officer, with the person who made the decision; and

(b) every party to the matter in which the question of law or fact (or both) arose.

(2) Where the case stated is a reference from a tribunal, the tribunal must serve a draft case on every party to the matter in which the question of law or fact (or both) arose.

Compare: 1908 No 89 Schedule 2 r 723(3)

21.9 Contents of case

(1) A case must state concisely—

(a) the circumstances relating to the matter leading to the statement of the case; and

(b) the relevant facts as determined by the tribunal (attaching copies of documents, if any) necessary to enable the court to decide the questions; and

(c) where appropriate, the respective contentions of the parties with reference to the questions; and

(d) the questions on which the opinion of the court is sought.

(2) Subclause (3) applies when a ground of appeal is—

(a) that there was no evidence on which the tribunal could properly reach its decision, or a specified part of it; or

(b) that the tribunal reached a wrong conclusion on a question of fact.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(3) When this subclause applies, there must be attached to the case—

(a) copies of the documents, affidavits, and exhibits that were placed before the tribunal; and

(b) a copy of any evidence given at the hearing that has been transcribed.

(4) A transcript certified as correct by or on behalf of the tribunal requires no further verification of its contents.

(5) No document or transcript of any evidence may be attached to the case unless it is necessary for a proper determination by the court of the question of law or fact (or both) specified in the case.

(6) The draft case may be amended by the tribunal only to correct errors of fact.

(7) The case must be signed by or on behalf of the tribunal.

Compare: 1908 No 89 Schedule 2 r 724D

21.10 Order for transcription of evidence

(1) In any case stated on a question of law or fact (or both), the court may order, on any conditions it thinks just, that a transcript be made of all or any part of the evidence that was material to the issues specified in the notice of appeal if—

(a) there has been a hearing before the tribunal by which the decision was made and the evidence given at the hearing was recorded but has not been transcribed; and

(b) a ground of appeal is either of those referred to in rule 21.9(2).

(2) Rule 20.14(2) to (6) applies, with all necessary modifications, in relation to an application for an order for a transcript as if the application were an application for an order under rule 20.14(1).

Compare: 1908 No 89 Schedule 2 r 724E

21.11 When case deemed to be stated

(1) The appellant or the party who sought the stating of a case must ensure that, when the case has been settled and signed by or on behalf of the tribunal,—

(a) the case is filed in the appropriate registry; and

(b) immediately after the case has been filed in the appropriate registry, the party filing it must serve a copy on every party to the matter in which the question of law or fact (or both) arose.

(2) A case is deemed to have been stated when a case stated has been filed.

Compare: 1908 No 89 Schedule 2 r 724F

21.12 Power to amend case

(1) The court may send a case back to the tribunal for amendment—

(a) to clarify the question of law or fact (or both) on which the opinion of the court is sought; or

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(b) to provide any further information necessary to enable the court to dispose of the questions in the case stated.

(2) The court may amend the case at the hearing.

Compare: 1908 No 89 Schedule 2 r 724G

21.13 Security for costs

The court may order the appellant in a case stated to give security for costs.

Compare: 1908 No 89 Schedule 2 r 724I

21.14 Determination of questions

After hearing and determining the question of law or fact (or both) in a case stated, the court must do 1 or more of the following things:

(a) in the case of an appeal, reverse, confirm, or amend the decision in respect of which the case was stated:

(b) in the case of an appeal, remit the matter to the tribunal for reconsideration and decision in accordance with the opinion of the court on the question of law or fact (or both):

(c) in every other case, remit the matter to the tribunal with the opinion of the court:

(d) in any case, make any other order that is just.

Compare: 1908 No 89 Schedule 2 r 725

Part 22
Patents

22.1 Interpretation

In this Part,—

Act means the Patents Act 2013

Commissioner means the Commissioner of Patents

journal means the *Journal of the Intellectual Property Office of New Zealand*

report means a report by a scientific adviser

respondent's notice means a notice given under rule 22.32

scientific adviser includes—

(a) an accountant:

(b) an actuary:

(c) an architect:

(d) an engineer:

(e) a medical practitioner:

(f) a person with scientific qualifications:

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(g) a surveyor:

(h) other specially skilled persons whose opinion in relation to any matter may be of assistance to the court.

Compare: 1908 No 89 Schedule 2 r 725A

Subpart 1—Scientific advisers

22.2 Appointment

(1) In a proceeding under the Act or for infringement of a patent, the court may (with or without an application) appoint an independent scientific adviser to—

(a) assist the court; or

(b) inquire into and report on any questions of fact or opinion that do not involve questions of law or construction.

(2) The court must appoint an independent scientific adviser if all parties request it.

Compare: 1908 No 89 Schedule 2 r 725B

22.3 Nominating scientific adviser and settling questions and instructions

(1) A scientific adviser is nominated by the court.

(2) Questions or instructions to be submitted or given to the scientific adviser must be settled by the court.

Compare: 1908 No 89 Schedule 2 r 725C

22.4 Report

(1) A report by a scientific adviser must—

(a) be made in writing to the court; and

(b) be accompanied by the number of copies the court requires.

(2) The court must forward copies of the report to the parties.

(3) If a report is not accepted by all parties to a proceeding, it must be—

(a) treated as information furnished to the court; and

(b) given the weight the court considers appropriate.

Compare: 1908 No 89 Schedule 2 r 725D

22.5 Cross-examination

(1) A party may, within 10 working days of receiving a copy of a report, or within any longer time the court directs, apply for leave to cross-examine a scientific adviser on his or her report.

(2) The court may make an order for cross-examination of the scientific adviser at the hearing.

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(3) At the hearing, the court must direct at what stage the scientific adviser will be called.

Compare: 1908 No 89 Schedule 2 r 725E

22.6 Experiment or test

(1) If the scientific adviser considers that an experiment or test (other than one of an insignificant nature) is necessary in order to report in a satisfactory manner, he or she must—

(a) inform the parties; and

(b) endeavour to get agreement between the parties on expenses for, and the persons to attend, the experiment or test.

(2) If there is no agreement between the parties, those matters are to be determined by the court.

Compare: 1908 No 89 Schedule 2 r 725F

22.7 Further or supplementary report

(1) The court may direct a scientific adviser to make a further or supplementary report.

(2) Rules 22.4 and 22.5 apply to further or supplementary reports.

Compare: 1908 No 89 Schedule 2 r 725G

22.8 Remuneration

A scientific adviser's remuneration must be fixed by the court, and includes—

(a) the costs of making a report; and

(b) a proper daily fee for attendance at court.

Compare: 1908 No 89 Schedule 2 r 725H

Subpart 2—Amending specification

22.9 Application of subpart to application under section 89

This subpart applies to an application made by a patentee under section 89 of the Act for an order to amend the patentee's complete specification.

Compare: 1908 No 89 Schedule 2 r 725X

22.10 Notifying Commissioner

The patentee must notify the Commissioner of an intention to make an application to amend.

Compare: 1908 No 89 Schedule 2 r 725Y

22.11 Advertisement

(1) A notice must be accompanied by a copy of a suitable advertisement of the proposed amendment.

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(2) The Commissioner must publish the advertisement in the journal (on 1 occasion).

(3) The advertisement must—

(a) contain particulars of the proposed amendment and of the patentee's address for service within New Zealand; and

(b) state that any person who wishes to oppose the amendment must, within 10 working days after the date of the actual issue of the journal, give written notice to the patentee.

Compare: 1908 No 89 Schedule 2 r 725Z

22.12 Right to be heard

A person giving notice under rule 22.11(3)(b) is entitled to be heard, subject to any direction of the court on costs.

Compare: 1908 No 89 Schedule 2 r 725ZA

22.13 Time for making application

The patentee must, as soon as practicable after the expiration of 15 working days after the date of the issue of the journal in which an advertisement of the proposed amendment is published, proceed by way of interlocutory application.

Compare: 1908 No 89 Schedule 2 r 725ZB

22.14 Service of notice of interlocutory application

The patentee must serve notice of the interlocutory application, together with a copy of the specification certified by the Commissioner showing the proposed amendment in distinguishing ink or type, on—

(a) the Commissioner; and

(b) the parties; and

(c) any person who has given notice of an intention to oppose.

Compare: 1908 No 89 Schedule 2 r 725ZC

22.15 Duty of court to give directions

On hearing the interlocutory application, the court must—

(a) decide whether and on what terms an application is allowed to proceed (whether in relation to costs or otherwise); and

(b) direct whether the application is to be heard on oral or affidavit evidence, and, if on affidavit evidence, fix the times within which affidavits must be filed by the parties and other persons entitled to be heard under the Act or the rules.

Compare: 1908 No 89 Schedule 2 r 725ZD

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22.16 Procedure when amendment allowed

(1) If the court makes an order allowing a specification to be amended,—

(a) the patentee must immediately lodge a copy of the order with the Commissioner; and

(b) the Commissioner must advertise the order on 1 occasion in the journal and otherwise as the court may direct.

(2) A patentee must, if required by the court or the Commissioner, leave a new specification and drawings as amended and prepared under the Patents Regulations 2014 at the Intellectual Property Office of New Zealand.

Compare: 1908 No 89 Schedule 2 r 725ZE

Subpart 3—Revoking patent

22.17 Application by originating application

(1) An application to the court to revoke a patent under section 112 of the Act (not being an application made in the course of a proceeding) must be by way of an originating application.

(2) The originating application must be filed in the registry of the court at Wellington (unless the court otherwise directs).

Compare: 1908 No 89 Schedule 2 r 725ZF

22.18 Respondent begins proceeding

(1) The respondent is entitled—

(a) to begin and give evidence in support of the patent; and

(b) to reply, if the applicant gives evidence impeaching the validity of the patent.

(2) This rule has effect despite rule 10.10.

Compare: 1908 No 89 Schedule 2 r 725ZG

Subpart 4—Objections

22.19 Particulars if validity of patent disputed

Particulars of an objection to the validity of a patent must—

(a) be delivered with—

(i) an application for revocation under section 112 of the Act; or

(ii) a defence in a proceeding for infringement of a patent; or

(iii) a counterclaim for revocation under section 147 of the Act; and

(b) include the grounds on which the validity of the patent is disputed; and

(c) include particulars clearly stating issues intended to be raised.

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22.20 Particulars if want of novelty alleged

(1) The particulars of an objection on the basis of want of novelty must state the time and place of the alleged previous knowledge, publication, or use.

(2) The particulars of an objection on the basis that the invention has been used prior to the date of the patent must—

(a) state the name and address of the alleged prior user and the place of prior use; and

(b) state whether the prior use is alleged to have continued to the date of the patent, and, if not, the earliest and latest dates on which the prior use is alleged to have taken place; and

(c) contain a description (accompanied by drawings, if necessary) sufficient to identify the alleged prior use; and

(d) if the use relates to machinery or apparatus, specify whether it is in existence and where it may be inspected.

(3) Evidence that exists at the date of delivery of the particulars about machinery or apparatus in relation to which prior use is alleged is not able to be received, unless it is proved that the party relying on the prior use has,—

(a) if the machinery or apparatus is in that party's own possession, offered an inspection of it; or

(b) if the machinery or apparatus is not in that party's own possession, used best endeavours to obtain an inspection of it for the other parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r 725ZI

22.21 Service of notice on Solicitor-General

A party that intends to dispute the validity of a patent in a proceeding must—

(a) give notice of that intention to the Solicitor-General at least 15 working days before the hearing; and

(b) supply the Solicitor-General with a copy of papers filed in the proceeding by that party or papers filed by any other party that the Solicitor-General requires.

Compare: 1908 No 89 Schedule 2 r 725ZJ

22.22 Particulars supplied by plaintiff

In a proceeding for infringement of a patent, the plaintiff must—

(a) deliver particulars of the breaches relied on with the plaintiff's statement of claim; and

(b) state which aspects of the specification of the patent are alleged to be infringed; and

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(c) give at least 1 instance of each type of infringement.

Compare: 1908 No 89 Schedule 2 r 725ZK

22.23 Particulars supplied by defendant

[Revoked]

22.24 Evidence restricted to particulars delivered

(1) No person may be heard or adduce evidence in support of an alleged infringement, objection, or defence so far as it relates to matters that are not specified in, or are at variance with, the particulars that person has delivered.

(2) Despite subclause (1), the court may grant leave on terms it considers appropriate.

Compare: 1908 No 89 Schedule 2 r 725ZM

22.25 Amendment of particulars

(1) Particulars filed in the court under these rules may be amended by leave of the court on terms the court considers just.

(2) Further and better particulars may at any time be ordered by the court.

(3) This rule has effect despite rule 7.77.

Compare: 1908 No 89 Schedule 2 r 725ZN

Subpart 5—Appeals

22.26 Application of Part 20

Part 20 applies to an appeal under the Act, unless modified by or inconsistent with this Part or the Act.

Compare: 1908 No 89 Schedule 2 r 725ZZA

22.27 Method and time of bringing appeal

(1) A person who wishes to appeal from a decision of the Commissioner in relation to which a right of appeal is given by the Act must file a notice of appeal in the court.

(2) The notice of appeal must be filed within 20 working days after the date of the Commissioner's decision.

(3) Other than with the leave of the court, an appeal must not be entertained unless notice of appeal has been given within the 20-working-day period.

Compare: 1908 No 89 Schedule 2 rr 725ZO, 725ZP

22.28 Contents of notice of appeal

A notice of appeal must state—

(a) the decision or part of the decision appealed against; and

(b) any error of law alleged; and

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(c) any question of law to be resolved; and

(d) the grounds of the appeal (specified with reasonable particularity in order to give the court and the other parties full information about the issues involved); and

(e) the relief sought.

Compare: 1908 No 89 Schedule 2 r 725ZQ

22.29 Grounds of appeal

Only grounds stated in the notice of appeal may be allowed to be taken by the appellant at the hearing, unless the court grants leave to do otherwise on terms it considers appropriate.

Compare: 1908 No 89 Schedule 2 r 725ZR

22.30 Service of notice of appeal

An appellant must, within 5 working days of filing a notice of appeal, serve a copy of it on—

(a) the Commissioner; and

(b) any other party to the proceeding before the Commissioner.

Compare: 1908 No 89 Schedule 2 r 725ZS

22.31 Commissioner to transmit papers

On receiving notice of an appeal, the Commissioner must immediately transmit all papers relating to the subject matter of the appeal to the court.

Compare: 1908 No 89 Schedule 2 r 725ZT

22.32 Contentions raised by respondent

(1) A respondent who has not appealed a decision of the Commissioner, but who wishes to contend on appeal that the decision be varied (in any event or in the event of the appeal being allowed in whole or in part)—

(a) must give notice stating the grounds of the contention and the relief sought by the respondent; and

(b) need not file a further notice of appeal.

(2) A respondent who wishes to argue that a decision of the Commissioner be affirmed on grounds other than those set out in the decision must give notice of those grounds of contention.

Compare: 1908 No 89 Schedule 2 r 725ZU

22.33 Respondent's notice

(1) A respondent's notice must be sent to the Commissioner, the appellant, and every other party to the proceedings before the Commissioner—

(a) within 20 working days after the date of the receipt of the notice of appeal by the respondent; or

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(b) within any longer period the court directs.

(2) A party sending a respondent's notice must, within 5 working days after the date of the service of the notice on the appellant, give 2 copies of the notice to the court.

(3) If more than 1 party files a notice of appeal, any party (whether or not that party has filed a notice of appeal) may file a respondent's notice in respect of a notice of appeal given by any other party.

Compare: 1908 No 89 Schedule 2 r 725ZV

22.34 Appeal by way of rehearing

(1) An appeal is by way of rehearing.

(2) The evidence used on appeal must be the same as that used before the Commissioner.

(3) No further evidence may be given, except with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 725ZW

22.35 Proceeding heard and determined in public

(1) A proceeding under the Act or for infringement of a patent must be heard and determined in public unless the court directs that it must be heard in private.

(2) Despite subclause (1), a proceeding relating to a decision of the Commissioner in a case in which the complete specification of the patent application has not been published must be heard and determined in private unless the court directs that it must be heard in public.

(3) A direction given by the court (on its own initiative or on the application of a party to a proceeding) may relate to the whole proceeding or a specified part of it.

Compare: 1908 No 89 Schedule 2 r 725ZX

22.36 Documentary evidence

Rules about the filing of documentary evidence in proceedings before the Commissioner apply to documentary evidence filed on an appeal.

Compare: 1908 No 89 Schedule 2 r 725ZY

22.37 Cross-examination of witnesses

(1) At the request of a party, the court may order that a person who has made a statutory declaration or sworn an affidavit in the matter to which the appeal relates attend for cross-examination.

(2) A party that requires a witness to attend for cross-examination must pay the witness the appropriate fees, allowances, and travelling expenses under the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023.

Compare: 1908 No 89 Schedule 2 r 725ZZ

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Subpart 6—Costs

22.38 Costs

In a proceeding for infringement of a patent, no costs are allowed to the parties who deliver particulars of breaches or of objection in respect of any issues raised in those particulars and relating to that patent unless the issues or particulars are certified by the court as—

(a) proved; or

(b) reasonable and proper.

Compare: 1908 No 89 Schedule 2 r 725ZZB

Part 23
Enforcement between jurisdictions

Subpart 1—Enforcement under Reciprocal Enforcement of Judgments Act 1934

23.1 Scope and interpretation

(1) This subpart applies to the enforcement of judgments under the Act.

(2) With the exception of subclause (3), this subpart does not apply to, and does not affect—

(a) the enforcement of judgments at common law by a proceeding commenced under Part 5 or 12; or

(b) the filing of memorials, and subsequent enforcement, of judgments obtained out of New Zealand (*see* section 172 of the Senior Courts Act 2016).

(3) An application to the court or a Judge under section 172(5) of the Senior Courts Act 2016 for an order that the person against whom the judgment was obtained show cause why enforcement process should not issue must be made by originating application under Part 19.

(4) In this Part, unless the context otherwise requires,—

Act means the Reciprocal Enforcement of Judgments Act 1934

application for registration means an application made under section 4 of the Act

foreign judgment means any judgment to which, under section 3, 3A, or 3B of the Act, Part 1 of the Act for the time being applies

general rules means the rules comprised in the other Parts of these rules.

(5) Unless the context otherwise requires, expressions not defined in this subpart but defined in the Act have the meanings so defined.

Compare: 1908 No 89 Schedule 2 r 726

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23.2 Application of other Parts

The general rules apply except so far as they are modified by or are inconsistent with this subpart.

Compare: 1908 No 89 Schedule 2 r 727

23.3 Subpart subject to Orders in Council

This subpart has effect subject to provisions in Orders in Council made under section 3, 3A, or 3B of the Act declared by those Orders in Council to be necessary for giving effect to any agreement made by or on behalf of the Government of New Zealand in relation to matters in respect of which there is power to make rules of court for the purposes of Part 1 of the Act.

Compare: 1908 No 89 Schedule 2 r 728

23.4 Method of application for registration

(1) An application for registration must be made by originating application in form G 30, and Part 19 applies except so far as it is modified by or inconsistent with this subpart.

(2) The application may be made without notice to the judgment debtor.

Compare: 1908 No 89 Schedule 2 r 729

23.5 Title and content of application

The heading to each document filed in an application for registration must—

(a) include both a reference to the Act and a reference to the judgment sought to be enforced; and

(b) specify, in relation to the judgment, both the court in which it was given and the parties to the judgment.

Compare: 1908 No 89 Schedule 2 r 730

23.6 Place of filing

An application for registration must be filed in the registry of the court in which the defendant would have been required to file that defendant's statement of defence had the proceeding been commenced by way of proceeding on the foreign judgment and not by way of application for registration.

Compare: 1908 No 89 Schedule 2 r 731

23.7 Supporting affidavits

Every application for registration must be supported by 1 or more affidavits.

Compare: 1908 No 89 Schedule 2 r 732

23.8 Copy judgment and translation

(1) The foreign judgment, or a verified or certified or otherwise duly authenticated copy of it, must be attached as an exhibit to an affidavit filed in support of the application for registration.

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(2) If the judgment is expressed in a language other than English, a translation of the judgment in English must be filed.

(3) Any such translation must be verified by the affidavit of a person qualified as a translator from that language.

Compare: 1908 No 89 Schedule 2 r 733

23.9 Judicial notice of authentication of judgment

Judicial notice must be taken of any seal or signature by which a copy of a foreign judgment is verified and which purports to be—

(a) the seal of the court in which the judgment was given or of a Judge or a Registrar or similar officer of the court; or

(b) the signature of a Judge or Registrar or similar officer of that court.

Compare: 1908 No 89 Schedule 2 r 734

23.10 Evidence of exchange rates and interest

The affidavit or affidavits filed in support of the application for registration of a money judgment must include,—

(a) when the application does not state that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed,—

(i) the rate of exchange prevailing on the day of the application between New Zealand currency and the currency in which the sum payable under the judgment is expressed:

(ii) the amount that the sum payable under the judgment represents in New Zealand currency calculated at that rate:

(b) the rate of interest (if any) carried by the judgment by the law of the country under which it is given:

(c) the amount of interest that, by that law, will have become due under the judgment up to the time of the application, expressed,—

(i) when the application does not state that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed, in New Zealand currency calculated under paragraph (a):

(ii) when the application states that the judgment is to be registered in the currency in which it is expressed, in that currency.

Compare: 1908 No 89 Schedule 2 r 735

23.11 Evidence of right to registration

(1) An affidavit filed in support of the application for registration must state, to the best of the information and belief of the person,—

(a) that the applicant is entitled to enforce the judgment; and

(b) either—

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(i) that, at the date of the application, the judgment has not been satisfied; or

(ii) that, at the date of the application, the judgment has been partly satisfied; and

(c) if, at the date of the application, the judgment has been partly satisfied, the balance remaining payable or other action required to be taken to satisfy the judgment at that date; and

(d) that, at the date of the application, the judgment can be enforced in the country of the original court; and

(e) that, if the judgment were registered, the registration would not be, or be liable to be, set aside under section 6 of the Act; and

(f) the full name, title, trade, or business, and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively.

(2) The person making the affidavit must specify in that affidavit the source of the person's information and the grounds for his or her belief.

Compare: 1908 No 89 Schedule 2 r 736

23.12 Further evidence

The application for registration must be supported by whatever other evidence may be required, having regard,—

(a) in the case of a money judgment of a superior court, to the Order in Council under section 3 of the Act:

(b) in the case of a money judgment of an inferior court, to the Order in Council under section 3A of the Act:

(c) in the case of a non-money judgment of a superior court, to the Order in Council under section 3B(1) of the Act:

(d) in the case of a non-money judgment of an inferior court, to the Order in Council under section 3B(2) of the Act.

Compare: 1908 No 89 Schedule 2 r 737

23.13 Registration of part of judgment

When—

(a) a foreign judgment is in respect of different matters; and

(b) if some parts of the foreign judgment had been contained in separate judgments, those judgments could not properly have been registered,—

the application for registration must specify, and the order giving leave to register the foreign judgment must be limited to, the parts that are entitled to registration.

Compare: 1908 No 89 Schedule 2 r 738

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23.14 Security for costs

The court may, on any application for registration, order the judgment creditor to give security for the costs of the judgment debtor in opposing the application or in applying to set aside the registration.

Compare: 1908 No 89 Schedule 2 r 739

23.15 Order for registration

(1) The order giving leave to register a judgment or part of a judgment—

(a) must state the period, being a period computed from the date of service of notice of registration, within which an application may be made to set aside the registration; and

(b) must prohibit enforcement of the judgment until after the expiration of the period stated in paragraph (a).

(2) Unless the court otherwise orders, the period stated under subclause (1)(a) must be the same as would apply under the general rules to the filing of a statement of defence in a proceeding.

(3) The court may, on an application made at any time while it remains competent for any party to apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

(4) It is not necessary to serve an order made under subclause (1) on the judgment debtor.

Compare: 1908 No 89 Schedule 2 r 740

23.16 Method of registration

(1) The registration of every judgment ordered to be registered under the Act must be effected by entry of particulars in an appropriate record book kept by the Registrar.

(2) The record book must state—

(a) the date of the order for registration:

(b) the name, title, trade, or business of the judgment creditor and the judgment debtor:

(c) the usual or last known place of abode or business of the judgment creditor and the judgment debtor:

(d) in the case of a money judgment, the sum payable under the judgment, expressed,—

(i) when the application states that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed, in that currency; or

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(ii) in any other case, as if it were for an equivalent amount in New Zealand currency, based on the rate of exchange prevailing on the day of the application for registration:

(e) the interest (if any), up to the time of registration, for which the judgment is registered:

(f) where the judgment is a non-money judgment, particulars of the judgment:

(g) the costs allowed of and incidental to registration:

(h) any special directions contained in the order for registration:

(i) the particulars of any action taken to enforce the judgment.

Compare: 1908 No 89 Schedule 2 r 741

23.17 Date of registration

(1) The date of the order for registration and the date of the registration are to be treated as the date when the originating application was filed.

(2) Subclause (1) is subject to a court order.

Compare: 1908 No 89 Schedule 2 r 742

23.18 Notice of registration

(1) Notice in writing of the registration of a foreign judgment in New Zealand must be served on the judgment debtor.

(2) The notice must be served personally in accordance with the general rules unless some other mode of service is ordered by the court.

(3) Despite rule 6.28, if the judgment debtor is out of New Zealand, the notice may be served without the leave of the court.

Compare: 1908 No 89 Schedule 2 r 743

23.19 Contents of notice of registration

(1) The notice of registration must state—

(a) full particulars of—

(i) the judgment registered; and

(ii) the order for registration; and

(iii) any special direction contained in the order for registration; and

(b) whether the notice is issued by the judgment creditor or by a solicitor on behalf of the judgment creditor; and

(c) an address for service; and

(d) subject to subclause (2), the right of the judgment debtor to apply, on the grounds appearing in the Act, to have the registration set aside; and

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(e) in accordance with the terms of the order giving leave to register, within what period from the date of service of the notice an application to set aside may be made.

(2) Subclause (1)(d) does not require the notice to set out the grounds on which the registration can be set aside.

Compare: 1908 No 89 Schedule 2 r 744

23.20 Application to set aside registration

(1) An application to set aside the registration of a foreign judgment must be made by interlocutory application.

(2) On any such application, the court may direct that an issue between the judgment creditor and the judgment debtor must be stated and tried and may give such directions in relation to the trial of the issue as may be necessary.

Compare: 1908 No 89 Schedule 2 r 745

23.21 Determination of certain questions

If, whether under the Act or under this subpart, any question arises about whether a judgment to which Part 1 of the Act applies can be enforced in the country of the original court, or what interest is payable under any judgment under the law of that country, that question must be determined in accordance with,—

(a) in the case of a money judgment of a superior court, the Order in Council under section 3 of the Act:

(b) in the case of a money judgment of an inferior court, the Order in Council under section 3A of the Act:

(c) in the case of a non-money judgment of a superior court, the Order in Council under section 3B(1) of the Act:

(d) in the case of a non-money judgment of an inferior court, the Order in Council under section 3B(2) of the Act.

Compare: 1908 No 89 Schedule 2 r 746

23.22 Enforcement of judgments

(1) A registered judgment must not be enforced at any time in—

(a) the period specified in the order for registration; or

(b) any extension of the period specified in the order for registration; or

(c) the period between the filing and the disposal of any application to set aside the registration.

(2) In every case the fact and date of service of the notice of registration must be proved by an affidavit.

Compare: 1908 No 89 Schedule 2 r 747

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23.23 Form of enforcement process

The form of an enforcement process within the meaning of rule 17.3 issued on a foreign judgment registered under the Act must—

(a) specify the sum awarded, or the order or other relief granted; and

(b) state the name and address of the judgment creditor; and

(c) name the judgment debtor against whom the judgment was obtained; and

(d) name the court in which the judgment was obtained and the date of that judgment; and

(e) certify that the judgment has been duly registered in the High Court pursuant to Part 1 of the Reciprocal Enforcement of Judgments Act 1934.

Compare: 1908 No 89 Schedule 2 r 748

Subpart 2—Certified copy procedure

23.24 Method of application

(1) An application under section 11 of the Act for a certified copy of a judgment obtained in the court must be made by application without notice filed in the registry of the court in which the judgment was sealed.

(2) The application must be supported by the affidavit of the judgment creditor or the judgment creditor's solicitor, and that affidavit must—

(a) give particulars of the proceeding in which the judgment was sealed; and

(b) attach—

(i) a copy of the statement of claim by which the proceeding was instituted; and

(ii) evidence of the service of the statement of claim upon the judgment debtor or of appearance by the judgment debtor in the proceeding; and

(iii) copies of the pleadings, if any, in the proceeding; and

(c) verify the copies of evidence attached to it in accordance with paragraph (b); and

(d) state the grounds on which the judgment was based; and

(e) state whether the judgment debtor did or did not object to the jurisdiction, and, if so, on what grounds; and

(f) state—

(i) that the judgment is not subject to any stay of execution or of enforcement; and

(ii) that no notice of appeal against it has been given; and

(iii) whether the time for appealing has expired; and

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(g) state the rate at which the judgment carries interest.

Compare: 1908 No 89 Schedule 2 r 749

23.25 Issue of certified copy

(1) It is not necessary to seal any order made on an application under rule 23.24; instead, the Registrar must issue to the judgment creditor—

(a) a copy of the judgment sealed with the seal of the court, which copy must be certified by the Registrar—

(i) to be a true copy; and

(ii) to be issued in accordance with section 11 of the Act; and

(b) a separate certificate under the seal of the court in which the Registrar must certify—

(i) the matters stated in the affidavit filed in accordance with rule 23.24(2); and

(ii) any other particulars it is necessary to give to the court or tribunal in which enforcement of the judgment will be sought.

(2) In giving a certificate under subclause (1)(b) the Registrar is entitled to rely on the affidavit filed under rule 23.24(2) and the documents attached to it.

Compare: 1908 No 89 Schedule 2 r 750

Subpart 3—Enforcement of certain judgments and orders of Federal Court of Australia

[Revoked]

23.26 Interpretation

[Revoked]

23.27 Scope

[Revoked]

23.28 Application of other Parts

[Revoked]

23.29 Method of application

[Revoked]

23.30 Title of proceeding

[Revoked]

23.31 Place of filing

[Revoked]

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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23.32 Evidence of exchange rates and interest

[Revoked]

23.33 Method of registration

[Revoked]

23.34 Notice of registration

[Revoked]

23.35 Contents of notice of registration

[Revoked]

23.36 Service of copy of judgment, order, or injunction

[Revoked]

23.37 Copy of judgment, order, or injunction to be filed if facsimile produced

[Revoked]

23.38 Application to set aside registration or for stay of enforcement

[Revoked]

Part 24
Insolvency

Subpart 1—Scope

24.1 Interpretation

(1) In this Part, unless the context otherwise requires, **Act** means the Insolvency Act 2006.

(2) In this Part, unless the context otherwise requires, expressions defined in the Act and used but not defined in this Part have the meanings given by the Act.

(3) Subclause (1) does not apply to subpart 15 (cross-border proceedings).

Compare: 1908 No 89 Schedule 2 r 819

24.2 Application of Part

This Part applies to matters arising under the Act or Part 4 of the Administration Act 1969, and to proceedings relating to them in the court, whenever commenced.

Compare: 1908 No 89 Schedule 2 r 820

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24.3 Application of general rules and practice of court

The other Parts of these rules and the general practice of the court apply when this Part applies, unless they are modified by or inconsistent with the Act or this Part.

Compare: 1908 No 89 Schedule 2 r 821

Subpart 2—Proceedings generally

24.4 Forms

(1) The prescribed forms must be used whenever appropriate.

(2) If a form has not been prescribed for an application, it must be an interlocutory application, and an order made on that application must be in the form prescribed for an interlocutory order.

(3) If subclause (2) does not apply, the parties may frame a form for the special purpose of the particular case or the court may frame the form.

(4) If no form is prescribed, a notice must contain sufficient details to inform the recipient fairly of its substance.

(5) A warrant to search for and seize a bankrupt's property under section 150 or 151 of the Act must be in form B 7.

Compare: 1908 No 89 Schedule 2 r 822

24.5 General requirements of documents filed in court

Every document filed must—

(a) comply with the rules in subpart 3 of Part 5 so far as they are applicable and with any necessary modifications; and

(b) be headed by the words "In the matter of the Insolvency Act 2006, and in the matter of the bankruptcy (or proposal, as the case may be) of".

Compare: 1908 No 89 Schedule 2 r 823

24.6 Advertising of notices or proceedings

An advertisement of a notice or proceeding that is published in a newspaper circulating in the area in which the proceeding is pending must comply with the advertising requirements of the Act or this Part.

Compare: 1908 No 89 Schedule 2 r 824

24.7 Discretion of court as to method of taking evidence

Unless otherwise provided in this Part, the court may, in any proceeding, take all or any part of the evidence orally or by written interrogatories or on affidavit or by commission, as the court thinks just.

Compare: 1908 No 89 Schedule 2 r 825

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Subpart 3—Bankruptcy notices

24.8 Issue of bankruptcy notice

(1) A request for the issue of a bankruptcy notice must be in form B 1.

(2) The Registrar may approve the issue of a bankruptcy notice if—

(a) the request is founded on a judgment or order of a court; and

(b) the Registrar has no knowledge that payment of the debt has occurred.

(3) A bankruptcy notice must be in form B 2 and a certified copy of the judgment or order on which the bankruptcy notice is based must be attached to it.

(4) The bankruptcy notice must state the amount of any costs claimed.

Compare: 1908 No 89 Schedule 2 r 826

24.9 Service of bankruptcy notice in New Zealand

(1) A bankruptcy notice that is to be served in New Zealand must be served within 6 months from the date of its issue.

(2) The creditor may before or after the expiry of the period referred to in subclause (1) apply to the court for an order extending the period of service.

(3) The court may extend the period for service for a further 3 months from the expiry of the period referred to in subclause (1) if the court is satisfied that—

(a) reasonable efforts have been made to effect service; or

(b) for any other good reason an extension of the period for service is desirable.

(4) A bankruptcy notice must be served in accordance with Part 6 (Service).

Compare: 1908 No 89 Schedule 2 r 827

24.10 Setting aside bankruptcy notice

(1) If an application to set aside a bankruptcy notice cannot be heard until after the expiration of the time specified in the notice as the day on which the act of bankruptcy will be complete, the time is treated as extended until the application has been determined.

(2) An act of bankruptcy is not committed by reason only of non-compliance with the notice until the application has been determined.

Compare: 1908 No 89 Schedule 2 r 828

Subpart 4—Adjudication proceedings

24.11 Application for adjudication by creditor

(1) A creditor's application for adjudication must be commenced by filing an originating application in form B 3.

(2) Part 19 applies to adjudication proceedings but, in case of any conflict, is overridden by this Part.

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(3) An affidavit in form B 4 and a summons to debtor in form B 5 must be filed (in duplicate) with a creditor's application.

(4) A summons must also state the amount of any costs claimed.

(5) An order of adjudication made on the application must be in form B 16.

Compare: 1908 No 89 Schedule 2 r 829

24.12 Verification of creditor's application

A creditor's application must be verified by affidavit of the creditor or some other person having knowledge of the facts.

Compare: 1908 No 89 Schedule 2 r 830

24.13 Where application for adjudication to be filed

An application for adjudication must be filed,—

(a) if the debtor is resident in New Zealand, in the registry of the High Court nearest by the most practicable route to the place in which the debtor has resided or carried on business for the longest period during the 6 months immediately before the time when the application is filed:

(b) if the debtor is in custody, in the registry of the High Court nearest by the most practicable route to the place in which the debtor is in custody:

(c) if the debtor is absent from New Zealand or the applying creditor cannot ascertain the debtor's place of residence, in the registry of the High Court nearest by the most practicable route to the place in which the applying creditor resides or carries on business:

(d) if a debtor has never been resident in New Zealand, in the registry of the High Court nearest by the most practicable route to the place in which the applying creditor resides or carries on business:

(e) if any act of bankruptcy relied on by the applying creditor is specified in sections 20 and 21 of the Act, in any registry of the court.

Compare: 1908 No 89 Schedule 2 r 831

24.14 Registrar to fix hearing date for creditor's application

(1) The Registrar must fix a hearing date for the application and insert the date in the summons to the debtor before releasing the summons to the creditor for service.

(2) If the application and summons have not been served, the Registrar may, from time to time, alter the hearing date.

Compare: 1908 No 89 Schedule 2 r 832

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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24.15 Court may alter hearing date for creditor's application

If it is proved to the court's satisfaction that the debtor has absconded or there is any other good reason, the court may, on any terms it thinks just, hear the creditor's application on any date the court considers expedient.

Compare: 1908 No 89 Schedule 2 r 833

24.16 Service of creditor's application on debtor

(1) A copy of the creditor's application and the summons to the debtor must be served on the debtor at least 10 working days before the hearing of the creditor's application.

(2) If the debtor dies before service of the creditor's application and summons, the court may order service to be effected on the debtor's administrator or any other person as it thinks just.

Compare: 1908 No 89 Schedule 2 r 834

24.17 Service of creditor's application on trustee or supervisor

(1) A copy of the creditor's application and the summons to the debtor must be served personally on the trustee or supervisor, as the case may be,—

(a) if the act of bankruptcy alleged is that the debtor has made a disposition of all or substantially all of the debtor's property to a trustee for the benefit of all or any of the debtor's creditors; or

(b) if, at the time of the filing of the application, a proposal under subpart 2 of Part 5 of the Act has been approved by the court or a debt repayment order has been made under subpart 3 of Part 5 of the Act.

(2) The documents set out in subclause (1) must be served at least 10 working days before the hearing of the creditor's application.

Compare: 1908 No 89 Schedule 2 r 835

24.18 Debtor's notice of intention to oppose adjudication

A debtor who intends to oppose the making of an order of adjudication must, by 1 pm on the last working day before the hearing of the creditor's application,—

(a) file a notice of opposition in form B 6, together with an affidavit in support of the opposition; and

(b) serve a copy of those documents on the applicant creditor.

Compare: 1908 No 89 Schedule 2 r 836

24.19 Affidavit evidence of applicant creditor

(1) Unless the court otherwise directs, an applicant creditor's evidence of a debt, an act of bankruptcy, or any other material statements may be given by affidavit.

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(2) The affidavit must be sworn by or on behalf of the applicant creditor at least 3 working days before the date of the hearing of the application.

Compare: 1908 No 89 Schedule 2 r 837

24.20 Applicant creditor's solicitor's certificate as to unpaid debt

A certificate by the applicant creditor's solicitor to the effect that, after having made due inquiries, the solicitor is satisfied that the debt remains unpaid, may be accepted by the court as sufficient prima facie evidence that the debt remains unpaid.

Compare: 1908 No 89 Schedule 2 r 838

24.21 Death of debtor against whom application filed

If a debtor against whom a bankruptcy application is filed dies, the application must, unless the court otherwise orders, be continued as if the debtor were alive.

Compare: 1908 No 89 Schedule 2 r 839

Subpart 5—Appointment of Official Assignee

24.22 Applicant to deposit sum for Official Assignee's expenses

The person who has applied for an order appointing the Official Assignee to be a receiver and manager of all or any part of the debtor's estate must, before the order is made, deposit with the Official Assignee any sum that the court directs for the Official Assignee's expenses.

Compare: 1908 No 89 Schedule 2 r 840

24.23 Official Assignee may seek additional sum where original deposit insufficient

(1) If the sum deposited for the Official Assignee's expenses under rule 24.22 is insufficient, the person who paid the deposit must deposit with the Official Assignee any additional sum that the court may, on the application of the Official Assignee, from time to time direct.

(2) If the additional sum is not deposited within 24 hours after the making of the order, the Official Assignee may apply to have the order appointing the Official Assignee as receiver and manager discharged by the court.

Compare: 1908 No 89 Schedule 2 r 841

24.24 Notification of order appointing Official Assignee as receiver and manager

(1) The Registrar must, immediately after the order appointing the Official Assignee as receiver and manager has been made, forward 2 copies of the order to the Official Assignee.

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(2) If the debtor is in New Zealand, the Official Assignee must cause a copy of the order appointing the Official Assignee as receiver and manager to be served on the debtor.

(3) The Official Assignee must advertise the Official Assignee's appointment as receiver and manager within 5 working days after the making of the order.

(4) The order referred to in this rule must be in form B 17.

Compare: 1908 No 89 Schedule 2 r 842

24.25 Repayment of deposits after order of adjudication

(1) If an order of adjudication is made after the Official Assignee is appointed receiver and manager, the Official Assignee must repay to the creditor the deposits made under rules 24.22 and 24.23 out of the proceeds of the estate.

(2) If there are insufficient proceeds in the estate to pay the Official Assignee's fees and expenses as receiver and manager, the Official Assignee may keep all or any part of the deposits as payment of those fees and expenses.

Compare: 1908 No 89 Schedule 2 r 843

24.26 Dismissal of application after order appointing Official Assignee as manager and receiver

If, after an order has been made appointing the Official Assignee as receiver and manager, the application upon which the order was made is dismissed,—

(a) the court must, on an application made within 15 working days from the date of the dismissal, make an order relating to any damages or claim arising out of the Official Assignee's appointment; and

(b) the court may make any other order it thinks just.

Compare: 1908 No 89 Schedule 2 r 844

Subpart 6—Contributions from bankrupt

24.27 Application for order under section 147

A creditor who intends to make an application under section 147 of the Act must give at least 10 working days' notice of that intention to the Official Assignee and to the bankrupt.

Compare: 1908 No 89 Schedule 2 r 845

24.28 Official Assignee's report

(1) If the Official Assignee or a creditor applies for an order under section 147 of the Act, the Official Assignee must prepare a report as to the circumstances of the bankruptcy, the bankrupt's conduct, and the bankrupt's earning power, responsibilities, and prospects.

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(2) At least 5 working days before the time fixed for the hearing, the Official Assignee must lodge the report in the court, and forward a copy to the bankrupt, and to the applicant, if the applicant is a creditor.

Compare: 1908 No 89 Schedule 2 r 846

24.29 Official Assignee to notify employer, etc, about proposed assignment or charge

If it is proposed that an order be made assigning to, or charging in favour of, the Official Assignee any money due or becoming due to the bankrupt by way of wages or salary or from any other source,—

(a) the Official Assignee must notify the employer or other person against whom the assignment or charge is proposed; and

(b) the person who is notified is entitled to appear and be heard.

Compare: 1908 No 89 Schedule 2 r 847

24.30 Official Assignee to serve order of assignment, etc

The Official Assignee must serve a duplicate of any order assigning or charging in favour of the Official Assignee any money due or becoming due to the bankrupt on the employer or other person against whom the assignment or charge was given.

Compare: 1908 No 89 Schedule 2 r 848

Subpart 7—Compositions during bankruptcy

24.31 Application for order approving composition

(1) The Official Assignee may apply to the court to approve a composition (whether or not the Official Assignee reports in favour of it) if—

(a) the creditors have passed a confirming resolution in relation to the composition; and

(b) the bankrupt does not, within 3 working days from the date of the confirmation, apply to the court for approval of the composition.

(2) The Official Assignee is not, by making the application, treated as approving the composition.

Compare: 1908 No 89 Schedule 2 r 849

24.32 Notice to Official Assignee of application to approve composition

Any person, other than the Official Assignee, who applies to the court to approve a composition must, at least 10 working days before the day appointed for hearing the application, serve notice of the application on the Official Assignee.

Compare: 1908 No 89 Schedule 2 r 850

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24.33 Notice of application to approve composition

If an application is made to the court to approve a composition, the Official Assignee must, at least 5 working days before the day appointed for hearing the application, send notice of the application to every creditor whose debt has been proved.

Compare: 1908 No 89 Schedule 2 r 851

24.34 Official Assignee to account when composition approved

If a composition is approved by the court, the Official Assignee must account to the bankrupt, or, as the case may be, to the trustee.

Compare: 1908 No 89 Schedule 2 r 852

Subpart 8—Irregular transactions

24.35 Applications by Official Assignee for cancellation of irregular transactions or retransfer of property or payment of value

(1) An application to the court by the Official Assignee under section 206 of the Act (for the cancellation of an irregular transaction) or under section 207 of the Act (for the retransfer of property or payment of value) must be made by originating application under Part 19.

(2) An application under section 206 must be in form B 14.

(3) An application under section 207 must be in form B 15.

Compare: 1908 No 89 Schedule 2 r 853

Subpart 9—Discharge of bankrupt

24.36 Filing and service of objection to discharge

(1) An objection to a discharge under section 292 of the Act is entered by filing an objection in form B 8.

(2) A creditor who enters an objection to a discharge must serve the objection on the Official Assignee.

Compare: 1908 No 89 Schedule 2 r 854

24.37 Service, etc, of notice of application for discharge

At least 20 working days before the hearing date, the bankrupt must—

(a) serve on the Official Assignee, and every creditor whose debt has been proved, notice of application for discharge under section 294 of the Act; and

(b) cause notice of the application and the hearing date to be advertised.

Compare: 1908 No 89 Schedule 2 r 855

24.38 Report of Official Assignee

At least 10 working days before the hearing date, the Official Assignee must—

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(a) lodge in the court a copy of the Official Assignee's report under section 296 of the Act; and

(b) serve a copy of the report on the bankrupt and all creditors known to the Official Assignee.

Compare: 1908 No 89 Schedule 2 r 856

24.39 Opposition by creditor to discharge

A creditor who intends to oppose the discharge of a bankrupt on grounds other than those specified in the Official Assignee's report must file and serve on the Official Assignee and the bankrupt a notice of the creditor's intended opposition and the grounds of opposition not less than 5 working days before the hearing.

Compare: 1908 No 89 Schedule 2 r 857

24.40 Conditions affecting salary, etc, after order of discharge

(1) The Official Assignee must notify the bankrupt's employer of the Official Assignee's intention to ask the court to impose a condition that affects any salary or wages that may, after the date of the order of discharge, become due to the bankrupt.

(2) The Official Assignee must notify the employer of an order made under section 298 of the Act before receiving payment of any salary or wages.

Compare: 1908 No 89 Schedule 2 r 858

24.41 Annulment of adjudication to be advertised

The Official Assignee must immediately cause a notice of an order annulling an adjudication to be advertised.

Compare: 1908 No 89 Schedule 2 r 859

Subpart 10—Proposals

24.42 Proposal and statement of affairs and affidavit

A proposal under subpart 2 of Part 5 of the Act must be in form B 9 and must be accompanied by a statement of affairs and affidavit in form B 10.

Compare: 1908 No 89 Schedule 2 r 860

24.43 Trustee's report on proposal

The trustee must file a report in form B 11 with the application for approval under section 333 of the Act.

Compare: 1908 No 89 Schedule 2 r 861

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Subpart 11—Insolvent deceased estates

24.44 Application for order to administer under Part 6 of Act

An application for an order to administer under Part 6 of the Act must be by originating application.

Compare: 1908 No 89 Schedule 2 r 862

24.45 Application by creditor or beneficiary

(1) Notice of an application under section 381 of the Act must be given by serving on the administrator, or, if no administrator has been appointed, on those persons that the court directs, a copy of the application together with a copy of any supporting affidavit.

(2) The court may, within such time as the court requires, direct the administrator to file the account in form B 12 if—

(a) an application is made by a creditor, or any person beneficially interested, after a request has been made to an administrator; and

(b) the administrator, having been requested in writing to apply, has failed to make an application within 15 working days after receiving the request.

Compare: 1908 No 89 Schedule 2 r 863

24.46 Duty of Registrar when order made

If an order is made under section 379 or 381 of the Act, the Registrar must send to the appointee and to the Commissioner of Inland Revenue a copy of the order and of the account specified in section 380(3) of the Act.

Compare: 1908 No 89 Schedule 2 r 864

24.47 Duty of administrator when order made

If an order has been made under section 379 or 381 of the Act,—

(a) the administrator must immediately send an account of the administrator's dealings and administration of the deceased estate to the appointee; and

(b) the administrator must, at the same time, provide whatever particulars of the affairs of the deceased are required by the appointee.

Compare: 1908 No 89 Schedule 2 r 865

24.48 Person who has intermeddled in estate may be ordered to give particulars

The court may, on an appointee's application, direct that an account be made, verified, and given by any person the court considers has administered or otherwise intermeddled with all or any part of the deceased's property, if—

(a) an order has been made under section 379 or 381 of the Act; and

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(b) it appears to the court that no administrator exists and the appointee is unable to find any person willing to give the particulars required by rule 24.47.

Compare: 1908 No 89 Schedule 2 r 866

24.49 Administration election

A certificate by Public Trust or the Māori Trustee recording an election to administer an insolvent estate under Part 6 of the Act must be in form B 13.

Compare: 1908 No 89 Schedule 2 r 867

Subpart 12—Appeals

24.50 Applications to vary or discharge order or decision of Registrar or District Court Judge

(1) An application to the court under section 414 of the Act to vary or discharge the order or decision of a Registrar or District Court Judge under section 413 of the Act must be filed,—

(a) if it is made by a party who was present or represented when the order was made or the decision given, within 5 working days after the making of the order or the giving of the decision; or

(b) if it is made by a party who was not then present or represented, within 5 working days after the receipt by the party of notice of the order or decision.

(2) The application does not stay proceedings unless a Judge, the Registrar, or the District Court Judge otherwise orders.

Compare: 1908 No 89 Schedule 2 r 868

24.51 Appeals to Court of Appeal

(1) The Court of Appeal (Civil) Rules 2005, so far as they are applicable and with any necessary modifications, apply to appeals to the Court of Appeal under section 414 of the Act.

(2) The Official Assignee of the bankrupt's property is a party to an appeal.

Compare: 1908 No 89 Schedule 2 r 869

Subpart 13—Official Assignee

24.52 Applications to court by Official Assignee

An application by the Official Assignee to the court may be made personally, by counsel, or by any agent duly appointed under paragraph (t) of Schedule 1 of the Act.

Compare: 1908 No 89 Schedule 2 r 870

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24.53 Official Assignee's liability for costs

Unless the court otherwise directs, the Official Assignee is not personally liable for costs if—

(a) proceedings are brought against the Official Assignee representing the estate of the bankrupt; or

(b) the Official Assignee is made a party to a proceeding on the application of another party.

Compare: 1908 No 89 Schedule 2 r 871

Subpart 14—District Court filings

24.54 Filing decisions of District Court

(1) If, under the Act, an application relating to bankruptcy may be filed in a District Court, the Registrar of that court must forward to the nearest High Court a certified copy of the decision of that court.

(2) The certified copy of the decision of the District Court must be filed by the Registrar and forms part of the proceedings of the High Court.

Compare: 1908 No 89 Schedule 2 r 872

Subpart 15—Cross-border proceedings

24.55 Interpretation

(1) In this subpart, unless the context otherwise requires, **Act** means the Insolvency (Cross-border) Act 2006.

(2) Unless the context otherwise requires, expressions defined in Schedule 1 of the Act have, in this subpart, the meanings so defined.

(3) In this subpart, references to articles are references to articles in Schedule 1 of the Act.

Compare: 1908 No 89 Schedule 2 r 873

24.56 Applications for recognition of foreign proceedings

(1) An application by a foreign representative under article 15(1) must be made by originating application under Part 19.

(2) In addition to complying with the requirements of article 15, the application must—

(a) be supported by an affidavit verifying the statement referred to in article 15(3) (identifying all foreign proceedings in respect of the debtor that are known to the foreign representative) or by other sworn evidence acceptable to the court:

(b) be served, in accordance with Part 6 of these rules, on the debtor or a New Zealand agent or representative of the debtor unless a Judge directs

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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that the application may in all the circumstances proceed without that service.

(3) A foreign representative who has filed an application under subclause (1) may apply without notice for relief of a provisional nature under article 19(1).

Compare: 1908 No 89 Schedule 2 r 874(1), (2), (6)

24.57 Other procedural requirements

(1) A New Zealand agent or representative of the debtor served under rule 24.56(2)(b), must, as a condition of being treated as a respondent to the application under Part 19, provide evidence of that agency or representation to the court's satisfaction.

(2) The foreign representative must, when filing an application under rule 24.56(1) or within 25 working days after the date of filing, file an application for directions as to service under rule 18.7 and the Judge may give directions as to service and make any incidental orders considered just.

(3) An application for modification or termination of recognition under article 17(5) must be made by originating application served on the parties and any other persons who were directed to be served before the recognition order under article 17(1) was made.

Compare: 1908 No 89 Schedule 2 r 874(3)–(5)

24.58 Relief after recognition

(1) The foreign representative may apply by interlocutory application for appropriate relief under article 21(1).

(2) An application under subclause (1) must be served on—

(a) any other parties to the application under rule 24.56:

(b) persons directed to be served under rule 24.56:

(c) any judgment creditor carrying on business, or resident, or having a registered office, in New Zealand.

Compare: 1908 No 89 Schedule 2 r 875

24.59 Modification or termination

(1) The foreign representative or a person affected by relief granted under article 19 and rule 24.56(3), or under article 21 and rule 24.58, may apply by interlocutory application for an order modifying or terminating the relief granted.

(2) The statutory manager may apply by interlocutory application under article 22(4) to terminate relief granted under article 19 and rule 24.56(3), or under article 21 and rule 24.58.

Compare: 1908 No 89 Schedule 2 r 876

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Subpart 16—Voluntary administration

24.60 Appointment of administrator under section 239L of Companies Act 1993

An application by a creditor, the liquidator (if the company is in liquidation), or the Registrar of Companies for the appointment by the court of an administrator under section 239L of the Companies Act 1993 (inserted by section 6 of the Companies Amendment Act 2006) must be made by originating application under Part 19.

Compare: 1908 No 89 Schedule 2 r 700ZL

24.61 Applications in course of administration

(1) An application to the court by the administrator or other person entitled to apply to the court under Part 15A of the Companies Act 1993 must be made by originating application under Part 19.

(2) If an application in relation to a company has been made to the court under subclause (1), any further application in relation to the voluntary administration of that company may be made by interlocutory application under subpart 2 of Part 7.

(3) Subclause (1) is subject to subclause (2).

Compare: 1908 No 89 Schedule 2 r 700ZM

24.62 Proper registry of court

(1) The proper registry of the court for the purpose of filing an originating application under rule 24.61 is—

(a) the registry of the court in the town where, or the registry of the court in the town nearest to where, the company's registered office is situated; or

(b) if the company does not have a registered office, the registry of the court in the town where, or the registry of the court in the town nearest to where, the principal or last known place of business is or was situated.

(2) If it appears to the court on application to it that the originating application has been filed in the wrong registry of the court, or that any other registry of the court would be more convenient to all parties affected, it may direct that the originating application and any documents filed in relation to that application be filed in, or transferred to, the proper registry or the other registry of the court.

(3) This rule overrides rule 5.1.

Compare: 1908 No 89 Schedule 2 r 700ZN

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Part 25
Admiralty

Subpart 1—Preliminary provisions

25.1 Interpretation

(1) In this Part, unless the context otherwise requires,—

Act means the Admiralty Act 1973

action means an action *in personam* or *in rem*, or both, in the admiralty jurisdiction of the court

foreign ship has the same meaning as it has in section 2(1) of the Maritime Transport Act 1994.

(2) In this Part, unless the context otherwise requires, terms and expressions used and not defined in this Part but defined in the Act have the same meaning as in the Act.

Compare: 1908 No 89 Schedule 2 r 764

25.2 Scope of this Part

(1) Subpart 1 contains preliminary provisions and applies generally to actions.

(2) Subpart 2 contains provisions about starting actions and applies generally to actions.

(3) Subpart 3 contains provisions in addition to subpart 2 that apply to actions arising out of collisions between ships.

(4) Subpart 4 contains provisions in addition to subpart 2 that apply to actions for the limitation of liability under Part 7 of the Maritime Transport Act 1994.

(5) Subpart 5 applies to applications for judgment by default in actions.

(6) Subpart 6 applies to the arrest, release, and sale of property in actions.

(7) Subpart 7 contains miscellaneous provisions that apply generally to actions.

25.3 Application of other rules and practice of court

The other Parts of these rules and the general practice of the court apply when this Part applies unless modified by or inconsistent with the Act or this Part.

Compare: 1908 No 89 Schedule 2 r 766

25.4 Parties can apply for directions if procedure not prescribed

(1) A party or intending party who wishes to take a step in a proceeding for which a procedure is not prescribed by this Part or any other Part or by the general practice of the court may apply to the court or a Judge for directions.

(2) The court or a Judge may give any directions concerning the steps to be taken by the party that the court or Judge thinks just.

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(3) A step in a proceeding is treated as having been properly taken if taken in accordance with the directions given under subclause (2).

Compare: 1908 No 89 Schedule 2 r 767

25.5 Form of application

An interlocutory application under this Part must be in form G 31 and an order made on that application must be in form G 34.

Compare: 1908 No 89 Schedule 2 r 768

Subpart 2—Starting proceedings in admiralty

25.6 Action *in personam* or *in rem*, or both, started by notice of proceeding

(1) Actions may be *in personam* or *in rem*, or both.

(2) An action is started by a notice of proceeding—

(a) issued from any registry of the court; and

(b) endorsed, before being issued, with a concise statement of—

(i) the nature of the claim; and

(ii) the relief or remedy required; and

(iii) the amount claimed (if any).

(3) The concise statement referred to in subclause (2) is not a statement of claim within the meaning of these rules.

(4) An action is treated as having started when a notice of proceeding complying with subclause (2) is filed.

Compare: 1908 No 89 Schedule 2 r 769

25.7 Notice of proceeding for action *in personam*

(1) An action *in personam* is started by a notice of proceeding in form AD 2.

(2) The action must be headed as in form AD 1.

(3) Rules 6.27 to 6.35 apply in relation to service out of the jurisdiction in an action *in personam*.

Compare: 1908 No 89 Schedule 2 r 770

25.8 Notice of proceeding for action *in rem*

(1) An action *in rem* is started by a notice of proceeding in form AD 4.

(2) The action must be headed as in form AD 3.

(3) No proceedings *in rem* concerning any claim against the Crown may be brought.

(4) A notice of proceeding *in rem* may not be served out of the jurisdiction, but a notice of proceeding that is both *in rem* and *in personam* may be served out of the jurisdiction in so far as it is *in personam*.

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(5) Rules 6.27 to 6.35 apply to service out of the jurisdiction under subclause (4).

Compare: 1908 No 89 Schedule 2 r 771(1)–(5)

25.9 Notice of proceeding for action both *in rem* and *in personam*

(1) An action that is both *in rem* and *in personam* is started by a notice of proceeding in form AD 5.

(2) The action must be headed as in form AD 1.

Compare: 1908 No 89 Schedule 2 r 771(6)

25.10 How to serve notice of proceeding in action *in rem* on ship, cargo, or other property

(1) To serve a notice of proceeding in an action *in rem* on a ship or on cargo or on other property on board a ship,—

(a) attach a sealed copy of the notice to a place adjacent to the bridge or some conspicuous part of the ship, or adjacent to an entrance way to the superstructure or accommodation section of the ship; and

(b) leave a copy of the notice with the person apparently in charge of the ship, if that person is available at the time of service.

(2) To serve a notice of proceeding in an action *in rem* on cargo or on other property not on board a ship,—

(a) attach a sealed copy of the notice to that cargo or other property; and

(b) attach a copy of the notice to the place where the cargo or other property is located.

(3) To serve a notice of proceeding in an action *in rem* on freight in the hands of an individual,—

(a) show a sealed copy of the notice to that individual; and

(b) leave a copy of the notice with that individual.

(4) To serve a notice of proceeding in an action *in rem* on proceeds in court,—

(a) show a sealed copy of the notice to the Registrar; and

(b) leave a sealed copy of the notice with the Registrar.

(5) To serve a notice of proceeding in an action *in rem* on inaccessible cargo or on other property,—

(a) show a sealed copy of the notice to any person appearing to be in charge of that cargo or other property; and

(b) leave a copy of the notice with that person.

(6) Instead of serving a notice of proceeding in the appropriate manner set out in subclauses (1) to (5), service in an action *in rem* may be carried out in some other manner ordered by the court.

Compare: 1908 No 89 Schedule 2 r 772(1)

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25.11 Other provisions about service in action *in rem*

(1) A notice of proceeding in an action *in rem* may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.

(2) The following provisions apply in an action *in rem* if a caveat against arrest is entered under rule 25.43:

(a) the notice of proceeding must be served by or on behalf of the plaintiff or the plaintiff's solicitor on any person at whose instance the caveat is entered:

(b) a sealed copy of the notice must be delivered to the address for service given in the request for the caveat as soon as the plaintiff or the plaintiff's solicitor becomes aware that the caveat is in force.

(3) Service of a notice of proceeding or of a warrant of arrest is not required in an action *in rem* if the solicitor for a person interested in the defendant undertakes in writing to—

(a) accept service; and

(b) enter an appearance; and

(c) give security or pay money into court instead of giving security.

(4) An affidavit of service in an action *in rem* attaching as an exhibit a sealed copy of the notice of proceeding and stating the time, place, and method of service must be filed.

Compare: 1908 No 89 Schedule 2 r 772(2)–(5)

25.12 Defendant must enter appearance

(1) A defendant to an action must enter an appearance in person, or by a solicitor, by filing a memorandum in form AD 6 within the time and at the place directed in the notice of proceeding.

(2) If 2 or more defendants to an action enter an appearance by the same solicitor at the same time, only 1 memorandum need be completed and filed.

(3) A defendant to an action may enter a conditional appearance in the action, but a conditional appearance has effect as an unconditional appearance unless—

(a) a Judge otherwise orders; or

(b) the defendant applies to the court, within the period specified in rule 25.17, for an order under that rule and the court makes an order under that rule.

Compare: 1908 No 89 Schedule 2 r 773(1), (4), (6)

25.13 Content of memorandum

(1) Every memorandum of appearance must contain an endorsement stating—

(a) that the appearance is filed by the party appearing in person or by the party's solicitor (as the case may be); and

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(b) if applicable, the solicitor's name and address, and the name of the solicitor's firm (if any); and

(c) if applicable, the name and address of the solicitor acting as agent in the proceeding of the solicitor filing the appearance or of the agent's firm (if any); and

(d) an address for service.

(2) A memorandum of appearance in an action *in rem* must also state—

(a) the name and correct address of the party appearing and the capacity in which that party appears, whether as owner, part-owner, or otherwise; and

(b) the port of registry or port to which the ship belongs.

(3) A statement made under subclause (2) is prima facie evidence of the matters stated in it.

Compare: 1908 No 89 Schedule 2 r 773(10), (11)

25.14 Time limits for entering appearance

(1) An appearance must be entered,—

(a) for a notice of proceeding to be served within the jurisdiction, within 10 working days after the day of service:

(b) for a notice of proceeding to be served outside the jurisdiction, within the period specified by an order granting leave to serve the notice outside the jurisdiction.

(2) A party not entering an appearance within the specified period may, by consent of the other parties or by leave of the Judge, enter an appearance at any time on any terms that the Judge may order.

(3) A party may not enter an appearance after judgment has been entered except with the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 773(2), (5)

25.15 Provisions about filing

(1) A memorandum of appearance may be filed by post and—

(a) the appearance is treated as having been entered when the memorandum is actually received by the Registrar:

(b) the duplicate copy to be returned to the party filing the memorandum may be returned by post.

(2) When a memorandum of appearance is filed, the Registrar must—

(a) enter an appearance in the Register of Admiralty Proceedings; and

(b) return to the party filing the memorandum a duplicate copy showing the date of filing.

Compare: 1908 No 89 Schedule 2 r 773(8), (15)

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25.16 Service of memorandum

The party filing the memorandum of appearance must—

(a) serve the duplicate copy on the plaintiff as soon as practicable; and

(b) immediately serve registry copies on those other parties who have entered appearances.

Compare: 1908 No 89 Schedule 2 r 773(9)

25.17 Defendant may apply for orders

(1) A defendant to an action may apply to the court for an order for 1 or more of the following:

(a) setting aside the notice of proceeding or service of the notice on the defendant:

(b) declaring that the notice has not been duly served on the defendant:

(c) discharging any order giving leave to serve the notice on the defendant out of the jurisdiction.

(2) The application may be made—

(a) at any time before entering an appearance in the action; or

(b) if the defendant has entered a conditional appearance, within 5 working days after the day on which that conditional appearance is entered.

(3) The court may make any order it thinks just.

Compare: 1908 No 89 Schedule 2 r 773(7)

25.18 Solicitor's undertaking

A written undertaking by a solicitor to give security or to pay money into court instead of bail in an action *in rem* given by a solicitor on behalf of any person may be enforced under subpart 4 of Part 2 of the Contempt of Court Act 2019 if the solicitor fails to comply with that undertaking.

25.19 Substituted defendants, third parties, and interveners

Rules 25.12 to 25.18 apply, with the necessary modifications, to—

(a) an added or substituted defendant:

(b) a third or further party who is served with a third party notice:

(c) an intervener who has obtained leave to intervene in an action.

Compare: 1908 No 89 Schedule 2 r 773(3)

25.20 Statement of claim

(1) Every action must be heard with pleadings, unless the court or a Judge otherwise orders under this rule or rule 25.23(5).

(2) The plaintiff must file in court and serve a full and explicit statement of claim on each defendant, unless the court or a Judge gives leave to the contrary.

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(3) The steps required by subclause (2) must be taken either when the notice of proceeding is served on that defendant or at any time after service of the notice on that defendant, but in no case later than 10 working days after that defendant enters an appearance, unless the court or a Judge gives leave to the contrary or subclause (4) applies.

(4) If preliminary acts are required under rule 25.23, the plaintiff must file in court and serve a statement of claim on each defendant within 10 working days after the latest date on which the preliminary act of any party to the action is filed, unless the court or a Judge orders the action to be tried without pleadings.

Compare: 1908 No 89 Schedule 2 r 774

25.21 Statement of defence

A defendant who enters an appearance in, and intends to defend, an action must file in court and serve a statement of defence on the plaintiff within 20 working days after the day on which a statement of claim is served on the defendant, unless the court or a Judge gives leave to the contrary.

Compare: 1908 No 89 Schedule 2 r 775

Subpart 3—Procedure in collision cases

25.22 Meaning of preliminary act

A **preliminary act** is a document containing a statement of the following particulars:

(a) the names of the ships that came into collision and their ports of registry:

(b) particulars (referring to the period immediately before the collision) of the person in command, the persons on the bridge, and the persons keeping a lookout on the plaintiff's ship (if the plaintiff is filing a preliminary act) and on the defendant's ship (if the defendant is filing a preliminary act):

(c) the date and time of the collision:

(d) the place of the collision:

(e) the direction and force of the wind:

(f) the state of the weather including visibility:

(g) the state, direction, and force of the tidal or other current:

(h) the ship's course and speed through the water when the other ship was first seen or immediately before any measures were taken in connection with its presence, whichever was the earlier:

(i) the lights (if any) carried by the ship:

(j) the distance and bearing of the other ship if and when its echo was first observed by radar:

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(k) the distance, bearing, and approximate heading of the other ship when first seen:

(l) the other ship's light or combination of lights (if any) when first seen:

(m) the other lights or combination of lights (if any) of the other ship that were subsequently seen before the collision, and the time of the sighting:

(n) the alterations (if any) made to the ship's course and speed after the earlier of the 2 times referred to in paragraph (h) up to the time of the collision, and the times of those alterations, and the measures (if any), other than alterations of course or speed, taken to avoid the collision, and the times of those measures:

(o) the parts of each ship that first came into contact and the approximate angle between the 2 ships at the moment of contact:

(p) the sound signals or other signals (if any) given, and the times of those sound signals or other signals:

(q) the sound signals or other signals (if any) heard or seen from the other ship, and the times of hearing or seeing those sound signals or other signals.

Compare: 1908 No 89 Schedule 2 r 785(2)

25.23 Preliminary acts to be filed in collision cases

(1) In an action arising out of a collision between ships, unless the court otherwise orders,—

(a) the plaintiff must file a preliminary act within 20 working days after the issue of the notice of proceeding:

(b) the defendant must file a preliminary act within 20 working days after entering an appearance in the action and before any pleading is filed or served.

(2) The Registrar must seal every preliminary act and file it in a closed envelope, and the envelope must be sealed with the official stamp of the court and show the date of filing.

(3) The envelope must not be opened until the pleadings are closed and a consent signed by each of the parties to the opening of the preliminary acts is filed, unless the court or a Judge otherwise orders.

(4) A party filing a preliminary act concerning a collision must, within 3 working days after it is filed, serve notice of the filing on every other party who has filed a preliminary act concerning the same collision.

(5) If the court orders that the preliminary acts be opened, the court may also order that the action be tried without pleadings.

(6) If the court or a Judge orders the action to be tried without pleadings, the court or a Judge may also order each party, within the period stated in the order,—

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(a) to file a statement of the grounds on which the party charges any other party with negligence in connection with the collision; and

(b) to serve a copy of the statement on that other party.

Compare: 1908 No 89 Schedule 2 r 785(1), (3)–(6)

25.24 Proceedings against party in default where other party fails to lodge preliminary act

(1) A defendant in an action arising out of a collision between ships who has lodged a preliminary act within the specified period may apply to the court for an order to dismiss the action if the plaintiff fails to lodge a preliminary act within the specified period, and the court may by order dismiss the action or make any other order on any terms it thinks just.

(2) The plaintiff to an action *in personam* arising out of a collision between ships who has lodged a preliminary act within the specified period may proceed to judgment under rule 25.29 if the defendant fails to lodge a preliminary act within the specified period, as if that failure were a failure to enter an appearance or to file a statement of defence within the periods specified by or under these rules for doing those things.

(3) The plaintiff to an action *in rem* arising out of a collision between ships who has lodged a preliminary act within the specified period may apply to the court by motion for judgment against the defendant if the defendant fails to lodge a preliminary act within the specified period, and the plaintiff need not file or serve a statement of claim or an affidavit before the hearing of the motion.

(4) On the hearing of the motion under subclause (3),—

(a) the court may make any orders it thinks just; and

(b) if the defendant does not appear on the hearing and the court considers that judgment should be given for the plaintiff provided the plaintiff proves the plaintiff's case, the court must order that the plaintiff's preliminary act be opened and require the plaintiff to satisfy the court that the plaintiff's claim is well founded.

(5) The plaintiff's evidence may, unless the court otherwise orders, be given by affidavit.

(6) On being satisfied that the plaintiff's claim is well founded, the court may—

(a) give judgment for the claim; and

(b) at the same time,—

(i) order that the property against which the action is brought be appraised and sold and the proceeds paid into court; or

(ii) make any other orders it thinks just.

(7) The court may, on any terms it thinks just, set aside any judgment entered under this rule.

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(8) In this rule, references to the **specified period** are to be construed as references to the period within which, by virtue of rule 25.23(1) or of any order of the court or a Judge, the plaintiff or defendant, as the context of the reference requires, is required to lodge a preliminary act.

Compare: 1908 No 89 Schedule 2 r 786

Subpart 4—Limitation of liability under Part 7 of Maritime Transport Act 1994

25.25 Actions for limitation of liability

(1) Proceedings for relief under Part 7 of the Maritime Transport Act 1994 must be in the form of an action *in personam*.

(2) In the action the person seeking relief is the plaintiff and must be described in the notice of proceeding by name and not described merely as the owner of, or as bearing some other relation to, a particular ship or other property.

(3) For the purposes of the proceedings,—

(a) **name** includes a firm name or the name under which a person carries on business:

(b) if any person with a claim against the plaintiff concerning the casualty to which the action relates has been described for the purposes of that claim merely as the owner of, or as bearing some other relation to, a ship or other property, that person may be described in that way as defendant to the notice of proceeding and, if described in that way, is to be treated for the purposes of this rule as having been named in the notice of proceeding by that person's name.

(4) At least 1 of the persons with claims against the plaintiff concerning the casualty to which the action relates must be described by name in the notice of proceeding as a defendant.

(5) All persons with claims against the plaintiff concerning the casualty to which the action relates who are not named defendants may be described generally in the notice of proceeding as defendants.

(6) The notice of proceeding must be served on 1 or more of the defendants who are named by their names, and need not be served on any other defendant.

Compare: 1908 No 89 Schedule 2 r 792(1)–(7)

25.26 Plaintiff must apply to court within 5 working days

(1) The plaintiff in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994, without filing a statement of claim, must apply to the court by notice of motion for an order limiting the plaintiff's liability or, in default of an order to that effect, for directions as to the further proceedings in the action, and the application must be made—

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(a) within 5 working days after the entry of appearance by 1 of the defendants named by their names in the notice of proceeding; or

(b) if none of the defendants enters an appearance, within 5 working days after the period specified for appearing.

(2) The application must be supported by an affidavit or affidavits proving—

(a) the plaintiff's case in the action; and

(b) if none of the defendants named in the notice of proceeding by their names has entered an appearance, service of the notice of proceeding on at least 1 of the defendants so named; and

(c) the names of all the persons (other than defendants to the action who are named in the notice of proceeding by their names) who, to the knowledge of the plaintiff, have claims against the plaintiff concerning the casualty to which the action relates; and

(d) the address of each of those persons, if known to the plaintiff.

(3) The motion and every affidavit in support of the motion must be served, at least 5 working days before the hearing of the application, on any defendant who has entered an appearance.

(4) If, at the hearing of the application, it appears to the court that it is not disputed that the plaintiff has a right to limit the plaintiff's liability, the court must make a decree limiting the plaintiff's liability and fix the amount to which the liability is to be limited.

(5) If, at the hearing of the application, it appears to the court that any defendant does not have sufficient information to enable the defendant to decide whether or not to dispute that the plaintiff has a right to limit the plaintiff's liability, the court must—

(a) give such directions as appear to be appropriate for enabling the defendant to obtain such information; and

(b) adjourn the hearing.

(6) If, on the hearing or resumed hearing of the application, the court does not make a decree limiting the plaintiff's liability, the court must give such directions as to the further proceedings in the action as appear to be appropriate.

(7) A defendant who, after directions have been given under subclause (6), ceases to dispute the plaintiff's right to limit the plaintiff's liability must immediately file a notice to that effect in the registry of the court and serve a copy on the plaintiff and on every other defendant who has entered an appearance.

(8) If every defendant who disputes the plaintiff's right to limit the plaintiff's liability serves a notice on the plaintiff under subclause (7), the plaintiff may apply to the court for an order limiting the plaintiff's liability, and subclauses (3) and (4) apply to the application with the necessary modifications.

Compare: 1908 No 89 Schedule 2 r 792(8)

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25.27 Protection against other parties

(1) This rule applies if the only defendants in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994 are those named in the summons by their names and all those defendants have been served.

(2) An order limiting the plaintiff's liability—

(a) need not be advertised; but

(b) if not advertised, operates only to protect the plaintiff against claims by the named defendants or persons claiming through or under those persons.

(3) To protect the plaintiff's liability against claims by other persons as well as the defendants and persons referred to in subclause (2)(b), an order limiting the plaintiff's liability must—

(a) be advertised by the plaintiff in the manner provided, and within the period specified, in the order; and

(b) specify a period within which persons with claims against the plaintiff concerning the casualty to which the action relates may enter an appearance in the action (if they have not already done so) and file their claims, and, in cases to which subclause (5) applies, file a motion, if they think fit, to set the order aside.

(4) The period to be allowed under subclause (3)(b), unless the court otherwise orders, must be not less than 2 months from the latest date allowed for the appearance of the advertisement and, after the expiration of the period so allowed, leave of the court is required to enter an appearance, file a claim, or to make an application to set aside the order.

(5) If an order limiting the plaintiff's liability specifies a period in accordance with subclause (3),—

(a) a person with a claim against the plaintiff concerning the casualty to which the action relates who is not named in the notice of proceeding as a defendant to the action may, within the specified period after entering an appearance, apply on notice for the order to be set aside:

(b) a person with a claim against the plaintiff concerning the casualty to which the action relates who is named but was not served with the notice of proceeding and has not entered an appearance may, within the specified period after entering an appearance, apply on notice for the order to be set aside.

(6) An application under subclause (4) must be supported by an affidavit or affidavits showing that the defendant in question makes a claim in good faith against the plaintiff concerning the casualty in question and that the defendant has sufficient prima facie grounds for the contention that the plaintiff is not entitled to the relief given to the plaintiff by the order.

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(7) An application under subclause (4) and every affidavit in support of the application must be served, at least 5 working days before the hearing of the motion, on the plaintiff and on any defendant who has entered an appearance.

(8) If satisfied that the defendant concerned is making a claim in good faith against the plaintiff, and that it is reasonably arguable that the plaintiff is not entitled to the relief given to the plaintiff by the order, the court must set the order aside and give any directions as to the further proceedings in the action that appear appropriate.

Compare: 1908 No 89 Schedule 2 r 792(9), (10)

25.28 Order limiting plaintiff's liability

Any order limiting the plaintiff's liability in an action *in personam* for relief under Part 7 of the Maritime Transport Act 1994 may make any provision authorised by section 89 of the Maritime Transport Act 1994.

Compare: 1908 No 89 Schedule 2 r 792(11)

Subpart 5—Judgment by default

25.29 Who may seek judgment by default in action *in personam*

(1) Rules 15.4 to 15.14 apply to actions *in personam*.

(2) A plaintiff to an action *in personam* is entitled to proceed to judgment if the defendant fails, within the period specified by or under this Part, either to enter an appearance or to file a statement of defence.

(3) Judgment under this rule must not exceed the amount endorsed on the notice of proceeding or claimed in the statement of claim concerning the demand for costs.

Compare: 1908 No 89 Schedule 2 r 787

25.30 Default in filing and service of statement of claim

(1) This rule applies if the plaintiff to an action *in personam* or *in rem* is required by these rules to file in court a statement of claim and to serve it on a defendant, but the plaintiff fails to do either of those things.

(2) The defendant may, after the expiration of the period specified by or under these rules for filing the statement of claim, apply to the court for an order to dismiss the action.

(3) The court may by order dismiss the action or make any other order on any terms it thinks just.

(4) The court may, on any terms it thinks just, set aside or vary any default judgment entered under this rule.

Compare: 1908 No 89 Schedule 2 r 788

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25.31 Third parties

Rule 4.17 applies if a third party fails to enter an appearance, as if the failure to enter an appearance were a failure to file a statement of defence.

Compare: 1908 No 89 Schedule 2 r 789

25.32 Application for judgment by default in action *in rem*

(1) An application for judgment by default in an action *in rem* must be made by motion.

(2) In default actions *in rem*, evidence may, unless the court otherwise orders, be given by affidavit.

(3) The plaintiff may, on filing an affidavit verifying the facts on which the action is based, apply to the court for judgment by default if—

- (a) a notice of proceeding is served under rule 25.11(2) on a party at whose instance a caveat against arrest has been issued; and
- (b) the sum claimed in the action begun by the notice of proceeding does not exceed the amount specified in the undertaking given by that party or that party's solicitor to procure the entry of that caveat; and
- (c) that party or that party's solicitor does not, within 10 working days after service of the notice of proceeding, fulfil that undertaking.

(4) A plaintiff to an action *in rem* may apply to the court for judgment by default if—

- (a) the defendant to the action fails to enter an appearance within the period specified for appearing; and
- (b) not less than 10 working days has passed since the notice of proceeding was served; and
- (c) the plaintiff has filed an affidavit proving due service of the notice of proceeding, a statement of claim (where one has not already been filed), and an affidavit verifying the facts on which the action is based.

(5) A plaintiff to an action *in rem* may apply to the court for judgment by default if—

- (a) the defendant to the action fails to file and serve a statement of defence on the plaintiff within the period specified by or under these rules for filing and service of the defence; and
- (b) the plaintiff has filed—
  - (i) an affidavit stating that no defence was served on the plaintiff by that defendant during the period referred to in paragraph (a); and
  - (ii) an affidavit verifying the facts on which the action is based.

(6) A party making a counterclaim in an action *in rem* may apply to the court for judgment by default if—

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(a) the defendant to the counterclaim fails to file and serve a defence to the counterclaim on the party making the counterclaim within the period specified by or under these rules for the filing and service of the defence to a counterclaim; and

(b) the party making the counterclaim has filed—

(i) an affidavit stating that no defence to the counterclaim has been served on that party by the defendant during that period; and

(ii) an affidavit verifying the facts on which the counterclaim is based.

Compare: 1908 No 89 Schedule 2 r 790(1), (3)–(5), (7)

25.33 Judgment by default in action *in rem*

(1) On being satisfied at the hearing that the applicant's claim in an action *in rem* is well founded, the court may—

(a) give judgment for the claim; and

(b) at the same time,—

(i) order the property against which the action, or, as the case may be, the counterclaim is brought to be appraised and sold and the proceeds to be paid into court; or

(ii) make any other orders it thinks just.

(2) Judgment given under subclause (1) may be enforced by—

(a) arrest of the property against which the action was brought:

(b) committal of the party at whose instance the caveat against that property was entered.

(3) The court may, on any terms it thinks just, set aside or vary any judgment by default entered in an action *in rem*.

Compare: 1908 No 89 Schedule 2 r 790(2), (6), (8)

Subpart 6—Arrest, release, and sale of property

Arrest of property

25.34 Application for warrant of arrest of property

(1) After the issue of a notice of proceeding or counterclaim *in rem*, the plaintiff or the defendant to the notice or counterclaim may, by an application in form AD 7, apply for the issue of a warrant of arrest of the property against which the action or counterclaim is brought.

(2) However, if 2 or more ships owned by the same person are named as defendant in an action arising from a cause of action concerning 1 ship only,—

(a) a warrant of arrest may be issued against 1 ship only; and

(b) the plaintiff must name that ship in the application for the warrant of arrest.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(3) The applicant for the issue of a warrant of arrest must cause a search to be made to determine whether any caveat against the issue of the warrant is in force.

(4) In support of the application for a warrant of arrest, the applicant must file—

(a) an affidavit stating—

(i) the name and description of the party at whose instance the warrant is to be issued; and

(ii) the nature of the claim; and

(iii) the name or nature of the property to be arrested; and

(iv) the extent to which the claim has been satisfied, the amount claimed paid into court, or security for payment of the claim given to the Registrar; and

(v) whether any caveat against the issue of a warrant of arrest has been filed and, if so, whether a copy of the notice of proceeding or a notice requiring payment or security has been served on the caveator; and

(vi) any other relevant information known to the applicant at the time the application is made; and

(b) an indemnity to the Registrar in form AD 8 and security to the satisfaction of the Registrar for the fees, expenses, and harbour dues (if any) of the Registrar and of the Registrar's appointed officers and agents.

Compare: 1908 No 89 Schedule 2 r 776(1)–(4)

25.35 Issue of warrant of arrest

(1) The Registrar may require additional security to cover fees, expenses, and harbour dues (if any) referred to in rule 25.34(4)(b).

(2) The Registrar must, before issuing the warrant of arrest, ascertain whether a caveat against the issue of a warrant of arrest has been entered, but, under rule 25.43(2), the entry of a caveat against arrest does not prevent the issue of a warrant of arrest.

(3) On being satisfied that the relevant requirements of rule 25.34 and this rule have been complied with, the Registrar must—

(a) complete the certificate on the application for a warrant of arrest; and

(b) issue a warrant of arrest in form AD 9.

(4) Despite subclause (2), a Registrar may, in the case of any emergency or special circumstances, issue a warrant of arrest immediately if the Registrar—

(a) is satisfied that a notice of proceeding has been issued and that there is either an emergency or special circumstances which justify the immediate issue of a warrant of arrest; and

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(b) is given an indemnity that the Registrar requires against any claim arising out of the issue of a warrant of arrest.

(5) The Registrar may, instead of completing the certificate on the application for warrant of arrest, endorse the application to the effect that the warrant is issued under subclause (4).

Compare: 1908 No 89 Schedule 2 r 776(5)–(7), (12), (13), (17)(b)

25.36 Service of warrant

(1) The warrant must be served by—

(a) the Registrar; or

(b) a person lawfully authorised (whether generally or specially for the purpose) to act as the Registrar.

(2) The Registrar or other authorised person must serve the warrant in the manner specified by these rules for the service of a notice of proceeding in an action *in rem*, and the property is to be treated as having been arrested when the warrant has been served by the Registrar or other authorised person in that manner.

(3) The warrant may be served on a Sunday, Good Friday, or Christmas Day, or any public holiday, as well as on any other day.

(4) A Registrar may, by fax or other means of communication,—

(a) send notice to the Registrar's appointed officer or agent, or to any other Registrar, of the issue of a warrant of arrest of any ship:

(b) give instructions for the execution of the warrant.

Compare: 1908 No 89 Schedule 2 r 776(8)–(10)

25.37 Currency of warrant

A warrant of arrest is valid for 6 months beginning on the day of issue unless sooner withdrawn, and successive warrants may be issued.

Compare: 1908 No 89 Schedule 2 r 776(14)

25.38 Notice of arrest of property

(1) The Registrar must give notice of the arrest of property by serving on any person or by affixing on a conspicuous part of the property a notice in form AD 10.

(2) Service may be made by the Registrar's duly appointed officer or agent.

Compare: 1908 No 89 Schedule 2 r 776(15)

25.39 No Crown indemnity required

Rules 25.34(4)(b) and 25.35(4)(b) do not require the Crown to give any indemnity or security.

Compare: 1908 No 89 Schedule 2 r 776(16)

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25.40 Breach of court order to move ship under arrest

(1) This rule applies to—

(a) the master of a ship who has been given notice of the issue of a warrant of arrest of the ship:

(b) any other person who has been given notice of the arrest of the ship.

(2) It is a breach of an order of the court for the master or other person to move the ship from where it is lying without the consent of the Registrar, and enforcement action may be taken under subpart 4 of Part 2 of the Contempt of Court Act 2019 against any person who moves an arrested ship.

25.41 Application for directions concerning property under arrest

(1) The Registrar or any party to an action *in rem* may apply to the court for directions concerning any property under arrest (including directions for the removal of the property).

(2) The person applying must give notice of the application to all parties to the action unless the court otherwise orders.

Compare: 1908 No 89 Schedule 2 r 776A

25.42 Request for caveat against arrest of property

(1) A person may request a caveat against the arrest of any property by filing a request in form AD 11 signed by the person or the person's solicitor undertaking—

(a) to enter an appearance in any action that may be started against the property described in the request; and

(b) within 3 working days after receiving notice that such an action has been started, to give security to the satisfaction of the Registrar in the sum specified in the request or to pay that sum into court.

(2) If the amount claimed in the action does not exceed the amount specified in the undertaking, the caveator must pay into court or give security for the amount claimed within 3 working days after the day of service of the notice of proceeding or counterclaim.

(3) If the caveator fails to pay into court or give security in accordance with this rule, and the party seeking the issue of a warrant of arrest suffers any loss as a result, the court may order the caveator to pay to that party damages for that loss unless the caveator shows good and sufficient reason for that failure.

Compare: 1908 No 89 Schedule 2 r 777(1), (3), (4)

25.43 Entry of caveat

(1) Immediately on the filing of a request under rule 25.42, the Registrar must enter a caveat in the Register of Admiralty Proceedings.

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(2) Neither this Part nor the entry of a caveat under this rule prevents a party from taking out a warrant for the arrest of property, but if a caveat is entered under this rule against the arrest of property and a party has that property arrested, that party is liable for costs and damages unless the party shows good and sufficient reason for the arrest.

(3) A caveat under this rule is valid for 6 months commencing on the day after the date on which it is entered unless sooner withdrawn, and successive caveats may be entered.

(4) A caveat under this rule may be withdrawn at any time by the filing of a notice of withdrawal signed by the caveator or the caveator's solicitor, but the withdrawal does not affect any rights or obligations that may have accrued at the date of the withdrawal.

(5) The court may, on its own initiative or on application, set aside a caveat entered under this rule.

Compare: 1908 No 89 Schedule 2 r 777(2), (5)–(8)

25.44 Request for instrument of release

(1) A party interested in any property arrested under a warrant of arrest may request a Registrar to issue an instrument of release (a **release**) in form AD 12 for the release of the property unless the property is sold under an order of the court.

(2) The release must be issued out of the registry where the action in which the warrant was issued is proceeding.

(3) The Registrar must, before issuing the release, cause a search to be made to ascertain whether a caveat against release of the property in question is in force.

(4) Before a release is issued, the party entitled to its issue must,—

(a) if a caveat against release of the property in question is in force, give notice to the party at whose instance it was entered or that party's solicitor requiring that the caveat be withdrawn; and

(b) file a request for the issue of a release.

(5) Before property under arrest is released in compliance with a release issued under this rule, the party at whose instance it was issued must, in accordance with the directions of the Registrar, either pay the costs, charges, and expenses due in connection with the care and custody of the property while under arrest or give a written undertaking to pay those costs, charges, and expenses.

(6) The court, on the application of any party who objects to directions given to that party by the Registrar under subclause (5), may vary or revoke the directions.

Compare: 1908 No 89 Schedule 2 r 778(1), (6)–(9)

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25.45 Issue of release

(1) A Registrar may issue a release either—

(a) on the order of the court at the request of a party interested in the property under arrest; or

(b) by consent of all the other parties to the action in which the warrant of arrest was issued, unless release on this basis is prevented by a court order.

(2) A Registrar may issue a release under subclause (1) either—

(a) on payment into court of the amount claimed in the notice of proceeding together with the costs of issue and execution of the warrant of arrest; or

(b) on security (including a bail bond in form AD 13) for those amounts having been given to the satisfaction of the Registrar.

(3) A release must not be issued for property under subclause (1) if a caveat against release of that property is in force, unless the court otherwise orders.

(4) A release must be issued for property if,—

(a) before an appearance is entered in the action concerned, a party at whose instance the property was arrested files a notice withdrawing the warrant of arrest; and

(b) rule 25.44(4) has been complied with (if applicable) and the release is not prevented by subclause (3).

Compare: 1908 No 89 Schedule 2 r 778(2)–(5), (10)

25.46 Caveat against release and payment

(1) A person may prevent the release of property under arrest in an action *in rem* or the payment out of court of any money in court representing the proceeds of sale of that property, or both that release and that payment, by filing a request for a caveat in form AD 14.

(2) On the filing of the request, the Registrar must enter in the Register of Admiralty Proceedings a caveat against—

(a) the issue of a release for the property; or

(b) the payment out of court of the money in court; or

(c) both.

(3) The caveator must serve a copy of the caveat on every party to the action.

(4) A party who delays the release of property by entry of a caveat is liable in damages to any person having an interest in the property, unless that party shows to the satisfaction of the court good and sufficient reason for having the caveat entered.

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(5) A caveat under this rule is valid for 6 months commencing on the day after the date of entering, unless sooner withdrawn, but successive caveats may be entered.

(6) A caveat under this rule may be withdrawn by filing a notice of withdrawal signed by the caveator or the caveator's solicitor.

(7) The court may, on its own initiative or on application, set aside a caveat issued under this rule.

Compare: 1908 No 89 Schedule 2 r 779

25.47 Discharge of cargo under arrest from ships not under arrest and of cargo not under arrest

(1) If a ship is not under arrest but cargo on board the ship is, persons interested in the ship who wish to discharge the cargo under arrest may, without intervening in the action, request the Registrar to take the appropriate steps in accordance with this rule.

(2) The Registrar must apply to the court under rule 25.41 for the appropriate order if—

(a) the Registrar considers the request reasonable; and

(b) the applicant gives the Registrar a satisfactory undertaking in writing to pay on demand the fees and expenses incurred by the Registrar, and any of the Registrar's appointed officers or agents, in taking the desired steps.

(3) If the interested persons are unable or unwilling to arrange for an undertaking under subclause (2)(b) to be given, they may intervene in the action in which the cargo is under arrest and apply for an order for discharge of the cargo and for directions as to the fees and expenses incurred by the Registrar, and any of the Registrar's appointed officers or agents, in discharging and storing the cargo under the order.

(4) If a ship is under arrest but cargo on board the ship is not, persons interested in the cargo who wish to secure its discharge may follow one or other of the procedures specified in this rule.

Compare: 1908 No 89 Schedule 2 r 780

25.48 Security

(1) The amount and form of any security required under this Part may be determined by the court or a Judge on an application by any party.

(2) If security is being given by a person not ordinarily resident within the jurisdiction, that person must—

(a) submit to the jurisdiction of the court for all purposes relating to the security and its enforcement, unless otherwise ordered by the court; and

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(b) give an address for service within the jurisdiction of the court.

Compare: 1908 No 89 Schedule 2 r 781

25.49 Payment out of court

(1) No money paid into court in any action may be paid out of court except under subclause (2) or by order of the court or a Judge.

(2) With the written consent of all parties to the action and of any caveator and of any intervener under rule 25.50, the Registrar may authorise money to be paid out of court.

Compare: 1908 No 89 Schedule 2 r 782

25.50 Interveners

(1) If property against which an action *in rem* is brought is under arrest or money representing the proceeds of sale of that property is in court, a person who has an interest in that property or money but who is not a defendant to the action may intervene in the action.

(2) The intervener must file papers appropriate to the proceeding and serve those papers on every other party.

Compare: 1908 No 89 Schedule 2 r 783

25.51 Appraisement and sale of property

(1) A party may request a commission for the appraisement and sale of any property under arrest of the court by filing a request in form AD 15.

(2) The court may, either before or after final judgment, order that any property described in the request—

(a) be appraised; or

(b) be sold with or without appraisement, and either by public auction or by private contract.

(3) If the property is deteriorating in value, the court may order that it be sold immediately.

(4) If the property sold is of small value, the court may, if it thinks just, order that it be sold without a commission of sale being issued.

(5) The commission for the appraisement must be in form AD 16 and must, unless the court otherwise orders, be executed by the Registrar or the Registrar's duly appointed officer or agent.

(6) A commission for appraisement and sale may not be executed until an undertaking in writing, satisfactory to the Registrar, to pay the Registrar's fees and expenses on demand has been lodged in the Registrar's registry.

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(7) The Registrar must pay into court the gross proceeds of the sale of any property sold by the Registrar under a commission for sale, and must bring into court the account relating to the sale (with vouchers in support).

Compare: 1908 No 89 Schedule 2 r 784

25.52 Determination of priority of claims where court orders sale of ship

(1) In making an order for the sale of a ship in an action *in rem*, the court may further order—

(a) that the order of priority of the claims against the proceeds of sale of the ship not be determined until after the expiration of 65 working days, or of any other period specified by the court, beginning with the day on which the proceeds of sale are paid into court:

(b) that any party to the action or to any other action *in rem* against the ship or the proceeds of sale of the ship may apply to the court in the action to which that party is a party to extend the period specified in the order:

(c) that, within 5 working days after the date of payment into court of the proceeds of sale, the Registrar must send a notice in form AD 17 for publication in the *Gazette* and such newspaper (if any) as the court may direct.

(2) A party who obtains judgment against the ship or the proceeds of sale of the ship may, on obtaining judgment, apply to the court by motion for an order determining the order of priority of the claims against the proceeds of sale of the ship.

(3) However, if the order for sale contains a further order referred to in subclause (1), an application for an order determining priorities may be made only after the expiration of the period that applies under paragraph (a) or (b) of that subclause.

(4) An application to the court to extend the period referred to in subclause (1)(a) must be served on each party who has begun an action *in rem* against the ship or the proceeds of sale of the ship.

(5) The Registrar must lodge in the registry a copy of each newspaper in which the notice referred to in subclause (1)(c) appeared.

(6) The expenses incurred by the Registrar in complying with an order of the court under this rule must be included in the Registrar's expenses relating to the sale of the ship.

Compare: 1908 No 89 Schedule 2 r 791

Subpart 7—Miscellaneous provisions

25.53 Inspection of ship, etc

(1) The court may, on the application of any party, make an order for the inspection by a court expert, or by any party or witness, of any ship or other property,

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whether real or personal, if the inspection is necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the action.

(2) Subclause (1) does not limit the court's powers under any other provision of these rules.

Compare: 1908 No 89 Schedule 2 r 793

25.54 Consent orders

(1) Any agreement in writing between the parties to a cause or matter that is dated and signed by the parties or their solicitors may be filed if the Registrar thinks it is reasonable to file the agreement.

(2) The agreement becomes an order of the court when it is filed.

Compare: 1908 No 89 Schedule 2 r 794

25.55 Registrar may seek court's assistance

(1) The Registrar may apply to the court for orders to assist the Registrar in the performance or exercise of any function, duty, right, or power conferred or imposed on the Registrar by this Part.

(2) The court may make any orders it thinks just concerning the performance or exercise of that function, duty, right, or power.

Compare: 1908 No 89 Schedule 2 r 795(1)

25.56 Parties may seek review of Registrar's decision

(1) Any party to a proceeding who is affected by a decision of the Registrar under this Part may apply, by interlocutory application, to review that decision.

(2) The court may make any orders it thinks just.

Compare: 1908 No 89 Schedule 2 r 795(2)

Part 26
Arbitration Act 1996

Subpart 1—Preliminary provisions

26.1 Interpretation

In this Part,—

Act means the Arbitration Act 1996

arbitral tribunal has the same meaning as in section 2(1) of the Act

Judge includes Associate Judge

Schedule 1 means Schedule 1 of the Act

Schedule 2 means Schedule 2 of the Act.

Compare: 1908 No 89 Schedule 2 r 877

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26.2 Application

This Part applies to—

(a) an appeal under clause 5(1)(a) or (b) of Schedule 2:

(b) an application for leave to appeal under clause 5(1)(c) of Schedule 2:

(c) an application for entry of an award as a judgment under article 35 of Schedule 1.

Compare: 1908 No 89 Schedule 2 r 878

Subpart 2—Appeals under clause 5(1)(a) or (b) of Schedule 2

26.3 Originating application to commence appeal

(1) The plaintiff must commence an appeal to which clause 5(1)(a) or (b) of Schedule 2 applies by filing an originating application in the proper registry determined under rule 5.1.

(2) The originating application—

(a) must be in form Arb 1; and

(b) must not name the arbitral tribunal as a defendant.

(3) Rule 5.44 applies to the originating application.

(4) The application must attach the award or arbitral tribunal's decision to which the appeal relates, but if it is not available at the date of the application it must be filed by the applicant immediately it becomes available.

(5) This rule has effect despite rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r 879

26.4 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit proving that the appeal falls within clause 5(1)(a) or (b) of Schedule 2, as the case may be.

Compare: 1908 No 89 Schedule 2 r 880

26.5 Service

The plaintiff must serve copies of the originating application and the affidavit on the defendant either before or immediately after filing.

Compare: 1908 No 89 Schedule 2 r 882

26.6 Amending appeal grounds

The grounds of the appeal may be subsequently amended by leave of the court.

Compare: 1908 No 89 Schedule 2 r 881

26.7 Notice of opposition to application

(1) A defendant intending to oppose the originating application must—

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(a) file a notice of opposition; and

(b) serve it on the plaintiff and all other parties.

(2) The notice of opposition—

(a) must be filed within 10 working days after service of the originating application; and

(b) must state the defendant's intention to oppose the application and the grounds of opposition, including—

(i) a denial of any fact stated in the originating application that is not admitted; and

(ii) a statement of any fact or matter, not mentioned in the originating application, on which the defendant relies; and

(c) must contain a reference to any enactment, or rule, or principle of law on which the defendant relies; and

(d) must be in form G 33, with any necessary modifications.

Compare: 1908 No 89 Schedule 2 r 883

26.8 Cross-appeal

(1) A defendant wishing to cross-appeal at the hearing of the originating application in the circumstances set out in subclause (2) must—

(a) file a notice of cross-appeal; and

(b) serve it on the plaintiff and all other parties.

(2) The circumstances are that—

(a) the defendant intends to contend at the hearing that another question of law arises out of the award; and

(b) the other question is the reason for the cross-appeal; and

(c) clause 5(1)(a) or (b) of Schedule 2 applies with respect to the other question.

(3) The notice of cross-appeal—

(a) must be filed within 10 working days after service of the plaintiff's originating application; and

(b) must be in form Arb 1, with any necessary modifications.

(4) This Part applies to cross-appeals with all necessary modifications.

Compare: 1908 No 89 Schedule 2 r 884

26.9 Record of arbitration

(1) This rule and rule 26.10 apply if the court gives a direction under rule 7.15(1)(d)(i) at a case management conference or at any other time.

(2) The record of the arbitration comprises any—

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(a) application, documents, written submissions, statements, reports, and other papers lodged with the arbitral tribunal; and

(b) transcript of evidence; and

(c) exhibits.

(3) Despite subclause (2), a part of the record must be omitted from the record filed if the parties agree that it is unnecessary for the hearing of the appeal.

(4) The cost of preparing the record—

(a) must be met by the plaintiff; and

(b) is a disbursement in the proceeding.

Compare: 1908 No 89 Schedule 2 r 886(1), (3), (6), (7)

26.10 Service and filing of record

(1) The plaintiff must serve a properly indexed copy of the record of the arbitration on the defendant within 20 working days of the direction.

(2) Within 5 working days after service of the proposed record and index, the defendant must,—

(a) if agreeing to the record and index, signify agreement by signing the index; or

(b) advise the plaintiff of changes sought to the proposed record or index.

(3) After the defendant has taken the steps in subclause (2), the plaintiff must file, without delay,—

(a) a properly indexed copy of the record; and

(b) a memorandum setting out changes sought by the defendant and the plaintiff's reasons for not agreeing to them, if applicable; and

(c) any further documents that the defendant contends form part of the record.

(4) The court may direct the plaintiff to file a further copy of the record if an appeal is to be heard by more than 1 Judge.

Compare: 1908 No 89 Schedule 2 r 886(2), (4), (5), (8)

26.11 Transcript of evidence

(1) This rule and rule 26.12 apply if the court gives a direction under rule 7.15(1)(d)(ii) at a case management conference or at any other time.

(2) The court may order that a transcript be made of any recorded evidence given in the arbitration—

(a) if it is satisfied that the transcript is required to properly determine the appeal; and

(b) subject to any conditions that the court thinks just.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(3) The cost of preparing a transcript is a disbursement in the proceeding.

Compare: 1908 No 89 Schedule 2 r 887(1), (2), (7)

26.12 Service and filing of transcript

(1) The plaintiff must serve the proposed transcript on the defendant within 20 working days of the direction.

(2) Within 5 working days after service of the proposed transcript, the defendant must—

(a) agree to the transcript, and signify agreement by appropriately certifying the transcript; or

(b) advise the plaintiff of—

(i) changes sought; and

(ii) additional evidence to be transcribed.

(3) After the defendant has taken the steps in subclause (2), the plaintiff must file, without delay,—

(a) the transcript; and

(b) a memorandum setting out changes sought by the defendant and the plaintiff's reasons for not agreeing to them, if applicable.

(4) The defendant may file a transcript of evidence if—

(a) the defendant sought to have additional evidence transcribed; and

(b) the plaintiff disputed—

(i) the relevance of the evidence; or

(ii) the necessity of transcribing it for the hearing.

(5) The court may direct a party submitting a transcript to file a further copy of it if an appeal is to be heard by more than 1 Judge.

Compare: 1908 No 89 Schedule 2 r 887(3)–(6), (8)

26.13 Hearing of appeal

(1) Appeals are by way of rehearing.

(2) In an appeal, the court has all the powers and discretions of an arbitral tribunal—

(a) to hold the hearing or any part of it in private; and

(b) to make orders prohibiting the publication of any report or description of the proceedings or any part of them.

Compare: 1908 No 89 Schedule 2 r 889

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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26.14 Leave to appeal to Court of Appeal

An application to the High Court under clause 5(5) of Schedule 2 for leave to appeal to the Court of Appeal must be filed within 20 working days of the High Court's determining the appeal under clause 5(4) of Schedule 2.

Compare: 1908 No 89 Schedule 2 r 890

Subpart 3—Leave to appeal under clause 5(1)(c) of Schedule 2

26.15 Applications for leave to appeal

(1) The plaintiff must commence a proceeding to which clause 5(1)(c) of Schedule 2 applies by filing an originating application in the proper registry determined under rule 5.1.

(2) The originating application—

(a) must be in form Arb 2; and

(b) must not name the arbitral tribunal as a defendant.

(3) In relation to the originating application, the following apply:

(a) rule 5.44; and

(b) rules 26.4 to 26.7, with all necessary modifications.

(4) This rule has effect despite rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r 891

26.16 Submissions

(1) The plaintiff must file the following within 10 working days of the time specified in subclause (2):

(a) submissions as to why leave should be granted:

(b) copies of any authorities relied on.

(2) The time is whichever of the following applies:

(a) the date on which the plaintiff is served with a notice of opposition:

(b) the date by which the defendant must file a notice of opposition if the defendant wishes to oppose the application.

(3) Copies of material filed must be served immediately on any defendant who has filed and served a notice of opposition.

(4) At the hearing, unless otherwise directed by the Judge,—

(a) the plaintiff or his or her counsel is restricted to 30 minutes; and

(b) the defendant or his or her counsel is restricted to 30 minutes; and

(c) the plaintiff or his or her counsel is restricted to 10 minutes by way of reply.

Compare: 1908 No 89 Schedule 2 r 892

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26.17 Granting leave

The court need not give reasons for granting leave unless it thinks reasons are required in the circumstances.

Compare: 1908 No 89 Schedule 2 r 893

26.18 Refusing leave

The court must give reasons if it refuses to grant leave.

Compare: 1908 No 89 Schedule 2 r 894(1)

26.19 Applying to Court of Appeal for leave to appeal

An application to the court under clause 5(5) of Schedule 2 for leave to appeal to the Court of Appeal from a refusal to grant leave to appeal must be filed within 20 working days of the refusal.

Compare: 1908 No 89 Schedule 2 r 894(2)

Subpart 4—Entry of award as judgment under article 35 of Schedule 1

26.20 Entry of judgment if all parties agree

(1) All parties to an award who agree that it may be entered as a judgment may apply to a Registrar by letter signed by all parties or their solicitor or counsel requesting the entry of the award as a judgment.

(2) The Registrar must enter the award as a judgment as soon as practicable—

(a) if he or she is satisfied that all parties have agreed; and

(b) if he or she is satisfied with respect to the matters set out in article 35(2) of Schedule 1.

Compare: 1908 No 89 Schedule 2 r 895

26.21 Entry of judgment in other cases

(1) If rule 26.20 does not apply, a party to an award who wishes to enforce it may—

(a) enforce it by action; or

(b) apply to the court for entry of the award as a judgment.

(2) A party electing the method set out in subclause (1)(a) must commence a proceeding under Part 5.

(3) A party electing the method set out in subclause (1)(b) must follow the procedure set out in rules 26.22 to 26.27.

Compare: 1908 No 89 Schedule 2 r 896

26.22 Application for entry of award as judgment

(1) The party to the award must file an originating application in the proper registry, determined under rule 5.1.

(2) The originating application—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) must be in form Arb 3; and

(b) must not name the arbitral tribunal as a defendant.

(3) Rule 5.44 applies to the originating application.

(4) This rule has effect despite anything in rule 5.25 or Part 18.

Compare: 1908 No 89 Schedule 2 r 897

26.23 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit proving the matters set out in article 35(2) of Schedule 1.

Compare: 1908 No 89 Schedule 2 r 898

26.24 Service

(1) The plaintiff must serve copies of both the originating application and the affidavit on the defendant either before or immediately after filing.

(2) Subclause (1) does not apply if the plaintiff obtains an order under rule 26.25.

Compare: 1908 No 89 Schedule 2 r 899

26.25 Entry as judgment without notice in exceptional circumstances

(1) In exceptional circumstances, the plaintiff may, on or after the filing of the originating application, file an application without notice for an order that the award be entered as a judgment.

(2) The application must be supported by an affidavit that sets out the exceptional circumstances that justify the order sought.

(3) The court may determine the application without notice and make the order sought if satisfied that the order is required in the interests of justice.

(4) If the court makes the order sought, the court may also direct that the award not be enforced before it has been served on the defendant and a period specified by the court has expired after service.

Compare: 1908 No 89 Schedule 2 r 899A

26.26 Entry as judgment if defendant takes no steps

(1) The Registrar must enter the award as a judgment as soon as practicable if—

(a) the defendant takes no steps within the time specified in subclause (2); and

(b) the plaintiff makes an application for the entry.

(2) The time is whichever of the following applies:

(a) 10 working days after the plaintiff's application is served on the defendant; or

(b) a period fixed by the court of less than 10 working days after the order fixing that period is served on the defendant.

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(3) An application to the Registrar under subclause (1)(b)—

(a) is made by letter signed by the plaintiff or his or her solicitor or counsel requesting the entry of the award as a judgment; and

(b) need not be served on the defendant.

(4) An application for an order under subclause (2)(b) may be made without notice.

(5) An order under subclause (2)(b) does not take effect unless it is served on the defendant together with the documents referred to in rule 26.24(1).

(6) Subclause (5) applies even if the originating application to which the order relates has already been served on the defendant, and in that case the previous service of the application ceases to have effect when the order is made.

Compare: 1908 No 89 Schedule 2 r 900

26.27 Opposition to entry as judgment

(1) This rule applies if a defendant wishes to oppose the originating application.

(2) The plaintiff's application is stayed pending the determination of an application under this rule.

(3) The defendant must file and serve an application seeking an order for refusal of recognition and enforcement in terms of article 36 of Schedule 1.

(4) The application referred to in subclause (3) must be—

(a) filed and served within the applicable period specified in rule 26.26(2); and

(b) treated as if it were an originating application under Part 19; and

(c) disposed of in accordance with Part 19; and

(d) determined at the same time as the plaintiff's application to enforce the award by entry as a judgment.

(5) To avoid doubt, an application under this rule is concerned with the recognition or enforcement of an award and not with any question of law arising out of the award that may be determined by the court or the Court of Appeal under clause 5 of Schedule 2 of the Act.

Compare: 1908 No 89 Schedule 2 r 901

Part 27
Administration (including probate)

Subpart 1—General

27.1 Wills and intestacies to which this Part applies

(1) The rules in this Part apply to—

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(a) the wills (whenever made) of persons who die on or after 1 November 2007; and

(b) grants of administration in respect of persons who die intestate on or after the date when these rules come into force.

(2) The rules in this Part, except rule 27.14, do not apply to the wills of persons who died before 1 November 2007.

(3) The High Court Rules set out in Schedule 2 of the Judicature Act 1908 before their amendment by the High Court Amendment (Wills Act 2007) Rules 2007, except for the amendment in rule 27.14, apply to the wills of persons who died before 1 November 2007.

27.2 Interpretation

For the purposes of this Part,—

administration—

(a) means probate of a deceased's will; and

(b) includes letters of administration of a deceased's estate, granted with or without a will annexed, for general, special, or limited purposes; and

(c) for Public Trust or the Māori Trustee or a trustee company as defined in the Trustee Companies Act 1967, includes—

(i) an order to administer; and

(ii) an election to administer

administrator—

(a) means a person to whom administration is granted; and

(b) includes Public Trust or the Māori Trustee or a trustee company as defined in the Trustee Companies Act 1967 treated as an executor or administrator because it has filed an election to administer

executed, for a will, means signed and witnessed in accordance with the requirements of section 11(3) and (4) of the Wills Act 2007

grant means a grant of administration

will has the same meaning as in section 8 of the Wills Act 2007.

Subpart 2—Applications for administration

27.3 Kinds of applications for grants

An application for a grant is made by—

(a) an application without notice under rule 27.4; or

(b) an application in solemn form under rule 27.6.

27.4 Applications without notice

(1) This rule applies to an application without notice.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) Rule 5.36 does not apply to the application.

(3) The application must be made in form PR 1AA.

(4) *[Revoked]*

(5) If the applicant knew the deceased or knows about the deceased's death personally, the applicant must file an affidavit in whichever is appropriate of forms PR 1 to PR 6 to prove the deceased's death.

(6) If the applicant did not know the deceased and does not know about the deceased's death personally,—

(a) paragraphs 1 and 2 of forms PR 1 to PR 6 must be omitted; and

(b) another person must swear an affidavit proving the deceased's death, in the form of paragraphs 1 and 2 of form PR 1.

(7) If the application is for a grant of probate or a grant of letters of administration with the will annexed, the applicant must file an affidavit in form PR 1 or PR 2 to prove the validity of the will that the application is about.

(8) *[Revoked]*

(9) A form presented for filing under this rule is not invalid just because it contains minor differences from a prescribed form as long as the form still has the same effect and is not misleading.

Compare: 1908 No 89 Schedule 2 r 634

27.5 Restrictions if possibly invalid will exists

(1) This rule applies if the applicant—

(a) knows of a will later than the will that the application is about; and

(b) has reason to believe that the later will is invalid.

(2) This rule also applies if the applicant—

(a) seeks a grant because the deceased was intestate; and

(b) knows of a will; and

(c) has reason to believe that the will is invalid.

(3) The applicant may make an application under rule 27.4 containing proof that—

(a) the applicant has given the executor named in the will written or electronic notice of the applicant's intention to apply; and

(b) the executor has not applied for a grant within 1 month after service of the notice; and

(c) a caveat has not been lodged against a grant within 1 month after service of the notice.

(4) The court—

(a) may direct the applicant to apply for an order under section 53 of the Administration Act 1969; and

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(b) must defer dealing with the application under rule 27.4 until the application under section 53 has been determined.

Compare: 1908 No 89 Schedule 2 r 635

Applications in solemn form

27.6 Applications in solemn form

(1) This rule applies to an application in solemn form.

(2) An application is made in solemn form if—

(a) the applicant chooses to apply in that way; or

(b) the applicant is ordered to apply in that way.

(3) Part 5 applies to the application.

(4) The procedure for dealing with the application is the same as for an ordinary proceeding, subject to the rules in this Part.

Compare: 1908 No 89 Schedule 2 r 636

27.7 Respondents and additional parties

(1) The applicant may apply to the court for directions as to the persons to be named as respondents to an application under rule 27.6.

(2) If the applicant does not apply, or if the court does not give directions, the applicant must name as respondents—

(a) the person who may be entitled to a grant if the applicant does not obtain the grant; and

(b) all persons who have lodged caveats under rule 27.11.

(3) A person interested in the result of an application under rule 27.6 may apply to the court to be added as a party.

(4) If the court is satisfied that the interests of the person are not already adequately represented, it may—

(a) order that the person be added; and

(b) impose conditions on the order, if necessary; and

(c) give directions as to the part that the person is to take in the hearing of the application.

Compare: 1908 No 89 Schedule 2 r 637

27.8 Compromises

(1) This rule applies if an application under rule 27.6 is the subject of a compromise, whether or not a statement of defence has been filed.

(2) The court may direct—

(a) that the application is to be treated as an application under rule 27.4; and

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(b) that evidence on the application may be given by affidavit.

Compare: 1908 No 89 Schedule 2 r 638

27.9 Pleadings

(1) This rule applies to an application under rule 27.6 in which a pleading states that the will that the application relates to is invalid.

(2) This rule also applies to an application under rule 27.6 in which a pleading states that a will that is the subject of a grant obtained by way of an application without notice is invalid.

(3) The pleading must state the substance of the case against validity.

(4) If the allegation is that the will's execution was not valid, the pleading must state the facts on which the allegation is based.

(5) If the allegation is that the will-maker did not have testamentary capacity when the will was executed, the pleading must state whether the incapacity lay in any or all of the following:

(a) the will-maker's lack of ability to comprehend or recollect the extent of his or her estate; or

(b) the will-maker's lack of ability to comprehend or recollect the claims of persons excluded from participating in his or her estate; or

(c) the will-maker's insane delusions about the persons who have claims on his or her estate; or

(d) some other specified incapacity.

Compare: 1908 No 89 Schedule 2 r 639

27.10 Where application is filed

(1) An application without notice under rule 27.4 and all documents relating to that application must be filed in the registry of the court at Wellington (irrespective of where the deceased resided immediately before he or she died).

(2) An application in solemn form under rule 27.6 and all documents relating to that application must be filed in the registry of the court nearest to where the deceased resided immediately before he or she died.

(3) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in only 1 place in New Zealand, the application and documents must be filed in the registry of the court nearest, by the most practicable route, to the place where his or her property is situated.

(4) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in more than 1 place in New Zealand, the application and documents must be filed in the registry of the court at Wellington or a registry specified under subclause (6).

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(5) If the deceased did not reside in New Zealand when he or she died and left no property in New Zealand, the application and documents must be filed in the registry of the court at Wellington or a registry specified under subclause (6).

(6) If subclause (4) or (5) applies,—

(a) the applicant may make an interlocutory application for an order specifying the registry of the court in which the application and documents are to be filed; and

(b) the court may make an order specifying the registry.

(7) If an application or a document is filed in the wrong registry of the court, the court may order the transfer of the application or document to the appropriate registry.

27.11 Where caveat is lodged

(1) This rule applies to a caveat under section 60 of the Administration Act 1969.

(2) The caveat must be in form PR 10.

(3) The caveat must be lodged with the Registrar of the court at Wellington.

Compare: 1908 No 89 Schedule 2 r 641

27.12 Evidence of death

(1) The court may accept any evidence that satisfies it of the death of a person whose estate is the subject of an application for a grant, unless no dead body has been identified as that of the person.

(2) If no dead body has been identified as that of the person, the applicant must apply for leave to swear death.

(3) The applicant applies by—

(a) making an interlocutory application before filing an application for a grant; or

(b) incorporating the application for leave to swear death in an application without notice under rule 27.4.

(4) The applicant must file affidavits stating—

(a) the circumstances under which the application is made; and

(b) the facts from which the court is invited to infer death; and

(c) whether or not the person's life was insured and, if it was, the name and address of the insurer.

(5) If the person's life was insured,—

(a) the applicant must serve notice of the application and copies of the affidavits on the insurer; and

(b) the insurer is treated as a party to the application for the purposes of rules 2.5 to 2.11 and 7.19 to 7.52.

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(6) The court may make an order that the person is presumed to be dead for the purposes of the grant.

(7) The court may accept any evidence that satisfies it of the death of a person who, if alive, would have been entitled to a grant.

Compare: 1908 No 89 Schedule 2 r 642

27.13 Sale of perishable property

(1) This rule applies if—

(a) a deceased leaves perishable property; and

(b) the property's value may be greatly diminished before the court can make a grant.

(2) A person interested in the deceased's estate may apply to the court for an order—

(a) authorising a named person to sell the property; and

(b) directing the payment of the proceeds to the Registrar for the deceased's estate.

(3) The court may make the order.

Compare: 1908 No 89 Schedule 2 r 643

27.14 Registrars may make some orders

(1) This rule applies to the following registrars:

(a) all Registrars; and

(b) all Senior Deputy Registrars; and

(c) no other deputy registrars.

(2) The registrars have the powers of the court under—

(a) sections 5 to 9A and sections 12, 19, 21, 44, and 61(a)(ii) of the Administration Act 1969; and

(b) section 380(4)(c)(iii) of the Insolvency Act 2006; and

(c) section 154(3) of the Insolvency Act 1967; and

(d) section 76 of the Public Trust Act 2001; and

(e) section 79(3) of the Trusts Act 2019; and

(f) section 8(1) of the Trustee Companies Act 1967; and

(g) rules 27.10(6)(b) and 27.10(7); and

(h) rule 27.12(6), if an unopposed application has been made under rule 27.12(3); and

(i) rule 27.13(3); and

(j) rule 27.29(2); and

(k) rule 27.30(1) to (4); and

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(l) rule 27.34(2); and

(m) rule 7.23(5).

(3) Rules 2.7 to 2.11 apply to a registrar acting under subclause (2) and, for this purpose, references in them to rule 2.5 or 2.6 must be read as references to rule 27.14(2).

Compare: 1908 No 89 Schedule 2 r 644

27.15 Application of rules 27.16 to 27.28

Rules 27.16 to 27.28 apply to every case in which a will is advanced and relied on—

(a) for a grant of probate; or

(b) for a grant of letters of administration with the will annexed.

Compare: 1908 No 89 Schedule 2 r 645

27.16 Evidence as to execution

(1) A person who knows the relevant facts personally may provide the evidence required by rules 27.17 to 27.28.

(2) If the evidence relates to the fact, date, manner, or circumstances of the execution of a will, the person providing the evidence must be—

(a) an attesting witness; or

(b) a person present when the will was executed.

(3) If the authenticity of the signature of the will-maker or an attesting witness is in doubt, the court may accept evidence from any appropriate person to prove that the signature is in the handwriting of the will-maker or the attesting witness.

(4) If the application is unopposed, evidence given under this rule must be given by affidavit, and form PR 12 may be used.

Compare: 1908 No 89 Schedule 2 r 646

27.17 Evidence of validity

Each of the following is evidence that a will is valid:

(a) a statement by each of the witnesses on the will as provided in section 11(5) of the Wills Act 2007:

(b) evidence given under rule 27.16 satisfying the court that the will complies with section 11(3) and (4) of the Wills Act 2007:

(c) a copy of an order of the court made under section 14 of the Wills Act 2007.

27.18 Doubt as to will-maker's understanding

(1) This rule applies if—

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(a) a person directed by the will-maker signed the will-maker's will in the will-maker's presence; and

(b) the will does not state that the will-maker read over the will and thoroughly understood it before the will-maker directed the person to sign it.

(2) This rule also applies if—

(a) the will-maker—

(i) was blind; or

(ii) was illiterate; or

(iii) signed the will by mark; and

(b) the will does not state that the will was read over to, and thoroughly understood by, the will-maker before the will-maker signed it.

(3) This rule also applies if the court is doubtful for any other reason whether or not the will-maker, at the time the will was signed,—

(a) thoroughly understood the will; or

(b) had full knowledge of its contents.

(4) Evidence must be given under rule 27.16 satisfying the court that the will-maker, at the time the will was signed,—

(a) thoroughly understood the will; or

(b) had full knowledge of its contents.

Compare: 1908 No 89 Schedule 2 r 648

27.19 Doubt as to originality of signature

(1) This rule applies if it appears to the court, when it inspects a will, that a signature on it—

(a) may not be an original signature; or

(b) may be a reproduction of the original signature.

(2) The court may require evidence to prove whether or not the signature is an original signature.

Compare: 1908 No 89 Schedule 2 r 649

27.20 Doubt as to date

If there is doubt as to the date on which a will was executed, the court may require evidence to prove the date.

Compare: 1908 No 89 Schedule 2 r 650

27.21 Changes

(1) This rule applies if—

(a) a change appears on a will; and

(b) the change is of practical importance; and

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(c) the change was not made by a means described in section 15 of the Wills Act 2007.

(2) The court may require evidence to prove whether or not the change was present when the will was executed.

(3) The court may give directions as to the form in which the will is to be proved.

(4) Words that have been changed form part of a will as proved if the change does not obliterate the words in such a way as to prevent their effect being apparent.

(5) Subclause (4) applies even though there is no satisfactory evidence that the words were changed before the will was executed.

Compare: 1908 No 89 Schedule 2 r 651

27.22 Revocations or revivals by other document

(1) This rule applies if—

(a) it appears to the court, when it inspects a will, that some other document has been attached to it; or

(b) a will contains a reference to another document in terms suggesting that it ought to be incorporated in the will.

(2) The court may require the other document to be produced or its non-production to be explained.

(3) The court may require evidence as to—

(a) the attaching or incorporation of the document; and

(b) when it came into existence.

Compare: 1908 No 89 Schedule 2 r 652

27.23 Revocation

(1) This rule applies if it appears to the court that,—

(a) for a will made on or after 1 November 2007, one of the means of revocation described in section 16 of the Wills Act 2007 may have been used; or

(b) for a will made before 1 November 2007, one of the means of revocation described in section 16, as modified by section 40(2)(m) and (n) of the Wills Act 2007, may have been used.

(2) The applicant must satisfy the court that the will has not been revoked.

Compare: 1908 No 89 Schedule 2 r 653

27.24 Duplicate wills

(1) This rule applies if more than 1 copy of a will has been executed.

(2) All executed copies must be produced to the court, or accounted for to its satisfaction, to exclude an inference of revocation.

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(3) If the court doubts whether subclause (2) has been complied with, it may require evidence to prove that it was.

Compare: 1908 No 89 Schedule 2 r 654

Subpart 3—Administration with will annexed

27.25 Circumstances in which grant may be made

(1) This rule applies if a will exists but does not appoint an executor.

(2) This rule also applies if the executor or each of the executors appointed—

(a) has died during the will-maker's life; or

(b) has survived the will-maker but has died without obtaining a grant; or

(c) has renounced probate of the will; or

(d) is a former spouse or former civil union partner of the will-maker whose appointment is void under section 19 of the Wills Act 2007, for a will made on or after 1 November 2007; or

(e) is a former spouse of the will-maker whose appointment is void under section 19, as modified by section 40(2)(q), of the Wills Act 2007, for a will made before 1 November 2007; or

(f) is incapable of acting as an executor but does not have an attorney for the purposes of section 9A of the Administration Act 1969.

(3) This rule also applies if—

(a) section 19 of the Administration Act 1969 applies to an executor; and

(b) no one entitled to apply for an order nisi under that section has done so within 4 months after the will-maker's death.

(4) The court may grant letters of administration with the will annexed to the person entitled to them according to the priority in rule 27.26.

Compare: 1908 No 89 Schedule 2 r 655(1), (3), (4)

27.26 Priority of potential administrators for purposes of rule 27.25

(1) The first in priority is a residuary beneficiary holding in trust for any other person.

(2) The second in priority is a residuary beneficiary for life.

(3) The third in priority is,—

(a) if the will disposes of the whole residue, the ultimate residuary beneficiary; or

(b) if the will does not dispose of the whole residue but the court is satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—

(i) a beneficiary entitled to the estate; or

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(ii) a beneficiary entitled to a share in the estate; or

(c) if the will does not dispose of the whole residue and the court is not satisfied that it disposes of the whole or substantially the whole of the estate as ascertained by the time the application for the grant is made,—

(i) a person entitled to a share in the residue not disposed of or the person's personal representative; or

(ii) the Attorney-General, if entitled to claim the residue as *bona vacantia* on behalf of the Crown.

(4) The fourth in priority is—

(a) a specific beneficiary or the beneficiary's personal representative; or

(b) a creditor or the creditor's personal representative; or

(c) if the will does not dispose of the whole estate, a person who has no immediate beneficial interest in the estate because of its small amount but may have a beneficial interest if the estate increases.

(5) The fifth in priority is a specific or residuary beneficiary who is entitled on the happening of a contingency.

(6) The sixth in priority is a person who—

(a) has no interest under the will; and

(b) would be entitled to a grant if the deceased had died wholly intestate.

(7) Persons who are third, fourth, or fifth in priority, and are entitled to the grant, are entitled to the grant in order of priority in their class according to the value of their interests or the amounts of their debts.

Compare: 1908 No 89 Schedule 2 r 656

27.27 Proving entitlement to grant

(1) This rule applies if—

(a) an applicant applies for a grant of letters of administration with the will annexed; and

(b) rule 27.26 would give persons other than the applicant a priority that is higher than, or equal to, that of the applicant.

(2) The applicant must—

(a) satisfy the court that all the persons are dead, incompetent, or disqualified; or

(b) satisfy the court that the applicant has given all the persons notice of the intended application; or

(c) attach the written consents of all the persons to an affidavit in form PR 2.

(3) The court may excuse the applicant from giving notice to, or obtaining the consent of, a person who, at the time of the application,—

(a) is beyond the jurisdiction of the court; or

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) cannot be found.

(4) The court may impose conditions under subclause (3).

Compare: 1908 No 89 Schedule 2 r 657

27.28 Grant while executor is minor

(1) This rule applies if a person is, when the court grants letters of administration with the will annexed,—

(a) the sole executor of the will; and

(b) a minor; and

(c) not entitled to a grant under section 9(3) of the Administration Act 1969.

(2) The court may grant letters of administration with the will annexed to any appropriate person.

(3) The person is entitled to the grant until the minor becomes entitled to and obtains a grant.

Compare: 1908 No 89 Schedule 2 r 658

Subpart 4—Grants

27.29 Time for making grant

(1) The following time limits apply to the making of a grant:

(a) for probate or letters of administration with the will annexed, no earlier than 5 working days from the date of the will-maker's death; and

(b) for other letters of administration, no earlier than 10 working days from the date of the deceased's death.

(2) If the applicant for the grant applies for the shortening of a time limit, the court may shorten it.

Compare: 1908 No 89 Schedule 2 r 659

27.30 Grants to attorneys

(1) The court may make a grant to the lawfully constituted attorney of a person who—

(a) is entitled to the grant; and

(b) does not reside in New Zealand.

(2) The court may make a grant to the holder of an enduring power of attorney for a donor to whom section 9A of the Administration Act 1969 applies.

(3) If the person or the donor is one of 2 or more executors, the court may make the grant to the attorney or the holder only after—

(a) the attorney or the holder has given notice to the other executors; or

(b) the court has dispensed with notice.

(4) The court may limit the grant in any way.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(5) A grant under section 9A of the Administration Act 1969 must convey the effect of sections 9A(6) and 9B(2) of that Act.

(6) The grant is for the use and benefit of the person or donor.

Compare: 1908 No 89 Schedule 2 r 660

27.31 Common or solemn form

(1) A grant on an application under rule 27.4 must be in common form in whichever is appropriate of forms PR 7, PR 8, and PR 9.

(2) A grant on an application under rule 27.6 must be in solemn form.

Compare: 1908 No 89 Schedule 2 r 661

Subpart 5—Inventories and accounts

27.32 Inventory and account filed by administrator

(1) A person interested in a deceased's estate may apply for an order that the administrator of the estate file the following documents:

- (a) an accurate inventory of the estate; and
- (b) an account of the estate that—
  - (i) is accurate; and
  - (ii) states the dates and details of all receipts and disbursements; and
  - (iii) states which of the receipts and disbursements were on capital account and which were on revenue account.

(2) The applicant must—

- (a) make the application within 3 years after the date of the grant appointing the administrator; and
- (b) serve the administrator with notice of the application.

(3) If the court makes an order,—

- (a) the administrator must file the documents within the period after the service of the order that the court specifies; and
- (b) the account must be current to—
  - (i) the date of service of the order; or
  - (ii) another date specified in the order.

(4) If no one makes an application, or if the court does not make an order,—

- (a) the administrator may file the documents if he or she wishes to do so and at any time he or she wishes; and
- (b) the account must state the date to which it is current.

(5) The administrator must file an affidavit verifying the documents.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(6) The administrator must file the documents in the registry in which the grant was made.

Compare: 1908 No 89 Schedule 2 r 662

Subpart 6—Overseas assets

27.33 Administration of overseas assets

(1) An administrator administering overseas assets may request the court to seal an exemplification of administration in form PR 11.

(2) Alternatively, an administrator administering overseas assets may request the court to—

(a) seal a duplicate of the grant; or

(b) seal and certify a copy or photocopy of the grant.

(3) The administrator must file an affidavit as to the purpose for which the duplicate, copy, or photocopy is required.

Compare: 1908 No 89 Schedule 2 r 663

Subpart 7—Recall of grant

27.34 Recall of grant

(1) If a grant is made in common form, a person may make an interlocutory application for an order for the recall of the grant.

(2) The court may make an order recalling the grant only if—

(a) the application is unopposed; and

(b) one of the following circumstances exists:

(i) the grant was made on the basis that the deceased died intestate and a will has been found; or

(ii) a will has been found with a date later than that of the will of which probate was granted; or

(iii) the person to whom the grant was made applies for the recall; or

(iv) the person to whom the grant was made consents to the recall.

(3) If subclause (2) is not satisfied, a person wishing to apply for an order for the recall of the grant must bring proceedings.

(4) Rule 27.9 applies to an application under subclause (1) and the proceedings referred to in subclause (3).

Compare: 1908 No 89 Schedule 2 r 664

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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Subpart 8—Priorities on intestacy

27.35 Order of priority for grant in case of intestacy

(1) If a person has died wholly intestate, the right to apply for letters of administration of that person's estate is determined in accordance with the order of priority set out in subclause (3).

(2) Subclause (1) is subject to section 6 of the Administration Act 1969.

(3) The order referred to in subclause (1) is as follows:

(a) the first in priority is persons having a beneficial interest in the estate, according to the order of priority set out in subclause (4):

(b) the second in priority is the Attorney-General, if he or she claims *bona vacantia* on behalf of the Crown:

(c) the third in priority is a creditor of the deceased, or any person who, even though having no immediate beneficial interest in the estate, may have a beneficial interest in the event of an accretion to it.

(4) Persons having a beneficial interest in the estate are entitled to a grant of administration in the following order of priority:

(a) the surviving spouse or civil union partner or de facto partner entitled to succeed on the intestacy, if paragraph (b) does not apply and his or her beneficial interest in the estate is not affected,—

(i) in the case of a surviving spouse, by section 12(2) of the Matrimonial Proceedings Act 1963 (as applied by section 191(3) of the Family Proceedings Act 1980); or

(ii) in the case of a surviving spouse or a surviving civil union partner, by section 26(1) of the Family Proceedings Act 1980; or

(iii) in the case of a surviving de facto partner, by section 77B of the Administration Act 1969; or

(iv) in every case, by the choice of option A under section 61 of the Property (Relationships) Act 1976:

(b) in a case of the kind referred to in section 77C of the Administration Act 1969 (succession on intestacy if intestate dies leaving a spouse or a civil union partner and 1 or more de facto partners, or 2 or more de facto partners), a surviving spouse, surviving civil union partner, or surviving de facto partner entitled to succeed on the intestacy, if his or her beneficial interest in the estate is not affected in any of the ways stated in paragraph (a)(i) to (iv):

(c) the children of the deceased (including any persons entitled by virtue of the Legitimation Act 1939 or the Status of Children Act 1969) or, failing them, the issue of a child who has died during the lifetime of the deceased:

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(d) the parent or parents of the deceased:

(e) brothers and sisters of full or half blood, or, failing them, the issue of any such brother or sister who has died during the lifetime of the deceased:

(f) grandparents:

(g) uncles and aunts of full or half blood, or failing them, the issue of an uncle or aunt who has died during the lifetime of the deceased.

(5) The personal representative of a person in any of the classes referred to in subclause (4) or the personal representative of a creditor has the same right to a grant as the person represented.

(6) The Adoption Act 1955 applies in determining entitlement to a grant in the same way that it applies to devolution of property on intestacy.

(7) If a person has died partially intestate, that is, his or her will has disposed of some but not all of that person's assets, the court must make a single grant of administration for the whole of the estate. The executor, or executors, named in the will has priority in applying for that grant, but otherwise rule 27.26 applies.

Compare: 1908 No 89 Schedule 2 r 665

27.36 Justification of entitlement to grant

(1) When application is made for a grant of letters of administration of the estate of a person who has died wholly intestate and persons other than the applicant would have (if living and competent), under rule 27.35, a priority higher than or equal to that of the applicant, the applicant—

(a) must prove to the satisfaction of the court—

(i) that those persons are dead or incompetent; or

(ii) that notice of the intended application has been given to them; or

(b) must file their consents in writing, duly verified by affidavit.

(2) Despite subclause (1), the court may, on any conditions that it thinks just, dispense with the giving of notice to, or the obtaining of the consent of, any person who, at the time of the application,—

(a) is beyond the jurisdiction of the court; or

(b) cannot be found.

(3) The applicant must prove the identity and relationship with the deceased of any person who, under rule 27.35, has a priority higher than or equal to that of the applicant.

(4) If the applicant is the surviving spouse or the surviving civil union partner, the applicant must prove that at the time of the death of the deceased neither a decree of separation made under section 11 of the Matrimonial Proceedings Act 1963 nor a separation order made under Part 3 of the Family Proceedings Act 1980 was in force between the applicant and the deceased.

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(5) If the applicant is the surviving de facto partner, the applicant must prove that the restrictions on succession imposed by section 77B of the Administration Act 1969 do not apply.

(6) Nothing in this rule limits the power of the court to require evidence of other facts necessary to enable the court to decide whether to make a grant to the applicant.

(7) In particular, evidence may be required when it appears that the Crown is or may be entitled to a grant under the law relating to *bona vacantia*.

Compare: 1908 No 89 Schedule 2 r 666

Subpart 9—Commission

27.37 Form of application for commission

(1) This rule applies to an application to the court under section 139 of the Trusts Act 2019 for the allowance to any person who is or has been a trustee of the property subject to any trust, or to that person's personal representative, of a commission or percentage out of that property.

(2) An application under this rule must be made by statement of claim in accordance with Part 5.

(3) Despite subclause (2), the application must be made by interlocutory application in the proceeding for probate or letters of administration, or in the earlier proceeding for commission, if either—

(a) the trust was created by will or arises upon an intestacy; or

(b) there has been a previous application for commission (whether or not by the same applicant).

Compare: 1908 No 89 Schedule 2 r 667

27.38 Affidavit in support

An application under rule 27.37 must be supported by an affidavit or affidavits showing—

(a) how and when the trust was constituted, the names of all present and previous trustees of it, and the period during which each held registry:

(b) the information that is necessary in accordance with rule 18.7 to enable an order giving directions as to service to be made:

(c) particulars of any commission or percentage out of the trust property previously allowed by the court to, or taken in accordance with the instrument (if any) creating the trust or with the consent of the beneficiaries or otherwise by, each person who is or has been a trustee or the personal representative of a trustee:

(d) whether any profit, benefit, or advantage has been derived directly or indirectly by any trustee of the trust property or by any partner, relative,

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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servant, or personal representative of any trustee, from or in connection with the administration of it:

(e) particulars of every such profit, benefit, and advantage:

(f) the amount of the allowance sought by each applicant, and the basis or principle by which the same is arrived at:

(g) if an order is sought under section 139(3) of the Trusts Act 2019 apportioning the total amount allowed, the basis of the proposed apportionment:

(h) if the trustees who, or whose personal representatives, are making the application have not been the only trustees since the inception of the trust, information as to the extent to which, up to the date to which a commission or percentage is applied for,—

(i) the trust property has been realised and income got in:

(ii) the administration of the trust has been carried on and its responsibilities discharged by each person who is or has been a trustee:

(i) if the application is not made at or about the time of the final distribution of the trust property, sufficient information to enable the court to determine what commission or percentage (if any) should be ordered, having regard to—

(i) the extent to which the duties of the trusteeship have already been discharged:

(ii) the period likely to elapse before that final distribution:

(iii) the changes in trusteeship that may occur during that period:

(iv) other relevant facts.

Compare: 1908 No 89 Schedule 2 r 668

27.39 Documents to be filed and verified

(1) This rule is subject to rules 27.40 and 27.45.

(2) The following documents, verified by an affidavit or affidavits of a solicitor or qualified statutory accountant (within the meaning of section 5(1) of the Financial Reporting Act 2013), must be filed in respect of an application under rule 27.37:

(a) a copy of the will or other instrument (if any) creating the trust:

(b) capital and income accounts of the trust or summarised statements of those accounts showing—

(i) the trust property and liabilities at the inception of the trust and at the date to which a commission or percentage is sought:

(ii) the gross capital realisations and other capital receipts, and the capital liabilities discharged and investments of capital made, and distributions of capital to beneficiaries and other capital payments

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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made, during the period from the inception of the trust to the date to which a commission or percentage is sought, distinguishing those received and made by the trustees who, or whose personal representatives, are making the application from those received and made by other trustees (if any):

(iii) the gross income received and liabilities and outgoings discharged from income, and the distributions of income to beneficiaries, and other disbursements from income, during the last-mentioned period, distinguishing those received and made by the trustees who, or whose personal representatives, are making the application from those received and made by other trustees (if any):

(iv) the sums retained by or paid to solicitors, accountants, auctioneers, real estate agents, commission agents, brokers, and other agents during that period in respect of capital and income respectively.

Compare: 1908 No 89 Schedule 2 r 669

27.40 Power to adopt previous accounts

(1) Unless the court otherwise orders, the accounts of the trustees or summarised statements previously kept or made for the purposes of the trust may, subject to subclause (2), be adopted for the purposes of the application.

(2) Any information required by rules 27.38 and 27.39 and not contained in the accounts or summarised statements previously kept or made (including any information required in respect of administration by other trustees) must be supplied by supplementary accounts or summarised statements verified in each case by an affidavit of a qualified statutory accountant (within the meaning of section 5(1) of the Financial Reporting Act 1993) or solicitor.

(3) If any information and accounts or summarised statements required in support of the application have been supplied in support of any previous application to the court for a commission or percentage, rules 27.38 and 27.39 are to be treated to that extent as having been complied with.

Compare: 1908 No 89 Schedule 2 r 670

27.41 Power to refer matter to Registrar for inquiry

The court may at any time refer the application or anything that is part of it or connected with it to the Registrar for inquiry and report.

Compare: 1908 No 89 Schedule 2 r 671

27.42 Notice of inquiry by Registrar

(1) Unless the court otherwise orders, reasonable notice to the satisfaction of the Registrar of any appointment made by the Registrar to proceed with the Registrar's inquiry must be given to every person who was entitled to be served with the application.

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) Subclause (1) does not apply if the person has given notice in writing to the Registrar that the person does not intend to appear or be represented at the inquiry.

Compare: 1908 No 89 Schedule 2 r 672

27.43 Evidence before Registrar

The evidence of every witness called on the inquiry before the Registrar must be taken down in writing and signed by the witness, and accompany the Registrar's report to the court.

Compare: 1908 No 89 Schedule 2 r 673

27.44 Costs

(1) The court may, in its discretion, award costs to any applicant or other person affected by the application, whether any commission or percentage is allowed or not.

(2) The court may direct that any costs be paid out of the trust property or any part of it.

Compare: 1908 No 89 Schedule 2 r 674

27.45 Power to dispense with rules

(1) On an interlocutory application made before or after the filing of an application for a commission or percentage, and upon sufficient grounds, the court may dispense with the observance of all or any of the rules in this subpart.

(2) An application under subclause (1) may be made without notice, but the court may require notice of it to be given to any other person or persons and prescribe the method.

Compare: 1908 No 89 Schedule 2 r 675

Part 28
Trans-Tasman competition proceedings

28.1 Interpretation

In this Part, unless the context otherwise requires—

Australian proceeding means a proceeding in which a matter for determination arises under—

(a) any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or

(b) a provision of Part 6 or 12 of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act,—

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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and includes an interlocutory application related to such a proceeding and an application for the issue of execution or enforcement of a judgment, order, or injunction given, made, or granted in a proceeding

Federal Court means the Federal Court of Australia

New Zealand proceeding means a proceeding in which a matter for determination arises under—

(a) any of sections 36A, 98H, or 99A of the Commerce Act 1986; or

(b) a provision of Part 6 or 7 of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act,—

and includes a related interlocutory proceeding and an application for the issue of execution or enforcement of a judgment, order, or injunction given, made, or granted in a proceeding.

Compare: 1908 No 89 Schedule 2 r 446R

28.2 Commencement of New Zealand proceedings

(1) A New Zealand proceeding must be commenced by filing a statement of claim in the registry of the court at Auckland, Wellington, or Christchurch in accordance with rule 28.3.

(2) Despite subclause (1), the statement of claim may be filed in any of those registries of the court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that registry.

Compare: 1908 No 89 Schedule 2 r 446S

28.3 Registry of court in which proceedings to be commenced

(1) Despite rule 5.1, the registry of the court for the purposes of rule 28.2 is determined as follows:

(a) if any defendant is resident or the defendant's principal place of business is in New Zealand, that registry is whichever of the registries of the court at Auckland, Wellington, or Christchurch is nearest to the residence or principal place of business of the defendant and if there are 2 or more defendants, that registry is determined by reference to the first named defendant who is resident or whose principal place of business is in New Zealand:

(b) if no defendant is resident or no defendant's principal place of business is in New Zealand, that registry is whichever of those registries the plaintiff selects:

(c) despite paragraphs (a) and (b), if the Crown is a defendant, that registry is whichever of those registries the plaintiff selects.

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) If it appears to the court on application made to it that the statement of claim has been filed in the wrong registry of the court, or that any other registry

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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of the court in which the statement of claim may be filed would be more convenient to the parties, it may direct that the statement of claim be filed in that other registry, or that all documents filed in the proceeding be transferred to the proper registry or to that other registry which is then treated as the proper registry.

(4) If an order is made under subclause (3), each party must change the party's address for service accordingly.

Compare: 1908 No 89 Schedule 2 r 446T

28.4 Issue of subpoenas for service in Australia

(1) Despite rule 9.52, an order of subpoena in a New Zealand proceeding for service in Australia must not be issued without the leave of a Judge, and must,—

(a) in the case of an order of subpoena that requires a person to testify, whether or not it also requires a person to produce documents, be in form G 20:

(b) in the case of an order that requires a person to produce documents, but does not require a person to testify, be in form G 21.

(2) An application for the issue of an order of subpoena under subclause (1) must be made without notice by originating application and the provisions of Part 19 (other than rule 19.11) apply, subject to all necessary modifications, to the application.

(3) An application must be accompanied by an affidavit containing the following matters:

(a) the name, designation, occupation, and address of the witness:

(b) the nature of the evidence required from the witness and the relevance of that evidence:

(c) the date on which it is intended to serve the order of subpoena:

(d) the availability of suitable means of transport to enable the witness to comply with the order of subpoena:

(e) the amounts proposed to be paid or tendered to the witness in respect of expenses in complying with the order of subpoena:

(f) in any case where the subpoena requires the witness to testify, an estimate of the date on which and the length of time that person will be required to attend at the court:

(g) if the applicant is aware of any fact or circumstance that may constitute a ground for setting the subpoena aside under section 56G of the Act, the fact or circumstance.

(4) In determining whether to grant leave the Judge must, in addition to any other matter that the Judge considers to be relevant, have regard to—

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) the adequacy of the amount proposed to be paid or tendered to the witness in respect of expenses; and

(b) whether the time between the date of service and the date on which the witness is required to comply with the order of subpoena is reasonable in the circumstances.

(5) Leave may be granted under subclause (1) subject to such conditions as the Judge thinks just.

(6) Without limiting subclause (5), leave may be granted under subclause (1) subject to conditions relating to—

(a) the amount to be paid or tendered to the witness in respect of expenses:

(b) the date or dates on which the witness is required to comply with the order of subpoena:

(c) the documents or class or classes of documents to be produced.

(7) A Judge may direct that service on a body corporate will be effected by serving the order of subpoena on a member, officer, or servant of the body corporate in such manner as the Judge directs.

(8) The file relating to every such application must be kept separate from the file relating to the New Zealand proceeding.

(9) As provided in rule 3.11, no document relating to an application under this rule may be searched, inspected, or copied without the leave of a Judge.

Compare: 1908 No 89 Schedule 2 r 446U

28.5 Service of subpoena

(1) An order of subpoena issued in a New Zealand proceeding with the leave of a Judge may be served on a person in Australia personally by leaving with that person a sealed copy of the order together with a statement in form G 22 setting out the person's rights and obligations.

(2) Service of the order of subpoena on a corporation must be in accordance with any directions given by the Judge under rule 28.4(7).

(3) A person who has been served with an order of subpoena under subclause (1) is not compellable to comply with the order unless, at the time of service or at some other reasonable time before the date on which the person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to meet the person's reasonable expenses of complying with the order are tendered or paid to that person.

Compare: 1908 No 89 Schedule 2 r 446V

28.6 Subpoenas for production

(1) An order of subpoena issued in a New Zealand proceeding that requires a person in Australia to produce documents or things, but does not require the

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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person to testify, must permit the person to comply with the order by producing the documents or things at a specified registry of the Federal Court.

(2) Unless the court otherwise orders, the registry of the Federal Court specified under subclause (1) is the registry nearest to the place where the order of subpoena is served.

(3) A person served with an order of subpoena of the kind described in subclause (1) may comply with the subpoena by—

(a) producing the subpoena and the required documents or things to the specified registry of the Federal Court not later than 10 working days before the date specified in the order as the date on which the documents or things are required for production in the High Court; and

(b) obtaining a receipt from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of the Federal Court for the documents or things produced and sending, as soon as practicable, a copy of the receipt with a copy of the subpoena by fax to the registry of the High Court where the order was made; and

(c) providing an officer of the Federal Court with a sum sufficient to send the documents or things to New Zealand.

(4) The receipt is sufficient evidence of compliance with the order of subpoena.

Compare: 1908 No 89 Schedule 2 r 446W

28.7 Setting aside subpoena issued in New Zealand proceeding

(1) An application to set aside an order of subpoena issued in a New Zealand proceeding and served on a person in Australia under section 84 of the Trans-Tasman Proceedings Act 2010 may be filed by fax.

(2) The Registrar must send to the applicant by fax an acknowledgment of an application that has been filed by fax.

(3) The court must give such directions for the conduct of the hearing of the application as it thinks just.

(4) Without limiting subclause (3), the court may give directions requiring—

(a) the applicant to give evidence or make submissions by video link or telephone conference; or

(b) further evidence by the applicant to be taken in Australia; or

(c) the application to be heard in Australia.

Compare: 1908 No 89 Schedule 2 r 446X

28.8 Failure to comply with subpoena in New Zealand proceeding

The court may, on the application of a party to a New Zealand proceeding or on its own initiative, issue a certificate in form G 23 stating that a person in Australia who has been served with an order of subpoena in a New Zealand

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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proceeding has failed to comply with the order and may direct the Registrar of the court to transmit the certificate to the Federal Court.

Compare: 1908 No 89 Schedule 2 r 446Y

28.9 Payment of additional amounts to persons complying with subpoena in New Zealand proceeding

The court may, on the application of a person resident in Australia who has complied with an order of subpoena in a New Zealand proceeding or on its own initiative, order the person on whose application the order was obtained to pay to that person—

(a) an amount for expenses reasonably incurred by that person in complying with the order in addition to any expenses tendered or paid to that person under rule 28.5(3); or

(b) an amount for any loss of income occasioned by that person in complying with the order—

and may direct that the amount or amounts be fixed by the Registrar.

Compare: 1908 No 89 Schedule 2 r 446Z

28.10 Transmission of documents to Federal Court

The Registrar at the registry at which a document or thing is produced in compliance with a subpoena for production issued by the Federal Court for service in New Zealand in an Australian proceeding must—

(a) issue a receipt for the document or thing produced; and

(b) mark the document or thing so as to indicate the date and time of its production; and

(c) advise by fax the officer of the Federal Court who issued the subpoena; and

(d) send the document or thing to the Federal Court with a copy of the subpoena so as to ensure that it will be received by the Federal Court before the date on which it is required to be produced to that court.

Compare: 1908 No 89 Schedule 2 r 446ZA

28.11 Certification of judgments, orders, and injunctions in New Zealand proceedings

(1) The court may, on the application of a party to a New Zealand proceeding, issue to that party a copy of a judgment, order, or injunction given, made, or issued in that proceeding.

(2) An application under this rule may be made without notice.

(3) A copy of the judgment, order, or injunction must be—

(a) sealed with the seal of the court; and

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) certified to be a true copy of a judgment, order, or injunction given, made, or issued in a New Zealand proceeding within the meaning of section 81 of the Trans-Tasman Proceedings Act 2010 or an NZ market proceeding within the meaning of section 4 of the Trans-Tasman Proceedings Act 2010 (Aust).

Compare: 1908 No 89 Schedule 2 r 446ZB

28.12 Evidence and submissions by video link and telephone conference

(1) On an application by a party to a New Zealand proceeding a Judge may, if satisfied that the necessary equipment and facilities are available, direct that a witness may give evidence from Australia or a person appearing as a barrister or solicitor, or both, may make submissions from Australia by video link or telephone conference.

(2) An application under subclause (1) may be made without notice and must be accompanied by an affidavit stating—

(a) the reasons for the proposed course of action:

(b) the nature of the evidence:

(c) the witnesses to be examined:

(d) in a case where evidence is proposed to be given, an estimate of the time the examination of the witnesses will take:

(e) whether issues of character or credibility are likely to be raised:

(f) in a case where submissions are proposed to be made, an estimate of the time that will be required to make the submissions.

(3) In giving a direction under subclause (1), the Judge must instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions the Judge makes.

(4) Without limiting subclause (3), the Judge may direct that—

(a) the evidence be given or the submissions be made at the Federal Court or at a place approved by the Federal Court:

(b) an officer of the Federal Court or other person approved by the Judge be present to assist in the transmission of the evidence or submissions and, in particular, to—

(i) introduce witnesses giving evidence or a barrister or solicitor, or both, making submissions:

(ii) assist with the administration of oaths:

(iii) assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions:

(c) the evidence or the submissions be heard at a location other than the precincts of the High Court.

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(5) Unless the court otherwise orders, the costs incurred in giving the evidence or making the submissions by video link or telephone conference and transmitting the evidence or submissions in accordance with a direction given under this rule must be paid by the applicant.

Compare: 1908 No 89 Schedule 2 r 446ZC

Part 29
Commercial panel

29.1 Interpretation

(1) In this Part, unless the context otherwise requires,—

commercial panel means the commercial panel of the High Court established by section 19(1) of the Senior Courts Act 2016

defendant means a party against whom a proceeding is brought

panel Judge means a High Court Judge assigned to the commercial panel by the Chief High Court Judge in accordance with section 19(4) of the Senior Courts Act 2016

plaintiff means a party commencing a proceeding

proceeding means a proceeding commenced by a statement of claim or an originating application that is one of the types of proceedings specified in the Senior Courts (High Court Commercial Panel) Order 2017 in accordance with section 19(2)(b) of the Senior Courts Act 2016.

(2) In this Part,—

(a) every reference to a plaintiff must be read as including a reference to an applicant in respect of an originating application and every reference to a statement of claim must be read as including a reference to an originating application; and

(b) every reference to a defendant must be read as including a reference to a respondent in respect of an originating application and every reference to a statement of defence must be read as including a reference to a notice of opposition to an originating application.

29.2 Procedure for assignment of panel Judge

Plaintiff nominating proceeding for assignment

(1) A plaintiff may, on commencing a proceeding, nominate that the proceeding be dealt with by a panel Judge.

(2) A plaintiff makes a nomination under this rule by—

(a) filing and serving, with the statement of claim, a memorandum setting out the grounds for the nomination; and

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) endorsing the words "Commercial Panel" on the first page of the statement of claim, opposite the number of the proceeding (or, if that number is yet to be allocated, the position where that number is to appear in accordance with form G 1 in Schedule 1 of the High Court Rules 2016).

(3) A defendant who is served with a memorandum under this rule must, on filing a statement of defence, file and serve a memorandum stating—

(a) whether the defendant consents to or opposes a panel Judge dealing with the proceeding; and

(b) if the defendant opposes a panel Judge dealing with the proceeding, the defendant's grounds for opposing.

Defendant nominating proceeding for assignment

(4) A defendant may, on filing a statement of defence in a proceeding, nominate that a panel Judge deal with the proceeding if the plaintiff has not filed and served a memorandum under subclause (2).

(5) A defendant nominates that a panel Judge deal with the proceeding by filing and serving a memorandum setting out the grounds for the nomination and endorsing the first page of the statement of defence in the same manner as provided in subclause (2).

(6) A plaintiff must, not later than 5 working days after service of the defendant's memorandum, file and serve a memorandum stating—

(a) whether the plaintiff consents to or opposes a panel Judge dealing with the proceeding; and

(b) if the plaintiff opposes a panel Judge dealing with the proceeding, the plaintiff's grounds for opposing.

Nomination not precluded by application for summary judgment

(6A) A memorandum may be filed under subclause (2) or (5) notwithstanding that an interlocutory application for summary judgment has been made in the proceeding under rule 12.4.

Procedure for decision

(7) The Registrar must refer a memorandum filed under this rule to the Chief High Court Judge to decide whether to assign a panel Judge to the proceeding.

(8) The Chief High Court Judge may convene a hearing on the matter or may make a decision on the papers.

29.3 Cancellation of assignment

(1) The Chief High Court Judge may, at any time, on the application of a party to the proceeding or on the Chief High Court Judge's own initiative, cancel the assignment of a panel Judge to a proceeding.

(2) The Chief High Court Judge, on cancelling an assignment, must give directions as to the future conduct of the proceeding.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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29.4 Heading of documents

If a panel Judge is assigned to a proceeding, the heading of every document filed or issued in the proceeding must show the words "Commercial Panel" in the place specified in rule 29.2(2)(b).

29.5 Registry for filing and registry for hearings

(1) A panel Judge may undertake case management of proceedings assigned to the Judge (in the Judge's capacity as a panel Judge) in the registry of the court in which the Judge is based.

(2) A panel Judge may give any directions that the Judge thinks necessary to minimise any difficulties caused to a party as a result of the distance of the party from the registry of the court at which the panel Judge is based.

(3) In a proceeding to which a panel Judge is assigned,—

(a) all documents must be filed in the registry of the court in which the proceeding was originally filed; and

(b) the substantive hearing of the proceeding must be held in the registry of the court in which the proceeding was originally filed, unless the panel Judge directs otherwise.

29.6 Application of other rules

Other Parts of these rules, including rules relating to case management, apply to proceedings that a panel Judge deals with under this Part—

(a) subject to any directions of the panel Judge; and

(b) except to the extent that the rules are modified by or are inconsistent with the Act or this Part.

Part 29
Commercial list

[Revoked]

29.1 Interpretation

[Revoked]

29.2 Application of this Part

[Revoked]

29.3 Entry on commercial list by endorsement

[Revoked]

29.4 Entry on commercial list by order

[Revoked]

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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29.5 Entry on commercial list of appeals against determinations of Commerce Commission

[Revoked]

29.6 Entry on commercial list of applications for directions by liquidators or receivers

[Revoked]

29.7 Documents to be served on and filed and served by defendant

[Revoked]

29.8 Heading of documents

[Revoked]

29.9 Interlocutory applications

[Revoked]

29.10 Application for directions

[Revoked]

29.11 Response to application for directions

[Revoked]

29.12 Hearing of application for directions

[Revoked]

29.13 Removal from list

[Revoked]

29.14 Proceedings in other registries

[Revoked]

29.15 Memorandum that decision will be final

[Revoked]

29.16 Additional powers of commercial list Judge

[Revoked]

29.17 Disputes concerning construction

[Revoked]

29.18 Form of documents

[Revoked]

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Part 30
Judicial review

30.1 Crown Proceedings Act 1950 not affected

This Part does not limit or affect the Crown Proceedings Act 1950.

Compare: 1908 No 89 Schedule 2 r 622

30.2 Interpretation

In this Part, **extraordinary remedy** means—

(a) an order of mandamus, prohibition, or certiorari:

(b) a declaration or injunction in relation to the breach, threatened breach, continuation of a breach, or further breach of a duty of a court, tribunal, or person exercising public functions; or

(c) an order removing a person from public office or a declaration as to the right of a person to hold a public office.

Compare: 1908 No 89 Schedule 2 rr 623–627A

30.3 Procedure

(1) An application for judicial review under the Judicial Review Procedure Act 2016 and an application for an extraordinary remedy must be commenced by statement of claim and notice of proceeding in accordance with Part 5 of the rules.

(2) The heading of an application for review under the Judicial Review Procedure Act 2016 must state that it is an application for review.

(3) A statement of claim seeking an extraordinary remedy may claim more than 1 of those remedies and may claim any other relief (including damages) to which the plaintiff may be entitled.

(4) *[Revoked]*

Compare: 1908 No 89 Schedule 2 r 628

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).

30.4 Interim orders

(1) When an application is made for an extraordinary remedy under this Part, the court may make an interim order on whatever terms and conditions the court thinks just.

(2) An applicant who applies for an interim order must, if ordered by the court, file a signed undertaking to the effect that the applicant will abide by any order that the court may make in respect of damages—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(a) that are sustained by any other party through the making of the interim order; and

(b) that the court decides the applicant ought to pay.

(3) The undertaking must be referred to in the order and is part of it.

Compare: 1908 No 89 Schedule 2 r 627B

Part 31
Companies: Liquidation

31.1 Application

(1) This rule applies to an application to the High Court to put a company into liquidation.

(2) Rules 31.37 and 31.38 apply in respect of a notice under section 294(1) of the Companies Act 1993.

(3) These rules and the general practice of the High Court apply to applications to which subclause (1) applies and notices to which subclause (2) applies unless they are modified by or inconsistent with this Part or the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r 700A

31.2 Hearing of applications

Unless the court otherwise directs, every application to which this Part applies must be heard in open court.

Compare: 1908 No 89 Schedule 2 r 700B

31.3 Applications to be made by statement of claim

(1) An application to the High Court to put a company into liquidation under section 241(2)(c) of the Companies Act 1993 must be made by statement of claim in form C 1.

(2) *[Revoked]*

Compare: 1908 No 89 Schedule 2 r 700C

31.4 Proper registry of court

(1) Despite rules 5.1(1) to (3) and 5.25, the proper registry of the court for the purposes of the filing of a statement of claim under rule 31.3 is—

(a) the registry of the court in the town where, or the registry of the court in the town nearest to which, the defendant company's registered office is situated; or

(b) if the defendant company does not have a registered office, the registry of the court in the town where, or the registry of the court in the town nearest to which, the defendant company's principal or last known place of business is or was situated.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) This rule does not limit rule 5.1(4) and (5).

Compare: 1908 No 89 Schedule 2 r 700D

31.5 Notice of proceeding and verifying affidavit

(1) Rules 5.22 and 5.23 do not apply to a proceeding commenced by the filing of a statement of claim under rule 31.3.

(2) A notice of proceeding in form C 3 and an affidavit in form C 4 or C 5 verifying the allegations in the statement of claim must be filed and served with a statement of claim filed under rule 31.3.

(3) Subclause (2) is subject to rule 5.24.

(4) The affidavit must be made by the plaintiff, or by one of the plaintiffs if more than 1, or, if the proceeding is brought by a corporation, by a person who meets the requirements of rule 9.82.

(5) The affidavit is sufficient prima facie evidence of the statements in the statement of claim.

Compare: 1908 No 89 Schedule 2 r 700E

31.6 Date of hearing

(1) On the filing of a statement of claim under rule 31.3, the Registrar must as soon as practicable appoint the time and place of the hearing.

(2) Unless the court otherwise orders, the place for the hearing of the proceeding is—

(a) the High Court in the town in which the statement of claim is filed; or

(b) if no Judge will be available in that town at the appointed time, the High Court in another town; or

(c) if the statement of claim is filed in Masterton, the High Court at Wellington.

(d) *[Revoked]*

(3) Notice of the time and place of the hearing must be included in the notice of proceeding in form C 3.

(4) The Registrar may change the time before the proceeding has been advertised.

Compare: 1908 No 89 Schedule 2 r 700F

31.7 Exclusion of rules relating to setting down

[Revoked]

31.8 Directions

[Revoked]

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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31.9 Advertisement of application

(1) A proceeding commenced by a statement of claim under rule 31.3 must be advertised at least 5 working days before the hearing.

(2) In this Part, **working day** means any day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and

(ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; and

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

(3) This rule is subject to rule 31.10 and to any order made on an application under rule 31.11.

(4) If the registered office of the defendant company, or, if there is no such office, the principal or last known principal place of business of that company, is or was situated within a town in which there is a registry of the court, the advertisement must be published—

(a) once in the *Gazette*; and

(b) at least once—

(i) in a daily newspaper published in that town; or

(ii) in another newspaper as the Registrar directs.

(5) In the case of a defendant company to which subclause (4) does not apply, the advertisement must be published—

(a) once in the *Gazette*; and

(b) at least once—

(i) in a local newspaper circulating in the locality where the registered office, or principal or last known principal place of business, as the case may be, of the defendant company is or was situated; or

(ii) in another newspaper as the Registrar directs.

(6) The advertisement, which must be in form C 6, must state—

(a) the day on which the application to put the defendant company into liquidation was filed; and

(b) the name and address of the plaintiff and of the plaintiff's solicitor (if any); and

(c) the plaintiff's address for service; and

(d) the place, date, and time of the hearing of the application; and

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(e) that the statement of claim and the verifying affidavit may be inspected at the registry of the court or at the plaintiff's address for service; and

(f) that any person, other than the defendant company, who wishes to appear on the hearing of the application must file an appearance not later than 2 working days before the day appointed for the hearing of the application.

(7) If the plaintiff or the plaintiff's solicitor does not within the prescribed time, or within any extended time allowed by the Registrar, duly advertise the proceeding in the manner prescribed by this rule, the appointment of the time and place of hearing must be cancelled by the Registrar, and the proceeding must then be removed from the list, unless the defendant company has been served or the court otherwise directs.

Compare: 1908 No 89 Schedule 2 r 700I

31.10 Restriction on advertising of proceeding

(1) No person may, unless the court otherwise directs, publish any advertisement required by rule 31.9 or any other information relating to the statement of claim until at least 5 working days after the date on which the statement of claim is served on the defendant company.

(2) Subclause (1) does not apply when a statement of claim has been filed by the defendant company.

Compare: 1908 No 89 Schedule 2 r 700J

31.11 Power to stay liquidation proceedings

(1) If an application for putting a company into liquidation is made under rule 31.3, the defendant company, or, with the leave of the court, any creditor or shareholder of that company or the Registrar of Companies, may, within 5 working days after the date of the service of the statement of claim on the defendant company, apply to the court—

(a) for an order restraining publication of an advertisement required by rule 31.9 or any other information relating to that statement of claim; and

(b) for an order staying any further proceedings in relation to the liquidation.

(2) The court must treat an application under subclause (1) as if it were an application for an interim injunction and, if it makes the order sought, it may do so on whatever terms the court thinks just.

(3) The inherent jurisdiction of the court is not limited by this rule.

Compare: 1908 No 89 Schedule 2 r 700K

31.12 Service of proceeding

(1) Every statement of claim filed under rule 31.3 must, unless the defendant company has brought the proceeding, be served, together with the verifying affidavit and notice of proceeding, upon the defendant company.

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(2) Service under this rule must be effected not less than 15 working days before the date of hearing appointed or fixed under rule 31.6.

Compare: 1908 No 89 Schedule 2 r 700L

31.13 Affidavit of service

(1) The plaintiff must, before the hearing, file an affidavit of service in form C 8 proving the service of the statement of claim, verifying affidavit, and notice of proceeding on the defendant company.

(2) Subclause (1) does not apply—

(a) if the defendant company has brought the proceeding; or

(b) in relation to service on a person who, before the hearing, files a statement of defence.

Compare: 1908 No 89 Schedule 2 r 700M

31.14 Evidence of advertising

The plaintiff must, before the hearing, file in the registry of the court—

(a) copies of the advertisements published in accordance with rule 31.9; and

(b) a statement of the newspapers in which, and the dates on which, the advertisements appeared.

Compare: 1908 No 89 Schedule 2 r 700N

31.15 Entitlement to copy of statement of claim, etc

(1) Shareholders and creditors of the defendant company, and the Registrar of Companies, are entitled to be supplied by the plaintiff's solicitor with a copy of the statement of claim, verifying affidavit, and notice of proceeding, within 24 hours after requiring it.

(2) The price must not be more than 50 cents per page (inclusive of goods and services tax).

Compare: 1908 No 89 Schedule 2 r 700O

31.16 Statement of defence

(1) Rule 5.47 does not apply to a proceeding commenced by the filing of a statement of claim under rule 31.3.

(2) A person, being the defendant company or a creditor or shareholder of that company, who intends to defend a proceeding commenced by a statement of claim under rule 31.3 must file a statement of defence in the registry of the court named in the notice of proceeding.

(3) A person who files a statement of defence must serve a copy of that statement of defence on—

(a) the plaintiff; and

This is an unofficial prospective consolidation showing
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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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(b) any other person who, when the statement of defence is filed, has filed a statement of defence in the proceeding.

(4) If the defendant company has filed a statement of defence, a statement of defence filed by a creditor or shareholder of that company must state specifically any grounds of opposition that are additional to those appearing in the company's statement of defence.

Compare: 1908 No 89 Schedule 2 r 700P

31.17 Time for filing statement of defence

A statement of defence must be filed within 10 working days after the date on which the statement of claim is served on the person filing the statement of defence.

Compare: 1908 No 89 Schedule 2 r 700Q

31.18 Appearance

A person (other than the defendant company) who intends to appear on the hearing of the proceeding may, without filing a statement of defence, file an appearance in form C 9—

(a) stating that the person intends to appear; and

(b) indicating whether that person supports or opposes the application to put the company into liquidation.

Compare: 1908 No 89 Schedule 2 r 700R

31.19 Time for filing appearance

An appearance must be filed not later than 2 working days before the date of hearing.

Compare: 1908 No 89 Schedule 2 r 700S

31.20 Effect of failure to file statement of defence or appearance

If a person who is entitled to file a statement of defence or an appearance in a proceeding commenced by the filing of a statement of claim under rule 31.3 fails to file a statement of defence or an appearance within the time prescribed, that person must not, without an order for extension of time granted on application made under rule 31.22 or the special leave of the court, be allowed to appear at the hearing of the proceeding.

Compare: 1908 No 89 Schedule 2 r 700T

31.21 Evidence as to unpaid debts

(1) A certificate by the solicitor for the plaintiff that, after having made due inquiries, the solicitor is satisfied that a debt remains unpaid may be accepted by the court as sufficient prima facie evidence that that debt remains unpaid.

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(2) Subject to any direction of the court, evidence that a debt remains unpaid may be given by an affidavit sworn by or on behalf of the plaintiff not earlier than 2 working days before the date of hearing.

Compare: 1908 No 89 Schedule 2 r 700U

31.22 Interlocutory applications

(1) When a proceeding is commenced under rule 31.3, an interlocutory application (unless made with the leave of the court) may not be made to the court before the date of hearing specified in the notice of proceeding served with that statement of claim unless it is—

(a) an application for an extension or abridgement of time; or

(b) an application under rule 1.9, 31.6(2), or 31.11; or

(c) an application for the appointment of an interim liquidator; or

(d) an application for directions; or

(e) an application to excuse non-compliance with any rule in this Part.

(2) When a statement of defence is filed in a proceeding commenced under rule 31.3 and the hearing of that proceeding is adjourned for the allocation of a hearing date on a defended basis, these rules apply as if the proceeding had been commenced by a statement of claim filed under Part 5 and not under rule 31.3.

(3) The inherent jurisdiction of the court is not limited by this rule.

Compare: 1908 No 89 Schedule 2 r 700V

31.23 Power to appoint interim liquidator

(1) When a proceeding for putting a company into liquidation has been commenced under rule 31.3, the plaintiff and any person entitled to apply to the court for the appointment of a liquidator under section 241(2)(c) of the Companies Act 1993 may apply to the court for the appointment of an interim liquidator.

(2) If the court is satisfied, upon proof by affidavit, that there is sufficient ground for the appointment of an interim liquidator, it may make the appointment, and may limit the rights and powers of the interim liquidator in any manner it thinks just.

Compare: 1908 No 89 Schedule 2 r 700W

31.24 Additional and substituted plaintiffs in liquidation proceeding

(1) This rule applies to any person who is entitled to make an application to the court for putting a company into liquidation under section 241(2)(c) of the Companies Act 1993.

(2) The person may become a plaintiff in that proceeding by filing in the registry of the court and serving on all the parties to the proceeding—

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(a) a statement of claim in form C 1; and

(b) a notice of proceeding in form C 3; and

(c) an affidavit in form C 4.

(3) Those documents must be filed and served not later than 2 working days before the date of hearing of the proceeding.

(4) If a person has filed an appearance under rule 31.18 in a proceeding to put a company into liquidation and, on the day appointed for the hearing, or on any day to which the hearing has been adjourned, no plaintiff wishes then to proceed with the hearing of the application to put the company into liquidation, the court may, on the oral application of that person,—

(a) add that person as a plaintiff in the proceeding; or

(b) substitute that person for the plaintiff or plaintiffs or any of the plaintiffs in the proceeding.

(5) The addition or substitution of a person as a plaintiff under subclause (4) must be subject to the condition that that person file in the registry of the court and serve on all the other parties to the proceeding, within 5 working days after the day on which the addition or substitution is made,—

(a) a statement of claim in form C 1; and

(b) a notice of proceeding in form C 3; and

(c) an affidavit in form C 4.

(6) If a person to whom rule 31.16(2) applies is a person on whom the statement of claim is served under this rule, that person must file a statement of defence within 10 working days after the date on which the statement of claim is served upon that person.

Compare: 1908 No 89 Schedule 2 r 700X

31.25 Consolidation of proceedings

(1) If 2 or more proceedings have been commenced in respect of the same company under rule 31.3, the court may order those proceedings to be consolidated on such terms as it thinks just.

(2) Nothing in this rule limits the provisions of rules 10.12 and 10.13.

Compare: 1908 No 89 Schedule 2 r 700Y

31.26 Discontinuance of proceeding

A proceeding commenced under rule 31.3 may be discontinued only with the leave of the court.

Compare: 1908 No 89 Schedule 2 r 700YA

31.27 Requirements in relation to order appointing interim liquidator

The order appointing the interim liquidator must—

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

(a) show the number of the proceeding; and

(b) state the nature and a short description of the property of which the interim liquidator is ordered to take possession; and

(c) state the duties to be performed by the interim liquidator.

Compare: 1908 No 89 Schedule 2 r 700Z

31.28 Costs, charges, and expenses of interim liquidator and Official Assignee

(1) Subject to an order of the court, subclause (2) applies if—

(a) no order for putting the defendant company into liquidation is made in the proceeding; or

(b) an order for putting the defendant company into liquidation is rescinded; or

(c) all proceedings for putting the defendant company into liquidation are stayed.

(2) The person holding registry as interim liquidator is entitled to be paid, out of the property of the defendant company, all costs, charges, and expenses properly incurred by that person as interim liquidator or, if that person is the Official Assignee, whatever sum the court directs.

(3) If a person other than the Official Assignee has been appointed interim liquidator and the Official Assignee has taken steps for the purpose of obtaining a statement of affairs or has performed another duty prescribed by this Part, the interim liquidator must pay the Official Assignee whatever sum, if any, the court directs.

Compare: 1908 No 89 Schedule 2 r 700ZA

Order to put company into liquidation

31.29 Obligation to send notice of order appointing liquidator or interim liquidator of company

(1) When the court has made an order appointing a person to be liquidator of a company, or has made an order appointing an interim liquidator before an order putting the company into liquidation is made, the Registrar of the court must, on the same day, send to the liquidator or interim liquidator a notice informing him or her of his or her appointment.

(2) The notice must be in form C 10 or C 11, as the case requires, with any variations the circumstances require.

Compare: 1908 No 89 Schedule 2 r 700ZB

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31.30 Order and copies to be sealed

The plaintiff or the plaintiff's solicitor must, no later than 2 working days after the day on which an order putting a company into liquidation is made, leave the order and 2 copies of it at the registry of the court for sealing.

Compare: 1908 No 89 Schedule 2 r 700ZC

31.31 Contents of order putting company into liquidation

(1) An order putting a company into liquidation must be in form C 12.

(2) An order for the appointment of an interim liquidator must be in form C 13.

Compare: 1908 No 89 Schedule 2 r 700ZD

31.32 Transmission of order putting company into liquidation

When an order that a company be put into liquidation or an order for the appointment of an interim liquidator has been made,—

(a) 1 copy of the order sealed with the seal of the court must immediately be sent by post or otherwise by the Registrar to the liquidator or interim liquidator, as the case may be:

(b) 1 copy of the order sealed with the seal of the court must be served by the plaintiff on the company in accordance with the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r 700ZE

31.33 Service of order made under section 174 of Companies Act 1993

[Revoked]

31.34 Service of notice to officer executing process that company being put into liquidation

(1) This rule applies to a notice given for the purposes of section 252 of the Companies Act 1993, which is a notice—

(a) that an application has been made to the court to appoint a liquidator; or

(b) that the court has made an order appointing a liquidator; or

(c) that the court has appointed an interim liquidator; or

(d) of the calling of a meeting at which a special resolution is proposed to appoint a liquidator; or

(e) that a special resolution has been passed appointing a liquidator; or

(f) of the calling of a meeting of the board at which a resolution is proposed to appoint a liquidator; or

(g) that a resolution has been passed appointing a liquidator.

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(2) The notice must be in writing and addressed to the officer required to act on it, and may be served by being delivered by hand or by registered post at the office of that officer.

Compare: 1908 No 89 Schedule 2 r 700ZG

31.35 Procedure in respect of miscellaneous applications

(1) Subpart 2 of Part 7, relating to interlocutory applications, applies to applications to the court in respect of—

(a) a defendant company sought to be put into liquidation under section 241(2)(c) of the Companies Act 1993; or

(b) a company in respect of which a liquidator has been appointed under section 241(2)(c) of the Companies Act 1993.

(c) *[Revoked]*

(2) Subclause (1) is subject to subclauses (3) and (4).

(3) An application specified in subclause (1) must have the same heading as the heading on the application for putting the company into liquidation.

(4) Subclause (1) does not apply to—

(a) an application under rule 31.36; or

(b) an application to which Part 18 or 19 applies.

Compare: 1908 No 89 Schedule 2 r 700ZH

31.36 Applications involving allegations of fraud, negligence, misfeasance, or similar behaviour

(1) An application must be made by filing a statement of claim under these rules if it relates to a company described in subclause (2) and involves an allegation of fraud, negligence, misfeasance, or similar behaviour.

(2) The companies are—

(a) a defendant company in relation to an application made to put that company into liquidation under section 241(2)(c) of the Companies Act 1993; or

(b) a company in respect of which a liquidator has been appointed under section 241(2)(c) of the Companies Act 1993; or

(c) a company in respect of which an application under section 174 of the Companies Act 1993 is pending.

(3) The applicant must, as soon as practicable after the statement of defence has been filed or the time for filing a statement of defence has expired, file an application for directions as to the conduct of proceedings under rule 7.43A.

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(4) The statement of claim must have the same heading as the heading on the application for putting the company into liquidation or for the order under section 174 of the Companies Act 1993.

Compare: 1908 No 89 Schedule 2 r 700ZI

31.37 Liquidator's notice to set aside voidable transaction or voidable charge

A notice under section 294(1) of the Companies Act 1993 must—

(a) contain the heading in form C 14; and

(b) be in form C 15 or C 16 as appropriate; and

(c) comply with rules 5.11 and 5.44 (with any necessary modifications).

Compare: 1908 No 89 Schedule 2 r 700ZJ

31.38 Proper registry of court

(1) A notice under section 294(1) of the Companies Act 1993 must,—

(a) if the company has been put into liquidation by the court, be filed in the registry of the court in which the order putting the company into liquidation was made under the liquidation file number (even though the heading of the notice is different); and

(b) in any other case, be filed in the registry of the court in the town where, or the registry of the court in the town nearest to which, the registered office of the company in liquidation was situated at the date of liquidation.

(2) If more than 1 notice under section 294(1) of the Companies Act 1993 relating to the same company in liquidation has been filed under subclause (1)(b), those notices must be filed under the same file number (even though the heading of each notice is different).

Compare: 1908 No 89 Schedule 2 r 700ZK

31.39 Transitional provision for companies registered under the Companies Act 1955

Part 9A of the High Court Rules as in force immediately before the commencement of the Schedule of the Judicature (High Court Rules) Amendment Act 2008 applies, even though it has been repealed, to companies remaining registered under the Companies Act 1955.

Part 32
Freezing orders

32.1 Interpretation

In this Part, unless the context otherwise requires,—

ancillary order means an order made under rule 32.3

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another court means a court outside New Zealand or a court in New Zealand other than the High Court

applicant means a person who applies for a freezing order or an ancillary order

freezing order means an order made under rule 32.2

judgment includes an order

respondent means a person against whom a freezing order or an ancillary order is sought or made.

32.2 Freezing order

(1) The court may make an order (a **freezing order**), on or without notice to a respondent in accordance with this Part.

(2) A freezing order may restrain a respondent from removing any assets located in or outside New Zealand or from disposing of, dealing with, or diminishing the value of, those assets.

(3) An applicant for a freezing order without notice to a respondent must fully and frankly disclose to the court all material facts, including—

(a) any possible defences known to the applicant; and

(b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

(4) An application for a freezing order must be made by interlocutory application under Part 7 or originating application under Part 19, which Parts apply subject to this Part.

(5) An applicant for a freezing order must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the respondent for any damage sustained in consequence of the freezing order.

32.3 Ancillary order

(1) The court may make an order (an **ancillary order**) ancillary to a freezing order or prospective freezing order if the court considers it just.

(2) Without limiting the generality of subclause (1), an ancillary order may be made for any of the following purposes:

(a) eliciting information relating to assets relevant to the freezing order or prospective freezing order:

(b) determining whether the freezing order should be made:

(c) appointing a receiver of the assets that are the subject of the freezing order.

(3) An ancillary order is subject to the court's jurisdiction to decide an objection raised on the ground of the privilege against self-incrimination conferred by section 60 of the Evidence Act 2006.

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32.4 Respondent need not be party to proceeding

The court may make a freezing order or an ancillary order against a respondent even if the respondent is not a party to a proceeding in which substantive relief is sought against the respondent.

32.5 Order against judgment debtor or prospective judgment debtor or third party

(1) This rule applies if—

(a) judgment has been given in favour of an applicant by—

(i) the court; or

(ii) in the case of a judgment to which subclause (2) applies, another court; or

(b) an applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in—

(i) the court; or

(ii) in the case of a cause of action to which subclause (3) applies, another court.

(2) This subclause applies to a judgment if there is a sufficient prospect that the judgment will be registered in or enforced by the court.

(3) This subclause applies to a cause of action if—

(a) there is sufficient prospect that the other court will give judgment in favour of the applicant; and

(b) there is a sufficient prospect that the judgment will be registered in or enforced by the court; and

(c) there is a real connecting link between the subject matter of the order sought and the territorial jurisdiction of the New Zealand court; and

(d) the order sought would not be inconsistent with interim relief granted by the other court.

(4) The court may make a freezing order or an ancillary order or both against a judgment debtor or prospective judgment debtor if the court is satisfied, having regard to all the circumstances, that there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—

(a) the judgment debtor, prospective judgment debtor, or another person might abscond; or

(b) the assets of the judgment debtor, prospective judgment debtor, or another person might be—

(i) removed from New Zealand or from a place inside or outside New Zealand; or

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(ii) disposed of, dealt with, or diminished in value (whether the assets are in or outside New Zealand).

(5) The court may make a freezing order or an ancillary order or both against a person other than a judgment debtor or prospective judgment debtor (a **third party**) if the court is satisfied, having regard to all the circumstances, that—

(a) there is a danger that a judgment or prospective judgment will be wholly or partly unsatisfied because—

(i) the third party holds or is using, or has exercised or is exercising, a power of disposition over assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or

(ii) the third party is in possession of, or in a position of control or influence concerning, assets (including claims and expectancies) of the judgment debtor or prospective judgment debtor; or

(b) a process in the court is or may ultimately be available to the applicant, as a result of a judgment or prospective judgment, under which the third party may be obliged to disgorge assets or contribute toward satisfying the judgment or prospective judgment.

32.6 Form and further terms of freezing order

(1) A freezing order must be issued in form G 38.

(2) If the likely maximum amount of the applicant's claim is known, the value of the assets covered by the freezing order must not exceed that amount together with interest on that amount and costs.

(3) The freezing order must not prohibit the respondent from dealing with the assets covered by the order for the purpose of—

(a) paying ordinary living expenses; or

(b) paying legal expenses related to the freezing order; or

(c) disposing of assets, or making payments, in the ordinary course of the respondent's business, including business expenses incurred in good faith.

(4) Unless there are special circumstances, the court must require the applicant for a freezing order to give appropriate undertakings, including an undertaking as to damages.

(5) If the applicant has, or may later have, insufficient assets within New Zealand to discharge the obligation created by an undertaking as to damages, the court may require the applicant to provide security for that obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar.

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32.7 Duration of freezing order

(1) A freezing order made without notice to the respondent must state that it is limited to a particular date, which should be as early as practicable after the freezing order is made.

(2) The respondent must be informed that on that date the respondent will have an opportunity to be heard by the court.

(3) On the date referred to in subclause (1) the applicant has the onus of satisfying the court that the freezing order should be continued or renewed.

32.8 Discharge or variation of freezing order

(1) A freezing order must reserve leave to the respondent to apply to the court to discharge or vary the freezing order on whatever period of notice to the applicant the court considers just.

(2) An application by the respondent to discharge or vary the freezing order must be treated as an urgent application by the court.

32.9 Jurisdiction

This Part does not affect the jurisdiction of the court under any enactment to make an order freezing assets.

32.10 Costs

(1) The court may make any order as to costs it considers just in relation to an order made under this Part.

(2) Without limiting the generality of subclause (1), an order as to costs includes an order as to the costs of any person affected by a freezing order or ancillary order.

Part 33
Search orders

33.1 Interpretation

In this Part, unless the context otherwise requires,—

applicant means an applicant for a search order

described includes described generally, whether by reference to a class or otherwise

premises includes a vehicle or vessel of any kind

record includes a copy, photograph, film, or sample

respondent means a person against whom a search order is sought or made

search order means an order made under rule 33.2.

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33.2 Search order

(1) This rule applies only if the evidence is, or may be, relevant to an issue in the proceeding or anticipated proceeding.

(2) The court may make an order (a **search order**), in a proceeding or before a proceeding commences, with or without notice to the respondent, to—

(a) secure or preserve evidence; and

(b) require a respondent to permit persons to enter premises for the purpose of securing the preservation of evidence.

(3) Form G 39 must be used but may be varied as the circumstances require.

(4) A search order must be served on the respondent.

33.3 Requirements for grant of search order

The court may make a search order under rule 33.2 only if the court is satisfied that—

(a) an applicant seeking the order has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if the search order is not made; and

(c) there is sufficient evidence in relation to a respondent that—

(i) the respondent possesses relevant evidentiary material; and

(ii) there is a real possibility that the respondent might destroy such material or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

33.4 Restriction on entrants

(1) The permitted persons identified under rule 33.2(2)(b) must not include the applicant in person, or, if the applicant is not a natural person, any director, officer, employee, partner, or other person associated with the applicant, other than the applicant's solicitor.

(2) The number of those permitted persons must be as small as is reasonably practicable in the circumstances.

33.5 Applicant's undertaking and duty

(1) As a condition of the making of the order, the applicant must undertake to the court to pay the reasonable costs and disbursements of any independent solicitor appointed under rule 33.7.

(2) The court must require the applicant for a search order to give appropriate undertakings, including an undertaking as to damages.

(3) If the applicant has, or may later have, insufficient assets within New Zealand to discharge the obligation created by an undertaking as to damages, the court

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may require the applicant to provide security for that obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar.

(4) An applicant for a search order without notice to a respondent must fully and frankly disclose to the court all material facts, including—

(a) any possible defences known to the applicant; and

(b) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages.

33.6 Terms of search order

(1) A search order may direct a named or described person—

(a) to permit, or arrange to permit, another or other named or described person or persons specified—

(i) to enter specified premises; and

(ii) to take other steps including searching for, inspecting, or removing a listed or described thing and making or obtaining a record of it or information contained in it; and

(b) to provide, or arrange to provide, named or described persons with any described information, thing, or service; and

(c) to allow other named or described persons, including computer specialists not associated with either the applicant or the respondent, to take and retain in their custody, or copy, any described thing; and

(d) not to disclose any information about the order, for up to 3 working days after the date on which the order was served, except for the purposes of obtaining legal advice or legal representation; and

(e) to do or refrain from doing any specified act.

(2) A search order may contain whatever other incidental provisions the court considers just.

(3) A search order must fix a date on which the court will consider a report on the search from the independent solicitors, and any applications related to the matters listed in rule 33.8.

33.7 Independent solicitors

(1) If the court makes a search order, the court must appoint 1 or more solicitors, each of whom is independent of the applicant's solicitors (the **independent solicitors**), to supervise the execution of the order, and to do whatever things in relation to the order the court considers appropriate.

(2) The court may appoint an independent solicitor to supervise the carrying out of the order at any 1 or more premises, and a different independent solicitor or solicitors to supervise execution of the order at other premises, with each independent solicitor having power to do whatever things in relation to the order the court considers appropriate.

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(3) Service of a search order, or of any other document ordered to be served on a respondent, on a person appearing to an independent solicitor to be responsible and in charge of premises, is to be treated as service on the respondent.

(4) A search order must fix a date on which the court will consider a report on the search from the independent solicitors, and any applications related to the matters in rule 33.8.

33.8 Review of search

(1) On the date fixed under rule 33.7(4) the applicant and the respondent and the independent solicitors are entitled to appear, and the court may make any order it considers just.

(2) In making an order under subclause (1), the court must consider the following:

(a) what is to happen to any goods removed from the premises or to any copies that have been made:

(b) how the confidentiality to which the respondent is entitled is to be maintained:

(c) any privilege claim:

(d) any application by a party:

(e) any issue raised by an independent solicitor.

33.9 Costs

(1) The court may make any order as to costs that it considers just in relation to an order made under this Part.

(2) Without limiting the generality of subclause (1), an order as to costs includes an order as to the costs of any person affected by a search order.

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Schedule 1AA
Transitional, savings, and related provisions

r 1.4A

Part 1
Provisions relating to Senior Courts Act 2016 as enacted

1 References to enactments not yet in force

(1) A reference in these rules to an enactment not yet in force (**enactment A**) is, until enactment A comes into force, a reference to the provision that (with or without modification) enactment A will replace or that corresponds to enactment A.

(2) To avoid doubt, subclause (1) does not affect the application of section 38 of the Legislation Act 2019 (how to apply references to repealed legislation).

(3) In this clause, **enactment** means the whole or a part of the Senior Courts Act 2016, the District Court Act 2016, the Judicial Review Procedure Act 2016, the Interest on Money Claims Act 2016, the Electronic Courts and Tribunals Act 2016, or any other Act, regulations, or rules.

2 Other transitional provisions applying

(1) Part 2 of Schedule 5 of the Senior Courts Act 2016 contains further provisions about how proceedings that are begun before the Senior Courts Act 2016 comes into force are to be dealt with, including—

(a) the High Court Rules under which those proceedings are to be continued, completed, and enforced:

(b) the application of Part 2 of the former High Court Rules (which relates to the Commercial List):

(ba) the application of provisions of the former High Court Rules relating to interest on money claims:

(c) the continued effect of certain transitional provisions in the former High Court Rules.

(2) In this clause, **former High Court Rules** means the High Court Rules as in force immediately before the commencement of this clause.

Part 2
Provision relating to High Court Amendment Rules 2024

3 Application of principle in rule 14.2(1)(f) to award of costs made to party acting in person

(1) If an award of costs is made to a party acting in person,—

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(a) the award in respect of the costs incurred by the party before 1 September 2024 is subject to the principle set out in rule 14.2(1)(f) as in force immediately before 1 September 2024; and

(b) the award in respect of the costs incurred by the party on or after 1 September 2024 is subject to the principle set out in rule 14.2(1)(f) as in force on 1 September 2024.

(2) In this clause, **party acting in person** has the meaning set out in rule 14.2(2A).

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.

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High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Schedule 1
Forms

r 1.3(3)

Contents

General forms

		Page
G 1	General heading for documents filed in proceeding	446
G 2	Notice of proceeding	448
G 3	Memorandum (general form)	450
G 4	Memorandum to be endorsed on form G 2 in proceeding under Declaratory Judgments Act 1908	452
G 5	Memorandum to be endorsed on form G 2 in proceeding under Family Protection Act 1955	455
G 6	Notice to defendant served overseas	458
G 7	Appearance under protest to jurisdiction	460
G 8	Appearance for ancillary purpose	461
G 9	Appearance reserving rights	462
G 10	Memorandum to be attached to first document filed by party	463
G 11	Memorandum as to change of representation and/or address for service	465
G 12	Notice of intention to speak Māori	466
G 13	Notice of proceeding when summary judgment sought by plaintiff	469
G 14	Third party notice	473
G 15	Notice to other defendant	475
G 16	Affidavit of service	476
G 17	Service of foreign process in New Zealand—Registrar's certificate	477
G 18	Request for service abroad	478
G 19	Report of examiner	479
G 20	Subpoena to give evidence in New Zealand proceeding for service in Australia	481
G 21	Subpoena for production only issued in New Zealand proceeding for service in Australia	482
G 22	Statement of rights and obligations of person served in Australia with subpoena in Trans-Tasman Competition Proceedings	483
G 23	Certificate of non-compliance with subpoena issued in New Zealand proceeding for service in Australia	485

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

G 24	Notice of discontinuance	486
G 25	Subpoena	487
G 26	Subpoena to give evidence for service in Australia	488
G 27	Subpoena for production only for service in Australia	489
G 28	Statement of rights and obligations of person served in Australia with subpoena under Evidence Act 2006	490
G 29	Certificate of non-compliance with subpoena for service in Australia	494
G 30	Application for registration of foreign judgment under Reciprocal Enforcement of Judgments Act 1934	495
G 31	Interlocutory application on notice	497
G 32	Interlocutory application without notice	498
G 33	Notice of opposition	500
G 34	Interlocutory order	501
G 35	Notice to answer interrogatories	502
G 36	Notice to admit facts	503
G 37	Affidavit ~~of documents~~ for disclosure	504
G 38	Freezing order	507
G 39	Search order	509
G 40	General court order	511
G 41	Chronology of events and facts	512
J 1	Judgment by default in case of liquidated demand	513
J 2	Judgment by default in proceeding for recovery of land	514
J 3	Judgment on trial by Judge	515
J 4	Judgment on trial by jury	516
E 1	Notice to liable party	517
E 2	Statement of means of liable party	519
E 3	Attachment order	523
E 4	Charging order on land	525
E 5	Interim charging order	526
E 6	Final charging order	527
E 7	Sale order	528
E 8	Possession order	530
E 9	Arrest order	531

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

E 9A	Warrant of committal for disruptive behaviour relating to court proceedings	532
E 9B	Order for fine for disruptive behaviour relating to court proceedings	533
E 9C	Order for community work for disruptive behaviour relating to court proceedings	534
E 9D	Warrant of committal for failing to comply with court order or undertaking	535
E 9E	Order for fine for failing to comply with court order or undertaking	536
E 9F	Order for community work for failing to comply with court order or undertaking	537
E 10	Sequestration order	538
E 11	Order to arrest and imprison absconding debtor	539
E 12	Order to arrest and imprison absconding debtor (in civil proceedings for penalty) when necessary to prove material prejudice	540
CL 1	Commercial list *[Revoked]*	541
CL 2	Appearance in proceeding entered on commercial list *[Revoked]*	541
CL 3	Notice of proceeding (being application to commercial list Judge) under section 24C(4) of Judicature Act 1908 *[Revoked]*	541
PR 1AA	Application without notice for obtaining grant of probate/letters of administration with the will annexed/letters of administration on intestacy*	542
PR 1	Affidavit for obtaining grant of probate	544
PR 2	Affidavit for obtaining grant of letters of administration with will annexed	549
PR 3	Affidavit for obtaining grant of administration on intestacy to surviving spouse, civil union partner, or de facto partner	555
PR 4	Affidavit for obtaining grant of administration on intestacy to daughter or son of deceased	560
PR 5	Affidavit for obtaining grant of administration on intestacy to parent of deceased	565
PR 6	Affidavit for obtaining grant of administration on intestacy to brother or sister of deceased	569
PR 7	Probate in common form	574
PR 8	Letters of administration with will annexed	576
PR 9	Letters of administration on intestacy	578
PR 10	Caveat	579

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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PR 11	Exemplification of probate or letters of administration	580
PR 12	Affidavit of valid execution	582
AD 1	General heading for action *in personam*	585
AD 2	Notice of proceeding *in personam*	586
AD 3	General heading for action *in rem*	588
AD 4	Notice of proceeding *in rem*	589
AD 5	Notice of proceeding both *in rem* and *in personam*	591
AD 6	Memorandum of appearance	593
AD 7	Application for warrant of arrest	595
AD 8	Indemnity to Registrar	596
AD 9	Warrant of arrest	597
AD 10	Notice by Registrar of arrest of property	598
AD 11	Request for caveat against arrest	599
AD 12	Release from arrest	600
AD 13	Bail bond	601
AD 14	Request for caveat against release and payment	602
AD 15	Request for commission for appraisement and sale	603
AD 16	Commission for appraisement and sale	604
AD 17	Notice for priority of claims on sale	605
Arb 1	Appeal under Arbitration Act 1996	606
Arb 2	Notice for leave to appeal under Arbitration Act 1996	608
Arb 3	Application to enter award as judgment	610
C 1	Statement of claim in proceeding for putting company into liquidation	612
C 2	Statement of claim in proceeding for order under section 174 of Companies Act 1993	613
C 3	Notice of proceeding for putting company into liquidation or for order under section 174 of Companies Act 1993	614
C 4	Verifying affidavit	617
C 5	Affidavit verifying statement of claim of limited company	618
C 6	Advertisement of application for putting company into liquidation	619
C 7	Advertisement of application for order under section 174 of Companies Act 1993	620
C 8	Affidavit of service	621

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
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C 9	Appearance in support of (or in opposition to) application for putting company into liquidation (or for making of order under section 174 of Companies Act 1993)	622
C 10	Notification to liquidator of order putting company into liquidation	623
C 11	Notification to interim liquidator of appointment	624
C 12	Order putting company into liquidation	625
C 13	Order appointing interim liquidator	626
C 14	General heading for notices in forms C 15 and C 16	627
C 15	Notice to set aside voidable transaction under Companies Act 1993	628
C 16	Notice to set aside voidable charge under Companies Act 1993	630
B 1	Request for issue of bankruptcy notice	632
B 2	Bankruptcy notice	633
B 3	Creditor's application for adjudication order	635
B 4	Affidavit supporting creditor's application for adjudication	636
B 5	Summons to debtor	637
B 6	Notice by debtor of intention to oppose application	639
B 7	Warrant to search for and seize bankrupt's property under section 150 or 151 of Insolvency Act 2006	640
B 8	Notice of objection to discharge	641
B 9	Proposal by insolvent to creditors under subpart 2 of Part 5 of Insolvency Act 2006	642
B 10	Statement of affairs and affidavit	644
B 11	Report of trustee on proposal	645
B 12	Account of assets, debts, etc, of deceased person verified by affidavit	647
B 13	Certificate by Public Trust or Māori Trustee of election to administer under Part 6 of Insolvency Act 2006	648
B 14	Originating application to cancel irregular transaction under section 206 of Insolvency Act 2006	649
B 15	Originating application to order retransfer of property or payment of value under section 207 of Insolvency Act 2006	651
B 16	Order adjudicating debtor bankrupt	653
B 17	Appointment of Official Assignee as receiver and manager	654

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

Purpose of forms

The High Court Rules forms are templates you can use to prepare a document for a proceeding in the High Court.

The forms are grouped as follows:

- general forms (G 1, G 2, etc) are those that the High Court Rules require, or authorise to be used, in a standard High Court proceeding:
- judgment forms (J 1, J 2, etc) are those used when entering a formal judgment on the court record:
- enforcement forms (E 1, E 2, etc) are those used when a judgment is being enforced:
- commercial list forms (CL 1, CL 2, etc) are those used when proceedings are on, or are to be transferred to, the commercial list (Auckland registry only):
- probate forms (PR 1, PR 2, etc) are those used in connection with applications for probate or administration:
- admiralty forms (AD 1, AD 2, etc) are those used in the High Court's admiralty jurisdiction over ships and cargo:
- arbitration forms (Arb 1, Arb 2, etc) are those used when the High Court's jurisdiction is invoked in relation to an arbitration:
- company forms (C 1, C 2, etc) are those used in relation to a company's liquidation:
- bankruptcy forms (B 1, B 2, etc) are those used when a person is being adjudicated bankrupt, and in the administration of the bankrupt estate.

Preparing forms

Before preparing a form, check whether a High Court Rule applies. The relevant rule number appears at the top of each form. If a rule applies, comply with it.

To prepare a document using the forms

- use the general heading as set out in form G 1 at the beginning of each document or any modified heading indicated:
- replace text in [*square brackets*] with the relevant text:
- when alternative statements are provided (statement A, statement B, etc), select the relevant statement or statements that apply and omit the others:
- if required, renumber the numbered paragraphs so that the final document is numbered sequentially:
- remove all instructions (always in italics) in the documents filed in the High Court or served on other parties—this includes instructions within square brackets, footnotes, and statement labels (statement A, statement B, etc).

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Format and content of forms

The High Court Rules specify requirements for the presentation of forms. In particular, you should refer to the following rules:

- Rule 1.21: this rule states that you may vary a prescribed form as the circumstances of the particular case require:
- Rules 5.2 to 5.16: these rules indicate how the completed forms should be formatted and how the content should be presented. This includes specifications for page size, margins, numbering of pages, and division of content into numbered paragraphs:
- Rule 5.10: this rule prescribes the content and format of the cover sheet of a document. When filing your first document as a party in a proceeding, at the end of it you must set out a memorandum containing prescribed information (*see* rule 5.44 and form G 10).

Swearing and affirming

Some documents, eg, affidavits, need to be solemnly verified. A form will indicate this by using the word "sworn" at the end of the document. This kind of document must be verified before a person who is authorised to take oaths, such as a solicitor or a Justice of the Peace.

However, under the Oaths and Declarations Act 1957 you may affirm instead of swearing an oath. "Affirming" means "solemnly, sincerely, and truly declaring and affirming" the contents of a document.

If you choose to affirm, change "sworn" to "affirmed" where it occurs in the form.

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Form G 1
General heading for documents filed in proceeding

rr 5.11(2), 19.9(1)

In the High Court of New Zealand

*[*Name of registry in English. Select from the table below.*] Registry

I te Kōti Matua o Aotearoa

[*Name of registry in te reo Māori. Select from the table below.*] Rohe

No: [*number of proceeding*]

Under the [*name of Act under which the proceeding is authorised*]

In the matter of [*specify matter to which proceeding relates*]

Between [*full name, place of residence, occupation*]

(plaintiff)

And [*full name, place of residence, occupation*]

(defendant)

Include the following if there is a counterclaim against both the plaintiff and another person.

Between [*full name, place of residence, occupation*]

(defendant)

And [*full name, place of residence, occupation*]

(plaintiff)

And [*full name, place of residence, occupation*]

(counterclaim defendant)

Names of registries

Name of registry in English	**Name of registry in te reo Māori**
Auckland	Tāmaki Makaurau
Blenheim	Te Waiharakeke
Christchurch	Ōtautahi
Dunedin	Ōtepoti
Gisborne	Tūranganui-a-Kiwa
Greymouth	Māwhera
Hamilton	Kirikiriroa
Invercargill	Waihōpai
Masterton	Whakaoriori
Napier	Ahuriri
Nelson	Whakatū

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Name of registry in English	**Name of registry in te reo Māori**
New Plymouth	Ngāmotu
Palmerston North	Te Papaioea
Rotorua	Te Rotorua-nui-a-Kahumatamomoe
Tauranga	Tauranga Moana
Timaru	Te Tihi-o-Maru
Wellington	Te Whanganui-a-Tara
Whanganui	Whanganui
Whangārei	Whangārei-terenga-parāoa

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Form G 2
Notice of proceeding

rr 5.23(2), 5.57(4)

To complete this notice,—

- *complete and insert the heading as set out in form G 1*:
- *complete and attach the memorandum as set out in form G 3*.

To the defendant/defendants* and any other person directed to be served.

*Select one.

This document notifies you that you must file in this registry of the court a statement of defence to the plaintiff's claim (a copy of which is served with this notice). You must do this within ~~25*~~ 30 working days after the date on which you have been served with this notice. If you do not, the plaintiff may at once proceed to judgment on the plaintiff's claim, and judgment may be given in your absence.

If a trial of the proceeding is necessary, it will be held in this court at [*place*] at a time to be fixed by the court.

~~**Substitute "30", in accordance with rules 5.47(3) and 6.35, if this notice is served out of New Zealand.*~~

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

If you file a statement of defence in the court, you must also provide the plaintiff with initial disclosure of documents in accordance with rule 8.4.

If you file a statement of defence in the court, you ~~will be notified of the date and time of the first case management conference.~~ 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).

~~The purpose of the conference is to assist the parties in the just, speedy, and inexpensive determination of the proceeding, to make directions as to the conduct of the proceeding, and, where practicable, to make interlocutory orders. The parties will also be assisted to identify, define, and refine the issues in dispute.~~

~~You must prepare for and attend the first case management conference. You will be expected to have discussed with the plaintiff the matters set out in Schedule 5 of the High Court Rules. You or your solicitor must file a memorandum relating to the procedural matters set out in rule 7.3 of the High Court Rules.~~

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Include the following paragraph if it applies, otherwise omit.

The court has directed that this notice and the statement of claim be served not only on the defendant/defendants* but also on the following persons: [*full name, place of residence, and occupation of each person or entity directed to be served*].

*Select one.

Date:

(Registrar/Deputy Registrar*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

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Form G 3
Memorandum (general form)

r 5.23(4)

Advice

1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on a proceeding in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

5 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

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Counterclaim

7 If you have a counterclaim against the plaintiff, you must file a statement of that counterclaim in the registry of the court, and serve it on the plaintiff and on any other person against whom the same claim is made. This must be done within the same period of time you have for filing a statement of defence.

Witnesses

8 Summonses for the attendance of witnesses will be issued on application at the registry of the court.

Registry hours

9 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 4
Memorandum to be endorsed on form G 2 in proceeding under Declaratory Judgments Act 1908

r 5.23(4)

Advice

1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on a proceeding in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

5 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

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Appearance objecting to jurisdiction of court

7 If you object to the jurisdiction of the court to hear and determine this proceeding, you may file in the registry of the court an appearance stating your objection and the grounds for it instead of a statement of defence, and serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing a statement of defence.

8 An appearance is not treated as a submission to the jurisdiction of the court.

Appearance for ancillary purposes

9 If you do not oppose the plaintiff's claim but want to be heard on an ancillary matter (including costs), you may, without filing a statement of defence,—

(a) file an appearance stating the matters on which you want to be heard; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

10 Those matters will not subsequently be determined except on notice to you.

Appearance reserving rights

11 If you do not oppose the plaintiff's claim but want to reserve your rights in the event that another person becomes a party to the proceeding or that a party takes a step in the proceeding that is against your interests, you may, without filing a statement of defence,—

(a) file an appearance reserving those rights in the registry of the court; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

12 Subsequently—

(a) you will be entitled to be served with all documents relevant to the reserved rights that may be filed in the proceeding by a person who is, or may become, a party; and

(b) with the leave of the court, you may file and serve a statement of defence and any other document within the time and on the terms and conditions prescribed by the court.

Registry hours

13 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

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Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 5
Memorandum to be endorsed on form G 2 in proceeding under Family Protection Act 1955

r 5.23(4)

Advice

1 Although you do not have to employ a solicitor for the purpose of this proceeding it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on a proceeding in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

5 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

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Appearance objecting to jurisdiction of court

7 If you object to the jurisdiction of the court to hear and determine this proceeding, you may file in the registry of the court an appearance stating your objection and the grounds for it instead of a statement of defence, and serve a copy of the appearance on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing a statement of defence.

8 An appearance is not treated as a submission to the jurisdiction of the court.

Appearance for ancillary purposes

9 If you do not oppose the plaintiff's claim but want to be heard on an ancillary matter (including costs), you may, without filing a statement of defence,—

(a) file an appearance stating the matters on which you want to be heard; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

10 Those matters will not subsequently be determined except on notice to you.

Appearance reserving rights

11 If you do not oppose the plaintiff's claim but want to reserve your rights in the event that another person becomes a party to the proceeding or that a party takes a step in the proceeding that is against your interests, you may, without filing a statement of defence,—

(a) file an appearance reserving those rights in the registry of the court; and

(b) serve a copy of it on the plaintiff and on any other defendant who has given an address for service.

12 Subsequently—

(a) you will be entitled to be served with all documents relevant to the reserved rights that may be filed in the proceeding by a person who is, or may become, a party; and

(b) with the leave of the court, you may file and serve a statement of defence and any other document within the time and on the terms and conditions prescribed by the court.

Claim by defendant

13 If you want to make a claim under the Family Protection Act 1955 to provide for yourself out of the estate of the deceased, you must file a statement of claim setting out your claim and supporting facts, and serve a copy of it on—

(a) the plaintiff; and

(b) the defendant; and

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(c) any other person (other than yourself) directed to be served with the plaintiff's proceeding.

This must be done within the same period of time you have for filing a statement of defence.

Registry hours

14 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 6
Notice to defendant served overseas

r 6.31

Add this notice to form G 3, G 4, G 5, or G 10 as appropriate.

Since you are resident outside New Zealand you are further notified that—

1 The plaintiff has commenced a proceeding against you in the High Court of New Zealand, claiming the relief specified in the attached statement of claim.

2 Although you are resident outside New Zealand, the plaintiff claims that this proceeding can be brought against you in the High Court of New Zealand.

3 By New Zealand law, the High Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.

4 [*Specify particular provision(s) of rule 6.27 on which the plaintiff relies to serve the proceeding overseas.*]

5 In this case the plaintiff claims: [*specify facts alleged by the plaintiff to confer jurisdiction*].

6 Even though the court has jurisdiction to hear and determine this proceeding, it may decline to do so if it is satisfied—

(a) that in all the circumstances a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be determined; and

(b) that the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.

7 If you want to dispute the jurisdiction of the court, you must, within the time specified for filing a statement of defence, and instead of filing and serving a statement of defence,—

(a) file an appearance in this court, in the form required by the rules of this court, stating your objection to the court's jurisdiction and the grounds for it; and

(b) serve a copy of it on the plaintiff.

The appearance is not treated as a submission to the jurisdiction of the court.

8 If you want to dispute the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send written authority (by fax or email) to a solicitor in New Zealand to act for you.

Note: This form should not be used if the defendant is to be served in Australia under section 13 of the Trans-Tasman Proceedings Act 2010. Use instead the information that section 15 of that Act requires to be served on the defendant (*see* form 1 of the Schedule of the Trans-Tasman Proceedings Regulations and Rules 2013).

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Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 7
Appearance under protest to jurisdiction

rr 5.52, 29.7

Complete and attach the memorandum as set out in form G 10.

1 The defendant, [*name*], appears under protest to object to the jurisdiction of the court to hear and determine this proceeding.

2 The defendant's objection is based on the following grounds: [*specify grounds*].

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

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Form G 8
Appearance for ancillary purpose

rr 5.52, 29.7

Complete and attach the memorandum as set out in form G 10.

The defendant, [*name*], does not oppose the plaintiff's claim but appears in order to be heard on the following matters: [*specify matters*].

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

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Form G 9
Appearance reserving rights

rr 5.52, 29.7

Complete and attach the memorandum as set out in form G 10.

The defendant, [*name*], does not oppose the plaintiff's claim but appears in order to reserve the defendant's rights in the event that another person becomes a party to this proceeding, or that a party takes a step in the proceeding that is against the defendant's interests.

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

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Form G 10
Memorandum to be attached to first document filed by party

rr 5.44, 19.8(2)

Select the statement that applies.

Statement A

This document is filed by the plaintiff/defendant/third party* in person. The address for service of the plaintiff/defendant/third party* is [*address*].

*Select one.

Documents for service on the filing party may be left at that address for service or may be—

(a) posted to the party at [*post office box address*]; or

(b) left for the party at a document exchange for direction to [*document exchange box number*]; or

(c) transmitted to the party by fax to [*fax number*]; or

Omit this paragraph if email service will not be accepted.

(d) emailed to the party at [*email address*].

Statement B

This document is filed by [*full name*], solicitor for the plaintiff/defendant/third party*, of the firm [*full name*]. The address for service of the plaintiff/defendant/third party* is [*address*].

*Select one.

Documents for service on the filing party may be left at that address for service or may be—

(a) posted to the solicitor at [*post office box address*]; or

(b) left for the solicitor at a document exchange for direction to [*document exchange box number*]; or

(c) transmitted to the solicitor by fax to [*fax number*]; or

(d) *Omit this paragraph if email service will not be accepted.*

emailed to the solicitor at [*email address*].

Statement C

This document is filed by [*full name*], solicitor for the plaintiff/defendant/third party*, of the firm [*full name*], whose postal address is [*address*]. The address for service of the plaintiff/defendant/third party* is [*address*].

*Select one.

The solicitor's agent in the proceeding is [*full name*].

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Documents for service on the party may be left at that address for service or may be—

(a) posted to the solicitor at [*post office box address*]; or

(b) left for the solicitor at a document exchange for direction to [*document exchange box number*]; or

(c) transmitted to the solicitor by fax to [*fax number*]; or

(d) *Omit this paragraph if email service will not be accepted.*

emailed to the solicitor at [*email address*].

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Form G 11
Memorandum as to change of representation and/or address for service

r 5.40(8)

To the Registrar of the High Court at [*place*]

and

To [*name of other party or parties to proceeding*]

This document notifies you that—

1 *For this paragraph select the statement that applies.*

Statement A

The solicitor for the plaintiff/defendant/third party* is now [*name and address of solicitor and solicitor's firm, if any*].

*Select one.

Statement B

The plaintiff/defendant/third party* now acts in person in place of [*name and address of previous solicitor and solicitor's firm, if any*].

*Select one.

2 The address for service of the plaintiff/defendant/third party* is now [*address complying with definition of address for service in rule 1.3*]. Service may also now be effected by—

(a) posting it to the party/party's solicitor* at [*post office box address*]; or

(b) leaving it for the party/party's solicitor* at a document exchange for direction to [*document exchange box number*]; or

(c) transmitting it to the party/party's solicitor* by fax to [*fax number*]; or

Omit this paragraph if email service will not be accepted.

(d) emailing it to the party/party's solicitor* at [*email address*].

*Select one.

Date:

Signature*:

(plaintiff/defendant/third party†)

*If this document notifies a change of solicitor, it must be signed by the party personally or by the party's solicitor.

†Select one.

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Form G 12
Notice of intention to speak Māori

r 1.11(4)

To the Registrar of the High Court at [*place*]

and

To [*names of parties to be served*]

This document notifies you that [*full name and address of party, counsel, or witness*] intends to speak Māori at—

~~*Select the statement that applies.*~~

~~*Statement A*~~

~~all case management conferences and hearings relating to the above proceeding.~~

~~*Statement B*~~

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

~~*Statement C*~~

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

~~*Select one.~~

Select the statement that applies.

Statement A

all hearings and conferences relating to the above proceeding.

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 on [*specify date of particular hearing or conference at which the person wishes to speak Māori*].

*Select one.

Date:

Signature:

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(signature of party/solicitor/person intending to speak Māori*)

*Select one.

Notes

1 "Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016" entitles the following persons to speak Māori in legal proceedings: the parties to the proceedings, witnesses, counsel, and, with the leave of the court, other persons.

~~2 If a person intends to speak Māori at all case management conferences and hearings relating to a proceeding or application, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the first case management conference or hearing, 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.~~

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.

~~3 If a person intends to speak Māori at all case management conferences and hearings after a particular case management conference or hearing, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the first case management conference or hearing at which the person intends to speak Māori, 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.~~

~~4 If a person intends to speak Māori at a particular case management conference or hearing, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the case management conference or hearing, 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.~~

5 Failure to give notice of intention to speak Māori does not prevent a person speaking Māori at a ~~case management conference or hearing~~ hearing or conference, but the court may—

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(a) adjourn the ~~conference or hearing~~ hearing or conference to enable the Registrar to arrange for an interpreter to be available ~~at the adjourned case management conference or hearing~~; and

(b) treat the failure to give notice as a relevant consideration in an award of costs.

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Form G 13
Notice of proceeding when summary judgment sought by plaintiff

r 12.4(4)

To the defendant/defendants*

*Select one.

This document notifies you that—

(a) a claim, a copy of which is served with this document, has been filed by the plaintiff; and

(b) the plaintiff has also applied to this court for immediate judgment against you (on that claim or, if judgment is not sought on the full claim, to the extent stated in the notice of application for summary judgment also served with this document) on the ground that you have no defence (to the plaintiff's claim or to the plaintiff's claim to the extent stated in the application).

Notice of opposition and affidavit setting out defence

1 If you have a defence to the plaintiff's claim, you should, not less than 3 working days before the date of hearing shown in the notice of application for summary judgment (also served with this document),—

(a) file in the court registry at [*place*]—

(i) a notice of opposition; and

(ii) an affidavit sworn by you or on your behalf setting out your defence; and

(b) serve a copy of that notice of opposition and a copy of that affidavit on the plaintiff.

2 The court may give whatever judgment on the plaintiff's claim against you is thought just if you fail—

(a) to file both a notice of opposition and an affidavit, and to serve copies of them on the plaintiff; and

(b) to appear on the date of hearing in opposition to the plaintiff's application.

3 If you are a natural person, you may appear personally at the hearing or by counsel.

4 If you are a company or other corporation, you may appear only by counsel at the hearing.

Statement of defence

5 You may, in addition to filing a notice of opposition and an affidavit, file a statement of defence.

6 If you want to file a statement of defence,—

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(a) you must file it in the registry of the court in which your notice of opposition and your affidavit were filed; and

(b) you must serve a copy of it on the plaintiff; and

(c) you must both file and serve it not less than 3 working days before the date of hearing.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Memorandum

Advice

1 Although you do not have to employ a solicitor for the purpose of this application, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to oppose this application or appear at any hearing must consult a solicitor immediately because—

(a) it can only carry on proceedings in the court by a solicitor; and

(b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.

3 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff has applied for legal aid for the purpose of this proceeding.

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Appearance objecting to jurisdiction of court

4 If you object to the jurisdiction of the court to hear and determine this proceeding, you may, within the time allowed for filing your notice of opposition and your affidavit,—

(a) file in the registry of the court, instead of a notice of opposition and an affidavit, an appearance stating your objection and the grounds for it; and

(b) serve a copy of the appearance on the plaintiff.

5 Such an appearance will not be treated as a submission to the jurisdiction of the court.

Registry hours

6 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Working days

7 **Working day** means any day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and

(b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Add the following notice if the defendant is to be served overseas (other than in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010). If the defendant is to be served in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010, do not use the following notice, but use instead the information that section 15 of that Act requires to be served on the defendant (see form 1 of the Schedule of the Trans-Tasman Proceedings Regulations and Rules 2013).

Notice to defendant served overseas

Since you are resident outside New Zealand you are further notified that—

1 The plaintiff has commenced a proceeding against you in the High Court of New Zealand, claiming the relief specified in the attached statement of claim.

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2 Although you are resident outside New Zealand, the plaintiff claims that the plaintiff can bring this proceeding against you in the High Court of New Zealand.

3 By New Zealand law, the High Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.

4 [*Specify particular provision(s) of rule 6.27 on which the plaintiff relies to serve the proceeding overseas.*]

5 In this case the plaintiff claims: [*specify facts alleged by the plaintiff to confer jurisdiction*].

6 Even though the court has jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied that—

(a) in all the circumstances a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and

(b) the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.

7 If you want to dispute the jurisdiction of the High Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing that solicitor to act for you.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 14
Third party notice

r 4.10(2)

To [*full name, address, occupation*]

This document notifies you that—

Claim by plaintiff against defendant

1 This proceeding has been brought by the plaintiff against the defendant, in which the plaintiff claims the relief set out in the plaintiff's statement of claim (copy attached). The defendant has/has not* filed a statement of defence to the claim.

*Select one.

Omit the following sentence if it does not apply.

A copy of that statement of defence is served with this document.

Claim by defendant against you

2 The defendant claims relief or a remedy against you in respect of, or arising out of, the plaintiff's claim. That relief or remedy and the grounds on which it is claimed are set out in the defendant's statement of claim (copy attached).

Can I dispute the claims made against the defendant and me?

3 Yes. If you want to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within 25* working days after the day on which you are served with this notice,—

(a) file in the registry of this court at [*place*] a statement of your defence to the plaintiff's claim or the defendant's claim, or both, as the case may be; and

(b) serve a copy of that statement of defence on the plaintiff and the defendant and on the other parties to the proceeding.

**Substitute "30", in accordance with rules 4.14(1A) and 6.35, if this notice is served out of New Zealand.*

What if I fail to dispute the claims?

4 If you do not dispute the claims—

(a) you will be treated as having admitted—

(i) the plaintiff's claim against the defendant; and

(ii) the defendant's right to the relief or remedy that the defendant claims against you; and

(iii) the validity of any judgment that may be given in the proceeding, whether by consent, default, or otherwise; and

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(b) you will be bound by any judgment given, which may be enforced against you under the rules of court.

Trial of proceeding

5 The trial of the proceeding, if a trial is necessary, will take place at [*place*] at a time to be fixed by the court.

Include the following sentence if there is a court order, otherwise omit.

This notice is issued under an order of the court made on [*date*].

Date:

Signature:

(defendant/solicitor for the defendant*)

*Select one.

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Form G 15
Notice to other defendant

r 4.21(1)

To the [*specify which defendant, eg, second, third, etc*] defendant, [*full name*]

This document notifies you that—

Claim against you

1 The [*specify which defendant*] defendant, [*name*], claims the relief or remedy against you set out in the attached statement of claim. The grounds for claiming the relief or remedy are also set out in the statement of claim.

Your right to dispute claim

2 If you dispute the claim, you must, within 10 working days after the day on which you are served with this notice,—

(a) file in this registry of the court a statement of your defence to the claim; and

(b) serve a copy of that statement of defence on—

(i) the claiming defendant, [*full name*]; and

(ii) the plaintiff; and

(iii) any other party who has filed an address for service.

Date:

Signature:

(defendant/solicitor for defendant*)

*Select one.

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Form G 16
Affidavit of service

r 6.10

I, [*full name, place of residence, occupation*], swear—

1 On [*day, date*], I served the [*party as described in the heading*], [*full name*], with the following documents:

[*List each document served, eg, statement of claim and notice of proceeding. If, under rule 6.10, a copy of a served document is not attached to the affidavit, the description of the document—*

(a) must be sufficient to enable the document to be identified; and

(b) must include the date of the document (if the document bears a date)].

2 I served the documents on the [*party as described in the heading*] at [*place*] in New Zealand by [*specify how documents were delivered, eg, personally*].

3 I believe it was the [*defendant or other party as described in the heading*] that I served because—

Select the statement(s) that apply.

Statement A

the defendant/[*party*]* acknowledged that he/she* is the defendant.

*Select one.

Statement B

I know the defendant/[*party*]*.

*Select one.

Statement C

[*Specify any other reason.*]

4 *Omit this paragraph if it does not apply.*

True copies of the documents served are attached to this affidavit and marked "A" and "B".

Signature of deponent:

Sworn at: [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*)

*Select one.

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Form G 17

Service of foreign process in New Zealand—Registrar's certificate

r 6.25

1 I, [*full name*], Registrar of the High Court of New Zealand, at [*place*], certify that the documents attached to this certificate are—

(a) the original letter of request for service of process received from [*name of foreign court or tribunal*] at [*place where foreign court or tribunal sits*] in [*name of foreign country*], in the matter of [*specify matter pending before foreign court or tribunal*]; and

(b) the copy of the process/citation* received with the letter of request; and

(c) the evidence of service on [*full name of entity or person named in letter of request*].

*Select one.

2 *For this paragraph select the statement that applies.*

Statement A

I certify that the service that has been proved and its proof comply with the law and practice of the High Court of New Zealand regulating the service and proof of service of New Zealand legal process in New Zealand.

Statement B

Service of the process could not be effected for the following reasons: [*specify reasons*].

3 I certify that the cost of effecting the service/attempting to effect the service* is $[*amount*].

*Select one.

Date:

Signature:

(Registrar)

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Form G 18
Request for service abroad

r 6.34(2)

To the Registrar of the High Court at [*place*]

1 This request is made under [*name of convention*].

2 I request that the statement of claim and notice of proceeding in this proceeding be transmitted through the proper channel to [*name of country*] for service/substituted service* on the [*describe defendant as in the heading*] defendant, [*name*], at [*place*] or elsewhere in [*name of country*], and that the service be effected directly through a New Zealand or British consular officer (or by the competent authority of that country).

*Select one.

3 I undertake—

(a) to be responsible for all expenses of effecting or endeavouring to effect service incurred by the New Zealand Government and by any competent authority acting in the matter or by any governmental officer; and

(b) on being advised of the amount of those expenses,—

(i) to pay that amount immediately to a Crown Bank Account; and

(ii) to produce evidence of the payment to the Registrar.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

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Form G 19
Report of examiner

r 9.23

To the Registrar of the High Court at [*place*]

1 Under the order of this court made on [*date*] and rule 9.20 of the High Court Rules, I, [*full name and address of examiner*], the examiner appointed by that order,—

(a) duly appointed [*time, date*] as the time and [*address of place where examination to be held*] as the place where the persons named in the order were to be examined; and

(b) notified the parties.

2 At the appointed time and place, the parties appeared by counsel, namely, [*name*] for the plaintiff and [*name*] for the defendant. The proceeding was adjourned until [*particulars of any adjournments*]*.

*Omit this sentence if proceeding not adjourned.

3 The examination of the witnesses named in the order was conducted before me in accordance with rule 9.20 of the High Court Rules on [*dates on which witnesses were examined*].

4 With the written consent of each party and in accordance with rule 9.21 of the High Court Rules, the following witnesses were also examined before me on [*dates on which additional witnesses were examined*].

5 Before each witness was examined, the witness took an oath or affirmation to tell the truth, the whole truth, and nothing but the truth in the evidence that the witness was about to give.

6 The evidence of each witness was recorded. Under rule 9.22 of the High Court Rules, I also recorded—

(a) a note of each objection to any evidence; and

(b) the ground of each objection; and

(c) my opinion on each objection; and

(d) the answer (if any) of the witness to the question.

7 The entire record is attached.

8 I certify that I incurred the following out-of-pocket expenses in relation to this examination: [*specify items, eg, rent, transport, stenographer, and attach vouchers*].

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Date:

Signature:

(examiner)

If the evidence of any witness is not taken for any of the reasons set out in rule 9.20(7), complete and insert the following certificate either:

- *in place of paragraphs 2 to 7; or*
- *after paragraph 7.*

In all other circumstances, omit.

I certify that at the time and place appointed set out in paragraph 1/at [*time, date, place*], the time and place to which I had adjourned the examination*,—

*Select one.

Select the statement that applies.

Statement A

there was no appearance by or on behalf of the plaintiff/defendant*.

*Select one.

Statement B

the witness [*name*] did not attend.

Statement C

the plaintiff/defendant* stated that there was no intention to proceed with the taking of evidence.

*Select one.

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Form G 20

Subpoena to give evidence in New Zealand proceeding for service in Australia

r 28.4(1)

To [*name, place of residence, occupation*]

1 You are ordered to attend the High Court of New Zealand at [*place, date, time*] and, on each subsequent day until you are discharged from attendance, to give evidence on behalf of the [*party*] in this proceeding.

2 *Omit this paragraph if it does not apply.*

You are ordered to bring with you and produce at the same time and place [*details of documents to be produced*].

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*, with the leave of the Honourable Justice [*name*].

*Select one.

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

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Form G 21
Subpoena for production only issued in New Zealand proceeding for service in Australia

r 28.4(1)

To [*name, place of residence, occupation*]

1 *For this paragraph select the statement that applies.*

Statement A

You are ordered to produce this subpoena and the documents or things set out in the list below at the High Court of New Zealand at [*place, date, time*].

Statement B

You are ordered to produce this subpoena and the documents or things set out in the list below at the Federal Court of Australia at [*place*] not later than [*date*].

2 If you produce the documents or things at the Federal Court you must obtain a receipt for the documents or things produced from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of that court and send a copy of that receipt and a copy of this subpoena by fax to the Registry of the High Court of New Zealand shown below and provide an officer of the Federal Court with a sum that is sufficient to send the documents or things to New Zealand.

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*, with the leave of the Honourable Justice [*name*].

*Select one.

List of documents and things

[*List documents and things.*]

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

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Form G 22
Statement of rights and obligations of person served in Australia with subpoena in Trans-Tasman Competition Proceedings

r 28.5(1)

Allowances and travelling expenses

1 At the time you are served with this subpoena, or at some other reasonable time before the hearing, you are entitled to be paid allowances and travelling expenses, or given vouchers in respect of those allowances and expenses, that cover your reasonable expenses in complying with this subpoena.

2 You are not required to comply with this subpoena unless those allowances and travelling expenses or vouchers are tendered to you.

3 You are also entitled to be paid for your reasonable expenses in complying with the subpoena in addition to any payment or vouchers tendered to you. You may apply to the High Court of New Zealand for an order specifying that amount.

Failure to comply

4 Failure to comply with this subpoena constitutes contempt of the Federal Court of Australia, and is punishable unless you establish that the failure to comply should be excused.

Setting subpoena aside

5 You may apply to the High Court of New Zealand to have the subpoena set aside under section 84 of the Trans-Tasman Proceedings Act 2010 of New Zealand. Section 84 of the Trans-Tasman Proceedings Act 2010 provides that, without limiting the grounds on which the order may be set aside, the High Court may set the order aside on any of the following grounds:

(a) that the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:

(b) that the witness is liable to be detained for the purpose of serving a sentence:

(c) that the witness is liable to prosecution for an offence:

(d) that the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or 83 of the Commerce Act 1986 of New Zealand:

(e) that the evidence of the witness could be obtained without significantly greater expense by other means:

(f) that compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:

(g) in the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the

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court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.

6 The application must be made by affidavit and must be filed in the registry of the High Court of New Zealand that issued the order of subpoena.

7 The affidavit must be sworn by the applicant and must set out the facts relied on to set the subpoena aside.

8 You can send the affidavit by fax. If you do this,—

(a) mark the document for the attention of the officer whose name appears on the subpoena; and

(b) give a fax number so that a receipt can be sent to you; and

(c) post the original affidavit to the court.

9 Your affidavit will be served on the party who obtained the subpoena.

10 The High Court of New Zealand will decide whether a hearing is necessary. If it is, you will be notified by an officer of the court.

Note

If you are in doubt about any matter relating to this subpoena you should obtain legal advice.

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Form G 23
Certificate of non-compliance with subpoena issued in New Zealand proceeding for service in Australia

r 28.8

To the Federal Court of Australia at [*place*]

1 The High Court of New Zealand certifies that [*name of person subpoenaed*], having been served with a subpoena in a New Zealand proceeding within the meaning of section 32B of the Federal Court of Australia Act 1976 (a copy of which is attached to this certificate), has contravened that subpoena in that [*particulars of contravention*].

2 *For this paragraph select the statement that applies.*

Statement A

No application to set aside the subpoena under section 84 of the Trans-Tasman Proceedings Act 2010 of New Zealand has been made to the High Court.

Statement B

An application to set aside the subpoena under section 84 of the Trans-Tasman Proceedings Act 2010 of New Zealand has been dismissed. A copy of the reasons for dismissing the application is attached to this certificate.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 24
Notice of discontinuance

r 15.19(2)

To the Registrar of the High Court at [*place*]

and

To [*name of other party or parties to proceeding*]

This document notifies you that—

1 [*Name of plaintiff discontinuing proceeding*] discontinues this proceeding against [*name of defendant or, if more than 1 defendant, names of defendants or names of defendants against whom the plaintiff discontinues the proceeding*].

2 *For this paragraph select the statement that applies.*

Statement A

A copy of the written consent of a plaintiff who is required under rule 15.20 of the High Court Rules to consent to this discontinuance is attached.

Statement B

A copy of the written consent of a defendant who is required under rule 15.20 of the High Court Rules to consent to this discontinuance is attached.

Statement C

The High Court has granted leave to the plaintiff to discontinue this proceeding.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

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Form G 25
Subpoena

r 9.52(1)

To [*name, place of residence, occupation*]

1 You are ordered to attend the High Court at [*place, date, time*] and, on each subsequent day until you are discharged from attendance, to give evidence on behalf of the [*party*] in this proceeding.

2 *Omit this paragraph if it does not apply.*

You are ordered to bring with you and produce at the same time and place [*details of documents and things to be produced*].

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party.*

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

Allowances and travelling expenses

1 You are entitled to have paid to you, at the time of the service of this order on you, or at some other reasonable time before the hearing, an amount in respect of your allowances and travelling expenses.

2 The amount payable to you in respect of your allowances and travel expenses is the amount payable to witnesses under the Witnesses and Interpreters Fees, Allowances, and Expenses Regulations 2023.

Failure to attend

3 If, having been tendered or paid allowances and travelling expenses at the appropriate rate, you fail to attend, the court may issue a warrant to arrest you and bring you before the court.

4 The penalty for failing to attend without just excuse is a fine not exceeding $500.

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Form G 26
Subpoena to give evidence for service in Australia

r 9.59(1)

To [*name, place of residence, occupation*]

1 You are ordered to attend [*place of court or, if witness is required to attend at a place other than the High Court, that other place*] on [*date, time*] and on each subsequent day until you are discharged from attendance to give evidence on behalf of the [*party*] in this proceeding.

2 *Omit this paragraph if it does not apply.*

You are ordered to bring with you and produce at the same time and place [*details of documents and things to be produced*].

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*.

*Select one.

Note: Section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form of the rights and obligations of the person served.

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

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Form G 27
Subpoena for production only for service in Australia

r 9.59(2)

To [*name, place of residence, occupation*]

1 You are ordered to produce this subpoena and the documents or things set out in the list below at the High Court of New Zealand at [*place, date, time*].

2 You will comply with this subpoena if you produce the documents or things at a registry of an Australian court that is authorised by the law of the Commonwealth of Australia to receive those documents or things, no later than 7 working days before that date.

3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*.

*Select one.

Note: Section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form of the rights and obligations of the person served.

List of documents or things

[*List documents or things.*]

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

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Form G 28
Statement of rights and obligations of person served in Australia with subpoena under Evidence Act 2006

r 9.61

Important: This statement is important. Please read the statement and the attached document carefully. If you are in any doubt about this statement or the attached documents, you should get legal advice immediately.

Attached to this statement is a subpoena issued by the High Court of New Zealand. A subpoena is a summons to a witness to give evidence or produce documents. The subpoena attached to this statement requires you to [*specify whether witness is required to attend the High Court or some other place to give evidence, give evidence and produce documents or things, or only produce documents or things*].

The subpoena may be served in Australia under section 156 of the Evidence Act 2006 of New Zealand.

This statement sets out your rights and obligations relating to the subpoena.

Your rights

1 At the time you are served with this subpoena, or at some other reasonable time before the hearing, you are entitled to be paid allowances and travelling expenses, or given vouchers in respect of those allowances and expenses, that cover your reasonable expenses in complying with this subpoena.

2 You are not required to comply with this subpoena unless those allowances and travelling expenses or vouchers are tendered to you.

3 You are also entitled to be paid for your reasonable expenses in complying with the subpoena in addition to any payment or vouchers tendered to you. You may apply to the High Court of New Zealand for an order specifying that amount.

4 You may apply to the High Court of New Zealand to have the subpoena set aside. If you want to have the subpoena set aside, you should get legal advice as soon as possible.

5 An application to set the subpoena aside can be made and determined without having to go to New Zealand. You are entitled to have Australian solicitors act for you.

6 The High Court of New Zealand may determine the application without a hearing if neither you nor the party who requested the issue of the subpoena requires a hearing. The court may hold a hearing by audio link or audiovisual link if the court thinks fit. If a party applies to the court for a direction to hear the application by audio link or audiovisual link, the court is required to hear it by audio link or audiovisual link.

Note: *See* "setting subpoena aside" for details of the grounds on which a subpoena may be set aside and the procedure that must be followed.

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Your obligations

7 If the subpoena is not set aside, you must comply with it if—

(a) when you were served with the subpoena, or at some reasonable time before the time specified for you to comply, you have been paid or tendered allowances and travelling expenses, or offered vouchers in respect of those allowances and expenses, that are sufficient to cover reasonable expenses incurred in complying with this subpoena; and

(b) a copy of the order of the Judge of the High Court of New Zealand granting leave to serve the subpoena was served on you with the subpoena; and

(c) you were served with the subpoena not later than the date specified by the Judge of the High Court who granted leave to serve the subpoena; and

(d) any other conditions relating to the service of the subpoena have been complied with; and

(e) you have attained the age of 18 years.

8 If the subpoena only requires you to produce documents or things, you may comply with the subpoena by producing the documents or things at any registry of an Australian court that is authorised by the law of the Commonwealth of Australia to receive them, not later than 10 days before the date specified in the subpoena for producing them in the High Court of New Zealand. If you produce the documents or things at a registry of an Australian court, you will be required to produce the subpoena and to pay the cost of sending the documents or things to the High Court. You are entitled to have the costs of producing the documents or things, and of sending them to the High Court, paid or tendered to you before you are required to comply with the subpoena.

Failure to comply with subpoena

9 Failure to comply with the subpoena constitutes contempt of the Federal Court of Australia and is punishable unless you establish that the failure to comply should be excused.

Setting subpoena aside

10 You may apply to the High Court of New Zealand to have this subpoena set aside under section 160 of the Evidence Act 2006 of New Zealand. Section 160 provides that the High Court must set the subpoena aside if—

(a) the subpoena requires the witness to attend at a sitting of a court and the High Court is satisfied that—

(i) the witness does not have, and cannot by the exercise of reasonable diligence within the time required for compliance obtain, the necessary travel documents; or

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(ii) the witness is liable to be detained in New Zealand for the purpose of serving a sentence; or

(iii) the witness is liable to prosecution for an offence, or is being prosecuted for an offence, in New Zealand; or

(iv) the witness is liable to the imposition of a civil penalty in civil proceedings in New Zealand, not being proceedings for a pecuniary penalty under the Commerce Act 1986; or

(b) the witness is subject to a restriction on his or her movements, imposed by law or by order of a court, that would prevent the witness complying with the subpoena.

11 Section 160 further provides that the High Court may set a subpoena aside if it is satisfied that—

(a) the evidence of the witness could be obtained satisfactorily without significantly greater expense by other means; or

(b) compliance with the subpoena would cause hardship or serious inconvenience to the witness; or

(c) in the case of a subpoena that requires a witness to produce documents or things, whether or not it also requires the witness to give oral evidence,—

(i) the documents or things should not be taken out of Australia; and

(ii) satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.

12 An application to set the subpoena aside must be filed in the registry of the High Court of New Zealand in which leave to serve the subpoena was given, together with any affidavit setting out the facts on which you rely.

13 The application and the affidavit may be sent by fax or email. The fax number and email address of the registry of the court are [*fax number and email address*].

14 The application must contain an address for service in New Zealand or Australia and may also state a fax number in New Zealand or Australia or email address to which documents relating to the application may be sent.

15 The Registrar of the High Court of New Zealand will arrange for service of the application and any affidavit.

16 The High Court of New Zealand can decide the application without a hearing if neither you (for example, in the application) nor the party who requested the issue of the subpoena (for example, in a document filed in response to the application) states that a hearing is required. If there is to be a hearing, the hearing may, if the court thinks fit, be by audio link or audiovisual link. You may, however, either in your application to set the subpoena aside or within a reasonable time after filing the application, request that the court direct that the

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hearing be by audio link or audiovisual link. If you make such a request, the court will direct that the hearing be by audio link or audiovisual link.

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Form G 29
Certificate of non-compliance with subpoena for service in Australia

r 9.65

To the Federal Court of Australia at [*place*]

The High Court of New Zealand certifies that on [*date*] the Honourable Justice [*name*] gave leave to serve a subpoena, being a subpoena to which Part 4 of the Evidence Act 2006 of New Zealand applies, on [*name of person subpoenaed*], and that [*name of person subpoenaed*] has failed to comply with the subpoena in that [*particulars of failure to comply*].

Date:

Signature:

(Registrar/Deputy Registrar*)

Postal address of registry:

Telephone:

Fax:

*Select one.

Sealed: [*date*]

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Form G 30
Application for registration of foreign judgment under Reciprocal Enforcement of Judgments Act 1934

r 23.4(1)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the matter of the Reciprocal Enforcement of Judgments Act 1934

And

In the matter of a judgment of the [*name of foreign court*]

Between [*full name*] (judgment creditor)

And [*full name*] (judgment debtor)

To the Registrar

This document notifies you that—

1 On [*date*] at 10 am, the judgment creditor will apply to the court for an order that the judgment be registered under the Reciprocal Enforcement of Judgments Act 1934.

2 The judgment is attached to the affidavit of [*name of person making affidavit, and its date*].

3 *Omit this paragraph if the foreign judgment or an authenticated copy of it is being filed and is in English.*

A translation of the judgment into English is attached to the affidavit of [*name of person making affidavit, and its date*].

4 *Select the statement that applies.*

Statement A

The relevant rate of exchange, and the New Zealand currency equivalent of the amount of the judgment calculated at that rate, are set out in the affidavit of [*name of person making affidavit, and its date*].

Statement B

The judgment creditor wants the judgment to be registered in the currency in which it is expressed.

5 The rate of interest carried by the judgment by the law of [*specify country under whose law it was given*] is [*specify rate*] per cent. The amount of interest which, by that law, has become due up to the time of this application is [*specify amount in New Zealand currency if statement A was chosen for paragraph 4, or in the currency of the country of the judgment if statement B was chosen for that paragraph*].

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6 Evidence of the right to register the judgment is contained in the affidavit of [*name of person making affidavit, and its date*].

7 *Omit this paragraph if there is no relevant Order in Council imposing further evidentiary requirements.*

Further evidence required by an Order in Council under section 3 of the Reciprocal Enforcement of Judgments Act 1934 is contained in the affidavit of [*name of person making affidavit, and its date*].

Date:

Signature:

(judgment creditor/solicitor for judgment creditor*)

*Select one.

Notes

1 This form should be used if the application is being made without notice to the judgment debtor. Modify it appropriately if it is being made on notice.

2 The foreign judgment must be verified or certified or otherwise duly authenticated (*see* rule 23.8 of the High Court Rules).

3 The affidavit referred to in paragraph 7 must comply with rule 23.11 of the High Court Rules.

4 If only part of the foreign judgment is entitled to registration (*see* rule 23.13 of the High Court Rules), identify that part. An affidavit should explain why the remainder is not being registered.

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Form G 31
Interlocutory application on notice

rr 7.19(4), 12.4(4), 25.5

To the Registrar of the High Court at [*place*]

and

To [*name of party/parties to be served with this application*]

This document notifies you that—

1 The applicant, [*name*], will on [*date*] apply to the court for an order/orders* [*specify orders sought, numbering them if more than 1*].

*Select one.

2 The grounds on which each order is sought are as follows: [*specify concisely the grounds on which each order is sought*].

3 The application is made in reliance on [*specify any particular provision of an enactment, principle of law, or judicial decision relied on*].

Date:

Signature:

(solicitor for applicant/counsel for applicant/applicant*)

*Select one.

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Form G 32
Interlocutory application without notice

rr 7.19(4), 7.23(1)

To the Registrar of the High Court at [*place*]

This document notifies you that—

1 The applicant, [*name, place of residence, occupation*], applies for an order/orders* [*specify orders sought, numbering them if more than 1*].

*Select one.

2 The grounds on which each order is sought are as follows: [*specify concisely the grounds on which each order is sought*]/set out in the accompanying memorandum*.

*Select one.

3 The application is made in reliance on [*specify any particular provision of an enactment, principle of law, or judicial decision relied on*].

4 The application is made without notice to any other party on the following ground(s):*

(a) that requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant:

(b) that the application affects only the applicant:

(c) that the application relates to a routine matter:

(d) that an enactment expressly permits the application to be made without serving notice of the application:

(e) that the interests of justice require the application to be determined without serving notice of the application.

*Select the ground or grounds that are applicable. At least one of the grounds must apply.

5 I certify that—

(a) the grounds set out in paragraph 4 on which the application relies are made out; and

(b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

Date:

Signature:

(applicant *or* solicitor/counsel* for applicant)

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Phone number:

(applicant *or* solicitor/counsel* for applicant)

*Select one.

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Form G 33
Notice of opposition

rr 7.24(3), 12.9(1), 29.11(3)

To the Registrar of the High Court at [*place*]

and

To [*name of applicant and any other party to be served with this notice*]

This document notifies you that—

1 The respondent, [*name*], intends to oppose the interlocutory application by the plaintiff/defendant* dated [*date*].

*Select one.

2 The respondent is opposed to the making of the order/the orders numbered [*specify numbers*] in the application*.

*Select one.

3 The grounds on which the respondent opposes the making of the order(s) are as follows: [*specify grounds concisely*].

4 The respondent relies on [*specify any particular provision of an enactment, principle of law, or judicial decision relied on*].

Date:

Signature:

(solicitor for respondent/counsel for respondent/respondent*)

*Select one.

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Form G 34
Interlocutory order

rr 7.47(3), 25.5

To [*every party who has given an address for service and any other person affected by the order*]

1 The interlocutory application made by [*name*] on [*date*] was determined by the Honourable Justice [*name*] on [*date*].

2 *For this paragraph select the statements that apply.*

Statement A

The determination was made following a hearing held on [*date(s)*]. [*List names of counsel or solicitors who represented the respective parties at the hearing and state whether any party appeared in person at the hearing.*]

Statement B

The determination was made without a hearing.

Statement C

The determination was made with the consent of the parties.

3 The following order was/orders were* made: [*specify orders made, numbering them if more than 1*].

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 35
Notice to answer interrogatories

r 8.1(3)

To [*name of party required to answer interrogatories*]

This document notifies you that—

1 The party giving notice, [*name of party giving notice*], requires you to answer the interrogatories set out in paragraph 5 of this notice.

2 The requirement to answer interrogatories is made under rule 8.34 of the High Court Rules. The interrogatories relate to matters in question in this proceeding between you and the party giving notice.

3 You must answer the interrogatories within a period of [*specify number*] working days. (The period starts on the first working day after you are served with the notice.)

4 *Include this paragraph if verification is required, otherwise omit.*

You are also required to verify your answers by affidavit.

5 The interrogatories that you are required to answer are as follows: [*specify interrogatories required to be answered, numbering them if more than 1*].

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

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Form G 36
Notice to admit facts

r 8.14(2)

To [*name of party required to admit facts*]

This document notifies you that—

1 The party giving notice, [*name of party giving notice*], requires you to admit the facts set out in paragraph 4 of this notice. The admissions are for the purpose of this proceeding only.

2 The requirement is made under rule 8.47 of the High Court Rules.

3 If you refuse or neglect to admit the facts within 5 working days after the day on which you are served with this notice, you will have to pay the costs of proving the facts, unless a Judge orders otherwise.

4 The facts that you are required to admit are as follows: [*specify facts party is required to admit, numbering them if more than 1.*]

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

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Form G 37
Affidavit ~~of documents~~ for disclosure

rr 8.15, 8.16

I, [*full name, place of residence, occupation*], swear—

1 I am [*state which party you are (or the capacity in which you make the affidavit) and your authority to make the affidavit*].

~~2 I make this affidavit under an order for standard discovery under rule 8.7/under an order for tailored discovery under rule 8.10* on [*date*] (the discovery order).~~

~~*Select one.~~

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.

~~3 [*Specify the content of the discovery order in terms of paragraph (a), (b), or (c) of rule 8.12(2) and, if paragraph (c) applies, state the obligations imposed by the order.*]~~

~~4 I understand the obligations imposed by the discovery order.~~

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

*Select one.

~~5 In order to fulfil those obligations, I have diligently searched for all documents required to be discovered under the discovery order, and I have also taken the following particular steps: [*specify steps taken, for example, inquiries made of named persons*].~~

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*].

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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*].

6 In the Schedule of this affidavit, I list the documents that I am required to ~~discover~~ disclose.

7 In Part 1 of the Schedule, I list the documents that are in my control and for which I claim neither privilege nor confidentiality.

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

In Part 2 of the Schedule, I list the documents that are in my control and for which I claim privilege and state in relation to each document the nature of the privilege that applies.

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

In Part 3 of the Schedule, I list the documents that are in my control and for which I claim confidentiality. I propose that inspection of these documents be restricted to [*name persons*] and that the following restrictions apply: [*specify proposed restrictions on inspection*].

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

In Part 4 of the Schedule, I list documents that are no longer in my control and state when, to the best of my knowledge and belief, each document ceased to be in my control and the persons who, to the best of my knowledge and belief, now have control of each document.

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

In Part 5 of the Schedule, I list other documents known to me that have never been in my control but that I know would ~~be discoverable~~ need to be disclosed if I had control of them.

~~12~~ ~~To the best of my knowledge and belief, this affidavit is correct in all respects and carries out my obligations under the discovery order.~~

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.

Sworn at: [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

Schedule

Part 1

This is an unofficial prospective consolidation showing
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Documents that are in my control and for which I claim neither privilege nor confidentiality

[*List and number the documents concerned*.]

Part 2
Documents that are in my control and for which I claim privilege

[*List and number the documents concerned. State the nature of the privilege claimed for each document or category of document, eg, legal professional privilege*.]

Part 3
Documents that are in my control and for which I claim confidentiality

[*List and number of the documents concerned. State why each document or category of document is confidential*.]

Part 4
Documents that are no longer in my control

[*List the documents concerned. State, to the best of your knowledge and belief,—*

(*a*) *when each document or category of document ceased to be in your control; and*

(*b*) *the persons who now have control of each document.*]

Part 5
Documents that have never been in my control

[*List any documents that you know relate to a matter in question in the proceeding but that are not, and have never been, in your control. State, to the best of your knowledge and belief, where the documents are.*]

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Form G 38
Freezing order

r 32.6(1)

To the respondent [*name*]

1 *For this paragraph select the statement that applies.*

Statement A

Judgment has been given in favour of the applicant by the court [*specify different named court if rule 32.5(3) applies*].

Statement B

The applicant has a good arguable case on an accrued or prospective cause of action that is justiciable in the court [*specify different named court if rule 32.5(3) applies*].

2 The court has considered the applicant's application for a freezing order, and has heard [*name of applicant or applicant's counsel*] in support.

3 The court is satisfied, having regard to all the circumstances disclosed by affidavit evidence filed in support of the application, that there is a danger that judgment in favour of the applicant will be wholly or partly unsatisfied, because [*state reason or reasons as set out in rule 32.5(4)*].

4 This freezing order is made in respect of the following assets:

[*set out a comprehensive list, with description adequate to identify each asset*].

5 Subject to paragraph 6, this order restrains you from removing any of the assets listed in paragraph 4 from New Zealand, or from disposing of, dealing with, or diminishing the value of, those assets, whether they are in or outside New Zealand.

6 This freezing order does not prohibit you from dealing with the assets covered by the order for the purpose of—

(a) paying ordinary living expenses; or

(b) paying legal expenses related to the freezing order; or

(c) disposing of assets, or making payments, in the ordinary course of your business, including business expenses incurred in good faith.

7 *Include this paragraph only if the freezing order was made without notice to the respondent*

As the freezing order has been made without notice to you, it will have no effect after [*state the particular date inserted by the court under rule 32.7*], unless on that date it is continued or renewed. On that date you or your counsel are entitled to be heard by the court in opposition to the continuation or renewal of the order.

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8 You may apply to the court by interlocutory application to discharge or vary the order. If you apply, you must give the applicant notice of not less than [*specify period fixed under rule 32.8*].

9 *Omit this paragraph if no undertaking has been required by the court.*

An undertaking as to damages given by the applicant is attached.

10 [*State any other special terms that the court has ordered*].

11 This order does not affect anyone outside New Zealand until it is declared enforceable by a court in the relevant country, (in which case it affects a person only to the extent that it has been declared enforceable) unless the person is—

(a) a person to whom this order is addressed, or an officer of that person, or an agent appointed by power of attorney of that person; or

(b) a person who—

(i) has been given written notice of this order at that person's residence or place of business within New Zealand; and

(ii) is able to prevent acts or omissions outside the jurisdiction of this court that constitute, or assist, a breach of this order.

12 This order does not prevent, in respect of assets located outside New Zealand, any third party from complying with—

(a) what it reasonably believes to be the third party's obligations, contractual or otherwise, under the laws of the country in which those assets are situated or under the proper law of any contract between the third party and the respondent; and

(b) any orders of the courts of that country, provided that reasonable notice of any application for such an order is given to the applicant's solicitors.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 39
Search order

r 33.2(3)

To the Respondent [*name*]

1 This order notifies you that the court is satisfied—

(a) the applicant has a strong prima facie case on an accrued cause of action; and

(b) the potential or actual loss or damage to the applicant will be serious if this search order is not made; and

(c) there is sufficient evidence in relation to you that—

(i) you possess important evidentiary material; and

(ii) there is a real possibility that you might destroy that material, or cause it to be unavailable for use in evidence in a proceeding or anticipated proceeding before the court.

2 You are required to permit the persons named or described above paragraph 4 to enter the premises described in paragraph 5 for the purpose of securing or preserving the evidentiary material listed or described in paragraph 6.

3 The applicant's undertaking as to damages is attached.

To the following persons [*names or description of persons authorised to enter and search*]

4 This order authorises you to search for, inspect, and remove the things listed or described in paragraph 6 and to take any further steps set out in paragraph 7*.

*Omit reference to further steps if none is authorised.

5 The specified premises are: [*full address of premises*].

6 The things that may be searched for and inspected or removed are: [*set out comprehensive list or description of these things*].

7 *Omit this paragraph if the search order does not authorise further steps*

The persons named or described above paragraph 4 may take the following further steps: [*list steps*].

8 The following independent solicitors are appointed to supervise the carrying out of this order and to report to the court: [*full names and addresses of independent solicitors*].

9 *Omit this paragraph if the court has not included this additional power.*

The independent solicitors are also authorised to do the following things: [*specify things*].

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To the Respondent and the persons named or described above paragraph 4

10 On [*date fixed under rule 33.6(3)*] the court will consider a report on the search from the independent solicitors. The applicant and the respondent and the independent solicitors are entitled to be heard on that date. The court will also consider the following:

(a) what is to happen to any goods removed from the premises or to any copies that have been made:

(b) how the confidentiality to which the respondent is entitled is to be maintained:

(c) any privilege claim:

(d) any application by a party:

(e) any issue raised by an independent solicitor.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form G 40
General court order

r 11.6A

Complete and insert the heading as set out in form G 1.

Before the Honourable Justice [*name, date*]

After reading [*identify relevant court documents*] and the affidavit(s) of [*full name(s)*] and after hearing/on the application of* [*name*], counsel/solicitor/ on behalf of [†*specify party applying for the order*], and [*name(s)*], counsel/solicitor† on behalf of [*specify the other party or parties*], this court orders (by consent, *if appropriate*): [*specify the order or orders made. When more than 1 order is made, they must be numbered*.]

*Select "on the application of" if no appearance.

†Select one.

Date:

Deputy Registrar

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Form G 41
Chronology of events and facts

r 7.4(1)(c)(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)**

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Form J 1
Judgment by default in case of liquidated demand

r 11.6(2)

Complete and insert the heading as set out in form G 1.

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover $[*amount*], and $[*amount*] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form J 2
Judgment by default in proceeding for recovery of land

r 11.6(2)

Complete and insert the heading as set out in form G 1.

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover possession of the land described in the plaintiff's statement of claim, and $[*amount*] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form J 3
Judgment on trial by Judge

r 11.6(2)

Complete and insert the heading as set out in form G 1.

This proceeding was heard on [*date(s)*] at [*place*] before the Honourable Justice [*name*], who, having heard from [*name*], counsel for the plaintiff, and [*name*], counsel for the defendant, and having heard the evidence adduced, gives judgment that [*terms of judgment*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form J 4
Judgment on trial by jury

r 11.6(2)

Complete and insert the heading as set out in form G 1.

This proceeding was heard on [*date(s)*] at [*place*] before the Honourable Justice [*name*] and a jury. Having heard from [*name*], counsel for the plaintiff, and [*name*], counsel for the defendant, and having heard the evidence adduced, the jury found that [*verdict or finding*] and judgment is given that [*terms of judgment*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 1
Notice to liable party

r 17.10

To [*name of liable party*]

This document notifies you that—

1 Judgment has been given against you in the High Court at [*place*] for $ [*amount*], and for [*specify amount for whichever of the following apply:*

- *costs*
- *disbursements*
- *witnesses' expenses*].

2 The entitled party, [*name*], is entitled to enforce payment of these amounts against you.

3 The entitled party requires you to serve the statement in the attached form E 2 on the entitled party within 10 working days after the date on which you are served with this notice.

4 You may be required to attend court to be orally examined about any of the following and other necessary issues:

(a) your receipts and payments for the preceding 52 weeks:

(b) your assets and liabilities:

(c) your income and expenditure:

(d) your means of satisfying the judgment.

5 If you pay the amount(s) stated in paragraph 1 within 10 working days after the date on which you are served with this notice,—

(a) you do not need to complete the attached form E 2; and

(b) you do not need to attend court to be orally examined.

Date:

Signature:

(entitled party/solicitor for entitled party*)

*Select one.

Notes

Advice

1 If you require help in completing the attached statement, consult your lawyer or seek help from a Citizens' Advice Bureau, Community Law Centre, or other community service.

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Registry hours

2 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

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Form E 2
Statement of means of liable party

r 17.10

I, [*full name, place of residence, occupation*], the liable party, state—

1 The 52 weeks immediately preceding the date of this statement started on [*date*] and end on [*date, which must be not later than date of statement*] (the 52 weeks).

2 My income for the 52 weeks was as follows:

Specify income for each item in the following table—if no income, specify "Nil".

Item	Particulars	Amount ($)
(a)	salary, wages, or other personal earnings	
(b)	gross income from business, shop, farm, or sale of produce*	
(c)	amount received from boarders (including children over 16 years of age)	
	boarders at $[*rate*] per week	
	boarders at $[*rate*] per week	
(d)	allowances from relatives and other persons (including board and lodging received in return for services rendered)	
(e)	gross rents from property (including rooms let)	
(f)	compensation or damages received (including payments from the Accident Compensation Corporation)	
(g)	superannuation, pension, or benefit (including overseas income)	
(h)	dividends and interest	
(i)	all other sources of income [*specify*]	
	Total income in the 52 weeks:	

*Attach the latest statement of financial position and statement of financial performance.

3 The employers and other persons from whom I received the income specified in paragraph 2 (other than that specified under item (b)) are as follows:

Item in paragraph 2	Name and address	Amount ($)
(a)	[*employers*]	
(b)	[*boarders*]	
(c)	[*relatives and other persons*]	
(d)	[*tenants*]	
(e)	[*persons who paid compensation or damages*]	
(f)	[*persons who paid superannuation, pension, or benefit*]	
(g)	[*persons who paid dividends and interest*]	
(h)	[*persons who paid other income*]	

4 My expenses for the 52 weeks were as follows:

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Specify expenses for each item in the following table—if no expenses, specify "*Nil*".

Item	Particulars	Amount ($)
(a)	income tax	
(b)	insurance and superannuation	
(c)	medical and hospital benefits	
(d)	rent	
(e)	rates	
(f)	mortgage payments	
(g)	repairs on home	
(h)	food and household supplies	
(i)	electricity, gas, and fuel	
(j)	telephone	
(k)	laundry and cleaning	
(l)	clothing	
(m)	child maintenance, care, and education	
(n)	maintenance for previous partner	
(o)	entertainment	
(p)	fares	
(q)	car maintenance, running, and registration	
(r)	hire purchase payments	
(s)	other expenses [*specify*]	
	Total expenses in the 52 weeks:	

5 Separate income, for the 52 weeks, of members of your household whose expenses are included was as follows:

Full name	Age	Relationship	Details of separate income ($)

6 The persons to whom I paid rent (the amount set out in item (d) of paragraph 4) were as follows:

Full name	Address	Amount ($)

7 The persons to whom I paid mortgage payments (the amount set out in item (f) of paragraph 4) were as follows:

Full name	Address	Amount ($)

8 The persons to whom I paid hire purchase instalments (the amount set out in item (r) of paragraph 4) were as follows:

Full name	Address	Amount ($)

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9 My assets (both in New Zealand and elsewhere) are as follows:

Item	Particulars	Amount ($)
(a)	land and buildings: [*address and capital value*]	
(b)	money in bank accounts: [*specify banks and account numbers*]	
(c)	money not in bank or invested:	
(d)	money lent or in the hands of any person: [*name and address*]	
(e)	government stock, shares, debentures, or bonds: [*specify details*]	
(f)	plant and machinery: [*specify details*]	
(g)	livestock: [*specify details*]	
(h)	interest in business, stock in trade, or venture of any kind: [*specify details*]	
(i)	motor vehicles: [*specify details*]	
(j)	any other property or assets not specified above, including interest in any estate: [*specify details*]	
	Total assets:	

10 The property specified in items [*specify*] of paragraph 9 of this statement is mortgaged, or otherwise secured to [*full name, address*], for the sum of $[*amount*].

11 Assets sold or otherwise disposed of by me at any time in the 52 weeks are as follows:

Description of asset	Names and addresses of persons to whom properties given, sold, or otherwise disposed of	Dates of disposal	Amounts received) ($)

12 Debts owed by me that are secured by mortgage or charge are as follows: $[*amount*].

13 The persons to whom the debts specified in paragraph 12 are owed, and the items specified in paragraph 9 on which the debts are secured, are as follows:

Name	Address	Item	Amount ($)

14 My unsecured debts are as follows: $[*amount*].

15 The persons to whom the debts specified in paragraph 14 are owed are as follows:

Name	Address	Amount of debt ($)

16 The liabilities that I expect I will be obliged to meet within the 6-month period beginning on the date of this statement are as follows: $[*amount*].

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17 The persons to whom I expect to be obliged to pay money during the 6-month period beginning on the date of this statement in discharge of liabilities specified in paragraph 16 are as follows:

Name	Address	Nature of liability	Amount ($)

I certify that the particulars given in this statement are correct.

I am aware that I may be called on to verify those particulars in court.

Date:

Signature:

(liable party)

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Form E 3
Attachment order

r 17.33(3)

Before the Honourable Justice [*name, date*]

To [*employer's name, address*]

1 This court is satisfied that you are the employer of [*liable party's name, address*] (the liable party).

2 On [*date*] in the High Court at [*place*], judgment was given against the liable party for $[*amount*] (including costs).

3 The liable party has not paid this amount and, after examining the liable party's means, the court makes this attachment order.

4 The court orders that while this order is in force, whenever any salary or wages become payable to the liable party, you must deduct from it the amount of $[*amount*] for each week.

5 However, if in any week the deduction would reduce the net earnings paid to the liable party below the protected earnings rate of $[*amount*] per week, you must adjust the amount of the deduction so that the liable party receives the protected earnings rate.

6 The first deduction is to be made on the payday following the date on which you receive this order. A deduction is to be made on every subsequent payday until [*date*] or until the total amount payable shown in paragraph 8 has been paid.

7 The money deducted is to be paid to [*name, address*] by the 20th day of the month after the month in which the deduction was made.

8 You are not required to make deductions for more than the total amount payable shown below—

Particulars	**Amount ($)**
Whole/portion* of judgment debt sought by this order	
Court fees and solicitor's costs	
Costs and expenses of this order	
Total amount payable	

*Select depending on whether enforcement is sought for less than the full amount for which judgment was sealed. If less than the full amount, add the following words: "(less than the full amount of the judgment debt)".

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Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

1 Please see High Court Rules 17.31 to 17.39 for the rules about this order. Those rules define the terms "employer" and "salary or wages".

2 If you do not make payments as required, you can be sued for the amount owing. You may also be convicted of an offence under the Judicature Amendment Act 2008 and fined up to $1,000.

3 You must notify the Registrar of the High Court within 7 days if the debtor leaves or is dismissed from your employment.

4 If you need to reduce the amount of any deduction from the liable party's salary or wages in order to leave the liable party with the protected earnings rate, you should notify the Registrar of the High Court immediately.

5 If in doubt about your obligations under this order, you should consult a solicitor or the Registrar at the High Court immediately.

6 The registry hours of the High Court are from 9 am to 5 pm, except on court holidays.

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Form E 4
Charging order on land

r 17.40(2)

*Before the Honourable Justice [*name, date*]

*Omit if order is issued as of right.

To [*name of liable party*]

This court orders that your estate, right, title, or interest in possession, remainder, reversion, or expectancy (whether vested or contingent) in [*land description*] is charged with payment of the amount for which the entitled party, [*name*], may obtain/has obtained* judgment. The amount charged is $[*amount*]†.

*Select one.

†If this order seeks less than the full amount for which judgment was sealed, add the following words: "(less than the full amount of the judgment debt)".

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 5
Interim charging order

r 17.40(2)

Omit the following words if the order is issued as of right without judicial order.

Before the Honourable Justice [*name, date*]

To [*name of liable party*]

This court orders that until it discharges or finalises this order, your estate, right, title, or interest in [*property description*] is charged with payment of the amount for which the entitled party, [*name*], may obtain/has obtained* judgment. The amount charged is $[*amount*]†.

*Select one.
†If this order seeks less than the full amount for which judgment was sealed, add the following words: "(less than the full amount of the judgment debt)".

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 6
Final charging order

r 17.40(2)

Before the Honourable Justice [*name, date*]

To [*name of liable party*]

This court orders that your estate, right, title, or interest in [*property description*] be charged with payment of the amount for which the entitled party, [*name*], has obtained judgment and $[*amount*], being the costs and disbursements incurred in obtaining this order. The total amount charged is $[*amount*]*.

*If this order seeks less than the full amount for which judgment was sealed, add the following words: "(less than the full amount of the judgment debt is being charged by this order)".

Date:

Signature:

(Deputy Registrar)

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Form E 7
Sale order

r 17.62(4)

To the Sheriff at [*place*]

1 This court authorises and requires you or your authorised agent to seize all the land and chattels (which include money, cheques, bills of exchange, promissory notes, bonds, and other securities for money) of [*name*] (the liable party) except—

(a) necessary tools of trade to a value not exceeding $5,000; and

(b) necessary household furniture and effects to a value not exceeding $10,000 (including the clothes belonging to the liable party (and his or her family)).

2 If money seized is not enough, you are authorised and required to obtain more money and deal with it in accordance with rules 17.62 to 17.79 of the High Court Rules. You are authorised and required to obtain more money by—

(a) receiving and recovering—

(i) the money payable to you under any cheques, bills of exchange, and promissory notes; or

(ii) money secured by bonds or other securities for money; and

(b) selling the liable party's seized chattels; and

(c) selling the liable party's estate, right, title, or interest in any land (whether it is in possession, remainder, reversion, or expectancy).

Note

1 The money seized will not be enough if it—

(a) cannot discharge any claims that by law are entitled to be paid in priority to the entitled party's claim; and

(b) cannot pay the costs and expenses of executing this order; and

(c) does not comprise—

(i) the whole/a portion* of the judgment debt sought by this order of $[*amount*] (inclusive of interest calculated using the Internet site calculator in accordance with the Interest on Money Claims Act 2016 and the entries set out in paragraph 2 of this note); and

(ii) subsequent costs/disbursements† of $[*amount*].

*Select one depending on whether enforcement is sought for less than the full amount for which judgment was sealed. If enforcement is sought for less than the full amount, add the following words: "(, which is less than the full amount of the judgment debt)".

†Select one.

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2 *For this paragraph select the statement that applies*.

Statement A (if the liable party pays or were to pay the judgment debt in full in 1 payment)

The entries made in the Internet site calculator for the purposes of calculating interest are—

(a) initial amount: $[*amount*]

(b) start date: [*date*]

(c) last day: [*date*].

Statement B (if the liable party has paid an instalment or instalments of the judgment debt)

The entries made in the Internet site calculator for the purposes of calculating interest are—

(a) initial amount: $[*amount*]

(b) start date: [*date*]

(c) last day: [*date*]

††(d) instalment amount: $[*specify the amount of each instalment*]

††(e) date of payment: [*specify the date of each instalment*].

††Repeat for each instalment if more than 1 has been paid.

Date:

Deputy Registrar

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Form E 8
Possession order

r 17.80(3)

To the Sheriff at [*place*]

Note: In this possession order, liable party means [*name of liable party*].

1 This court orders that you are authorised and required to take possession for [*name of entitled party*] (the entitled party) of—

Select the statement(s) that apply.

Statement A

the liable party's land [*land description(s)*], ejecting others from the land as necessary.

Statement B

the liable party's chattels [*list chattels*], seizing the chattels as necessary.

2 This court further orders that you are authorised to deliver possession of any land or chattels received under this possession order to the entitled party.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 9
Arrest order

r 17.83(2)

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

This court orders that you are authorised and required to—

(a) arrest [*name of liable party*] (the liable party); and

(b) bring the liable party before this court at [*place, date, time*]; and

(c) keep the liable party in prison until that time.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 9A

Warrant of committal for disruptive behaviour relating to court proceedings

r 10.27(1)

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*], and to each and every constable in New Zealand, and to the manager of the [*specify prison]*] at [*place*]

1 On [*date*], [*full name*], the offender, wilfully disrupted the proceedings of the High Court at [*place*]/wilfully disobeyed an order or a direction of the court at [*place*]* and was ordered to stand committed for [*period*] to the prison at [*place*] for the offence.

*Select one.

2 This court therefore orders you, the Sheriff and others, to take [*name*] and to deliver that person to the manager of the prison, together with this warrant, and you, the manager, to receive [*name*] and to keep that person safely in the prison for [*period of time*] from the arrest under this warrant, or until that person is sooner discharged by order of this court.

Date:

Signature:

(High Court Judge)

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Form E 9B

Order for fine for disruptive behaviour relating to court proceedings

r 10.27(2)

Complete and insert the heading as set out in form G 1.

Before the Honourable Justice [*name, date*]

1 On [*date*], [*full name*], the offender, wilfully disrupted the proceedings of the High Court at [*place*]/wilfully disobeyed an order or a direction of the court at [*place*]*.

*Select one.

2 This court orders that [*name*] pay a fine of $[*amount*].

3 This court also orders that immediately on [*date*] [*name*] pay to the Registrar of this court the fine of $[*amount*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 9C
Order for community work for disruptive behaviour relating to court proceedings

r 10.27(3)

Complete and insert the heading as set out in form G 1.

Before the Honourable Justice [*name, date*]

1 On [*date*], [*full name*], the offender, wilfully disrupted the proceedings of the High Court at [*place*]/wilfully disobeyed an order or a direction of the court at [*place*]*.

*Select one.

2 This court orders that [*name*] complete [*period of time*] of community work for the offence.

3 The starting date of the sentence is the date of this order.

4 This court also orders that [*name*] must report to a probation officer in the probation area in which the offender resides as soon as practicable, and **not later than 72 hours after the start of the sentence of community work**.

5 The offender must work as directed by the probation officer until the sentence is complete.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 9D

Warrant of committal for failing to comply with court order or undertaking

r 17.85(2)

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*] and/a constable at [*place*]*

*Select one.

To the manager of the prison at [*place*]

1 On [*date*], this court ordered that [*name*] be committed to prison for failing to comply with an original court order/enforceable undertaking*.

*Select one.

2 You, the bailiff/constable*, are therefore ordered to arrest [*name*] and safely convey and deliver that person to the manager of the prison at [*place*], and you, the manager, are ordered to receive [*name*] and keep that person safely in the prison for the term of [*period of time*] or until that person is sooner discharged by order of this court.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 9E

Order for fine for failing to comply with court order or undertaking

r 17.85(3)

Complete and insert the heading as set out in form G 1.

Before the Honourable Justice [*name, date*]

To [*full name*] of [*address*]

1 At the sitting of the [*specify court*] at [*place*] on [*date*], you were ordered to pay a fine of $[*amount*] for failing to comply with an original court order/ enforceable undertaking*.

*Select one.

2 This court orders that you pay a fine of $[*amount*].

3 This court also orders that immediately on [*date*] you pay to the Registrar of this court the fine of $[*amount*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 9F
Order for community work for failing to comply with court order or undertaking

r 17.85(4)

Complete and insert the heading as set out in form G 1.

Before the Honourable Justice [*name, date*]

To [*full name*] of [*address*]

1 At the sitting of the [*specify court*] at [*place*] on [*date*], you were ordered to do [*period of time*] of community work for failing to comply with an original court order/enforceable undertaking*.

*Select one.

2 The date on which the sentence is imposed is [*date*].

3 You must report in person to a probation officer in the probation area closest to you as soon as possible, and **not later than 72 hours after the date on which the sentence is imposed**.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 10
Sequestration order

rr 17.85(5), 17.86(3)

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

This court orders that you are appointed sequestrator and authorised and required to enter and take possession of all the land and chattels of [*name of liable party*] (the liable party). The sequestrator must obtain the rents and profits from the property until—

(a) the liable party complies—

  (i) with the original court order made at [*place, date*] in the way specified in the court order; or

  (ii) with the undertaking given at the court at [*place, date*]; or

(b) the court orders otherwise.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 11
Order to arrest and imprison absconding debtor

r 17.89(1)

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

1 This court orders that you are authorised and required to arrest [*name of liable party*] (the liable party) within 1 month of the date of this order and imprison the liable party at [*place*] for [*period of time*] unless and until—

(a) the liable party deposits in the court $[*amount*] by way of security; or

(b) the liable party gives [*name of plaintiff*] (the plaintiff) a bond executed by that party and 2 sufficient sureties of $[*amount*] or some other security satisfactory to the plaintiff.

2 The security is to be held on the basis that it is forfeit to the plaintiff if the liable party leaves New Zealand without the leave of the court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form E 12

Order to arrest and imprison absconding debtor (in civil proceedings for penalty) when necessary to prove material prejudice

r 17.89(1)

Before the Honourable Justice [*name, date*]

To the Sheriff at [*place*]

1 This court orders that you are authorised and required to arrest [*name of liable party*] (the liable party) within 1 month of the date of this order and imprison the liable party at [*place*] for [*period of time*] unless and until—

(a) the liable party deposits in the court $[*amount*] by way of security; or

(b) the liable party gives [*name of plaintiff*] (the plaintiff) a bond executed by the liable party and 2 sufficient sureties of $[*amount*] or some other security satisfactory to the plaintiff.

2 The security is to be held on the basis that if the liable party does not pay the plaintiff the amount that the plaintiff becomes entitled to claim from the liable party in these proceedings,—

(a) the security is forfeit to the plaintiff; and

(b) the liable party must go to prison (unless the court orders otherwise).

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form CL 1
Commercial list

[Revoked]

r 29.7(a)

Form CL 2
Appearance in proceeding entered on commercial list

[Revoked]

rr 29.7(b), 29.17(3)

Form CL 3
Notice of proceeding (being application to commercial list Judge) under section 24C(4) of Judicature Act 1908

[Revoked]

r 29.17(2)

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Form PR 1AA

Application without notice for obtaining grant of probate/letters of administration with the will annexed/letters of administration on intestacy*

r 27.4(3)

*Select one.

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place of residence, occupation*] (deceased)

To the Registrar of the High Court at Wellington

This document notifies you that—

1 *For this paragraph select the statement that applies.*

Statement A

The applicant(s) [*name, place of residence, occupation*] applies/apply* for an order that probate of the will of the deceased be granted to the applicant(s)*/applies/apply* for the following orders:* [*list the orders being sought*].

*Select one.

Statement B

The applicant(s) [*name, place of residence, occupation*] applies/apply* for an order that letters of administration with the will annexed of the estate of the deceased be granted to the applicant(s)*/applies/apply* for the following orders:* [*list the orders being sought*].

*Select one.

Statement C

The applicant(s) [*name, place of residence, occupation*] applies/apply* for an order that letters of administration of the estate of the deceased be granted to the applicant(s)*/applies/apply* for the following orders:* [*list the orders being sought*].

*Select one.

2 The grounds on which the order/each order* is sought are as follows: [*specify concisely the grounds on which the order/each order* is sought. If more than 1, list each one or list them all*].

*Select one.

3 The application is made in reliance on section 5 of the Administration Act 1969 and rule 27.4 of the High Court Rules 2016 [*specify any other particular provision of an enactment, principle of law, or judicial decision relied on*].

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4 The application is made without notice to any other person on the following grounds: [*select grounds that apply*]

(a) the application affects only the applicant:

(b) other persons who have an equal or higher entitlement to apply have been given notice of or have consented to the application:

(c) rule 27.5 of the High Court Rules 2016 applies and the application contains proof of each matter stated in rule 27.5(3) of the High Court Rules 2016:

(d) the application relates to a routine matter.

Date:

Signature:

(applicant(s) *or* solicitor/counsel(s)* for applicant(s))

Name of signatory: [*please print legibly*]

This application is filed by:

[*name of solicitor*]

(solicitor for the applicant(s))

of [*name of firm*]

PO Box and DX numbers:

Place:

Telephone and fax numbers, email address:

Physical street address:

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Form PR 1
Affidavit for obtaining grant of probate

r 27.4

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I/We*, [*full name, place of residence, occupation*], swear/severally swear/solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

*Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was/We were* present when the deceased died.

*Select one.

Statement B

I/We* attended the deceased's funeral.

*Select one.

Statement C

I/We* saw the deceased's dead body.

*Select one.

Statement D

The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased or knows or know about the deceased's death personally.

3 When the deceased died, he/she* resided at [*place, country*].

*Select one.

4 *[Revoked]*

5 I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the deceased's last will.

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*Select one.

6 *Include this paragraph only if the deceased made a document (including a codicil) changing the will. If more than 1 codicil was made, amend this paragraph by referring to each of them as the "first codicil" or the "second codicil", etc.*

The deceased made a document/codicil* changing the will referred to in paragraph 5. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is that document/codicil*.

*Select one.

7 *For this paragraph select the statement that applies.*

Statement A

I am the executor/We are the executors* named in the will.

*Select one.

Statement B

I am/We are* the surviving/substituted* executor/executors* named in the will.

*Select one.

Statement C

I am the/I am an/We are the/We are some of the* executor/executors* of the will according to its tenor.

*Select one.

8 *Include this paragraph only if it applies. Select the statement that applies.*

Statement A

The deceased's will was made on or after 1 November 2007. I am the deceased's surviving spouse/surviving civil union partner*. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for our separation or the dissolution of our marriage/civil union*.

*Select one.

Statement B

The deceased's will was made before 1 November 2007. I am the deceased's surviving spouse. When the deceased died, no order, decree, or enactment was in force between the deceased and myself providing for the dissolution of our marriage.

Statement C

The deceased's will was made on or after 1 November 2007. I am the deceased's former spouse/former civil union partner*. When the deceased died, a [*state details of order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*] was in force. However, my appointment as executor is not void under section 19 of the Wills Act 2007 because [*state why*].

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*Select one.

Statement D

The deceased's will was made before 1 November 2007. I am the deceased's former spouse. When the deceased died, a [*state details of order, decree, or enactment in force between the parties providing for the dissolution of their marriage*] was in force. However, my appointment as executor is not void under section 19, as modified by section 40(2)(q), of the Wills Act 2007 because [*state why*].

9 *Include this paragraph only if it applies. Select the statement that applies.*

Statement A

[*Full name*], the other executor named in the will, died at [*place, country*] on or about [*date*].

Statement B

[*Full name*], the other executor named in the will, renounced probate of the will by the renunciation document dated [*date*] that is attached and marked "[*specify*]".

Statement C

The deceased's will was made on or after 1 November 2007. [*Full name*], the other executor named in the will, is the deceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

Statement D

The deceased's will was made before 1 November 2007. [*Full name*], the other executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for the dissolution of their marriage*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

Statement E

[*Full name*], the other executor named in the will, does not join in the application because he/she* is incapable of acting as an executor because [*state why*].

*Select one.

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Statement F

[*Full name*], the other executor named in the will, does not join in the application because he/she* is overseas at present. His/her* current address is [*address*]. I/We* gave notice to him/her* of his/her* appointment as executor under the will and of my/our* intention to make the application. A copy of the notice/An acknowledgment of the notice* is attached and marked "[*specify*]".

*Select one.

Statement G

[*Full name*], the other executor named in the will, does not join in the application because he/she* is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [*date*].

*Select one.

Statement H

[*If the applicant(s) are the executor(s) according to the tenor of the will, state the facts proving this.*]

10 *If you selected statement A for paragraph 9, for this paragraph select the first of the following statements that applies, otherwise omit this paragraph.*

Statement A

I was/We were* present when the other executor died.

*Select one.

Statement B

I/We* attended the other executor's funeral.

*Select one.

Statement C

I/We* saw the other executor's dead body.

*Select one.

Statement D

The other executor is the person named [*full name*] in the death certificate that is attached and marked "[*specify*]".

11 I/We* will faithfully execute the will (including any document/codicil* changing the will†) of which probate is granted in accordance with the law. If the court requires me/us* to, I/we* will file in the court and verify by affidavit—

(a) an accurate inventory of the deceased's estate; and

(b) an account of the deceased's estate that—

(i) is accurate; and

(ii) states the dates and details of all receipts and disbursements; and

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(iii) states which of the receipts and disbursements were on capital account and which were on revenue account.

*Select one.

†Include words in the brackets only where such a document or codicil exists.

Severally sworn/affirmed* by both persons/by all of the persons* named above at [*place, date*]

or

Sworn/Affirmed* at [*place, date*]

before me:

*Select one.

[*print name*]

(A solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

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Form PR 2
Affidavit for obtaining grant of letters of administration with will annexed

r 27.4

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I/We*, [*full name, place of residence, occupation*], swear/severally swear/solemnly and sincerely affirm/severally solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was/We were* present when the deceased died.

*Select one.

Statement B

I/We* attended the deceased's funeral.

*Select one.

Statement C

I/We* saw the deceased's dead body.

*Select one.

Statement D

The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 When the deceased died, he/she* resided at [*place, country*].

*Select one.

4 *[Revoked]*

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5 I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is the deceased's last will.

*Select one.

6 *Include this paragraph only if the deceased made a document (including a codicil) changing the will. If more than 1 codicil was made, amend this paragraph by referring to each of them, as the "first codicil" or "second codicil", etc.*

The deceased made a document/codicil* changing the will referred to in paragraph 5. I/We* believe the document dated [*date*] and marked "[*specify*]" now produced and shown to me/us* is that document/codicil*.

*Select one.

7 *For this paragraph select the statement that applies.*

Statement A

No executor is named in the will.

Statement B

[*Full name*], the sole executor named in the will, died at [*place, country*] on or about [*date*].

Statement C

[*Full name*], the sole executor named in the will, renounced probate of the will by the renunciation document dated [*date*] that is attached and marked "[*specify*]".

Statement D

The deceased's will was made on or after 1 November 2007. [*Full name*], the sole executor named in the will, is the deceased's former spouse/former civil union partner*. Section 19 of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for their separation or the dissolution of their marriage or civil union*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

Statement E

The deceased's will was made before 1 November 2007. [*Full name*], the sole executor named in the will, is the deceased's former spouse. Section 19, as modified by section 40(2)(q), of the Wills Act 2007 makes the appointment void. The relevant document in force when the deceased died was [*state details of order, decree, or enactment in force between the parties providing for the dissolution of their marriage*]. A certified/sealed* copy of the document is attached and marked "[*specify*]".

*Select one.

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Statement F

[*Full name*], the sole executor named in the will, is incapable of acting as an executor because [*state why*].

Statement G

[*Full name*], the sole executor named in the will, is 19 years old and is not, and never has been, married and is not, and never has been, in a civil union/is 18 years old and is not, and never has been, married and is not, and never has been, in a civil union/is not yet 18 years old*. He/she* was born on [*date*].

*Select one.

Statement H

[*Full name*], an executor named in the will, is an executor to whom section 19 of the Administration Act 1969 applies. No one entitled to apply for an order nisi under that section has done so within 4 months after the will-maker's death.

8 *If you selected statement B for paragraph 7, for this paragraph select the first of the following statements that applies, otherwise omit this paragraph.*

Statement A

I was/We were* present when the sole executor died.

*Select one.

Statement B

I/We* attended the sole executor's funeral.

*Select one.

Statement C

I/We* saw the sole executor's dead body.

*Select one.

Statement D

The sole executor is the person named [*full name*] in the death certificate attached and marked "[*specify*]".

9 I am/We are* [*state facts showing applicant's or applicants' right to the grant in terms of rules 27.26 and 27.27 or 27.28. Attach any consent given by any other person whose priority is higher than, or equal to, that of the applicant or applicants*].

*Select one.

10 *Omit this paragraph if it does not apply.*

No child of the deceased died before the deceased leaving issue entitled to share under the will.

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11 *Include this paragraph if there are other children of the deceased who are beneficiaries in the will but not applicants. Otherwise, state* "*The deceased was not survived by any other children.*"

In addition to myself, the deceased was survived by the following children, all of whom (except when otherwise stated) are adult:

[*state full names and places of residence*]

The consent of [*name*] and [*name*], the other children of the deceased and beneficiaries referred to in clause(s) [*clause number(s)*] of the will to my/our* application, are attached and marked "[*specify*]" and "[*specify*]".

*Select one.

12 *Omit this paragraph if it does not apply.*

I am the deceased's surviving spouse/surviving civil union partner/surviving de facto partner*.

I am a beneficiary under the will.

[*in the case of a surviving spouse or surviving civil union partner*] I have not ceased to be a beneficiary under the will under section 19 of the Wills Act 2007 [*if the will was made on or after 1 November 2007*]/section 19, as modified by section 40(2)(q), of the Wills Act 2007 [*if the will was made before 1 November 2007*]*.

[*in every case*] I have not ceased to be a beneficiary under the will under section 61 of the Property (Relationships) Act 1976. I choose option B under section 61. I lodged a notice of choice of option under section 65(2)(c) of that Act in this court on [*date*]/at the same time as I filed this application*. A copy is attached and marked [*specify*].

*Select one.

Omit paragraphs 13 and 14 when a trustee corporation within the meaning of section 2 of the Administration Act 1969 applies for the grant, either alone or jointly with another person.

13 *For this paragraph select the statement that applies.*

Statement A

I/We* have made reasonable inquiries for the purposes of section 5A(1)(a) of the Status of Children Act 1969 as to the existence of a parent or child of the deceased, in addition to those already known to me/us* who could claim an interest in the deceased's estate/part of the deceased's estate* only because of the Status of Children Act 1969 and the deceased's will. The inquiries included those required by section 5A(2) of the Status of Children Act 1969. The nature of the inquiries was [*specify*].

*Select one.

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Statement B

Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay a grant of administration because [*state why*].

Statement C

Getting in or preserving the assets of the deceased's estate requires the making of an immediate grant of administration because [*state why*].

Statement D

No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

14 *If you selected statement A for paragraph 13, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my/our* inquiries was that I/we* did not discover any such parent or child.

*Select one.

Statement B

The result of my/our* inquiries was that I/we* discovered [*full name(s) and the relationship of those discovered*].

*Select one.

15 *Include the following paragraph where those discovered are children.*

The person/Those* discovered is/are* aged [*specify ages*], being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

16 To the best of my/our* knowledge, information, and belief, the gross value of the deceased's estate does not exceed $[*amount*].

*Select one.

17 I/We* will faithfully execute the will (including any document/codicil* changing the will†) annexed to the letters of administration in accordance with the law. If the court requires me/us* to, I/we* will file in the court and verify by affidavit—

(a) an accurate inventory of the deceased's estate; and

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(b) an account of the deceased's estate that—

(i) is accurate; and

(ii) states the dates and details of all receipts and disbursements; and

(iii) states which of the receipts and disbursements were on capital account and which were on revenue account.

*Select one.

†Include words in the brackets only where such a document or codicil exists.

Severally sworn/affirmed* by both persons/by all of the persons* named above at [*place, date*]

or

Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

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Form PR 3

Affidavit for obtaining grant of administration on intestacy to surviving spouse, civil union partner, or de facto partner

r 27.4

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

*Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

Statement D

The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant did not know the deceased and does or do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and knows or know about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

4 *[Revoked]*

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 *For this paragraph select the statement that applies.*

Statement A

I am the surviving spouse/civil union partner* of the deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected—

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

(a) [*in the case of a surviving spouse*] by section 12(2) of the Matrimonial Proceedings Act 1963 (as applied by section 191(3) of the Family Proceedings Act 1980); or

(b) [*in the case of a surviving spouse or surviving civil union partner*] by section 26(1) of the Family Proceedings Act 1980; or

(c) [*in every case*] by the choice I make between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I choose option B under section 61 and I lodged a notice of choice of option under section 65(2)(c) of that Act in this court on [*date*]/at the same time as I filed this application*. A copy is attached and marked [*specify*].

*Select one.

Statement B

(a) I am the surviving de facto partner of the deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected by the choice I make between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I choose option B under section 61 and I lodged a notice of choice of option under section 65(2)(c) of that Act in this court on [*date*]/at the same time as I filed this application*. A copy is attached and marked [*specify*].

*Select one.

(b) My interest is not affected by section 77B of the Administration Act 1969 (which negates the beneficial interest of a surviving de facto partner to a relationship of short duration in some circumstances [*if you claim that section 77B(2) applies, state the facts supporting your claim*].

7 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a de facto partner entitled to succeed on the intestacy.

Statement B

The deceased was not survived by a husband/wife*, or by a civil union partner or by another de facto partner, entitled to succeed on the intestacy.

*Select one.

Statement C

The deceased was also survived by a husband/wife/civil union partner/1 or more other de facto partners* entitled to succeed on the intestacy, namely: [*list full name(s) and places of residence*].

*Select one.

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

8 *If you selected statement C for paragraph 7, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

Statement A

On [*date*], I gave written notice to [*full names*], the survivors of the deceased who are named in the preceding paragraph, that I intended to apply to this court for letters of administration of the estate.

Statement B

Of the survivors of the deceased who are named in the preceding paragraph, [*number of survivors*], namely, [*full names and country of residence for each*], reside beyond the jurisdiction of the court.

Statement C

I attach to this affidavit the consents, marked "*specify*", of [*full names*], survivors of the deceased who are named in paragraph 7, to letters of administration of the deceased's estate being granted to me.

9 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a child—

(a) who was born to the deceased; or

(b) who was adopted by the deceased; or

Omit paragraphs (c) and (d) if the deceased was female.

(c) in respect of whom the deceased had admitted paternity; or

(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

Statement B

The deceased was survived by the following children, all of whom, except where otherwise shown, are adult: [*list full names, places of residence, and occupations of the children of the deceased and, in the case of any child who is a minor, the child's age*].

10 *Include this paragraph if you selected statement B for paragraph 9, otherwise omit.*

The children named in paragraph [*number*] are children to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

11 *Include this paragraph if you selected statement B for paragraph 9, otherwise omit.*

The deceased was not survived by any other child—

(a) who was born to the deceased; or

(b) who was adopted by the deceased; or

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Omit paragraphs (c) and (d) if the deceased was female.

(c) in respect of whom the deceased had admitted paternity; or

(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

12 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B

Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay a grant of administration because [*state why*].

Statement C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D

No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

13 *If you selected statement A for paragraph 12, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B

The result of my inquiries was that I discovered [*full names and relationship of those discovered*].

14 *Include the following paragraph where those discovered are children*.

The person/Those* discovered is/are* aged [*specify ages*] being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

15 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

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It has no legal status and may contain errors.

16 I will faithfully administer the estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

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Form PR 4
Affidavit for obtaining grant of administration on intestacy to daughter or son of deceased

r 27.4

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

Note: This form must be appropriately modified if more than 1 daughter or son is applying.

1 The deceased, [*name as on cover sheet*], whom I/we* knew, died at [*place, country*] on or about [*date*].

*Select one.

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

Statement D

The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* that is attached and marked "A".

*Select one.

If the applicant or applicants for the grant do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

4 *[Revoked]*

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 I am a daughter/son* of the deceased.

*Select one.

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

7 *For this paragraph select the statement that applies. Note: Statements B and C should be appropriately altered if the deceased entered a civil union that was dissolved or affected by court order.*

Statement A

At the time of his death, my father was a widower/At the time of her death, my mother was a widow* and was not living in a de facto relationship.

*Select one.

Statement B

I attach to this affidavit a copy of the order/decree absolute* marked "[*specify*]", dissolving my father's/mother's* marriage. He/She* did not subsequently marry or enter into a civil union, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement C

I attach to this affidavit a copy of the separation order/decree of judicial separation* marked "[*specify*]", made between my father and his wife or husband/my mother and her husband or wife*. The order/decree* was in force at the time of his/her* death, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement D

The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked "[*specify*]" is a copy of the choice of option.

*Select one.

Statement E

The deceased never married or entered into a civil union and at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

8 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by any other child—

(a) who was born to the deceased; or

(b) who was adopted by the deceased; or

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Omit paragraphs (c) and (d) if the deceased was female.

(c) in respect of whom the deceased had admitted paternity; or

(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

Statement B

In addition to myself, the deceased was survived by the following children, all of whom, except where otherwise shown, are adult: [*list full names, places of residence, and occupations of the other children of the deceased and, in the case of a child who is a minor, the age of that child*].

9 *If you selected statement B for paragraph 8, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

Statement A

On [*date*], I gave written notice to [*full names*], adult children of the deceased who are named in paragraph 8, that I intended to apply to this court for letters of administration of the estate of the deceased. Attached and marked "[*specify*]" is a copy/copies* of that notice/those notices*).

*Select one.

Statement B

I attach to this affidavit the consents, marked "[*specify*]" of [*full names*], adult children of the deceased who are named in paragraph [*specify*], to letters of administration of the deceased's estate being granted to me.

10 *For this paragraph select the statement that applies.*

Statement A

Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies to me.

Statement B

Both in the case of the children of the deceased who are named in paragraph [*number*] of this affidavit and in my case, neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

11 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

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Statement B

Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*state why*].

Statement C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D

No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

12 *If you selected statement A for paragraph 11, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B

The result of my inquiries was that I discovered [*full names and relationship of those discovered*].

13 *Include the following paragraph where those discovered are children.*

The person/Those* discovered is/are* aged [*specify ages*] being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

14 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

15 I will faithfully administer the deceased's estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

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Form PR 5
Affidavit for obtaining grant of administration on intestacy to parent of deceased

r 27.4

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

This form must be appropriately modified if more than 1 parent is applying.

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I knew, died at [*place, country*] on or about [*date*].

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

Statement D

The deceased is the person named [*full name*] in the attached certified copy of the death certificate at [*place*] marked "A".

If the applicant or applicants for the grant do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

4 *[Revoked]*

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 I am the deceased's father/mother*.

*Select one.

7 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a spouse or civil union partner, or by any de facto partners, entitled to succeed on the intestacy.

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Statement B

I attach to this affidavit a copy of the order/decree absolute* marked "[*specify*]", dissolving the marriage/civil union*of my son/daughter*, the deceased. He/She* did not subsequently marry or enter into a civil union, and, at the time of his/her* death, he/she* was not living in a de facto relationship.

*Select one.

Statement C

I attach to this affidavit a copy of the separation order/decree of judicial separation* marked "[*specify*]", made between my son/daughter*, the deceased, and his wife or husband/her husband or wife/civil union partner*. The order/decree* was in force at the time of his/her* death, and at the time of his/her* death he/she* was not living in a de facto relationship.

*Select one.

Statement D

The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked "[*specify*]" is a copy of the choice of option.

*Select one.

8 *For this paragraph select the statement that applies.*

Statement A

I attach to this affidavit the consent marked "[*specify*]" of [*full name*], the father/mother* of the deceased, to letters of administration of the deceased's estate being granted to me.

*Select one.

Statement B

[*Full name*], the father/mother* of the deceased, died at [*place, country*] on or about [*date*] and therefore predeceased his/her* son/daughter*.

*Select one.

Statement C

[*Full name*], the father/mother* of the deceased, does not join in the application as he/she* is incapable of acting as administrator because [*state why*].

*Select one.

9 The deceased was not survived by a child—

(a) who was born to the deceased; or

(b) who was adopted by the deceased; or

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the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Omit paragraphs (c) and (d) if the deceased was female.

(c) in respect of whom the deceased had admitted paternity; or

(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

10 The deceased was not survived by any grandchild—

(a) who was born to a child of the deceased; or

(b) who was adopted by a child of the deceased; or

(c) in respect of whom a son of the deceased had admitted paternity; or

(d) in respect of whom a son of the deceased was adjudged, before or after the death of the child of the deceased, to be the father.

11 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

Statement B

Making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*state why*].

Statement C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D

No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

12 *If you selected statement A for paragraph 11, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

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Statement B

The result of my inquiries was that I discovered [*full names and relationship of those discovered.*].

13 *Include the following paragraph where those discovered are children.*

The person/Those* discovered is/are* aged [*specify ages*], being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

14 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

15 I will faithfully administer the deceased's estate in accordance with the law, and will, when required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

Form PR 6
Affidavit for obtaining grant of administration on intestacy to brother or sister of deceased

r 27.4

The cover sheet for this form should have the same heading as that set out in form PR 1.

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

This form must be appropriately altered if more than 1 brother or sister is applying.

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 The deceased, [*name as on cover sheet*], whom I knew, died at [*place, country*] on or about [*date*].

2 *For this paragraph select the first of the following statements that applies.*

Statement A

I was present when the deceased died.

Statement B

I attended the deceased's funeral.

Statement C

I saw the deceased's dead body.

Statement D

The deceased is the person named [*full name*] in the death certificate/certified copy of the death certificate* attached and marked "A".

*Select one.

If the applicant or applicants for the grant do not know about the deceased's death personally, replace paragraphs 1 and 2 with an affidavit in the form of those paragraphs made by a person or persons who knew the deceased and know(s) about the deceased's death personally.

3 At the time of death the deceased resided at [*place, country*].

4 *[Revoked]*

5 I have made full inquiries and searches for a will made by the deceased. I am satisfied that the deceased died without leaving a will and was wholly intestate.

6 I am a brother/sister* of the deceased.

*Select one.

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

7 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by a spouse or civil union partner, or by any de facto partner, entitled to succeed on the intestacy.

Statement B

I attach to this affidavit a copy of the order/decree absolute* marked "[*specify*]", dissolving the marriage/civil union* of my brother/sister*, the deceased. He/She* did not subsequently marry or enter into a civil union, and at the time of his/her* death he/she* was not living in a de facto relationship.

Statement C

I attach to this affidavit a copy of the separation order/decree of judicial separation* marked "[*specify*]", made between my brother/sister*, the deceased, and his/her* wife/husband/civil union partner*. The order/decree* was in force at the time of his/her* death, and at the time of his/her* death he/she* was not living in a de facto relationship.

Statement D

The deceased was survived by a spouse/civil union partner/de facto partner* who was entitled to succeed on the intestacy, but his/her* beneficial interest in the estate was affected by the choice he/she* made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he/she* chose option A. Attached and marked "[*specify*]" is a copy of the choice of option.

*Select one.

8 The deceased was not survived by a parent.

9 The deceased was not survived by any child—

(a) who was born to the deceased; or

(b) who was adopted by the deceased; or

Omit paragraphs (c) and (d) if the deceased was female.

(c) in respect of whom the deceased had admitted paternity; or

(d) in respect of whom the deceased was adjudged, before or after his death, to be the father.

10 The deceased was not survived by any grandchild—

(a) who was born to a child of the deceased; or

(b) who was adopted by a child of the deceased; or

(c) in respect of whom a son of the deceased had admitted paternity; or

(d) in respect of whom a son of the deceased was adjudged, before or after the death of the child of the deceased, to be the father.

This is an unofficial prospective consolidation showing
the changes that will be made to the High Court Rules on 1 January 2026 by the
High Court (Improved Access to Civil Justice) Amendment Rules 2025.
It has no legal status and may contain errors.

11 *For this paragraph select the statement that applies.*

Statement A

The deceased was not survived by any other brother or sister.

Statement B

In addition to myself, the deceased was survived by the following brothers and sisters, all of whom, except where otherwise shown, are adult: [*list full names, places of residence, and occupations of the other brothers and sisters of the deceased and, in the case of any brother or sister who is a minor, the age of that brother or sister*].

12 *If you selected statement B for paragraph 11, for this paragraph select the statement(s) that apply, otherwise omit this paragraph.*

Statement A

On [*date*], I gave written notice to [*full names*], adult brothers and sisters of the deceased who are named in paragraph 11, that I intended to apply to this court for letters of administration of the deceased's estate. Attached and marked "[*specify*]" is a copy of that notice.

Statement B

I attach to this affidavit the consents, marked "[*specify*]", of [*full names*], adult brothers and sisters of the deceased who are named in paragraph 11, granting me letters of administration of the deceased's estate.

13 *For this paragraph select the statement that applies.*

Statement A

Neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies to me.

Statement B

Both in the case of the brothers and sisters of the deceased who are named in paragraph 11 of this affidavit and in my case, neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

14 *For this paragraph select the statement that applies.*

Statement A

I have made reasonable inquiries for the purposes of the Status of Children Act 1969 as to the existence of a parent or child of the deceased (in addition to those already known to me) who could claim an interest in the estate of the deceased by reason only of that Act and the enactments governing the distribution of intestate estates. Those inquiries, which included those required by section 5A(2) of the Status of Children Act 1969, consisted of [*specify*].

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Statement B

Making the inquiries specified in section 5A(1) of the Status of Children Act 1969 would unduly delay the making of a grant of administration because [*state why*].

Statement C

The getting in or preservation of the assets of the estate of the deceased requires the making of an immediate grant of administration because [*state why*].

Statement D

No useful purpose would be served by making the inquiries specified in section 5A(1)(a) of the Status of Children Act 1969 because [*state why*].

15 *If you selected statement A for paragraph 14, for this paragraph select the statement that applies, otherwise omit this paragraph.*

Statement A

The result of my inquiries was that I did not discover any such parent or child. Attached and marked "[*specify*]" is a certificate from the office of the Registrar-General confirming the absence of a record of any such parent or child.

Statement B

The result of my inquiries was that I discovered [*full names and relationship of those discovered.*].

16 *Include the following paragraph where those discovered are children.*

The person/Those* discovered are* [*specify ages*], being a child/children* to whom neither section 16(2)(d) of the Adoption Act 1955 nor section 4 of the Status of Children Act 1969 is relevant or applies.

*Select one.

17 To the best of my knowledge, information, and belief, the gross value of the estate left by the deceased does not exceed $[*amount*].

18 I will faithfully administer the deceased's estate in accordance with the law, and will, if required by the court, file in the court and verify by affidavit—

(a) a true and complete inventory of the deceased's estate; and

(b) a true and complete account of the deceased's estate—

(i) setting out the dates and particulars of all receipts and disbursements; and

(ii) showing, in my opinion, which of the receipts and disbursements are on account of capital and which are on account of income.

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Sworn/Affirmed* at [*place, date*]

Before me:

*Select one.

[*print name*]

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

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Form PR 7
Probate in common form

r 27.31(1)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*name, place of residence, occupation*] (deceased)

1 *For this paragraph select the statement that applies*.

Statement A

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will. A copy is attached.

Statement B

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will and [*specify number*] document(s)/codicil(s)* changing the will. Copies are attached.

*Select one.

2 *For this paragraph select the statement that applies.*

Statement A

The will was proved before the Registrar/Senior Deputy Registrar* in chambers acting under rule 27.14 of the High Court Rules and probate of the will was granted today.

*Select one.

Statement B

The will and [*specify number*] document(s)/codicil(s)* changing the will were proved before the Registrar/Senior Deputy Registrar* in chambers acting under rule 27.14 of the High Court Rules and probate of the will and [*specify number*] document(s)/codicils* changing the will was granted today.

*Select one.

3 This probate document appoints [*full name(s), place(s) of residence, occupation(s)*], the executor/executors* [*or state basis for the grant as stated in paragraph 2 of the application*] named in the will/document/codicil that changed the will as the administrator/administrators* of the deceased's estate.

*Select one.

4 [*Specify any other order made as part of the grant*].

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Date:

Deputy Registrar

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Form PR 8
Letters of administration with will annexed

r 27.31(1)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*name, place of residence, occupation*] (deceased)

To [*full name, place of residence, occupation*] the [*state basis for entitlement to grant as specified in rule 27.26 that allowed grant of administration*]

1 *For this paragraph select the statement that applies*.

Statement A

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will. A copy is attached.

*Select one.

Statement B

The deceased, [*full name*], died at [*place, country*] on or about [*date*] leaving a will and [*specify number if more than 1*] document(s)/codicil(s)* changing the will. Copies are attached.

*Select one.

2 *For this paragraph select the statement that applies.*

Statement A

The will was proved before the Registrar/Senior Deputy Registrar in chambers acting under rule 27.14 of the High Court Rules and letters of administration with the will annexed was granted today.

*Select one.

Statement B

The will and [*specify number*] document(s)/codicil(s) changing the will were proved before the Registrar/Senior Deputy Registrar in chambers acting under rule 27.14 of the High Court Rules, and letters of administration with the will and [*specify number*] document(s)/codicils* changing the will annexed was granted today.

*Select one.

3 The circumstance in rule 27.25(1) to (3) of the High Court Rules allowing the grant of administration was [*specify*].

4 These letters of administration authorise you—

(a) to administer the deceased's estate; and

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(b) to demand and recover whatever debts may belong to the deceased's estate; and

(c) to pay whatever debts the deceased owed; and

(d) to pay the legacies contained in the will and [*specify number*] document(s)/codicil(s)* changing the will to the extent the estate allows.

*Select one.

5 *For this paragraph select the statement that applies.*

Statement A

You are appointed as the administrator with the will annexed of all of the deceased's estate.

Statement B

You are appointed as the administrator with the will and [*specify number*] document(s)/codicil(s)* changing the will annexed of all of the deceased's estate.

*Select one.

[*Specify any other order made as part of the grant*.]

Date:

Deputy Registrar

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Form PR 9
Letters of administration on intestacy

r 27.31(1)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place of residence, occupation*] (deceased)

To [*full name, place of residence, occupation*] [*state basis for entitlement to grant as specified in rule 27.35(4) that gives right to apply for administration, that is, the relationship to the deceased*] .

1 The deceased, [*full name*], died at [*place, country*] on or about [*date*] without leaving a will.

2 These letters of administration authorise you—

(a) to administer the deceased's estate; and

(b) to demand and recover whatever debts may belong to the deceased's estate; and

(c) to pay whatever debts the deceased owed, so far as the estate extends.

3 You are appointed as the administrator of all of the deceased's estate.

4 This grant was made today by the Registrar/Senior Deputy Registrar* in chambers acting under rule 27.14 of the High Court Rules.

*Select one.

Date:

Deputy Registrar

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Form PR 10
Caveat

r 27.11(2)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

Under section 60 of the Administration Act 1969

And

In the matter of the will/estate* of [*full name, place, occupation*] (deceased)

*Select one.

Probate of the will/letters of administration of the estate* of the deceased, [*name*], must not be granted without notice to [*full name*], solicitor for [*full name, place, occupation*], who has an interest in the estate.

*Select one.

Date:

Signature:

(caveator/solicitor for caveator*)

*Select one.

Complete and attach the memorandum as set out in form G 10.

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Form PR 11
Exemplification of probate or letters of administration

r 27.33(1)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

1 This document certifies a record in the [*name of Registry*] Registry of the High Court of New Zealand, which is a court of record. The record is that on [*date*]—

Select the statement that applies.

Statement A

the last will of [*full name, place, occupation*], who died at [*place*] on or about [*date*], was proved by, and probate was granted to, [*full name, place of residence*], the named executor.

Statement B

letters of administration with will annexed of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place of residence*] as [*specify the person's status as described in rule 27.26*].

Statement C

letters of administration of the estate of [*full name, place, occupation*], who died at [*place*] on or about [*date*], were granted to [*full name, place*].

2 *For this paragraph select the statement that applies.*

Statement A

The probate is on record in the office of that Registry.

Statement B

The letters of administration with will annexed/letters of administration* are on record in the office of that Registry.

*Select one.

3 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*

The text of the will is shown by the copy/copies* of it attached and endorsed on each page with the seal of the High Court of New Zealand.

*Select one.

4 *Omit this paragraph if the exemplification relates only to letters of administration on intestacy.*

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The sealing of this document is evidence of the acceptance by this court of the authenticity of the wording of the will.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form PR 12
Affidavit of valid execution

r 27.16(4)

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

In the estate of [*full name, place, occupation*] (deceased)

I, [*full name, place of residence, occupation*], swear/solemnly and sincerely affirm*—

*Select one.

1 I am one of the witnesses to/I was present at the signing of* the last will of the deceased, [*full name, place*]. The last will is the document marked "A" now produced and shown to me.

*Select one.

2 *For this paragraph, select the statement that applies*.

Statement A

On [*date*], the deceased signed the will by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of the will.

*Select one.

Statement B

On [*date*], the deceased directed another person to sign the will on his/her* behalf in his/her* presence, intending the signing of that person's name as it now appears on the will to be a valid signing of the will.

*Select one.

Statement C

On [*date*], the deceased acknowledged that he/she* had earlier signed the will by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of the will.

*Select one.

Statement D

On [*date*], the deceased acknowledged that he/she* had earlier directed another person to sign the will on his/her* behalf in his/her* presence, intending the signing of that person's name as it now appears on the will to be a valid signing of the will.

*Select one.

3 *For this paragraph, select—*

Statement A, if you selected Statement A in paragraph 2; or

Statement B, if you selected Statement B in paragraph 2; or

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Statement C, if you selected Statement C or D in paragraph 2.

Statement A

The signing referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness*] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

Statement B

The directing referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness*] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

Statement C

The acknowledging referred to in paragraph 2 was completed in my presence and in the presence of [*full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness*] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

4 *Include this paragraph only if there is a change on the will. Select the statement that applies.*

Statement A

The change on the will was executed by [*specify the actions complying with section 15(a) or (b) of the Wills Act 2007*].

Statement B

The change on the will was made by the obliteration of words in the will in such a way as to prevent their effect being apparent. The deceased indicated his/her* consent to the obliteration by [*specify the actions by which the deceased indicated consent to the obliteration*].

*Select one.

5 *Include this paragraph only if it must be proved that the deceased knew the contents of the will or a separate document.*

Before the deceased signed the will/separate document*, I read/[*full name*] in my presence read* the will/separate document* to the deceased and the deceased seemed to understand it thoroughly/seemed to have full knowledge of its contents*.

*Select one.

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Sworn/Affirmed* at: [*place, date*]

Before me: [*name, signature*]

*Select one.

(a solicitor of the High Court of New Zealand *or* Registrar/Deputy Registrar* of the High Court/District Court* *or* Justice of the Peace)

*Select one.

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Form AD 1
General heading for action *in personam*

rr 25.7(2), 25.9(2)

In the High Court of New Zealand

In Admiralty

[*Name of registry*] Registry

No: [*number of proceeding*]

Between [*name of plaintiff*]

(plaintiff)

And [*name of defendant*]

(defendant)

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Form AD 2
Notice of proceeding *in personam*

r 25.7(1)

To [*name of defendant(s)*]

1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you cause an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence.

2 The trial of the action, if a trial is necessary, will take place at the court at [*place*] at a time to be fixed by the court.

3 *For this paragraph select the statement that applies.*

Statement A

I, [*full name*], appearing in person, issued this notice of proceeding. My address for service is [*address*].

Statement B

I, [*full name of solicitor*], issued this notice of proceeding for the plaintiff/plaintiffs*. My firm is [*name, address*]. My address for service is [*address*] †.

*Select one.

†If the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Service of this notice

This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.

Directions for entering appearance

1 You may enter an appearance either personally (if acting without a solicitor) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at that registry.

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2 If the last day for entering your appearance falls on a Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

3 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

You must endorse the notice of proceeding before it is issued. The endorsement must contain a concise statement of the nature of the claim, the relief or remedy required, and the amount claimed (if any). In the case of a proceeding in rem add: The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973.

Statement of defence

A defendant who intends to defend an action must file or serve a statement of defence within 20 working days after the day on which the statement of claim was served on that defendant, unless the court or a Judge gives leave to the contrary.

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Form AD 3
General heading for action *in rem*

r 25.8(2)

In the High Court of New Zealand

In Admiralty

[*Name of registry*] Registry

No: [*number of proceeding*]

Admiralty action *in rem*

Between [*name of plaintiff(s), eg, the owners of the ship* "*X*"]

(plaintiff/plaintiffs*)

*Select one.

And [*name of defendant(s), eg, the ship* "*Y*"*, the ship* "*Y*" *and its freight, the ship* "*Y*" *and its cargo and freight, the cargo from the ship* "*Y*"*, the proceeds of the ship* "*Y*"*, or the proceeds of the cargo from the ship* "*Y*"]

(defendant/defendants*)

*Select one.

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Form AD 4
Notice of proceeding *in rem*

r 25.8(1)

To the owners and all others who have an interest in the [*name of ship or describe property*]

1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you cause an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence. If the thing described in this notice of proceeding is then held under an order of the court authorising its arrest, it may be sold by order of the court.

2 The trial of the action, if a trial is necessary, will take place at the court at [*place*] at a time to be fixed by the court.

3 *For this paragraph select the statement that applies.*

Statement A

I, [*full name*], appearing in person, issued this notice of proceeding. My address for service is [*address*].

Statement B

I, [*full name of solicitor*], solicitor for the plaintiff/plaintiffs*, issued this notice of proceeding. My firm is [*name, address*]. My address for service is [*address*].†

*Select one.

†If the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Service of this notice

This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.

Directions for entering appearance

1 You may enter an appearance either personally (if suing in person) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by

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either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at the registry.

2 The appearance must state the name and correct address of the party appearing and the capacity in which that party appears, whether as owner or part-owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.

3 If the last day for entering your appearance falls on a Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

4 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

You must endorse the notice of proceeding before it is issued. The endorsement must contain a concise statement of the nature of the claim, the relief or remedy required, and the amount claimed (if any). In the case of a proceeding in rem add: The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973.

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Form AD 5
Notice of proceeding both *in rem* and *in personam*

r 25.9(1)

To the owners and all others interested in the [*name of ship or describe property*]

and

To the defendant [*name*]

1 Unless, within 10 working days after you are served with this notice of proceeding (which is the period that begins on the day after the day of service), you have caused an appearance to be entered for you in the registry of this court at [*place*], the plaintiff may proceed in the plaintiff's action without having it heard in court, and judgment may be given in your absence. If the thing described in this notice of proceeding is then held under an order of the court authorising its arrest, it may be sold by order of the court.

2 The trial of the action, if a trial is necessary, will take place at the court at [*place*] at a time to be fixed by the court.

3 *For this paragraph select the statement that applies.*

Statement A

This notice of proceeding was issued by [*full name*] appearing in person. My address for service is [*address*].

Statement B

This notice of proceeding was issued by [*full name*], solicitor for the plaintiff/plaintiffs*. My firm is [*name, address*]. My address for service is [*address*].†

*Select one.

†If the plaintiff's solicitor is acting by an agent, the name and address of the agent should be shown as well as the name, firm, and address of the principal.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Service of this notice

This notice of proceeding must be served within 12 months after the date of the notice of proceeding, or within 6 months after the date of renewal, if renewed.

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Directions for entering appearance

1 You may enter an appearance either personally (if suing in person) or by a solicitor at the registry of the court mentioned in the notice of proceeding, by either filing a memorandum of appearance (in duplicate) in that registry or by posting the memorandum (in duplicate) to the Registrar at the registry.

2 The appearance must state the name and correct address of the party appearing and the capacity in which that party appears, whether as owner or part-owner or otherwise, and must also state the port of registry or port to which the ship belongs. Those statements are prima facie evidence of the matters stated in them.

3 If the last day for entering your appearance falls on a Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

4 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

You must endorse the notice of proceeding before it is issued. The endorsement must contain a concise statement of the nature of the claim, the relief or remedy required, and the amount claimed (if any). In the case of a proceeding in rem add: The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973.

The plaintiff claims against the [*name of ship or describe property*] under sections [*specify*] of the Admiralty Act 1973 [*summary of claim and amount*].

Include the following sentence if the plaintiff claims against a second defendant, otherwise omit.

The plaintiff claims against the second defendant [*summary of claim and amount*].

Statement of defence

A defendant who intends to defend an action must file or serve a statement of defence within 20 working days after the day on which the statement of claim was served on that defendant, unless the court or a Judge gives leave to the contrary.

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Form AD 6
Memorandum of appearance

r 25.12(1)

Defendant: [*name, place of residence or business, occupation*]

Include details for party and port of registry if appearance is in an action in rem.

Party: [*name and correct address of party appearing and capacity in which that party appears (ie, owner, part-owner, or otherwise). This statement is prima facie evidence of matters stated in it (see rule 25.13)*.]

Port of registry: [*name of port of registry or port to which ship belongs. This statement is prima facie evidence of matters stated in it (see rule 25.13)*.]

1 *Include this paragraph if the appearance is to a counterclaim, otherwise omit.*

This is an appearance to a counterclaim.

2 *Include this paragraph if the appearance is by an added defendant, third party, or intervener, otherwise omit.*

[*Specify briefly the particulars of the order or notice served on the party entering the appearance.*]

3 *Include this paragraph if the appearance is conditional, otherwise omit.*

This appearance has effect as an unconditional appearance unless, within 8 working days after the appearance is filed, an application is made to set aside the notice of proceeding or service of the notice of proceeding and an order is made accordingly (*see* rule 25.12 of the High Court Rules).

I, [*full name*], filed this appearance, appearing in person. My address for service is [*address*].

Date:

Signature:

(party/solicitor*)

*Select one.

Note

If the appearance is filed by a solicitor who has another solicitor acting as that solicitor's agent at the place of filing, add the name and address of the agent or the agent's firm to the name and address of the principal or the principal's firm.

Directions for entering an appearance

1 If the last day for entering an appearance falls on Saturday, Sunday, or court holiday, you may file the memorandum of appearance on the next working day following that Saturday, Sunday, or holiday.

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2 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing the memorandum, you must disregard the period that commences with 25 December and ends with 15 January.

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Form AD 7
Application for warrant of arrest

r 25.34(1)

To the Registrar of the High Court at [*place*]

1 The plaintiff applies for a warrant for the arrest of [*name of ship or describe property*].

2 The present location of the property to be arrested is [*location*].

3 This application is accompanied by the affidavit/affidavits* of [*names of deponents*] deposing to the matters referred to in Rule 25.34(4) of the High Court Rules, and an indemnity to the Registrar.

*Select one.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Certificate of Registrar

I certify that according to the records of the court—

(a) a notice of proceeding in an action *in rem* has been issued against [*name of ship or describe property to be arrested*]:

(b) this application was filed at [*time, date*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form AD 8
Indemnity to Registrar

r 25.34(4)

To the Registrar of the High Court at [*place*]

The applicant indemnifies you—

(a) for any fees and expenses (including harbour dues) that may be incurred by you in executing the warrant of arrest issued against [*name of ship or describe property*]; and

(b) against any liability arising out of or incidental to any act lawfully done by you in executing that warrant.

Date:

Signature:

(applicant/solicitor for applicant*)

*Select one.

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Form AD 9
Warrant of arrest

r 25.35(3)

To the Registrar of the High Court at [*place*]

and

To the Registrar's appointed officers or agents

You are directed to arrest the [*name of ship or describe property*] and keep it under safe arrest until you receive further orders from the court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This warrant of arrest is taken out by [*name of solicitor*], solicitor for [*name of party*].

Registrar's endorsement as to execution

This warrant was executed by [*name of person executing warrant*] at [*time, date*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form AD 10
Notice by Registrar of arrest of property

r 25.38(1)

[*Name of ship or property*]

1 The ship named/property described* above is in custody or possession of the Registrar of the High Court of New Zealand under a warrant of arrest from this court.

*Select one.

2 A person who attempts to remove the property or interfere with it without the written authority of the Registrar, or of the Registrar's officers or agents, will breach the order of the court.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form AD 11
Request for caveat against arrest

r 25.42(1)

[*Name of ship or describe property*]

1 I request a caveat be entered against the arrest of the ship/property* described above.

*Select one.

2 I undertake to enter an appearance in any action that may be begun against it in the court.

3 I undertake, within 3 working days after receiving notice of an action in the court concerning the arrested ship/property*, to give security to the satisfaction of the Registrar in an amount not exceeding $[*amount*] or to pay that amount into court.

*Select one.

4 My address for service is [*address*].

Date:

Signature:

(applicant/solicitor for applicant*)

*Select one.

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Form AD 12
Release from arrest

r 25.44(1)

To the Registrar of the High Court of New Zealand at [*place*]

and

To the Registrar's appointed officers and agents

1 The [*name of ship or describe property*] has been held under arrest in accordance with a warrant of arrest issued at [*place, date*].

2 You are now directed to release the arrested property.

3 The ground for release is [*specify ground, eg, court order, payment into court, etc*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

*Omit if this release is not under an order of the court.

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Form AD 13
Bail bond

r 25.45(2)

1 An action *in rem* against the [*name of ship or describe property*] is pending in this court. The parties to the action are [*names*].

2 I/We* submit to the jurisdiction of the court.

*Select one.

3 If the defendant does not satisfy a judgment in this proceeding or does not pay an amount due to be paid by the defendant under an admission of liability in this action or under a settlement agreement that is filed in this court, the enforcement process may issue against me/us*, my/our* executors or administrators or assigns, and my/our* goods and chattels, and the goods and chattels of my/our* executors, administrators, or assigns, for an amount not exceeding $[*amount*].

*Select one.

Date:

The common seal [*complete as usual*]:

This bond was signed by:

(sureties)

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

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Form AD 14
Request for caveat against release and payment

r 25.46(1)

[*Name of ship or describe property*]

Omit paragraph (a) or (b) if not requested.

I request a caveat be entered against—

(a) the issue of a release for the arrested property:

(b) payment out of court of the proceeds of sale (if the court should order that the arrested property be sold).

Date:

Signature:

[*(name of signatory)*]

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Form AD 15
Request for commission for appraisement and sale

r 25.51(1)

I/We* request a commission for the appraisement and sale of [*name of ship or describe property*], which was arrested by order of the court on [*date*].

*Select one.

Date:

Signature:

[*(name of signatory)*]

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Form AD 16
Commission for appraisement and sale

r 25.51(5)

To the Registrar of the High Court at [*place*]

and

To the Registrar's appointed officers and agents

1 The court has ordered that the [*name of ship or describe property*] be appraised and sold.

2 You are directed to choose 1 or more experienced persons and to swear them to appraise the property according to its correct value.

3 You are also directed that, once that value has been certified in writing by the appraiser or appraisers, you are to arrange for the property to be sold by [*specify whether sale to be by way of private treaty, tender, or public auction*] for the highest price that can be obtained for it, but not for less than the appraised value unless the court, on your application, allows it to be sold for less.

4 You are further directed that, immediately on the sale being completed, you are to pay the proceeds of the sale into court and to file in the court the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This commission is taken out by [*name*], solicitor for the [*name of party*].

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Form AD 17
Notice for priority of claims on sale

r 25.52(1)

1 The [*name of ship or describe property*] has been sold and the gross proceeds of that sale, amounting to $[*amount*] have been paid into court at [*place*].

2 The priority of the claims against the proceeds of sale will not be determined until after [*expiry date of period specified in order for sale*].

3 A person having a claim against the ship or described property, or the proceeds of sale of that ship or property, on which the person intends to proceed to judgment should commence an action to enforce that claim before the date specified in paragraph 2 and, if necessary, apply to the court to extend the period within which the order of priority of claims will not be determined.

4 If the steps referred to in paragraph 3 are not taken, an order determining the priority of claims against the ship or described property, or the proceeds of sale of that ship or property, may be made without notice to the person claiming against the ship or described property, or the proceeds of sale of that ship or property.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form Arb 1
Appeal under Arbitration Act 1996

rr 26.3(2), 26.8(3)

Complete and insert the heading as set out in form G 1.

To the Registrar of the High Court at [*place*]

and

To [*name(s) of party/parties to be served with this notice*]

This document notifies you that—

1 On [*date*] at [*time*], or as soon after that as counsel/parties* may be heard, [*name of plaintiff appealing against arbitral award*] will appeal to the court at [*place*] from an award dated [*date*] made by [*arbitral tribunal name(s)*].

*Select one.

2 The question/questions* of law arising out of the award is/are* as follows: [*specify precise form of question(s) of law alleged to arise, numbered if more than 1*].

*Select one.

3 The plaintiff contends that the question/questions* should be answered as follows: [*specify answer(s) contended for*].

*Select one.

4 The plaintiff seeks the following relief: [*specify relief sought*].

5 The grounds on which this application is made are—

(a) the plaintiff was a party to the arbitration; and

(b) *For this paragraph select the statement that applies.*

Statement A

the parties to the arbitration agreed before the award was made that any party might appeal to the court on any question of law arising out of the award; and

Statement B

after the award was made, every other party to the arbitration consented to an appeal to the court on the question/questions* of law arising out of the award stated above; and

*Select one.

(c) [*specify any grounds for the appeal other than those set out above, giving enough detail to inform the court and the other parties of the issues*].

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6 This application is made in reliance on clause 5(1)(a)/5(1)(b)* of Schedule 2 of the Arbitration Act 1996.

*Select one.

[*Specify any other enactment or principle of law relied on.*]

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application within 10 working days after the day on which you are served with this document. You can do this by—

(a) filing a notice of opposition in the court; and

(b) serving a copy of that notice on the plaintiff and on all other parties.

What can happen if I do not file and serve notice of opposition?

If you do not file and serve a notice of opposition, the court may proceed to determine this application in your absence.

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Form Arb 2
Notice for leave to appeal under Arbitration Act 1996

r 26.15(2)

Complete and insert the heading as set out in form G 1.

To the Registrar of the High Court at [*place*]

and

To [*name(s) of party or parties to be served with this notice*]

This document notifies you that—

1 On [*date*] at [*time*], or as soon after that as the applicant may be heard, [*name of party seeking leave*] will seek leave to appeal from an award dated [*date*] made by [*arbitral tribunal name(s)*].

2 The question/questions* of law arising out of the award is/are* as follows: [*specify precise form of question(s) of law alleged to arise, numbered if more than 1*].

*Select one.

3 The plaintiff contends that the question/questions* should be answered as follows: [*specify answer(s) contended for*].

*Select one.

4 If granted leave to appeal, the plaintiff will seek the following relief: [*specify relief sought*].

5 The grounds on which this application is made are—

(a) the plaintiff was a party to the arbitration; and

(b) [*specify any grounds for the appeal other than those set out above, giving enough detail to inform the court and the other parties of the issues*].

6 This application is made in reliance on clause 5(1)(c) of Schedule 2 of the Arbitration Act 1996.

[*Specify any other enactment or principle of law relied on.*]

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

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Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application within 10 working days after the day on which you are served with this notice. You can do this by—

(a) filing a notice of opposition in the court; and

(b) serving a copy of that notice on the plaintiff and on all other parties.

What can happen if I do not file and serve notice of opposition?

If you do not file and serve a notice of opposition, the court may proceed to determine this application in your absence.

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Form Arb 3
Application to enter award as judgment

r 26.22(2)

Complete and insert the heading as set out in form G 1.

To the Registrar of the High Court at [*place*]

and

To [*name(s) of party or parties to be served with this notice*]

This document notifies you that—

1 The plaintiff seeks to enforce the award dated [*date*] made by [*arbitral tribunal name(s)*] by entry as a judgment.

2 This application is made in reliance on article 35 of Schedule 1 of the Arbitration Act 1996.

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application by—

(a) filing an application in the court seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1 of the Arbitration Act 1996; and

(b) serving a copy of that notice on the plaintiff and on all other parties.

You must do this within whichever of the following periods is shorter:

(a) 10 working days after the day on which you are served with this application:

(b) any period fixed by the court of less than 10 working days after you have been served with the order fixing that period.

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What will happen if I do not file and serve an application seeking an order that recognition and enforcement be refused?

If you do not file and serve such an application, the Registrar will proceed to enter the award as a judgment.

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Form C 1

Statement of claim in proceeding for putting company into liquidation

r 31.3(1)

Complete and attach the memorandum as set out in form G 10.

The plaintiff says—

1 The [*full name of company*] (the defendant company) was in [*month, year*] incorporated/reregistered* under the Companies Act 1993.

*Select one.

2 The registered office of the defendant company is at [*full address of registered office*].

3 [*Set out in paragraphs the facts on which the plaintiff relies.*]

4 The plaintiff therefore requests that the defendant company be put into liquidation by the court under the Companies Act 1993.

Date:

Signature:

(plaintiff/solicitor*)

*Select one.

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Form C 2
Statement of claim in proceeding for order under section 174 of Companies Act 1993

r 31.3(2)

The plaintiff says—

1 The [*name of company*] (the defendant company) was in [*month, year*] incorporated/reregistered* under the Companies Act 1993.

*Select one.

2 The registered office of the defendant company is at [*full address of registered office*].

3 *For this paragraph select the statement that applies.*

Statement A

The affairs of the defendant company have been/are being/are likely to be* conducted in a manner that is [*state whether oppressive, unfairly discriminatory, or unfairly prejudicial*] to the plaintiff in the plaintiff's capacity as a member/shareholder† of the defendant company.

*Select one.

†Select one or specify other capacity.

Statement B

An act/The acts* of the defendant company have been/are being/are likely to be* [*state whether oppressive, unfairly discriminatory, or unfairly prejudicial*] to the plaintiff in the plaintiff's capacity as a member/shareholder† of the defendant company.

*Select one.

†Select one or specify other capacity.

4 *Omit this paragraph if the plaintiff is filing this document without employing a solicitor.*

The plaintiff's solicitor is [*name and address of solicitor*].

Date:

Signature*:

(plaintiff/defendant/third party†)

*If this document notifies a change of solicitor, it must be signed by the party personally or by the party's attorney.

†Select one.

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Form C 3

Notice of proceeding for putting company into liquidation or for order under section 174 of Companies Act 1993

rr 31.5(2), 31.6(3)

To [*name of company*] (the defendant company)

and

Include the following address line if a liquidator or interim liquidator has been appointed, otherwise omit.

To [*full name, address, description*], the liquidator/interim liquidator* of the defendant company.

*Select one.

This document notifies you that—

1 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is, by a statement of claim (copy attached), applying for an order that the defendant company be put into liquidation under the Companies Act 1993.

Statement B

The plaintiff is, by a statement of claim (copy attached), applying for an order in respect of the defendant company under section 174 of the Companies Act 1993.

2 The application will be heard in this court at [*place, time, date*].

3 Unless, within 10 working days after the date on which you are served with this notice, you file in this registry of the court a statement of your defence to the plaintiff's claim (copy attached), the plaintiff may proceed to a hearing and—

Select the statement that applies.

Statement A

an order may be made for the liquidation of the defendant company by the court under the Companies Act 1993.

Statement B

an order may be made in respect of the defendant company under section 174 of the Companies Act 1993.

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Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Important information for recipient of notice

Legal advice

1 If you want to oppose this application or to appear at the hearing, it is essential that you consult a solicitor immediately because a company—

(a) can carry on proceedings in the court only by a solicitor; and

(b) cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Advertising

2 The application to put the defendant company into liquidation under the Companies Act 1993 (or for the making of an order under section 174 of the Companies Act 1993 in respect of the defendant company) is to be advertised in the *New Zealand Gazette* and in a newspaper.

3 The advertisements will not be published until at least 5 working days after the date on which the defendant company is served with the statement of claim.

Omit the following heading and paragraphs 4 and 5 if the application is not an application to put the defendant company into liquidation.

Power of court to restrain advertising and stay proceedings

4 The court has power to make an order restraining the publication of the advertisement and staying any further proceedings in relation to the liquidation.

5 The defendant company or, with the leave of the court, any creditor, shareholder of the defendant company, or the Registrar of Companies may apply for that order within 5 working days after the date of the service of the statement of claim on the defendant company.

Statement of defence

6 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which the registry is open.

7 *Omit this paragraph if it conflicts with a direction by the court.*

In calculating the time for filing your statement of defence, you must disregard the period that commences with 25 December and ends with 15 January.

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8 If you file a statement of defence, you must also, within the time permitted for filing it in the registry of the court, serve a copy of the statement on the plaintiff and on any other person who, when the statement of defence is filed, has filed a statement of defence in the proceeding.

9 If a statement of defence is not filed on behalf of the defendant company within the time prescribed, counsel for the defendant company will not, without an order for extension of time or the special leave of the court, be allowed to appear at the hearing. If a company wants to appear at a hearing it must do so by counsel—a company cannot appear in person.

Appearance by persons other than defendant company

10 A person (other than the defendant company) who intends to appear at the hearing of the application must file an appearance—

(a) stating that the person intends to appear; and

(b) *For this paragraph select the statement that applies.*

Statement A

indicating whether the person supports or opposes the appointment of a liquidator by the court.

Statement B

indicating whether the person supports or opposes the making of an order under section 174 of the Companies Act 1993.

11 If you file an appearance, you do not need to file a statement of defence.

12 You must file an appearance not later than the second working day before the day appointed for the hearing.

13 If you fail to file an appearance within the time prescribed, neither you nor counsel on your behalf will, without an order for extension of time or the special leave of the court, be allowed to appear at the hearing.

Registry hours

14 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form C 4
Verifying affidavit

r 31.5(2)

I, [*full name, place of residence, occupation*], swear that those allegations in the statement of claim (a copy of which is attached to this affidavit and marked "A") that relate to my own/my firm's* acts and deeds are true, and I believe to be true those allegations that relate to the acts and deeds of another person/other persons*.

*Select one.

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

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Form C 5
Affidavit verifying statement of claim of limited company

r 31.5(2)

I, [*full name, place of residence, occupation*], swear—

1 I have knowledge of the facts stated in this affidavit and am duly authorised by the plaintiff to make this affidavit on its behalf.

2 Those statements in the statement of claim (a copy of which is attached to this document and marked "A") that relate to the acts and deeds of the plaintiff are true, and I believe to be true those statements that relate to the acts and deeds of another person/other persons*.

*Select one.

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

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Form C 6

Advertisement of application for putting company into liquidation

r 31.9(6)

This document notifies you that—

1 On [*date*], an application for putting [*full name of company*] into liquidation was filed in the High Court at [*place*]. Its reference number is [*court file number*]. The application is to be heard by the High Court at [*place, date, time*].

2 A person, other than the defendant company, who wants to appear at the hearing of the application must file an appearance not later than the second working day before that day.

3 The statement of claim and the verifying affidavit may be inspected at the registry of the court or at the plaintiff's address for service.

4 The plaintiff is [*full name*], whose address for service is [*address*]. The plaintiff's solicitor is [*name*], whose address is [*address*].

Date:

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Form C 7
Advertisement of application for order under section 174 of Companies Act 1993

r 31.9(6)

1 Members of the public are notified that on [*date*] an application for an order under section 174 of the Companies Act 1993 in respect of [*full name of company*] was filed in the High Court at [*place*].

2 The order sought is an order [*specify nature of order sought*].

3 The application is to be heard by the High Court at [*place, date, time*].

4 A person, other than the defendant company, who wants to appear at the hearing of the application must file an appearance not later than the second working day before that day.

5 The plaintiff is [*full name*], whose address for service is [*address for service*].

Note: You may obtain further information from the registry of the court or from the plaintiff or the plaintiff's solicitor.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

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Form C 8
Affidavit of service

r 31.13(1)

I, [*full name, place of residence, occupation*], swear—

1 *For this paragraph select the statement that applies.*

Statement A

On [*date*] I served the defendant company with—

(a) the statement of claim in this proceeding; and

(b) the verifying affidavit made by [*full name, date*]; and

(c) the notice of proceeding dated [*date*].

Statement B

On [*date*] I served the defendant company with a statement of claim, verifying affidavit, and notice of proceeding (copies of which are attached to this document and marked "A", "B", and "C" respectively).

2 I served the documents on the defendant company at [*place*] in New Zealand by [*specify method by which service was effected*].

Signature of deponent:

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

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Form C 9

Appearance in support of (or in opposition to) application for putting company into liquidation (or for making of order under section 174 of Companies Act 1993)

r 31.18

Complete and attach the memorandum as set out in form G 10.

1 I, [*full name, address, description*], intend to appear at the hearing of this proceeding.

2 *For this paragraph select the statement that applies.*

Statement A

I support/oppose* the application for putting the defendant company into liquidation by the High Court.

*Select one.

Statement B

I support/oppose* the application for putting the defendant into liquidation by the making of an order under section 174 of the Companies Act 1993.

*Select one.

3 *For this paragraph select the statement that applies.*

Statement A

I am a creditor for $[*amount*] in the defendant company.

Statement B

I am a contributory/shareholder* holding [*number and class of shares held*] shares in the defendant company.

*Select one.

Date:

Signature:

(solicitor/counsel* for person filing appearance)

*Select one.

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Form C 10

Notification to liquidator of order putting company into liquidation

r 31.29(2)

To [*full name, full address*] (the liquidator).

This document notifies you that the Honourable Justice/Associate Judge* [*name*] today ordered that the defendant company be put into liquidation by the court under the Companies Act 1993.

*Select one.

Complete the following table.

Name of company	**Registered office**	**Plaintiff's solicitor**	**Date of filing of statement of claim**

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form C 11
Notification to interim liquidator of appointment

r 31.29(2)

To [*full name, full address*] (the interim liquidator).

The Honourable Justice/Associate Judge* [*name*] today appointed [*name of the Official Assignee or, if some other person has been appointed, the name, address, and description of that person*] as interim liquidator for the period before an order putting the company into liquidation is made.

*Select one.

Complete the following table.

Name of company	**Registered office**	**Plaintiff's solicitor**	**Date of filing of statement of claim**

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form C 12
Order putting company into liquidation

r 31.31(1)

This document notifies you that—

1 The application made by the plaintiff [*name*] was determined by the Honourable Justice/Associate Judge* [*name*] on [*date, time*].

*Select one.

2 This court orders that the defendant company be put into liquidation by the court under the Companies Act 1993, and appoints [*full name of liquidator*] as liquidator.

3 It also orders that the cost of $[*amount*] of the application be paid out of the assets of the defendant company.

4 Before making this order, the court—

(a) heard [*name of counsel*] for the plaintiff, and [*name of counsel*] for [*description of other party or person*]; and

(b) read the statement of claim and the affidavit of [*full name*] verifying the allegations in the statement of claim; and

(c) sighted the advertisements for the statement of claim published in [*specify date on which the advertisement appeared in the New Zealand Gazette, and name and date of issue of any other newspapers containing an advertisement for the statement of claim*]; and

(d) *Omit this paragraph if it does not apply.*

[*Specify any other evidence*.]

Date:

Deputy Registrar

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Form C 13
Order appointing interim liquidator

r 31.31(2)

This document notifies you that—

1 The application made by the plaintiff [*name*] was determined by the Honourable Justice/Associate Judge* [*name*] on [*date*].

*Select one.

2 The court appoints [*full name of interim liquidator*] as interim liquidator of the defendant company.

3 The court also limits and restricts the powers of the interim liquidator to the following acts: [*specify acts that the interim liquidator is to be authorised to do and the property of which the interim liquidator is to take possession*].

4 In making this order, the court read the following documents: [*specify documents relied on by the court*].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form C 14
General heading for notices in forms C 15 and C 16

r 31.37

In the High Court of New Zealand

[*Name of registry*] Registry

No: [*number of proceeding*]

Under the Companies Act 1993

In the matter of the liquidation of [*full name of company in liquidation*]

Between [*full name of liquidator*]

(liquidator)

And [*full name, place of residence, occupation*]

(intended recipient of notice)

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Form C 15

Notice to set aside voidable transaction under Companies Act 1993

r 31.37

Complete and attach the memorandum as set out in form G 10.

To the Registrar of the High Court at [*place*]

and

To [*full names of parties to be served*]

This document notifies you that—

1 The liquidator [*full name*] of [*full name of company in liquidation*] (the company) wants to have set aside the following transaction by the company that is voidable under section 292 of the Companies Act 1993: [*details of transaction to be set aside, including dates, amounts, and nature*].

2 The liquidator's postal, email, and street addresses are [*state addresses*].

3 The company was put into liquidation when a liquidator was appointed on [*date, time*] by—

Select the statement that applies.

Statement A

special resolution of those shareholders entitled to vote and voting on the question.

Statement B

the board of the company on the occurrence of an event specified in the constitution.

Statement C

the High Court at [*place*] under proceeding No [*number*], as a result of an application for the appointment of a liquidator that was filed on [*date*].

Statement D

a resolution of the creditors passed at the watershed meeting held under section 239AT of the Companies Act 1993.

4 The property or value that the liquidator wants to recover is [*details of property or value*].

5 In giving this notice, the liquidator relies on the following grounds: [*specify grounds*]

6 You may object to the transaction being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after this notice has been served on you.

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It has no legal status and may contain errors.

7 If you do object, your written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.

8 If you do not object, within 20 working days after the liquidator's notice has been served on you, the transaction will be set aside as against you.

9 If you do object, the liquidator may apply to the court for the transaction to be set aside.

Date:

Signature:

(solicitor/counsel* for liquidator)

*Select one.

Note

Definition of working day (Companies Act 1993)

working day means a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and

(ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January in any year falls on a Friday, the following Monday; and

(d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

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Form C 16
Notice to set aside voidable charge under Companies Act 1993

r 31.37

To the Registrar of the High Court at [*place*]

and

To [*full names of parties to be served*]

This document notifies you that—

1 The liquidator [*full name*] of [*full name of company in liquidation*] (the company) wants to have set aside the following charge by the company that is voidable under section 293 of the Companies Act 1993: [*details of charge to be set aside, including dates, amounts, and nature*].

2 The liquidator's postal, email, and street addresses are [*state addresses*].

3 The company was put into liquidation when a liquidator was appointed on [*date, time*] by—

Select the statement that applies.

Statement A

special resolution of those shareholders entitled to vote and voting on the question.

Statement B

the board of the company on the occurrence of an event specified in the constitution.

Statement C

the High Court at [*place*] under proceeding No [*number*], as a result of an application for the appointment of a liquidator that was filed on [*date*].

Statement D

a resolution of the creditors passed at the watershed meeting held under section 239AT of the Companies Act 1993.

4 In giving this notice, the liquidator relies on the following grounds: [*specify grounds*].

5 You may object to the charge being set aside by sending to the liquidator a written notice of objection that is received by the liquidator at his or her postal, email, or street address within 20 working days after this notice has been served on you.

6 If you do object, your written notice of objection must contain full particulars of the reasons for objecting and must identify any documents that evidence or substantiate the reasons for objecting.

7 If you do not object, within 20 working days after the liquidator's notice has been served on you, the transaction will be set aside as against you.

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8 If you do object, the liquidator may apply to the court for the charge to be set aside.

Date:

Signature:

(solicitor/counsel* for liquidator)

*Select one.

Note

Definition of working day (Companies Act 1993)

working day means a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and

(ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; and

(b) a day in the period commencing with 25 December in any year and ending with 2 January in the following year; and

(c) if 1 January in any year falls on a Friday, the following Monday; and

(d) if 1 January in any year falls on a Saturday or a Sunday, the following Monday and Tuesday.

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Form B 1
Request for issue of bankruptcy notice

r 24.8(1)

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To the Registrar of the High Court at [*place*]

1 I, [*full name, address, description of judgment creditor*], request that the court issue a bankruptcy notice against [*full name, address, and description of judgment debtor*].

2 *If rule 24.13 requires a different statement, substitute that for this paragraph.*

The judgment debtor, [*name*], has for the greater part of the past 6 months resided at [*full address*] or carried on business at [*full address*], which is nearest by the most practicable route to the registry of this court.

3 I produce a certified copy of a final judgment or final order against [*name of judgment debtor*], obtained by me in the [*name*] court on [*date*].

4 Execution on the judgment has not been stayed.

Date:

Signature:

(judgment creditor/solicitor for judgment creditor*)

*Select one.

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Form B 2
Bankruptcy notice

r 24.8(3)

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [*full name and address of judgment debtor*]

1 Within [*10 working days, or, if the notice is served outside New Zealand, the period specified in the order for service*] after you are served with this notice (excluding the day of service)—

(a) you must pay to the judgment creditor, [*full name, address*], $[*amount*], either in person or at the address for service of the judgment creditor (or the solicitor for the judgment creditor). This amount is the amount the judgment creditor claims is due (or remains unpaid) on a final judgment or final order, on which execution has not been stayed, that the judgment creditor obtained against you in the [*name of court*] on [*date*]; or

(b) you must secure or enter into a new formal agreement with the judgment creditor or, alternatively, obtain the High Court's approval of terms of payment; or

(c) you must satisfy the High Court that you have a counterclaim, set-off, or cross-demand against the judgment creditor—

(i) that equals or exceeds the amount claimed by the judgment creditor; and

(ii) that you could not put forward in the action or proceeding in which the judgment or order was obtained.

2 The judgment creditor also claims costs against you of $[*amount*], which includes—

(a) a fee of $[*amount*] for filing this notice; and

(b) a fee of $150 for serving this notice.

3 A certified copy of the judgment or order on which this bankruptcy notice is based is attached.

Date:

(Deputy Registrar)

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Notes

Please carefully read the following information.

Consequences of not complying with notice

If you do not comply with paragraph 1, you will have committed an act of bankruptcy on which bankruptcy proceedings may be taken against you.

Procedure for counterclaiming, etc

If you consider you have a counterclaim, set-off, or cross-demand against the judgment creditor that comes within paragraph 1(c), or you wish to seek the court's approval of terms of payment, you must, within 10 working days from the date of receiving this notice, apply to the High Court. Your application must be supported by affidavit.

You must, within the same time, also serve a copy of the application and supporting affidavit on the judgment creditor.

Costs

If you do not dispute the claim for costs, you must, within 10 working days, pay the costs claimed to the judgment creditor, either in person or at the address for service of the judgment creditor (or the solicitor for the judgment creditor), unless—

(a) the amount claimed has been secured or has become the subject of a new formal agreement to the judgment creditor's satisfaction or to the satisfaction of the High Court; or

(b) the amount of any counterclaim, set-off, or cross-demand that you advance is sufficient to cover the costs claimed as well as the amount specified in paragraph 1(a).

If you dispute the claim for costs, you must, within 10 working days, apply to the High Court to fix costs.

If you do not pay the costs claimed or dispute the claim for costs, you will commit an act of bankruptcy for which you may be adjudicated bankrupt.

This notice is issued by [*name and address of judgment creditor*] in person by [*full name and address for service of solicitor for judgment creditor*]*.

*Select one.

Note: The amount claimed for costs in paragraph 2 must be determined as if the proceeding were a category 2 proceeding specified in Schedule 2 of the High Court Rules and the time allocation were the time allocation for item 44 and band B specified in Schedule 3 of the High Court Rules.

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Form B 3
Creditor's application for adjudication order

r 24.11(1)

Complete this application in accordance with the requirements of rule 24.5.

To the Registrar of the High Court at [*place*]

and

To [*full name of debtor*]

This document notifies you that—

1 The creditor of [*full name, address of debtor*] will on [*date*] at [*time*] ask the court to make orders—

(a) adjudicating [*full name of debtor*] bankrupt; and

(b) as to costs.

2 The creditor claims that—

(a) the debtor has, for the greater part of the past 6 months, resided at/carried on business at [*full address*]* [*or state other relevant facts under rule 24.13*]; and

*Select one.

(b) the debtor owes the creditor [*amount and particulars of debt, including when it is payable*]; and

(c) the debtor has committed an available act of bankruptcy, as follows: [*state particulars, including date, of the act of bankruptcy*]; and

(d) the creditor has no security for the debt/is a secured creditor as follows: [*state particulars of the security*]*.

*Select one.

3 The creditor's name and address is [*creditor's full name and address*].

Dated at [*place, date*]

Applicant creditor:

Witness:

Signature:

(Deputy Registrar/Registrar/solicitor/Justice of the Peace*)

*Select one.

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Form B 4
Affidavit supporting creditor's application for adjudication

r 24.11(3)

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

I, [*full name, address, description of applying creditor*], the applicant, swear—

Select the statement that applies.

Statement A

The statements I make in the accompanying application are, to the best of my knowledge, information, and belief, true.

Statement B

I am a person having knowledge of the facts to which the accompanying application relates. The statements in the application are, to the best of my knowledge, information, and belief, true.

Signature:

(applicant creditor/deponent*)

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

Note

If the applicant cannot state on oath that the statements in the application are, to the best of the applicant's knowledge and belief, true, the applicant must set out the statements that the applicant can swear to the truth of, and file a further affidavit by some person or persons who can swear to the truth of the remaining statement(s).

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Form B 5
Summons to debtor

r 24.11(3)

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [*full name, address, description of debtor*]

1 You are summoned to attend before the High Court at [*place, time, date*] (the hearing date).

2 [*Full name, address, description of applicant*] has filed an application in this court to adjudicate you bankrupt.

3 The court will consider whether you should be adjudicated bankrupt on the following grounds: [*specify grounds*].

4 If, by the hearing date, you have not paid the amount of $[*amount specified in the creditor's application*] to the applicant, either in person or at the address for service of the applicant (or solicitor for the applicant), or you have not paid or disputed the amount of the costs claimed by the applicant in the bankruptcy notice served on you, the applicant is entitled to ask the court to adjudicate you bankrupt.

5 The applicant also claims costs against you of $[*amount*], which includes a fee for filing this summons of $[*amount*] and a fee of $[*amount*] for serving this summons.

6 If you do not dispute the claim for costs in paragraph 5, you must, by the hearing date, pay those costs, either in person or at the address for service of the applicant (or the solicitor for the applicant).

7 If you dispute the claim for costs, you may,—

(a) before the hearing date, apply to the court to fix costs; or

(b) at the hearing, apply orally to the court to fix costs.

8 You are not required to attend the hearing and no warrant will be issued if you do not attend, but if you do not attend the hearing the court will proceed in your absence.

9 If you intend to oppose the making of an order of adjudication you must, by 1 pm on the last working day before the hearing date, file a notice of opposition in form B 6, together with an affidavit in support of the opposition, and serve a copy of those documents on the applicant creditor.

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Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

This summons is issued by [*full name and address for service of applicant*] in person/by [*full name and address for service of solicitor for applicant*]*.

*Select one.

Note

The amount claimed for costs in paragraph 5 must be determined as if the proceeding were a category 2 proceeding specified in Schedule 2 of the High Court Rules, and the time allocation were the time allocation for item 45 and band B specified in Schedule 3 of the High Court Rules.

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Form B 6
Notice by debtor of intention to oppose application

r 24.18

Insert a heading that conforms with rule 24.5 and describes the parties as judgment creditor and judgment debtor respectively.

To [*full name and address for service of (solicitor for) applicant creditor*]

and

To the Registrar of the court at [*place*]

This document notifies you that—

1 I, [*full name, address, description of debtor*], intend to oppose the making of an order of adjudication as sought in the application.

2 I intend to dispute the applicant creditor's debt/the act of bankruptcy*—

(a) on the following grounds: [*specify grounds*]; and

(b) on the evidence contained in the affidavit filed in support of this notice.

*Select one.

Date:

Signature:

(debtor)

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Form B 7

Warrant to search for and seize bankrupt's property under section 150 or 151 of Insolvency Act 2006

r 24.4(5)

Insert a heading that conforms with rule 24.5.

To [*the Official Assignee or other authorised person*]

1 [*Full name, address, description of bankrupt*] was adjudicated a bankrupt on [*date*].

2 You and your assistants are authorised to—

(a) enter and search [*specify locality*]; and

(b) seize all or any part of the property of the bankrupt in the custody or possession of the bankrupt or any other person; and

(c) if necessary to effect that seizure,—

(i) to break open any building or room of the bankrupt where the bankrupt is believed to be; and

(ii) to break open any building, room, or receptacle of the bankrupt where any of the bankrupt's property is believed to be; and

(iii) to seize and take possession of that property; and

(d) *Include this paragraph only in a warrant under section 150 of the Insolvency Act 2006, otherwise omit.*

seize any document relating to the bankrupt's property, conduct, or dealings.

3 You must safely detain and keep in your possession anything that you have seized until it is disposed of or dealt with by the Official Assignee in accordance with the Insolvency Act 2006.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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Form B 8
Notice of objection to discharge

r 24.36(1)

Insert a heading that conforms with rule 24.5.

To the Registrar of the High Court at [*place*]

This document notifies you that I, the Official Assignee/[*full name, address, description of creditor*]*, object to the automatic discharge of the bankrupt.

*Select one.

Omit the following statement if the Official Assignee is objecting.

A copy of the order of the court permitting the objection is attached.

Date:

Signature:

(Official Assignee/Deputy Official Assignee/creditor*)

*Select one.

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Form B 9
Proposal by insolvent to creditors under subpart 2 of Part 5 of Insolvency Act 2006

r 24.42

Insert a heading that conforms with rule 24.5.

To the Registrar of the court at [*place*]

I, [*full name, address, description of insolvent person*] (the insolvent), submit the following proposal under the Insolvency Act 2006:

1 That payment/satisfaction* of my debts to the secured creditors will be made in the following manner: [*specify terms of proposal in respect of secured claims*].

*Select one.

2 That payment/satisfaction* of debts directed by the Insolvency Act 2006 to be paid in priority to all other debts in the distribution of the property of a bankrupt will be made as follows: [*specify terms of proposal in respect of preferred claims*].

*Select one.

3 That provision for payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal will be made in the following manner: [*specify terms of proposal in respect of fees and expenses of trustee*].

4 *For this paragraph select the statement that applies.*

Statement A

That a dividend of $[*amount*] will be paid on all unsecured debts.

Statement B

[*Specify terms of proposal in respect of unsecured claims.*]

5 [*Specify terms of any other offer.*]

6 That the money payable under this proposal will be paid over to the trustee, [*full name, address*], and the payment of the money will be secured in the following manner: [*list full names and addresses of sureties, if any, and specify terms of any proposed security or charge or guarantee*].

7 That [*full name, address*] is willing to act as trustee in terms of this proposal.

Date:

Signature:

(insolvent)

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I am willing to act as trustee in terms of this proposal.

Date:

Signature:

(trustee)

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Form B 10
Statement of affairs and affidavit

r 24.42

Insert a heading that conforms with rule 24.5.

Statement showing the assets, debts, and liabilities of [*full name, address, description of insolvent person*] (the insolvent).

Assets	**$**
Stock-in-trade at [*place*], estimated at	
Book debts, estimated to produce	
Cash in hand	
Cash in [*name of bank*]	
Furniture and other personal property according to list attached and marked "A"	
Real property according to list attached and marked "B"	
Surplus from securities in hands of secured creditors	
Other assets	
Total assets	

Debts and liabilities	
Unsecured creditors according to list attached and marked "C"	
Secured creditors according to list attached and marked "D"	
Less estimated value of securities	
Surplus	
Other liabilities according to list attached and marked "E"	
Total debts	

I, [*full name, address, description of insolvent person*], swear that the above statement and the lists marked "A", "B", "C", "D", and "E" are a correct statement of my assets, debts, and liabilities, the names and addresses of my creditors, and the securities held by them.

Sworn at [*place, date*]

(insolvent person)

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

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Form B 11
Report of trustee on proposal

r 24.43

Insert a heading that conforms with rule 24.5.

I, [*full name, address, description of trustee*], the trustee named in the proposal of [*full name, address, description of insolvent*] (the insolvent), report to the court as follows:

1 The insolvent on [*date*] lodged a proposal in the court. A correct copy (marked "A") is attached.

2 On [*date*], I gave notice to every known creditor affected by the proposal (the names and addresses of whom are listed in the document marked "B" attached) that a meeting of creditors would be held on [*date*] to consider the proposal.

3 The notice was accompanied by the following:

(a) a statement of the assets, debts, and liabilities of the insolvent:

(b) a list of the insolvent's creditors affected by the proposal and showing the amounts of their claims:

(c) a copy of the insolvent's proposal, a form of proof of debt, and a voting letter.

4 I attach correct copies of the notice (marked "C"), the statement of affairs (marked "D"), and the list of creditors (marked "E").

5 The meeting of creditors was held on [*date*] and was presided over by [*full name*].

6 *For this paragraph select the statement that applies.*

Statement A

The proposal was accepted by the required majority of creditors.

Statement B

The proposal was amended at the meeting and was accepted by the required majority of creditors (as amended).

7 A correct copy of the resolution of the meeting (marked "F") is attached.

8 In my opinion—

(a) the assets of the insolvent and their fair realisable value are as follows: [*details of assets, giving the value as carried on the books of the insolvent and the trustee's estimate in each case of their realisable value*]:

(b) the debts and liabilities of the insolvent are as follows: [*details of debts and liabilities, including whether secured, preferred, or unsecured, and pointing out discrepancies (if any) between debts and liabilities as declared by the insolvent and as subsequently proved and admitted by the trustee*]:

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(c) *For this paragraph select the statement that applies.*

Statement A

the debtor's proposal is an advantageous one for the creditors for the following reasons: [*specify fully the reasons of the trustee*].

Statement B

the debtor's proposal is not advantageous for the creditors for the following reasons: [*specify fully the reasons of the trustee*].

Date:

Signature:

(trustee)

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Form B 12

Account of assets, debts, etc, of deceased person verified by affidavit

r 24.45(2)

Insert a heading that conforms with rule 24.5.

Statement showing the assets, debts, and liabilities of the estate of [*full name, former address of deceased*] (the deceased).

Assets	**$**
Stock-in-trade at [*place*], estimated at	
Book debts, according to list attached and marked "A"	
Cash in hand	
Cash in [*name of bank*]	
Household furniture and effects	
Real property according to list attached and marked "B"	
Surplus from securities in hands of secured creditors	
Other assets according to list attached and marked "C"	
Total assets	
Debts and liabilities	
Unsecured creditors, according to list attached and marked "D"	
Secured creditors according to list attached and marked "E"	
Less estimated value of securities	
Surplus	
Other liabilities, according to list attached and marked "F"	
Total debts	

According to the above statement there appears to be a deficiency in the estate amounting to $[*amount*].

I, [*full name, address, description of administrator*], swear—

1 That I am the administrator of the estate.

2 That the above statement and the lists marked "A", "B", "C", "D", "E", and "F" show the assets, debts, and liabilities of the deceased so far as they are known to me.

Signature:

(administrator)

Sworn at [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar/Notary Public*)

*Select one.

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Form B 13
Certificate by Public Trust or Māori Trustee of election to administer under Part 6 of Insolvency Act 2006

r 24.49

Insert a heading that conforms with rule 24.5.

The Public Trust/Māori Trustee*, certifies as follows:

*Select one.

1 *For this paragraph select the statement that applies.*

Statement A

The [*Public Trust or Māori Trustee*] is the executor under the will of the deceased, which was proved in this court on [*date*].

Statement B

The [*Public Trust or Māori Trustee*] is the administrator of the estate of the deceased under an order to administer the estate granted to the [*Public Trust or Māori Trustee*] on [*date*].

2 The [*Public Trust or Māori Trustee*] has control of the estate, and is satisfied that the assets of the deceased that are available, or reasonably likely to be available, are not sufficient to meet the various claims on the estate, and that the estate appears to be insolvent.

3 Under the circumstances, the [*Public Trust or Māori Trustee*] elects to administer the estate under Part 6 of the Insolvency Act 2006, and makes this certificate accordingly.

Date:

Signature:

(signed for the Public Trust/by the Māori Trustee*)

*Select one.

Sealed: [*name, date*]

Witness: [*name, address, description*]

Note

When this certificate is filed it has the effect of both an application for the estate to be administered, and an order that the estate be administered, under Part 6 of the Insolvency Act 2006. *See* section 386(2) of the Insolvency Act 2006.

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Form B 14
Originating application to cancel irregular transaction under section 206 of Insolvency Act 2006

r 24.35(2)

Insert a heading that conforms with rule 24.5.

To the Registrar of the court at [*place*]

and

To [*full names of parties to be served*]

This document notifies you that—

1 The Assignee of [*full name, address of bankrupt person*] will on [*date*] at [*time*] ask the court to—

(a) order the cancellation of the irregular transaction identified in paragraph 4 of this application:

(b) make the following additional orders: [*specify*].

2 [*Full name of bankrupt person*] was adjudicated bankrupt on [*date*].

3 The property or value that the Assignee wants to recover is [*details of property or value*].

4 The transaction claimed to be irregular is described in the attached notice, which was filed and served under section 206(2) of the Insolvency Act 2006.

5 The transaction is claimed to be irregular because it was an insolvent transaction/insolvent charge/insolvent gift*.

*Select one.

6 The Assignee relies on the following matters in support of the claim in paragraph 5: [*specify matters with particularity*].

7 The Assignee relies on the following evidence: [*list any affidavits filed or to be filed*].

8 A person who, having been served with this application, wants to oppose the making of an order referred to in paragraph 1—

(a) is advised to consult a solicitor for that purpose without delay:

(b) must comply with the procedural rules set out in Part 19 of the High Court Rules:

(c) must file and serve a notice of opposition (in form G 33 of the High Court Rules) to the application within the earlier of—

(i) 10 working days after being served with this application:

(ii) 3 working days before the hearing date for this application.

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Date:

Signature:

(Assignee/counsel for the Assignee*)

*Select one.

Note

The notice filed and served under section 206(2) of the Insolvency Act 2006 and the written notice of objection received by the Assignee under section 206(4) must both be attached to this application.

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Form B 15

Originating application to order retransfer of property or payment of value under section 207 of Insolvency Act 2006

r 24.35(3)

Insert a heading that conforms with rule 24.5.

To the Registrar of the High Court at [*place*]

and

To [*full names of parties to be served*]

This document notifies you that—

1 The Assignee of [*full name, address of bankrupt person*] will on [*date*] at [*time*] ask the court to—

(a) *For this paragraph select the statement that applies.*

Statement A

order the retransfer to the Assignee of the property/an interest in the property* described in paragraph 2 of this application:

*Select one.

Statement B

order the payment to the Assignee of a sum of money:

(b) make the following additional order: [*specify any additional order sought under section 207(2), otherwise omit this paragraph*].

2 [*Specify property or interest in property or sum of money to which the application refers.*]

3 The Assignee relies on the following matters as justifying the orders asked for in this application: [*specify matters with particularity*].

4 The Assignee relies on the following evidence: [*list any affidavits filed or to be filed*].

5 A person who, having been served with this application, wants to oppose the making of an order referred to in paragraph 1—

(a) is advised to consult a solicitor for that purpose without delay:

(b) must comply with the procedural rules set out in Part 18 of the High Court Rules:

(c) must file and serve a notice of opposition (in form G 33 of the High Court Rules) to the application within the earlier of—

(i) 10 working days after being served with this application:

(ii) 3 working days before the hearing date for this application.

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Date:

Signature:

(Assignee/counsel for the Assignee*)

*Select one.

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Form B 16
Order adjudicating debtor bankrupt

r 24.11

Before the Honourable Justice/Associate Judge* [*name*]

Date

Time

*Select one.

On the application of [*name, place of residence, occupation*], a creditor of the debtor, the court orders that [*full name, residential address, occupation*] be adjudicated bankrupt and that the creditor be allowed costs and disbursements of $[*amount*].

Date:

Deputy Registrar

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the changes that will be made to the High Court Rules on 1 January 2026 by the
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Form B 17
Appointment of Official Assignee as receiver and manager

r 24.24

Before the Honourable Justice/Associate Judge* [*name*]

*Select one.

On the application of [*name, place of residence, occupation*], a creditor of the debtor, the court orders that the Official Assignee be appointed as receiver and manager of all/the following part* of the debtor's property†.

*Select one.

†If part only, specify that part precisely.

Date:

Deputy Registrar

Note

Three copies of this order must be filed in the court immediately after the making of the order.

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Schedule 2
Appropriate daily recovery rates

r 14.4

Part 1
Rates where party has solicitor on record

Category of proceedings (rule 14.3)	Appropriate daily recovery rate ($)
1	1,590
2	2,390
3	3,530

Part 2
Rates where party acting in person

Category of proceedings (rule 14.3)	Appropriate daily recovery rate ($)
1	500
2	500
3	500

Note: In this Part, **party acting in person** has the same meaning as in rule 14.2(2A).

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Schedule 3
Time allocations

r 14.5

	General civil proceedings	**Allocated days or part days**		
		A	**B**	**C**
	Commencement			
1	Commencement of proceeding by plaintiff	1.6	3	10
2	Commencement of defence by defendant	1	2	6
	Other pleadings and notices			
3	Reply	0.4	0.8	2.4
4	Counterclaim	0.8	1.6	4.8
5	Cross-notice between defendants	0.6	1.2	4
6	Third party notice and statement of claim	1.2	2.4	7
7	Notice of appearance	0.2	0.2	0.2
8	Notice of appearance with protest to jurisdiction	0.3	0.6	2
9	Pleading in response to amended pleading (payable regardless of outcome except when formal or consented to)	0.3	0.6	2
	Case management for any proceeding (including an ordinary proceeding)			
~~10~~	~~Preparation for first case management conference (including discussion about discovery)~~	~~0.2~~	~~0.4~~	~~1~~
~~11~~	~~Filing memorandum for first or subsequent case management conference or mentions hearing~~	~~0.2~~	~~0.4~~	~~1~~
~~12~~	~~Appearance at mentions hearing or callover~~	~~0.2~~	~~0.2~~	~~0.2~~
~~13~~	~~Appearance at first or subsequent case management conference~~	~~0.3~~	~~0.3~~	~~0.7~~
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
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
~~14~~	~~Preparation for and appearance at issues conference~~	~~–~~	~~0.5~~	~~1~~
15	Preparation for and appearance at pre-trial conference	–	0.5	1
	Interrogatories, ~~discovery~~ disclosure and inspection			
16	Notice to answer interrogatories	0.4	1	4
17	Answer to interrogatories	0.4	1	4
18	Notice to admit facts	0.4	0.8	2.4
19	Admissions of facts	0.4	0.8	2.4
~~20~~	~~List of documents on discovery~~	~~0.7~~	~~2.5~~	~~7~~

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General civil proceedings		**Allocated days or part days**		
20	Affidavit of initial disclosure	0.5	1.5	3
20A	Affidavit of further or particular disclosure	0.2	1	2
~~21~~	~~Inspection of documents~~	~~0.5~~	~~1.5~~	~~6~~
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
	Interlocutory applications (including applications for summary judgment and for review of interlocutory decisions)			
22	Filing interlocutory application	0.3	0.6	2
23	Filing opposition to interlocutory application	0.3	0.6	2
24	Preparation of written submissions	0.5	1.5	3
25	Preparation by applicant of bundle for hearing	0.4	0.6	1
26	Appearance at hearing of defended application for sole or principal counsel	The time occupied by the hearing measured in quarter days		
27	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
28	Obtaining judgment without appearance	0.3	0.3	0.5
29	Sealing order or judgment	0.2	0.2	0.2
	Preparing for affidavit hearing	*Time (in days) allocated, per hearing day, for preparation steps identified in columns 1 and 2*		
30	Preparation of affidavits, list of issues or authorities; and agreeing common bundle	1 for first hearing day: 0.75 per day for the second to fifth hearing days: no further allowance after the fifth day	2 for first hearing day: 1 per day for the second to fifth hearing days: no further allowance after the fifth day	4 for first hearing day: 2 per day for the second to fifth hearing days: no further allowance after the fifth day
31	Additional allowance for whichever party prepared common bundle	0.5	0.5	1
32	Preparation for hearing	All bands: 2 days for first hearing day: 1 per day for second to fifth hearing days: 0.75 per day from then on		
	Preparing for witness hearing	*(calculated by length of hearing)*		
33	~~Preparation of briefs, list of issues, authorities, and agreeing common bundle~~ Finalisation of chronology of events, preparation of expert witness statements and any further factual witness statements, index of documents, authorities, and agreeing common bundle	All bands: 1 per day for first to fifth hearing days: 0.75 per day from sixth to tenth hearing days: 0.5 per day from then on		

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General civil proceedings		**Allocated days or part days**		
33A	Additional allowance for whichever party prepared common bundle	All bands: 0.5		
33AA	Additional allowance for preparing merged chronology	0.2	0.5	0.8
33B	Preparation for hearing	All bands: 1 per day for first to fifth hearing days: 0.75 per day for sixth to tenth hearing days: 0.5 per day from then on		
	Appearances at affidavit hearing or witness hearing and other steps			
34	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		
35	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
36	Other steps in proceeding not specifically mentioned	As allowed by the court		
	Originating applications			
37	Filing application and supporting affidavits	1	2	6
38	Filing note of opposition and supporting affidavits	1	2	6
~~39~~	~~Case management~~			
40	Preparation of written submissions	0.5	1.5	3
41	Preparation by applicant of bundle for hearing	0.4	0.6	1
42	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		
43	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
	Bankruptcy proceedings			
44	Filing and serving bankruptcy notice	0.1	0.2	0.6
45	Filing application for adjudication by creditor	0.3	0.6	1.8
46	Appearance at hearing	0.2	0.4	1.2
47	Supporting party on bankruptcy	0.2	0.4	1.2
	Company liquidation proceedings			
48	Issuing statutory demand	0.1	0.2	0.6
49	Filing statement of claim and other documents	0.3	0.6	1.8
50	Appearance at hearing	0.2	0.4	1.2
51	Supporting party on liquidation	0.2	0.4	1.2
	Appeals			
52	Commencement of appeal or cross-appeal	0.5	1	3
53	Commencement of response to appeal or cross-appeal	0.3	0.5	1
~~54~~	~~Case management (as for ordinary proceeding)~~			
55	Preparation of Case on Appeal	0.5	1	2
56	Preparation of written submissions	1	3	6
57	Appearance at hearing for sole or principal counsel	The time occupied by the hearing measured in quarter days		

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General civil proceedings		**Allocated days or part days**		
58	Second and subsequent counsel if allowed by court	50% of allowance for appearance for principal counsel		
	Australian judgment proceedings			
58A	Preparing and filing an application under section 56 of the Trans-Tasman Proceedings Act 2010 to register in the court an Australian judgment	0.3	0.3	0.3
	Enforcement of judgment or order			
59	Charging order without application	0.3	0.3	1
60	Charging order with application, including any unopposed order	0.5	0.5	1.4
61	Sale order, including sale of seized property	0.5	0.5	0.7
62	Other enforcement process	0.5	0.5	0.7

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Schedule 4
Code of conduct for expert witnesses

r 9.43

Duty to the court

1 An expert witness has an overriding duty to assist the court impartially on relevant matters within the expert's area of expertise.

2 An expert witness is not an advocate for the party who engages the witness.

2A If an expert witness is engaged under a conditional fee agreement, the expert witness must disclose that fact to the court and the basis on which he or she will be paid.

2B In subclause 2A, **conditional fee agreement** has the same meaning as in rule 14.2(3), except that the reference to legal professional services must be read as if it were a reference to expert witness services.

Evidence of expert witness

3 In any evidence given by an expert witness, the expert witness must—

(a) acknowledge that the expert witness has read this code of conduct and agrees to comply with it:

(b) state the expert witness' qualifications as an expert:

(c) state the issues the evidence of the expert witness addresses and that the evidence is within the expert's area of expertise:

(d) state the facts and assumptions on which the opinions of the expert witness are based:

(e) state the reasons for the opinions given by the expert witness:

(f) specify any literature or other material used or relied on in support of the opinions expressed by the expert witness:

(g) describe any examinations, tests, or other investigations on which the expert witness has relied and identify, and give details of the qualifications of, any person who carried them out.

4 If an expert witness believes that his or her evidence or any part of it may be incomplete or inaccurate without some qualification, that qualification must be stated in his or her evidence.

5 If an expert witness believes that his or her opinion is not a concluded opinion because of insufficient research or data or for any other reason, this must be stated in his or her evidence.

Duty to confer

6 An expert witness must comply with any direction of the court to—

(a) confer with another expert witness:

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(b) try to reach agreement with the other expert witness on matters within the field of expertise of the expert witnesses:

(c) 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.

7 In conferring with another expert witness, the expert witness must exercise independent and professional judgment, and must not act on the instructions or directions of any person to withhold or avoid agreement.

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Schedule 5

Matters for consideration at case management conference

rr 7.3, 7.4

Note: The presiding Judge will expect the parties at the first case management conference to have—

(a) provided initial disclosure in accordance with rule 8.4:

(b) carefully considered the pleadings and the principal documents disclosed with them:

(c) discussed and endeavoured to agree on an appropriate discovery order and the manner in which inspection will take place, in accordance with rule 8.11:

(d) discussed and endeavoured to agree on the matters for consideration listed in this schedule:

(e) filed and served a joint memorandum or separate memoranda in accordance with rules 7.3 and 8.11.

Issues

1 Resolution and refinement of the issues, and as a consequence whether the pleadings require amendment.

2 Whether additional parties should be joined.

3 Whether this proceeding has been appropriately categorised and is either an ordinary defended proceeding or a complex defended proceeding.

Discovery and other interlocutory applications

4 The scope, terms, and timetable for any discovery.

5 If any interlocutory applications have been filed or will be filed, whether they can be heard and disposed of at the case management conference.

Readiness for trial

6 Is the case sufficiently ready for a fixture date to be allocated in the near future?

7 If there are still outstanding issues, whether a further case management conference or an issues conference should be timetabled.

Fixture or hearing

8 If the proceeding is ready to go for a hearing or a trial,—

(a) when should the close of pleadings date be?

(b) should there be a pre-trial conference?

(c) what is the estimated length of trial? (The Judge will estimate this by the number of witnesses and the estimate of duration of their testimony.)

(d) what timetable is required for written briefs?

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~~(e) is expert evidence required and, if so, what are the proposals for that evidence, including prior exchange, whether expert witnesses should conference, and how expert evidence is to be given (ie, in the normal course of a party's case, consecutively, or by way of panel)?~~

~~(f) are any special resources or requirements needed for the hearing?~~

~~(g) is an electronic common bundle and/or an electronic casebook to be prepared?~~

~~(h) can the proceeding be placed on a short-notice list or put down as a back-up fixture?~~

~~(i) is alternative dispute resolution suitable to try to facilitate settlement prior to trial?~~

~~(j) what is the categorisation of the proceeding in relation to costs?~~

~~Other~~

~~9 Any other matters, provided that those matters have been discussed between the parties at least 5 working days before the conference.~~

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Schedule 6
Standard directions for appeals

r 7.14

1 The appeal will be heard at [*time, date*]/at a time and date to be allocated by the Registrar*.

*Select one.

2 The time for the hearing is estimated to be [*half-days or days*].

3 The appeal is categorised as a category [*type*] proceeding for the purposes of rule 14.3.

4 The appeal is to proceed as determined by rule 20.8(1) or by any direction given under rule 20.8(3) in the [*specify*] registry.

5 The appellant must pay security in the sum of $[*amount*] not later than 10 working days after the conference.

6 Unless detailed and specific points on appeal have been included in the notice of appeal, the appellant must file and serve, not later than 10 working days after the conference, points on appeal that clearly state the issues on appeal.

7 If the appeal involves a significant issue under the New Zealand Bill of Rights Act 1990, or an issue affecting New Zealand's international obligations or the Crown's obligations under the Treaty of Waitangi, or an issue arising in the appeal is otherwise of significant public interest, the Judge may direct that the Solicitor-General be served with the notice of appeal and with documents subsequently filed in the appeal. In other cases, the parties must advise the Judge whether they consider that an amicus curiae should be appointed.

8 The appellant must file and serve, not later than 20 working days after the conference, a common bundle of paginated and indexed copies of all relevant documents, including, if applicable,—

(a) the reasons for the decision; and

(b) the sealed order or judgment appealed from; and

(c) the pleadings; and

(d) the statements of evidence or affidavits; and

(e) the exhibits; and

(f) the notes of evidence, to the extent that they are relevant to the issues on appeal; and

(g) any other documents, if possible in date sequence.

9 If a party insists on including a document in the common bundle even though another party objects to its inclusion on the ground that it is unnecessary or irrelevant, the objection must be recorded for the purpose of any award of costs relating to the inclusion of the document.

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10 The appellant must file and serve, not later than 25 working days after the conference,—

(a) the appellant's submissions; and

(b) a chronology (if relevant).

11 The appellant's submissions must be not more than 30 pages in length, unless a Judge permits an extension, and use 1.5 line spacing, and must contain—

(a) references to any specific passages in the evidence that the appellant will refer to at the hearing; and

(b) a list of the names and correct citations of any authorities mentioned.

12 The respondent must file and serve, not later than 30 working days after the conference,—

(a) submissions that meet the requirements set out in clause 11; and

(b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.

13 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 10 and 11 that the appellant or the respondent considers ought to be produced to the court. The bundle may be produced at the hearing of the appeal or filed before the appeal is heard.

14 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.

15 If the appeal is to be heard by a full court, 2 copies of each document must be filed.

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Schedule 7
Standard directions for appeals by way of case stated and references under Part 21

r 7.25(2)

1 The appeal will be heard (at [*time*] on [*date*]) [**or**] (at a time and date to be allocated by the Registrar).

2 The time for the hearing is estimated to be [*half days or days*].

3 The appeal is categorised as a category [*type*] proceeding for the purposes of rule 14.3.

4 The appellant must pay security in the sum of $[*amount*] not later than 10 working days after the conference [*if ordered under rule 21.13*].

5 The appellant must file and serve no later than 25 working days after the conference—

(a) the appellant's submissions; and

(b) a chronology (if relevant).

6 The appellant's submissions must contain—

(a) references to any specific passages in the evidence that the appellant will refer to at the hearing; and

(b) a list of the names and correct citations of any authorities mentioned.

7 The respondent must file and serve, not later than 30 working days after the conference,—

(a) submissions that meet the requirements set out in clause 6; and

(b) if the respondent disagrees with the appellant's chronology, a separate chronology noting areas of disagreement.

8 The appellant must prepare a bundle of any authorities referred to in the submissions provided in accordance with clauses 6 and 7 that the appellant or the respondent considers ought to be produced to the court. The bundle may be produced at the hearing of the appeal or filed before the appeal is heard.

9 If the appeal is to be heard by a single Judge, 1 copy of each document must be filed.

10 If the appeal is to be heard by a full court, 2 copies of each document must be filed.

Schedule 8
Matters for consideration at pre-trial conference for proceedings on standard track

[Revoked]

r 7.3(8)

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Schedule 9

~~Discovery checklist~~ Disclosure considerations and the listing and exchange protocol

rr ~~8.10, 8.11, 8.12,~~ 8.4, 8.4A, 8.15, 8.16, 8.27

The purpose of this schedule is to assist the parties in ~~carrying out discovery~~ carrying out disclosure in accordance with subpart 1 of Part 8, and to specify detailed requirements for listing and exchanging documents ~~when giving discovery~~ when giving disclosure.

Part 1

~~Discovery checklist~~ Disclosure considerations

~~1~~ ~~Assessing proportionality~~

~~The parties must—~~

~~(a)~~ ~~review the pleadings to identify the categories of documents that would be required if a standard discovery order were made in the terms set out in rule 8.7; and~~

~~(b)~~ ~~identify where those documents are likely to be located, including the following:~~

~~(i)~~ ~~the individuals likely to have those documents or know where they might be located; and~~

~~(ii)~~ ~~the location and likely volume of any documents held as hard copies or electronically; and~~

~~(iii)~~ ~~whether other people have discoverable documents within the client's control (for example, lawyers, accountants); and~~

~~(c)~~ ~~estimate the likely volume and cost of discovering the above material, including the following matters:~~

~~(i)~~ ~~the approximate number of hard copy and electronic documents; and~~

~~(ii)~~ ~~the estimated cost of assembling and discovering those documents (including reviewing for relevance, privilege and confidentiality, and listing the documents); and~~

~~(iii)~~ ~~whether specialist expertise is required to help the making of informed decisions (including an accurate assessment of the likely costs involved); and~~

~~(d)~~ ~~assess and discuss with the other parties whether that estimated cost is proportionate to the sums in issue or the value of the rights in issue in the proceeding. If the cost is disproportionate, or if, having regard to~~

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rules 8.8 and 8.9, the interests of justice require the making of a tailored discovery order, parties should seek such an order.

2 Extent of search

The parties must—

(a) assess whether any of the methods identified in clause 3(2)(a)(ii) may assist in locating electronic material efficiently; and

(b) consider whether it would be appropriate to seek a tailored discovery order about the extent to which a party must search for documents to reflect the circumstances of the case, including (but not limited to) the following:

(i) the number of documents involved; and

(ii) the nature and complexity of the proceeding; and

(iii) the ease and expense of retrieval of any particular document; and

(iv) the significance of any document that is likely to be located during the search.

3 Tailored discovery

(1) This clause applies when tailored discovery is appropriate having regard to rules 8.8 and 8.9, or when any party intends to apply for an order for tailored discovery.

(2) The parties must—

(a) endeavour to agree a proposal in relation to the discovery order that should be made, with respect to the following:

(i) *categories*: identify the categories of documents required to be discovered by the parties, and for each category seek to limit discovery to what is reasonable and proportionate. This may be done by, for example, specifying—

(A) subject matter:

(B) date range:

(C) types of documents:

(D) key individuals (for example, those who are company directors or are at a specified management level); and

(ii) *methods and strategies for locating documents*: seek agreement on what methods and strategies are appropriate to conduct a reasonable and proportionate search for the documents as identified in paragraph (a), including (but not limited to) the following:

(A) appropriate keyword searches; and

(B) other automated searches and techniques for culling documents (including concept searching, clustering technology,

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~~document prioritisation technology, email threading, and any other new tool or technique); and~~

~~(C) a method to be used to identify duplicate documents; and~~

~~(D) whether specialist assistance is required to locate documents efficiently and accurately; and~~

~~(b) discuss whether a staged approach may be appropriate in conjunction with identifying the categories and methods to be adopted by the parties. Parties may agree on—~~

~~(i) whether any different deadlines are appropriate; and~~

~~(ii) whether to look initially at select categories (for example, date ranges or key individuals).~~

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.

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.

4 Listing and exchange

(1) Parties are required by rules ~~8.12(2)~~ 8.16 (if ordered by a Judge) and 8.27(2) to use the listing and exchange protocol in Part 2 of this ~~schedule unless a discovery order otherwise requires. Parties must—~~ schedule. Parties must, however, comply with the duty to co-operate in rule 8.2 and—

(a) consider whether the listing and exchange protocol in Part 2 is appropriate and seek to agree any modifications; and

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(b) if any electronic material contains relevant information that cannot be seen if provided to other parties in paper or image form, consider what special arrangements will be necessary for inspection (for example, unusual software licences are required).

(2) If the parties agree to modify the listing and exchange protocol, the agreement between them must be recorded in writing. ~~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.~~

(3) To reduce unnecessary costs of listing documents, parties are encouraged to—

(a) use native electronic versions of documents as much as possible; and

(b) use the extracted metadata from native electronic documents, instead of manually listing documents; and

(c) convert documents to image format only when it is decided they are to be produced for ~~discovery~~ disclosure or inspection; and

(d) if document images are to be numbered, only number those images if they are to be produced for ~~discovery~~ disclosure or inspection.

5 Presenting documents at trial

~~The parties must—~~The parties must comply with the duty to co-operate in rule 8.2 and with rule 9.4 and—

(a) consider with the other parties how documents will be used efficiently and effectively in preparation for and in the conduct of the trial (for example, whether an electronic bundle of documents will be used); and

(b) ensure the format adopted for listing and exchange of documents is compatible with any such uses.

Part 2
Listing and exchange protocol

6 Protocol requirements

(1) Parties are required to—

(a) list documents, providing the following detail for each document:

(i) document ID:

(ii) date:

(iii) document type:

(iv) author:

(v) recipient:

(vi) parent document ID:

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(vii) privilege category; and

(b) exchange documents electronically by way of—

(i) a single, continuous table or spreadsheet, with each column exclusively containing the detail from paragraph (a); and

(ii) multi-page images in PDF format (or another format if agreed).

(2) Parties should endeavour to apply the specific details in clauses 7 to 11 to ensure consistency for listing and exchange.

(3) Any technical terms have the meanings set out in the glossary in Part 3.

7 List of documents format

(1) The format of the document descriptions should be as follows:

Field No	Field name	Description
1	Document ID	The document ID must be a unique reference The format must be alphanumeric, for example, AAA.000001, AAA.01.0001, etc Parties must agree on Party Codes, for example,— *AAA—Party A* *BBB—Party B* *CCC—Party C*
2	Date	The date appearing on the face of the document Dates must appear as DD/MMM/YYYY, for example, 01 Jan 2010 If a document is partially dated or only partially legible, this field must contain such date information as can be determined from the document If the date is estimated, state that in an additional field titled "Estimated"
3	Document type	The type of document being listed, for example, email, letter Parties may agree to construct a predefined list for all document types
4	Author	The name of the author of the document If only part of either the individual or organisation can be determined, provide the information available
5	Recipient	The name of the recipient(s) of a document If only part of either the individual or organisation can be determined, provide the information available
6	Parent document ID	This field will be populated with the document ID of the parent document This field will be populated only if a document is attached to, or embedded within, another document
7	Privilege category	This field is to be populated if the document is subject to a privilege claim

(2) Documents may be listed otherwise than chronologically if a different order would be more convenient.

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(3) Other than document ID, if information cannot be determined for a description it must be left blank.

(4) The parties may agree not to list face value descriptions for electronic documents, and instead use agreed metadata material that is extracted from the electronic files. In all cases, however, the method must be agreed. This is to ensure parties' descriptions are consistent with each other.

(5) Any document ID used in any supplementary ~~discovery~~ disclosure must be unique and run sequentially from the last number used in the previous list.

(6) The list must include all documents previously disclosed by that party in accordance with rule 8.4.

8 Specific document decisions

Duplicate documents

(1) The following applies in relation to duplicate documents:

(a) parties must take reasonable steps to ensure exact duplicate documents are removed from the ~~discovered~~ disclosed documents:

(b) a copy or version of a document containing a material modification or an obliteration or other marking must be treated as a separate document:

(c) an email and attachment are to be considered a duplicate only if the entire email and attachment document group is contained elsewhere:

(d) a document attached to a document group is not to be classed as a duplicate if it is contained as a stand-alone document elsewhere:

(e) parties should discuss the method of de-duplication at an early stage.

Emails

(2) The following applies in relation to emails:

(a) all ~~individually discoverable emails~~ emails individually subject to disclosure obligations must be listed separately:

(b) if an email is part of a chain, parties should make reasonable efforts (subject to issues of time, cost, and proportionality) to—

(i) ~~discover~~ disclose the top-level version of each relevant email contained within the chain; and

(ii) investigate whether email chain technology may assist in directing parties to the end point of an email chain.

Attachments

(3) The following applies in relation to attachments:

(a) any document that is attached to or embedded within another document is to be classed as an attachment:

(b) attachments must be listed as separate documents:

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(c) in general, attachments must appear immediately after the parent document in the list, and will take the next document ID.

Consistency of names

(4) The following applies in relation to consistency of names:

(a) the parties must consult and co-operate with each other to agree on a set list of common names to ensure consistency across the document descriptions:

(b) consistent naming conventions may be established for fields like document type, author, and recipient.

Native electronic documents

(5) The following applies in relation to native electronic documents:

(a) electronic documents that do not lend themselves to conversion to PDF (for example, complex spreadsheets, databases, etc) may be exchanged in their native electronic format:

(b) parties may agree on a list of electronic file types that do not lend themselves to conversion to PDF.

Colour documents

(6) The following applies in relation to colour documents:

(a) colour versions of documents need to be created only if it will be evidentially significant to see colour in a document:

(b) if it is technically impracticable to reproduce a document in colour, the party giving ~~discovery~~ disclosure must make the original document available for inspection in its native file format.

9 Privilege

(1) Parties must agree on any specific privilege requirements for listing and exchange.

(2) Documents for which privilege is claimed may be group listed in accordance with rule 8.16(2).

(3) Documents must be given a description in accordance with clause 7(1), unless the description discloses information contained in a communication for which privilege is claimed.

(4) The parent document ID information must be noted in the list if the privilege claim relates to part of a document group.

10 Redactions

(1) The redacted sections of a document must be blacked out on the image. Parties may agree that a label or note must be provided explaining the grounds for the redaction.

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(2) The party redacting or altering a document must ensure that the original un-redacted and unaltered version is preserved so that it remains available to be inspected if required.

11 Exchange format

(1) The format of the table or spreadsheet must be as follows:

(a) each document must be contained within a separate row and all field entries must be contained within single cells; and

(b) a delimiter, for example, ";", must be used for any multi-entry fields, for example, "; recipient".

(2) Documents must be provided as multi-page PDF images (or in another format if agreed).

(3) The file name for each individual document must be "document ID.pdf".

(4) If a document has relevant metadata, parties may request its provision in native file format. Either—

(a) the document ID must be contained within the name of the native file format, for example, "document ID.xls"; or

(b) the file name of the native file must be specified in an additional field in the spreadsheet.

(5) The parties may agree to provide documents as searchable images.

(6) If the software technology available to the party giving ~~discovery~~ disclosure makes it reasonably possible, all image documents must have the document ID clearly marked on at least the first page of the document.

(7) The spreadsheet and the folder with the documents should be provided on a media disk.

(8) Parties should not place any restrictions on the spreadsheet or documents that prevent opposing parties from accessing them.

Part 3
Glossary

In this schedule, unless the context otherwise requires,—

attachment means any document that is attached to or embedded within another document

clustering means grouping documents by identifying conceptually alike documents

concept searching means a search that attempts to match results with the query conceptually (rather than just by identity or similarity of words)

de-duplication means the process of identifying and removing duplicate documents from a collection of documents so that only 1 unique copy of each document remains. A cryptographic hash function such as the Message Digest algorithm 5 may be used

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to generate a digital fingerprint for an electronic document. The digital fingerprint of a document can then be electronically compared against the digital fingerprint of any other document to determine whether the documents are exact duplicates. De-duplication may also be implemented by using a cryptographic hash function applied to a group of documents

document has the meaning set out in rule 1.3 of the High Court Rules and includes all ESI

document description means the set of data fields used to describe a document under clause 7(1)

document ID has the meaning set out in clause 7(1)

document prioritisation technology (**predictive coding**) means technology that analyses the decisions of a human review of a sample set of documents. The software then prioritises/ranks the remainder of documents based on the decisions made on the sample documents, which allows the most relevant documents to be identified first

electronic image or **image** means an electronic representation of a paper document or electronically stored information. An electronic image may be a searchable image or an unsearchable image

electronically stored information (ESI) means any information stored electronically. It includes, for example, email and other electronic communications such as SMS and voicemail, word processed documents and databases, and documents stored on portable devices such as memory sticks and mobile phones. In addition to documents that are readily accessible from computer systems and other electronic devices and media disks, it includes documents that are stored on servers and back-up systems and electronic documents that have been deleted. It also includes metadata and embedded data

email threading (email chain) means technology that allows the identification of related emails in a thread. This technology can identify the email end point and identify the unique emails in a thread

keyword search means a software-aided search for words across the text of an electronic document

media disk means a CD, DVD, USB flash drive, or any other portable media device

metadata means data about data. In the case of an electronic document, metadata is typically embedded information about the document that is not readily accessible once the native electronic document has been converted into an electronic image or paper document, for example, the date on which the document was last printed or amended. Metadata may be created automatically by a computer system (system metadata) or may be created manually by a user (application metadata). Depending on the circumstances of the case, metadata may be ~~discoverable~~ subject to disclosure obligations

native electronic document or **native file format** means an electronic document stored in the original form in which it was created by a computer software program

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parent document means a document with 1 or more attachments. For example, an email is a parent document and any documents attached to the email are its attachments

party code means a sequence of alphanumeric characters in a document ID that uniquely identifies a party in the proceeding

PDF (portable document format) is a file format that enables documents to be displayed or printed in a manner that preserves the formatting originally used by the author. A PDF file may be either a searchable image file or an unsearchable image file

redaction means the process of rendering part of a document unreadable. It is sometimes referred to as masking. Redaction is typically used to render confidential or privileged portions of ~~an otherwise discoverable document~~ a document otherwise subject to disclosure obligations unreadable

searchable image means an electronic image in which text-based contents can be searched electronically.

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Schedule 10
Issues to be addressed at case management conference in proceedings under Part 30

r 7.17

Note: The presiding Judge will expect the parties at the first case management conference to have—

~~(a) provided initial disclosure in accordance with rule 8.4:~~

(b) carefully considered the pleadings and the principal documents disclosed with them.

1 The date for filing the statement of defence.

2 Any orders necessary relating to the production of the relevant records of the decision maker.

3 Categorisation of the proceeding for the purposes of rule 14.3.

4 Whether the Attorney-General or any other parties should be served.

5 Whether any application for interim relief is to be made.

6 Whether any other interlocutory applications are contemplated.

7 The estimated duration of the hearing.

8 Any dates on which the parties are unavailable for a fixture.

9 Proposed dates for filing and serving evidence.

10 Proposed date for filing and serving common bundle of documents.

11 Proposed dates for filing and serving submissions.

12 Any other matters relevant to the proceeding.