



## The Rules Committee

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### RULES COMMITTEE CONSULTATION PAPER

### REFORM OF THE DISTRICT COURTS RULES 2009: DRAFT DISTRICT COURT RULES

**Date of issue:** 1 November 2013  
**Date submissions due:** 30 January 2014

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#### Introduction

1. The District Court Rules sub-committee of the Rules Committee is seeking feedback from interested persons on the proposed draft District Court Rules to replace the District Court Rules 2009.
2. The consultation process to reform the District Court Rules 2009 began with meetings in the main centres in May 2012 and has continued since with regular updates being published in *New Zealand Lawyer* and *LawTalk*. The District Court Rules sub-committee has now prepared a draft set of Rules for consultation.

#### Proposed Changes

3. As previously indicated, the draft District Court Rules retain the best features of the District Court Rules 2009, such as the short and simplified trials and judicial settlement

conferences, while amending other aspects to address the concerns of the profession and other stakeholders.

4. In summary, the draft District Court Rules effect the following changes:

*Alignment with the High Court Rules*

The District Court Rules will be aligned with the High Court Rules as closely as possible in both organisation and wording. The only differences are intended to be those that flow from substantive differences in procedures, for example the different trial procedures or initial disclosure requirements.

*Replacing Forms with Pleadings*

The existing Forms (for claims/responses/third and subsequent parties) will be replaced with rules equivalent to the High Court Rules requiring the filing and service of pleadings.

Specimen form statements of claim and defence will be available from the Ministry of Justice website.

*List of Documents*

Rather than provide initial disclosure of documents, a pleading must be accompanied by a list of the documents on which the party relies and copies provided within 5 working days of a request.

*Case Management Conferences and Judicial Settlement Conferences*

A first case management conference will be held between 25 working days and 50 working days after the filing of a statement of defence to determine whether the mode of trial shall be a short trial and, if a short trial is not to be allocated, directing a judicial settlement conference be held after disposal of any matters set out in the equivalent to Schedule 5 of the High Court Rules as well as any necessary discovery orders or other interlocutory applications.

If a judicial settlement conference is unsuccessful, a second case management conference must be convened within 10 working days to address:

- Whether the mode of trial is a simplified trial or full trial;
- The close of pleadings date;
- The making of a discovery order unless the proceedings can be justly disposed of without any discovery. Either standard or tailored discovery orders may be made, the presumption being in favour of tailored discovery; and
- The hearing of any outstanding interlocutory application.

*Retaining the Existing Forms of Trial (Short, Simplified and Full Trials)*

The existing forms of trial (short, simplified or full) and judicial settlement conferences will be retained.

### *Summary judgment*

A party may apply for summary judgment in all proceedings except appeals or otherwise provided in any enactment.

5. To assist with seeing where the draft District Court Rules and the High Court Rules differ, a comparative table is set out in Appendix 1.

### **Meetings on the draft District Court Rules**

6. The District Court Rules sub-committee invites all interested parties who regularly appear in the District Courts' civil jurisdiction to attend the following meetings to learn more about the draft District Court Rules and to discuss the proposed changes.
7. The meetings will be held at the District Courts at 4 pm on:
  - Friday 15 November 2013 – Hamilton
  - Monday 18 November 2013 – Auckland
  - Tuesday 19 November 2013 – Dunedin
  - Wednesday 20 November 2013 – Christchurch
  - Thursday 21 November 2013 – Wellington
8. If you would like to attend any of the meetings, please contact the Judges' Research Counsel, Lara Williams, by emailing [lara.williams@justice.govt.nz](mailto:lara.williams@justice.govt.nz).

### **Conclusion**

9. Submissions are invited on the draft District Court Rules. Prior to making submissions, the District Court Rules sub-committee encourages interested parties to attend the meetings, where possible.
10. Parts of these draft District Court Rules may still be subject to some further refinement before the planned meetings, for example further drafting changes to the Appeals section to align it with the High Court Rules so far as is possible, and any proposed changes will be explained at those meetings.
11. Please return submissions or comments to Thomas Cleary, the Clerk to the Rules Committee, by **30 January 2014**. Submissions received may be posted on the Rules Committee's website. The contact details are as follows:

Clerk to the Rules Committee  
Auckland High Court  
PO Box 60  
AUCKLAND

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APPENDIX 1: COMPARISON OF DRAFT DCR (PCO 16974 v 4.2) WITH HCR

DCR (PCO 16974 v 3.16)	HCR	Difference
<p><b>1.6 Further provisions about interpretation</b></p> <p>(1) A word or an expression used in a rule or form in these rules and 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.</p> <p>(2) In a judgment, order, direction, or other document forming part of a proceeding or of an interlocutory application, unless the context otherwise requires,—  <b>month</b> means a calendar month  <b>working day</b> has the same meaning as in rule 1.5.</p>		
<p><b>1.10 Directions and defendants</b></p> <p>(1) A party or intended party may apply without notice to a Judge for directions if in doubt about—</p> <p>(a) whether it is correct or appropriate to join a person as a party; or</p> <p>(b) the proper court or registry in which to commence or take a step in a proceeding.</p> <p>(2) Despite subclause (1)(a), 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—</p> <p>(a) which (if any) of the defendants is liable; and</p> <p>(b) to what extent.</p>	<p><b>7.43A Directions as to conduct of proceedings</b></p> <p>...</p> <p>(2) A party or intended party may apply without notice to a Judge for directions if in doubt about—</p> <p>(a) whether it is correct or appropriate to join a person as a party; or</p> <p>(b) the proper court in which to commence or take a step in a proceeding; or</p> <p>(c) the correct method of proceeding under these rules.”</p> <p><b>4.3 Defendants</b></p> <p>...</p> <p>(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—</p> <p>(a) which (if any) of the defendants is liable; and</p> <p>(b) to what extent.</p>	<p>This rule is an amalgamation of rr 7.43A(2) and r 4.3 of the HCR.</p>

<p><b>1.11 Security</b></p> <p>(1) If any officer is empowered to take security from any person for any purpose, the security must be given by the number of sureties and in the form and for the amount that the officer empowered to take security thinks proper.</p> <p>(2) Any person required to give security may appeal to the court against any decision under subclause (1).</p> <p>(3) A party's solicitor may not be accepted as surety for a security that the party is required to give under rule 5.47(3).</p> <p>(4) If any surety becomes bankrupt or insolvent or makes a composition with his or her creditors, all further steps in the proceeding by the principal party to the security may</p>	<p><b>1.10 Security</b></p> <p>(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.</p> <p>(2) Any person required to give security may appeal to the court against any decision under subclause (1).</p> <p>(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.</p> <p><b>5.46 Solicitor not to be surety</b> A party's solicitor may not be accepted as surety for a security that the party is required to give under r 5.45(2).</p>	
<p><b>2.4 Registry hours</b></p> <p>(1) The court's registries must be open from 9 am to 5 pm on every day that is not a court holiday.</p> <p>(2) The Minister of the Crown who is responsible for the Ministry of Justice may from time to time authorise the closing of the court or any registry of the court for 1 hour.</p> <p>(3) If the Registrar is Registrar for 2 or more registries, or in any other special circumstances, those registries of the court must be open on the days and at the times from time to time determined by the Minister of the Crown who is responsible for the Ministry of Justice.</p> <p>(4) A notice of the registry hours must be posted in some convenient place accessible to the public.</p>	<p><b>Part 2, Subpart 1 – Associate Judges</b></p> <p><b>3.1 Registry hours</b> The court's registries must be open from 9 am to 5 pm on every day that is not a court holiday.</p>	Self-evident
<p><b>4.10 Requirements of third party notice</b></p> <p>...</p> <p>(2) The third party notice must be accompanied by a list of documents relied on by the defendant in form 4 (see rule 8.3 for related requirements to provide copies).</p>		The list of documents rule.

<p><b>4.19 Statement of claim to be filed and served</b></p> <p>...</p> <p>(2) (c) must be accompanied by a list of documents relied on by the defendant in form 4 (<i>see</i> rule 8.4 for related requirements to provide copies).</p>	<p><b>4.19 Statement of claim to be filed and served</b></p>	<p>The list of documents rules.</p>
<p><b>5.1 How to determine proper court</b></p> <p>(1) Documents that are required by these rules to be filed must be filed in the registry—</p> <p>(a) either—</p> <p>(i) nearest to the residence or principal place of business of the defendant; or</p> <p>(ii) if the defendant is neither resident nor has a principal place of business in New Zealand, selected by the plaintiff; or</p> <p>(b) nearest to the place where the actions or omissions that led to the claim happened; or</p> <p>(c) nearest to the place where the property that is the subject of the claim is located; or</p> <p>(d) determined by a court or Registrar on the court’s or Registrar’s own initiative or on application.</p> <p>(2) If it appears to a Judge or Registrar, on application by either of the parties, that the statement of claim has been filed in the wrong court, he or she may direct that the statement of claim and all documents be transferred to the proper registry.</p> <p>(3) If it appears to a Judge or Registrar, on application by either of the parties, that a different registry would be more convenient to the parties, he or she may direct that the statement of claim or all documents be transferred to the proper registry.</p>	<p><b>5.1 Identification of proper registry</b></p> <p>(1) The proper registry of the court, for the purposes of rules 5.25 and 19.7, is,—</p> <p>(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:</p> <p>(b) when no defendant is resident or has a principal place of business in New Zealand, the registry the plaintiff selects:</p> <p>(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:</p> <p>(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:</p> <p>(i) an application for judicial review under Part 1 of the Judicature Amendment Act 1972 that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:</p> <p>(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:</p> <p>(iii) an application under section 35, 47E, or 55 of the Terrorism Suppression Act 2002:</p> <p>(e) despite paragraphs (a) to (c), the court at Wellington or</p>	<p>The HCR has a much more complex identification of property registry rule.</p>

	<p>the court at Auckland in the case of applications under the Immigration Act 2009 in proceedings involving classified information.</p> <p>(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 case may be, the registry nearest to the residence of the plaintiff or the plaintiff first-named, as the case may be</p> <p>(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.</p> <p>(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.</p> <p>(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.</p>	
<p><b>5.5 Non-complying documents</b></p> <p>(1) A document that does not comply with rules 5.1 and 5.6 to 5.19 may be received for filing only by leave of a Judge or the Registrar.</p> <p>(2) The cost of an application under subclause (1) must be borne by the party making it, and may not be claimed</p>	<p><b>5.2 Non-complying documents</b></p> <p>(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.</p> <p>(2) The cost of an application under subclause (1) must be borne by the party making it, and may not be claimed as</p>	

<p>as costs against another party under Part 14.</p> <p>(3) <i>Despite subclause (1), a document presented for filing by a party who is not represented by a lawyer may be received and corrected by a Registrar, with the consent of that party.</i></p> <p>(3) <i>Nothing in this rule applies to a document to which any provision of Part 19 of these rules (enforcement) or Part 6 of the Act applies.</i></p>	<p>costs against another party under Part 14.</p>	
<p><b>5.26 Requirements as to notice of proceeding</b></p> <p>...</p> <p>(2) The notice of proceeding must be in form 1.</p> <p>...</p>	<p><b>5.23 Requirements as to notice of proceeding</b></p> <p>...</p> <p>(2) The notice of proceeding must be in <u>form G 2</u> and must advise the defendant of the defendant's obligations under <u>rule 8.4</u> (initial disclosure).</p> <p>...</p>	<p>DCR omits reference to advising defendant of discovery obligations.</p>
<p><b>5.28 Proceeding commenced by filing statement of claim</b></p> <p>(1) A proceeding must be commenced by filing a statement of claim in the proper registry.</p> <p>(2) Subclause (1) does not apply to—</p> <p>(a) an appeal under Part 17 or 18:</p> <p>(b) a proceeding commenced by originating application under [subpart 2 of Part 7].</p> <p>(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.</p> <p>(4) The statement of claim must be accompanied by a list of documents relied on by the plaintiff under rule 8.3 in form 4 (<i>see also</i> rule 8.3 for related requirements to provide copies).</p>	<p><b>5.25 Proceeding commenced by filing statement of claim</b></p> <p>(1) A proceeding must be commenced by filing a statement of claim in the proper registry of the court.</p> <p>(2) Subclause (1) does not apply to—</p> <p>(a) an unopposed application under Part 27:</p> <p>(b) an appeal under Part 20:</p> <p>(c) a proceeding commenced by originating application under Part 18, 19, or 26:</p> <p>(d) an application under Part 31.</p> <p>(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.</p>	<p>List of documents rule and also a specified form for statement of claim.</p>
	<p><b>Solicitor not to be surety</b></p> <p>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).</p>	<p>Moved to r 1.11A in the DCR</p>
<p><b>5.48 Filing and service of statement of defence</b></p> <p>...</p> <p>(2) Unless otherwise ordered by the court,—</p>	<p><b>5.47 Filing and service of statement of defence</b></p> <p>...</p> <p>(2) Unless otherwise ordered by the court,—</p>	<p>First (3) has the listing documents rule and a form for the statement of defence.</p>



<p>(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:</p> <p>(b) the time within which the statement of defence is required to be filed is 25 working days after the day on which the statement of claim and notice of proceeding are served on the defendant.</p> <p>(3) <i>The statement of defence must be accompanied by the list of documents required under rule 8.3 in form 4 (see also rule 8.3 for related requirements to provide copies).</i></p>	<p>(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:</p> <p>(b) the time within which the statement of defence is required to be filed is 30 working days after the day on which the statement of claim and notice of proceeding are served on the defendant.</p>	
<p><b>5.65 Service Generally</b></p> <p>...</p> <p>(3) The plaintiff's list of documents relied on in form 4 must be served together with the statement of claim.</p>	<p><b>5.70 Service Generally</b></p>	<p>The listing documents rule.</p>
<p><b>Not included</b></p>	<p><b>Rules 6.21 – 6.26 dealing with service of a foreign process on a person in New Zealand</b></p>	
	<p><b>7.1AA Outline of case management procedures for different types of proceedings</b></p> <p>(1) An ordinary defended proceeding or a complex defended proceeding—</p> <p>(a) is subject to a first case management conference (<i>see</i> rule 7.3):</p> <p>(b) may be the subject of 1 or more further case management conferences (<i>see</i> rule 7.4):</p> <p>(c) may also be the subject of an issues conference (<i>see</i> rule 7.5):</p> <p>(d) if the proceeding is being, or has been, allocated a hearing or trial date, may be the subject of a pre-trial conference (<i>see</i> rule 7.8).</p> <p>(2) An application for leave to appeal, or an appeal, under Part 20 (appeals), Part 21 (case stated), or Part 26 (Arbitration Act 1996) is subject to case management under different provisions (<i>see</i> rules 7.14 and 7.15).</p>	

	<p>(3) A proceeding commenced by originating application is subject to limited case management through the ability of the parties to seek directions (<i>see</i> rules 19.11 and 7.43A).</p> <p>(4) A proceeding on the commercial list is subject to limited case management through the ability of parties to seek directions (<i>see</i> rules 29.10 to 29.12).</p> <p>(5) An application for judicial review may be subject to case management under section 10 of the Judicature Amendment Act 1972 and any rules relating to the case management of such proceedings.</p> <p>(6) The following proceedings are not subject to case management:</p> <p>(a) undefended proceedings;</p> <p>(b) an application under Part 24 (insolvency) or Part 31 (companies: liquidation).</p> <p>(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.</p>	
<p><b>7.1 Proceedings subject of case management</b></p> <p>(1) Case management in accordance with this subpart will be applied to proceedings in order to promote their just, speedy, and inexpensive determination.</p> <p>(2) The purpose of a case management conference is to enable the Judge to assist the parties—</p> <p>(a) to identify, define, and refine the issues requiring judicial resolution; and</p> <p>(b) to determine what steps need to be taken in order to prepare the proceeding for hearing or trial; and</p> <p>(c) to decide how best to facilitate the conduct of the hearing or trial; and</p> <p>(d) to ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.</p>	<p><b>7.1 Proceedings subject of case management</b></p> <p>(1) Case management in accordance with this subpart will be applied to proceedings in order to promote their just, speedy, and inexpensive determination.</p> <p>(2) Subclause (1) is subject to subclause (8).</p> <p>(3) The purpose of a case management conference is to enable the Judge to assist the parties—</p> <p>(a) to identify, define, and refine the issues requiring judicial resolution; and</p> <p>(b) to determine what steps need to be taken in order to prepare the proceeding for hearing or trial; and</p> <p>(c) to decide how best to facilitate the conduct of the hearing or trial; and</p> <p>(d) to ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.</p> <p>(4) In this rule,—</p> <p><b>complex defended proceeding</b> means one that, in a</p>	

	<p>Judge’s opinion, needs intensive case management and therefore needs more than 1 case management conference before a fixture is allocated</p> <p><b>ordinary defended proceeding</b> 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.</p> <p>(5) For the purposes of this subpart, a proceeding must be classified as—</p> <ul style="list-style-type: none"> <li>(a) an ordinary defended proceeding; or</li> <li>(b) a complex defended proceeding; or</li> <li>(c) an application under Part 24 (insolvency) or Part 31 (companies liquidation); or</li> <li>(d) an application for leave to appeal, or an appeal, under Part 20 (appeals) or Part 26 (Arbitration Act 1996); or</li> <li>(e) an undefended proceeding; or</li> <li>(f) an application commenced by originating application under Part 19 (originating applications); or</li> <li>(g) a proceeding on the commercial list.</li> </ul> <p>(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—</p> <ul style="list-style-type: none"> <li>(a) resolved by a Judge not later than the date of the first case management conference; and</li> <li>(b) promptly advised to the parties.</li> </ul> <p>(7) A Judge may at any time review the classification assigned under subclause (5) and decide whether to maintain or alter it.</p> <p>(8) A proceeding that falls within subclause (5)(c) to (g) is not to be the subject of case management unless a Judge so directs.</p>	
	<p><b>7.2 Case management conferences generally</b></p> <p>(1) A Judge may hold a case management conference at any time.</p> <p>(2) A case management conference may be convened by a Judge on the Judge’s own initiative or on the application of</p>	

	<p>1 or more of the parties.</p> <p>(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.</p>	
<p><b>7.2 First case management conference</b></p> <p>(1) This rule applies unless—</p> <p>(a) no statement of defence has been filed in a proceeding; and</p> <p>(b) <i>no other response prescribed or otherwise required by these rules has been filed in a proceeding.</i></p> <p>(2) Unless otherwise ordered by a Judge, the first case management conference for the proceeding must be held on a date fixed by the Registrar that is the first available date not less than 25 working days after the date when the first statement of defence is filed in the proceeding, but, in any event, not less than 50 working days after the filing of the proceeding.</p> <p>(3) The agenda for the conference is—</p> <p>(a) the matters set out in [<b>Part A of Schedule 3</b>] (with any adaptations ordered by the Judge for the purposes of that conference); and</p> <p>(b) the hearing, and if practicable the disposal, of any outstanding interlocutory application; and</p> <p>(c) <i>determining in accordance with rule 10.1 whether the mode of trial is to be a short trial; and</i></p> <p>(d) <i>if a short trial is not allocated, directing that a judicial settlement conference under rule 7.3 must be held as soon as practicable after disposal of the matters referred to in paragraphs (a) and (b) unless—</i></p> <p>(i) <i>the Judge directs otherwise; or</i></p> <p>(ii) <i>the parties agree to participate in alternative dispute resolution; and</i></p>	<p><b>7.3 First case management conferences</b></p> <p>(1) This rule does not apply if—</p> <p>(a) no statement of defence has been filed in a proceeding; or</p> <p>(b) <i>the proceeding is an appeal within rule 7.14.</i></p> <p>(2) Unless otherwise ordered by a Judge, the first case management conference for the proceeding must be held on a date fixed by the Registrar that is the first available date not less than 25 working days after the date when the first statement of defence is filed in the proceeding, but, in any event, not less than 50 working days after the filing of the proceeding.</p> <p>(3) The agenda for the conference is—</p> <p>(a) the <u>Schedule 5</u> matters; and</p> <p>(b) the making of a discovery or other order under <u>rule 8.5</u>; and</p> <p>(c) the hearing, and if practicable the disposal, of any outstanding interlocutory application; and</p> <p>(d) <i>the fixing of—</i></p> <p>(i) <i>a close of pleadings date; and</i></p> <p>(ii) <i>a hearing or trial date for a proceeding classified as an ordinary defended proceeding and the making of appropriate trial directions; and</i></p> <p>(iii) <i>a date and arrangements for any further case management, issues, or pre-trial conference; and</i></p> <p>(e) other appropriate matters that have already been discussed by the parties.</p> <p>(4) The parties must either file a joint memorandum addressing the <u>Schedule 5</u> matters no later than 10 working days before the conference, or file separate memoranda addressing those matters in accordance with subclause (5).</p> <p>(5) If separate memoranda are filed, the plaintiff or applicant must file the first memorandum stating that party's position on the matters in <u>Schedule 5</u>. That memorandum must be filed 10 working days before the conference, followed no later than 5 working days before the conference by memoranda from the</p>	

<p>(e) other appropriate matters that have already been discussed by the parties.</p> <p>(4) The parties must either file a joint memorandum addressing the <b>[Part A of Schedule 3]</b> matters and the other matters referred to in subclause (3) no later than 10 days before the conference, or file separate memoranda addressing those matters in accordance with subclause (5).</p> <p>(5) If separate memoranda are filed, the plaintiff or applicant must file the first memorandum stating that party’s position on the matters in <b>[Part A of Schedule 3]</b> and the other matters referred to in subclause (3). That memorandum must be filed 10 working days before the conference, followed no later than 5 working days before the conference by memoranda from the other parties, each memorandum stating the party’s agreement or disagreement with memoranda already filed, and, in the case of disagreement, the reasons for disagreement and the different position contended for.</p> <p>(6) Memoranda filed under subclause (4) or (5) may also address matters that fall within subclause (3)(e).</p>	<p>other parties, each memorandum stating the party's agreement or disagreement with memoranda already filed, and, in the case of disagreement, the reasons for disagreement and the different position contended for.</p> <p>(6) Memoranda filed under subclause (4) or (5) may also address matters that fall within subclause (3)(e).</p> <p>(7) <i>The joint memorandum referred to in subclause (4) may be combined with any joint memorandum filed in relation to discovery under <u>rule 8.11</u>.</i></p> <p>(8) <i>A separate memorandum referred to in subclause (5) may be combined with any separate memorandum filed in relation to discovery under <u>rule 8.11</u>.</i></p>	
<p><b>7.3 Judicial settlement conference</b></p> <p>(1) This rule applies unless—</p> <p>(a) no statement of defence has been filed in a proceeding; and</p> <p>(b) no other response prescribed or otherwise required by these rules has been filed in a proceeding.</p> <p>(2) The purpose of a judicial settlement conference is to give the parties to the proceeding an opportunity to negotiate a settlement of the claim or any issue.</p> <p>(3) The parties must file and serve on the other parties copies of their will say statements and a memorandum identifying the issues and any settlement negotiations at least 10 working days before the date set for the conference.</p>	<p>JSCs are able to be held, but PN40 states that the High Court will only allocate a JSC to those proceedings where such a conference would be more appropriate than mediation.</p>	<p>Under the DCR, if a short trial is not allocated, then a JSC will be held.</p>

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| <p>(4) Will say statements and the memorandum required by subclause (3) that are produced at a judicial settlement conference are not admissible at any trial of the proceeding.</p> <p>(5) A judicial settlement conference must be convened by a Judge and held in chambers.</p> <p>(6) A Judge who convenes a judicial settlement conference may assist the parties in their negotiations, but that Judge must not preside at the trial (if any) unless—</p> <ul style="list-style-type: none"><li>(a) all parties taking part in the conference consent; or</li><li>(b) the only matter for resolution at the hearing is a question of law.</li></ul> <p>(7) A proceeding is treated as having been discontinued 30 working days after the date on which the Judge endorses the proceeding as having been settled, unless—</p> <ul style="list-style-type: none"><li>(a) the parties, by notice to the Judge given before the close of that 30-day period, consent to an extension of that period, and in that case the Judge must direct accordingly and the discontinuance takes effect on the close of that extended period; or</li><li>(b) in any other case, the Judge, in the interests of justice, directs that the proceeding be discontinued with effect on and after some other date stated by the Judge.</li></ul> <p>(8) If the Judge assisting the parties at a judicial settlement conference is satisfied that the parties are unable to settle the claim or issue, the Judge must,—</p> <ul style="list-style-type: none"><li>(a) as soon as practicable, indicate that he or she has formed that view; and</li><li>(b) adjourn the proceeding to a second case management conference under rule 7.4.</li></ul> <p>(9) The court may order any proceeding treated as having both discontinued under subclause (7) to be reinstated on good cause shown by either party and on any terms</p> |  |  |
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<p>it thinks just.</p>		
<p><b>7.4 Second case management conference</b></p> <p>(1) Unless otherwise ordered by a Judge, the second case management conference for the proceeding must be held on a date fixed by the Registrar within 30 working days of a judicial settlement conference held under Part 10.</p> <p>(2) The agenda for the second case management conference is set out in <b>[Part B of Schedule 3]</b>.</p> <p>(3) The parties must either file a joint memorandum addressing the <b>[Part B of Schedule 3]</b> matters no later than 10 working days before the conference, or file separate memoranda addressing those matters in accordance with this rule</p> <p>(4) If separate memoranda are filed, the plaintiff or applicant must file the first memorandum stating that party's position on the matters in <b>[Part B of Schedule 3]</b>. That memorandum must be filed no later than 10 working days before the conference, followed no later than 5 working days before the conference by memoranda from the other parties, each memorandum stating the party's agreement or disagreement with memoranda already filed, and, in the case of disagreement, the reasons for disagreement and the different position contended for.</p> <p>(5) The joint memorandum referred to in subclause (3) may be combined with any joint memorandum filed in relation to discovery under rule 8.10.</p> <p>(6) A separate memorandum referred to in subclause (4) may be combined with any separate memorandum filed in relation to discovery under rule 8.10.</p> <p>(7) The second case management conference may be adjourned if the Judge declines to certify that the proceeding is ready for allocation of a hearing or trial date by the Registrar.</p> <p>(8) It is the duty of all parties to a proceeding for which a</p>		<p>The DCR has a second case management conference if a JSC is unsuccessful. A JSC will normally only be held if the trial is a simplified or a full (not a short trial).</p>

<p>ate for hearing or trial has been allocated to notify the Registrar without delay, if the proceeding is settled.</p>		
	<p><b>7.5 Issues conferences</b></p> <p>(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.</p> <p>(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:</p> <ul style="list-style-type: none"> <li>(a) instructing solicitors:</li> <li>(b) all counsel engaged:</li> <li>(c) the parties (or, in the case of corporate parties, their senior officers or authorised representatives).</li> </ul> <p>(3) If any conflict arises between the pleadings and the issues as identified and refined before or at an issues conference, the pleadings prevail</p>	
<p><b>7.5 Additional case management conferences</b></p> <p>(1) In addition to case management conferences under rules 7.2 and 7.4, a Judge—</p> <ul style="list-style-type: none"> <li>(a) may hold a case management conference at any time:</li> <li>(b) must hold a case management conference if rule 5.4(2)(a) or applies.</li> </ul> <p>(2) A case management conference may be convened by a Judge on the Judge’s own initiative or on the application of 1 or more of the parties.</p>	<p><b>7.4 Further case management conferences</b></p> <p>(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.</p> <p>(2) The agenda for a conference under this rule—</p> <ul style="list-style-type: none"> <li>(a) will be set out in the order directing the conference, but a party may add a further item or items (if practicable giving advance notice to the other parties); and</li> <li>(b) will include or adapt the Schedule 5 matters; and</li> <li>(c) may prescribe steps to be taken in preparation for the conference.</li> </ul>	
<p><b>Not included. However, the DCR provide specific rules for appeals to the District Court (See Part 16B)</b></p>	<p><b>Rule 7.14 and 7.15 dealing with Case Management of Appeals</b></p>	
<p><b>Not included</b></p>	<p><b>7.16 Jury notice</b></p> <p>If either party to a proceeding to which section 19A 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</p>	



	<p>to the other party not later than—</p> <p>(a) 5 working days before the close of pleadings date for the proceeding; or</p> <p>(b) a date fixed by a Judge for the purpose.</p>	
	<p><b>7.43A Directions as to conduct of proceedings</b></p> <p>(1) A Judge may, by interlocutory order,—</p> <p>(a) fix the time by which a step in a proceeding must be taken:</p> <p>(b) fix the time by which all interlocutory steps must be completed:</p> <p>(c) direct the steps that must be taken to prepare a proceeding for a substantive hearing:</p> <p>(d) direct how the hearing is to be conducted:</p> <p>(e) make any other direction or order that the court may make under these rules.</p> <p>...</p>	<p>The DCR has direction making powers and the ability for a party to seek directions if unsure – r 1.11. This relates to (2)</p>
<p><b>7.42 Order relating to management of proceeding may be varied if circumstances change</b></p> <p>(1) This rule applies to an order or direction (a <b>determination</b>) that—</p> <p>(a) relates to the management of a proceeding; and</p> <p>(b) has been made by a Judge in chambers.</p> <p>(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.</p>	<p><b>7.50 Order relating to management of proceeding may be varied if circumstances change</b></p> <p>(1) This rule applies to an order or direction (a <b>determination</b>) that—</p> <p>(a) relates to the management of a proceeding; and</p> <p>(b) has been made by a Judge in chambers.</p> <p>(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.</p> <p>(3) <i>Despite subclause (2), a Judge may, on application or on the Judge’s own initiative, direct that—</i></p> <p>(a) <i>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:</i></p> <p>(b) <i>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</i></p>	

<p><b>7.45 Application for injunction</b></p> <p>(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.</p> <p>(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—</p> <p>(a) must provide for the commencement of the proceeding; and</p> <p>(b) may be granted on any further terms that the Judge thinks just.</p> <p>(3) An interlocutory injunction to which section 42(2) of the Act applies (restraining a party to a proceeding from removing from New Zealand, or otherwise dealing with, assets in New Zealand) must be in [form 19A] (freezing order).</p> <p>(4) For the purposes of subclause (3),—</p> <p>(a) an application for a Mareva injunction (freezing order) must be made by interlocutory application under rule 7.12:</p> <p>(b) an applicant for a freezing order without notice to a respondent must fully and frankly disclose to the court all material facts, including—</p> <p>(i) any possible defences known to the applicant; and</p> <p>(ii) information casting doubt on the applicant’s ability to discharge the obligation created by the undertaking as to damages.</p> <p>(c) 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</p>	<p><i>to the Court of Appeal.</i></p> <p><b>7.53 Application for injunction</b></p> <p>(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.</p> <p>(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—</p> <p>(a) must provide for the commencement of the proceeding; and</p> <p>(b) may be granted on any further terms that the Judge thinks just.</p>	
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<p>the respondent for any damage sustained in consequence of the freezing order:</p> <ul style="list-style-type: none"><li>(d) the freezing order must not prohibit the respondent from dealing with the assets covered by the order for the purpose of—<ul style="list-style-type: none"><li>(i) paying ordinary living expenses; or</li><li>(ii) paying legal expenses related to the freezing order; or</li><li>(iii) disposing of assets, or making payments, in the ordinary course of the respondent’s business, including business expenses incurred in good faith.</li></ul></li><li>(e) 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:</li><li>(f) 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:</li><li>(g) 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:</li><li>(h) an application by the respondent to discharge or vary the freezing order must be treated as an urgent application by the court:</li><li>(i) 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:</li><li>(j) the respondent must be informed that on that date the respondent will have an opportunity to be heard</li></ul>		
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<p>by the court:</p> <p>(k) on the date referred to in paragraph (g) the applicant has the onus of satisfying the court that the freezing order should be continued or renewed:</p> <p>(l) the court may make any order as to costs it considers just in relation to an order referred to subclause (k):</p> <p>(m) without limiting the generality of paragraph (l), an order as to costs included an order as to the costs of any person affected by a freezing order:</p> <p>(5) This subpart does not affect the jurisdiction of the court under any enactment to make an order freezing assets:</p>		
<p><b>8.4 List of documents relied on and will say statements</b></p> <p>(1) After filing a pleading, a party must, unless subclause (3) applies, serve on the other parties, at the same time as the service of that pleading, a list in form 4 consisting of—</p> <p>(a) all the documents referred to in that pleading; and</p> <p>(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.</p> <p>(2) A party who serves a list under subclause (1) must, on request by any other party who is served with the list, give to that other party a copy of any document on the list requested by that party within 5 working days of the request.</p> <p>(3) A party need not comply with subclause (1) or (2) if—</p> <p>(a) the circumstances make it impossible or impracticable to comply with subclause (1) or (2); and</p> <p>(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.</p>	<p><b>8.4 Initial disclosure</b></p> <p>(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—</p> <p>(a) all the documents referred to in that pleading; and</p> <p>(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.</p> <p>(2) A party need not comply with subclause (1) if—</p> <p>(a) the circumstances make it impossible or impracticable to comply with subclause (1); and</p> <p>(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.</p> <p>(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.</p> <p>(4) If a party fails to comply with subclause (1) or (3), a Judge</p>	

- (4) Despite subclause (1) or (2), a party does not need to provide any document that—
  - (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.
- (5) Documents may be provided either electronically or in hard copy form.
- (6) If an amended pleading is filed, this rule applies to that amended pleading if it—
  - (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.
- (7) Within 10 working days before a judicial settlement conference is to be held, a party must provide to the other party will say statements for each of that party’s witnesses.

- 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.

**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) that involve 1 or more allegations of fraud or dishonesty; or
- (c) in which the parties agree that there should be tailored discovery.

**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) that are on the commercial list; or
- (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

Obviously the District Court has different jurisdiction (\$200,000) and so the high level of value in the HCR is inappropriate for determining whether tailored discovery should be presumed.

	(f) in which the parties agree that there should be tailored discovery.	
<b>Not included</b>	<b>9.25 Letters of request where convention exists</b> <b>9.26 Issue of letters of request</b> <b>9.27 Agents of parties</b> <b>9.28 Consequences of non-compliance with undertaking as to expenses</b> <b>9.29 Application by Solicitor-General on letters of request from abroad</b> <b>(details not included)</b>	
<b>Not included</b>	<b>Subpart 3 – Medical Examinations (rr 9.30 – 9.33)</b>	
<b>Not included</b>	<b>9.60 Leave to serve New Zealand subpoena on a witness in Australia</b>	The DCR provide for the High Court to issue a subpoena for service in AAustralia (r 9.50 DCR).
<b>Not included</b>	<b>9.62 – 9.64 Set aside a New Zealand subpoena served in Australia</b>	
<b>10.1 Criteria for mode of trial</b> (1) The modes of trial available in a proceeding are— (a) the short trial: (b) the simplified trial: (c) the full trial. (2) In deciding the appropriate mode of trial, the court may have regard to the following: (a) the number of parties: (b) the complexity of the issues: (c) the amount at stake: (d) proportionality: short trial. (e) the nature of the action: (f) party requests: (g) any other matter the court considers relevant. (3) The short trial is intended for claims where the court considers that 1 or more of the following apply: (a) the case can come to a hearing quickly: (b) the issues are relatively uncomplicated or a modest amount is at stake: (c) the trial time is not likely to exceed a day.	<b>Not included</b>	HCR does not have a short trial procedure Instead there are procedures for those subject to case management (ordinary/complex defended proceedings) and then proceedings for other types of proceedings such as appeals or those entered onto the commercial list.

<p>(4) The simplified trial is intended for claims where the court considers that 1 or more of the following apply:</p> <ul style="list-style-type: none"> <li>(a) the duration of the hearing is not likely to exceed 3 days:</li> <li>(b) there is some complexity raised by the issues:</li> <li>(c) the amount of money involved is more than modest:</li> <li>(d) 1 or more expert witnesses will be giving evidence.</li> </ul> <p>(5) If the court considers that neither subclause (3) nor subclause (4) apply, the court must allocate a full trial.</p>		
<p><b>10.2 Mode of trial may be changed before trial</b>  Before any trial is due to commence, the court may, either on the application of any party or of its own motion, change the mode of trial determined for the proceeding and give any directions it considers necessary for the purpose.</p>		
<p><b>Rules 10.3 – 10.7 Trial modes</b></p>	<p><b>Not included</b></p>	
	<p><b>10.5 Existence or accuracy of record</b>  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.</p>	
	<p><b>10.11 When proceeding tried with jury</b></p> <ul style="list-style-type: none"> <li>(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.</li> <li>(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.</li> <li>(3) The jury may, instead of finding a verdict for either party, state the facts as they find them to have been proved.</li> <li>(4) The statement must be put into writing and signed by the foreman of the jury before the jury is discharged.</li> <li>(5) The jury may give a verdict for either party, subject to a</li> </ul>	

	<p>special case to be stated by the parties.</p> <p>(6) This rule applies subject to the provisions of any Act.</p>	
	<b>10.16 Removal into Court of Appeal</b>	
<p><b>11.8 Death or incapacity of Judge before judgment</b></p> <p>(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.</p> <p>(2) A proceeding or issue must be retried if—</p> <p>(a) subclause (1) does not apply; and</p> <p>(b) a Judge who is sitting on the trial of the proceeding or issue becomes incapable of giving judgment or dies.</p>	<p><b>11.8 Death or incapacity of Judge before judgment</b></p> <p>(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.</p> <p>(2) A decision is the judgment of the court, if—</p> <p>(a) subclause (1) does not apply; and</p> <p>(b) a court of 3 or more Judges sitting without a jury completes the trial of a proceeding or issue; and</p> <p>(c) 1 of the Judges becomes incapable of giving judgment or dies; and</p> <p>(d) a majority of the Judges who constituted the court when the trial began concur in the decision on the proceeding or issue.</p> <p>(3) A proceeding or issue must be retried if—</p> <p>(a) neither subclause (1) nor (2) applies; and</p> <p>(b) a Judge who is sitting without a jury on the trial of the proceeding or issue becomes incapable of giving judgment or dies.</p> <p>(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.</p> <p>(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:</p> <p>(a) give any further directions required by the jury;</p> <p>(b) take the verdict and give judgment on it;</p> <p>(c) discharge the jury without verdict;</p> <p>(d) do whatever is necessary, up to and including the sealing of judgment.</p>	<p>DCR does not define when a decision is the judgment of the court, as HCR 11.8(2) does. DCR does not discuss what should happen if the judge dies/becomes incapacitated during a jury trial.</p>
<p><b>12.1 Application of summary judgment procedure</b></p> <p>Rules 12.2 to 12.16 apply to all proceedings except proceedings under Part 17 or 18 (appeals) and except where otherwise provided in any enactment.</p>	<p><b>12.1 Application of summary judgment procedure</b></p> <p>Rules 12.2 to 12.16 apply to all proceedings except—</p> <p>(a) a proceeding under Part 19, 20, or 21; or</p> <p>(b) an application for a writ of habeas corpus; or</p>	<p>The District Court Rules do not refer to an application for a writ of habeas corpus, or an application for</p>



	(c) an application for administration in common form under Part 27.	administration, or originating applications.
<p><b>12.7 Time for service</b></p> <p>(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.</p> <p>(2) Rule 12.5 overrides this rule.</p>	<p><b>12.7 Time for service</b></p> <p>(1) The documents specified in rule 12.4(4) must be served on the other party to the proceeding not less than 15 working days before the date for hearing the application.</p> <p>(2) Rule 12.5 overrides this rule.</p>	<p>The District Court Rules refer to 25 days, the HCR 15 days. The HC Amendment Rules (No 3) are going to change the HCR to 25 working days.</p>
<p><b>14.3 Categorisation of proceedings</b></p> <p>...</p> <p>(3) Each step specified in item 19 of Schedule 2 of these rules must be treated as having been taken in a category 2 proceeding.</p> <p>(4) Unless the court otherwise directs, subclause (3) applies to a proceeding even if the court has, under subclause (2), determined the category of the proceeding.</p>		<p>Those steps are enforcement and other steps (eg application for charging orders)</p>
	<p><b>14.13 Proceedings within jurisdiction of District Court</b></p> <p>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.</p>	
<p><b>14.17 Solicitor acting in person</b></p> <p>A solicitor who is a party to a proceeding and acts in person is entitled to solicitors' costs.</p>		
<p><b>14.18 Proceeding transferred from High Court</b></p> <p>(1) This rule applies if a proceeding has been transferred from the High Court to [a District Court] and the amount remaining in dispute at the date on which the Registrar receives the documents referred to in section 47 of the Act is less than the amount originally claimed.</p> <p>(2) The costs incurred after that date must be allowed on the scale and subject to the rules applicable to the costs of a proceeding started in [a District Court] to recover the amount remaining in dispute.</p>		

<b>Not included</b>	<b>Part 14, Subpart 2 – taxation of costs between parties</b>	
<b>15.1 Dismissing or staying all or part of proceeding</b> ...	<b>15.1 Dismissing or staying all or part of proceeding</b> ... (4) This rule does not affect the court’s inherent jurisdiction	The HCR preserves the Court’s inherent jurisdiction in (4)
<b>15.9 Formal proof for other claims</b> ... (2) The proceeding must be listed for formal proof and <b>no notice is required to be given to the defendant.</b>	<b>15.9 Formal proof for other claims</b> ... (2) The proceeding must be listed for formal proof.	Subclause (2) of the DCR does not require notice
<b>15.17 Restrictions on right to discontinue proceeding</b> (1) A plaintiff may discontinue a proceeding only with the leave of the court if a party to the proceeding has given an undertaking to the court. ...	<b>15.20 Restrictions on right to discontinue proceeding</b> (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 8 of the Judicature Amendment Act 1972; or (b) a party to the proceeding has given an undertaking to the court. ...	(1) in the HCR contains additional grounds requiring leave – namely injunctions and interim orders/
<b>No equivalent</b>	<b>16.21 Interest on legacies</b> 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.	Subsection (3) varies from the HCR as the HCR states that the rule overrides rule 16.6-16.21, whereas the DCR only overrides 16.6-16.20.
<b>16.34 Report under section 62 or 62A of Act</b> (1) A report under section 62 or 62A of the Act— (a) must be in writing; and (b) must be filed in the registry of the court; and (c) is open to inspection by the parties. (2) The Registrar must, on the filing of the report, give notice of the report to all parties. (3) When the report has been filed,—	<b>No equivalent</b>	Maybe change the heading to insert “the” before “Act”?

<p>(a) if the further consideration of the proceeding has been adjourned to a particular day, any party may—</p> <ul style="list-style-type: none"> <li>(i) apply on that day to a Judge to adopt the report; or</li> <li>(ii) give not less than 3 working days' notice of the party's intention to make an application on that day to vary the report or to remit the report or any part of the report for further inquiry or report:</li> </ul> <p>(b) if the further consideration has not been adjourned to a particular day, any party may, on not less than 3 working days' notice, apply to a Judge to—</p> <ul style="list-style-type: none"> <li>(i) adopt or vary the report; or</li> <li>(ii) remit the report or any part of the report for further inquiry and report.</li> </ul>		
<p><b>16.35 Abandonment of excess if more than \$200,000 found due on taking of accounts</b></p> <p>(1) This rule applies if, on taking an account, it appears that a plaintiff is entitled to a larger amount than \$200,000, and the plaintiff has not by the plaintiff's notice of claim or statement of claim abandoned the excess over \$200,000.</p> <p>(2) The plaintiff may, if the defendant does not agree to extend the jurisdiction of the court under section 37 of the Act, by leave of the court abandon the excess over \$200,000, and judgment may be entered accordingly.</p>	<p><b>No equivalent</b></p>	
<p><b>Part 17 – Appeals to High Court</b> No equivalent in HCR</p>		
<p><b>Part 18 – Appeals to District Courts</b></p>		
<p><b>Part 19 (enforcement)</b> essentially a continuation from the previous Rules, specifically those in r 15. They are quite different to the HCR: see Part 17 HCR.</p>		
<p><b>20.1 Types of proceedings</b></p>	<p><b>18.1 Types of proceedings</b></p>	<p>HCR 18.1 includes more</p>

This Part applies to—

- (a) proceedings in which the relief claimed is wholly within the equitable jurisdiction of the court:
- (b) 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:
- (c) any other proceeding to which the court directs that this Part applies.

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:
  - (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*

matters

- (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 Trustee Act 1956:
  - (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:

*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
  - (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):

	<p><i>Mortgages and charges over land</i></p> <p>(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—</p> <p>(i) the person’s rights or obligations under the mortgage or charge; or</p> <p>(ii) the exercise or purported or threatened exercise of any right or power alleged to arise out of the mortgage or charge:</p> <p><i>Proceedings directed by court</i></p> <p>(e) any other proceeding to which the court directs that this Part is to apply</p>	
<p><b>20.5 Naming of defendants in cases involving deceased estates or trusts</b></p> <p>(1) This rule applies to a proceeding that—</p> <p>(a) involves a deceased estate or a trust; and</p> <p>(b) is not commenced by the personal representative of the deceased person or the trustee of the trust.</p> <p>(2) The only defendant that may be named in the statement of claim is the personal representative or the trustee.</p>	<p><b>18.5 Naming of defendants in cases involving deceased estates or trusts</b></p> <p>(1) This rule applies to a proceeding that—</p> <p>(a) involves a deceased estate or a trust; and</p> <p>(b) is not commenced by the personal representative of the deceased person or the trustee of the trust.</p> <p>(2) The only defendant that may be named in the statement of claim is the personal representative or the trustee.</p> <p>(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</p>	
<p><b>No equivalent</b></p>	<p><b>18.10 Time for serving claimant’s affidavit in proceedings under Family Protection Act 1955</b></p> <p>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.</p>	
	<p><b>18.13 Joining in proceedings under Family Protection Act</b></p>	

	<b>1955 and Law Reform (Testamentary Promises) Act 1949</b>	
<b>Rule 20.13</b> <b>Rule 20.14</b>	<b>No equivalent</b>	
<b>Rule 20.21 – 20.98</b>	<b>No equivalent</b>	
<b>Rule 20.99 (see also old r 11.1)</b>  <b>Interpretation</b> In this subpart, unless the context otherwise requires,— <b>Act</b> means the Arbitration Act 1996 <b>arbitral tribunal</b> has the same meaning as in section 2(1) of the Act <b>Schedule 1</b> means Schedule 1 of the Act.	<b>Rule 26.1</b> <b>Interpretation</b> In this Part,— <i>Act</i> means the <u>Arbitration Act 1996</u> <i>arbitral tribunal</i> has the same meaning as in <u>section 2(1)</u> of the Act <i>Judge</i> includes Associate Judge <i>Schedule 1</i> means <u>Schedule 1</u> of the Act <i>Schedule 2</i> means <u>Schedule 2</u> of the Act.	HCR contain a reference to Schedule 2 of the Act, whereas the DCR only refer to Schedule 1.
<b>20.106 Entry as judgment if defendant takes no steps</b> (1) The Registrar must enter the award as a judgment as soon as practicable if— (a) the defendant has failed to file and serve an application in accordance with rule 20.107 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) 15 working days after the plaintiff’s application is served on the defendant; or (b) a period fixed by the court of less than 15 working days after the order fixing that period is served on the defendant. (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.	<b>26.26 Entry as judgment if defendant takes no steps</b> (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. (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 <u>rule 26.24(1)</u> . (6) Subclause (5) applies even if the originating application to which the order relates has already been served on the	The time permitted in r 20.106(2)(a) DCR is 15 days compared to 10 days under the HCR.

<p>(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 20.104(1).</p> <p>(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.</p>	<p>defendant, and in that case the previous service of the application ceases to have effect when the order is made.</p>	
<p><b>20.107 Opposition to entry as judgment</b></p> <p>(1) This rule applies if a defendant wishes to oppose the originating application.</p> <p>(2) The plaintiff's application is stayed pending the determination of an application under this rule.</p> <p>(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.</p> <p>(4) The application referred to in subclause (3) must be—</p> <p>(a) filed and served within the time specified in rule 20.106(2); and</p> <p>(b) treated as if it were an originating application under subpart 2; and</p> <p>(c) disposed of in accordance with subpart 2; and</p> <p>(d) determined at the same time as the plaintiff's application to enforce the award by entry as a judgment.</p> <p>(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 High Court or Court of Appeal under clause 5 of Schedule 2 of the Act.</p>	<p><b>26.27 Opposition to entry as judgment</b></p> <p>(1) This rule applies if a defendant wishes to oppose the originating application.</p> <p>(2) The plaintiff's application is stayed pending the determination of an application under this rule.</p> <p>(3) The defendant must file and serve an application seeking an order for refusal of recognition and enforcement in terms of article 36 of <u>Schedule 1</u>.</p> <p>(4) The application referred to in subclause (3) must be—</p> <p>(a) filed and served within the applicable period specified in <u>rule 26.26(2)</u>; and</p> <p>(b) treated as if it were an originating application under <u>Part 19</u>; and</p> <p>(c) disposed of in accordance with <u>Part 19</u>; and</p> <p>(d) determined at the same time as the plaintiff's application to enforce the award by entry as a judgment.</p>	<p>The DCR contain sub-rule (5) which is designed to remove doubt and clarify that an application under r 20.107 is concerned with the recognition or enforcement of an award and is not do with any question of law arising out of the award that may be determined by the High Court or Court of Appeal.</p>
<p><b>21.1 – 21.7 Penal and disciplinary provisions</b></p>	<p><b>No equivalent</b></p>	