

High Court Amendment Rules 2012

Governor-General

Order in Council

At Wellington this day of 2012

Present:
in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Rules

- 1 Title**
These rules are the High Court Amendment Rules 2012.
- 2 Commencement**
These rules come into force on 1 May 2012.
- 3 Principal rules amended**
These rules amend the High Court Rules set out in Schedule 2 of the Judicature Act 1908.

Part 1

Case management

4 New subpart 1 of Part 7 inserted

Subpart 1 of Part 7 is revoked and the following subpart inserted:

“Subpart 1—Case management

“7.1 Proceedings the subject of case management

- “(1) Case management in accordance with this subpart must be applied to all proceedings in order to promote their just, speedy and inexpensive determination.
- “(2) The purpose of a case management conference is to enable the Judge to—
- “(a) assist the parties to identify, define and refine the issues requiring judicial resolution; and
 - “(b) assist the parties to determine what steps need to be taken in order to prepare the proceeding for hearing or trial; and
 - “(c) assist the parties to decide how best to facilitate the conduct of the hearing or trial; and
 - “(d) assist the parties to ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.
- “(3) Subclause (1) is subject to subclauses (8) and (9).
- “(4) 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
 - “(d) an application for leave to appeal, or an appeal, under Part 20 or Part 26; or
 - “(e) an undefended proceeding; or
 - “(f) an application commenced by originating application under Part 19.
- “(5) In this rule—
- “an **ordinary defended proceeding** means one which, in a Judge’s opinion, does not need more than 1 case management conference before a fixture is allocated

“a **complex defended proceeding** means one which, in a Judge’s opinion, needs more than 1 case management conference before a fixture is allocated.

- “(6) The proper classification of a proceeding as either an ordinary defended proceeding or a complex defended proceeding in terms of subclause (4) must be—
- “(a) resolved by a Judge at the first case management conference; and
 - “(b) promptly advised to any party not represented at that conference.
- “(7) A Judge may at any time review the classification assigned under subclause (3) and decide whether to maintain or alter it.
- “(8) A proceeding falling within paragraph (c) or (d) or (e) or (f) of subclause (4) is not to be the subject of case management unless a Judge so directs.
- “(9) In the case of a proceeding falling within those paragraphs that is not to be the subject of case management, or in the case of an undefended proceeding or a proceeding commenced by originating application under Part 19, the Judge may make any order contemplated by these rules on the application of a party.
- “(10) The Judge may also make an order under rule 15.7 (claims for liquidated demands) or 15.8 (formal proof of other claims).

“**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 convened 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 or pre-trial 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.

“**7.3 First case management conference**

- “(1) Unless otherwise ordered by a Judge, the first case management conference for a proceeding other than an appeal within rule 7.12 must be held on a date fixed by the Registrar that is

the first available date not less than 45 working days after the filing of the proceeding.

- “(2) The agenda for the conference is—
 - “(a) the Schedule 5 matters; and
 - “(b) the making of a discovery or other 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 hearing or trial date for a proceeding classified as an ordinary defended proceeding and the making of appropriate trial directions; and
 - “(iii) a date and arrangements for any further case management, issues or pre-trial conference.
 - “(e) other appropriate matters that have already been discussed by the parties.
- “(3) The parties must either file a joint memorandum addressing the Schedule 5 matters, or file separate memoranda addressing those matters in accordance with subclause (4).
- “(4) If separate memoranda are filed, the plaintiff or applicant must file the first memorandum stating that party’s position or views on the matters in Schedule 5, followed in turn by each of the other parties (in the order in which they appear in the title of the proceeding), 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.
- “(5) Memoranda filed under subclause (3) or (4) may also address matters falling within subclause (2)(e).
- “(6) The joint memorandum referred to in subclause (3) may be combined with any joint memorandum filed in relation to discovery under rule 8.11.
- “(7) A separate memorandum referred to in subclause (4) may be combined with any separate memorandum filed in relation to discovery under rule 8.11.

“(8) The parties must agree on a timetable for filing memoranda which ensures that the last memorandum is filed not later than 3 working days before the conference.

“7.4 Second case management and issues conferences

“(1) The Judge at the first case management conference of an ordinary defended proceeding or a complex defended proceeding may require a second case management conference or order one on the application of a party.

“(2) In the case of a complex defended proceeding the Judge may, on the Judge’s own initiative or if the parties agree, order an issues conference to advance the identification and refinement of the issues, and set the agenda for that issues conference.

“(3) 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).

“(4) The agenda for a conference under this rule—

“(a) must 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

“(b) may include or adapt the Schedule 5 matters; and

“(c) may prescribe steps to be taken in preparation for the conference.

“(5) If any conflict arises between the pleadings and the issues as identified and refined at an issues conference, the pleadings prevail.

“7.5 Allocation of hearing or trial date

“(1) If it appears to the Judge at the first case management 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 date at the first case management 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 subclause (2), the Judge must fix a close of pleadings date.
- “(5) 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.
- “(6) Subclause (5) 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 an amendment of a defect or error under rule 1.9.

“7.6 Pre-trial conferences

- “(1) The Judge may order the holding of a pre-trial conference for a proceeding which 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 and contents of the agreed bundle of documents:
 - “(c) the amount of detail in any chronology of facts:
 - “(d) the possible provision of lists of statutory provisions and cases likely to be referred to.

“7.7 Cancellation of conference

A Judge may cancel a case management conference if, after reading the memoranda prepared for the conference, the Judge is satisfied that the parties have achieved the goals of this sub-part 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
- “(c) devised an efficient way of conducting the hearing or trial that is proportionate to the subject matter.

“7.8 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.

“7.9 Timetable and monitoring obligations

The Registrar must—

- “(a) arrange the date of the first case management conference:
- “(b) remind parties or their counsel of the timetable obligations associated with any case management 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.

“7.10 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 7.5(1); and
- “(b) a list of proceedings which have had their first case management conference and are awaiting the allocation of a date for hearing or trial.

“7.11 Registrar’s functions in relation to hearing dates

- “(1) After a Judge has allocated a hearing date for a proceeding under rule 7.5(1) or (2), the Registrar must—
- “(a) promptly record the proceeding in the appropriate list; and
 - “(b) then promptly—
 - “(i) record the hearing date and the close of pleading date in the appropriate list; and
 - “(ii) 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.

“7.12 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 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.

“7.13 Directions for conduct of appeal

- “(1) At the conference, the Judge must 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,—
 - “(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.
- “(2) In the case of an appeal or reference by way of case stated under Part 21, this rule and rule 7.12 apply as if the appeal or reference were an appeal under Part 20, except that the references in subclauses (4) and (5) to Schedule 6 must be read as references to Schedule 7.”

5 Rule 7.7 amended

Rule 7.7 is amended by revoking subclause (10) and substituting:

- “(10) This rule is subject to rule 7.5(5) (which prohibits steps after the close of pleadings date without leave).”

6 Rule 7.48 amended

Rule 7.48 is amended by revoking subclause (1) and substituting:

- “(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.”

7 Rule 8.11 amended

Rule 8.11 is amended by deleting “rule 7.4” and inserting “rule 7.3”, and by deleting “rule 7.4(2)” and inserting “rule 7.3(2)”.

8 New form G 2 inserted

Form G 2 in Schedule 1 of the Act is revoked and a new Form G 2 set out in Schedule 2 of these rules is inserted.

9 New Schedule 5 inserted

Schedule 5 is revoked and a new Schedule 5 set out in Schedule 1 of these rules is inserted.

Part 2**Written briefs and common bundles****10 New subpart 1 of Part 9 inserted**

Subpart 1 of Part 9 is revoked and the following subpart inserted:

“Subpart 1—Briefs, oral evidence directions,
common bundle and chronology

“9.1 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 proceeding.
- “(2) The parties must also ensure that the briefs 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.

“9.2 Exchange of documents and index

- “(1) 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.
- “(2) Documents additional to those already disclosed may be disclosed at any time but no later than a date fixed by the court at a case management or issues conference.
- “(3) 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.

“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 or 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 rule and in rule 9.1 and rule 9.5 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.
- “(3) If a party other than the plaintiff has been ordered to prepare the common bundle, the reference in subclause (2) to the plaintiff is to be read as a reference to that different party.
- “(4) Subject to rule 7.5(5), 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 consecutive sequence:
- “(c) set out before the first document a common bundle index that shows—
- “(i) the nature and date of each document:
- “(ii) the party from whose custody each document has been produced:
- “(iii) 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).
- “(6) Unless the court directs otherwise, the common bundle must be served no later than 15 working days after the date when the last brief of any party is served under rule 9.7.

“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 if any of paragraphs (b) to (f) of subclause (1) to a document, the 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 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.

“9.6 Consequence of not incorporating document in common bundle

- “(1) A document that is 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 document that is not so incorporated but has been discovered unless its production would cause an injustice.
- “(3) The court may refuse leave to produce a document that is not so incorporated and has not been discovered if its non-production would cause an injustice.

“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 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) must be signed by the witness by whom the brief is made:
 - “(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 which are to be produced in any event:
 - “(g) must be confined to the matters in issue.
- “(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) When a brief is served the party serving it must as soon as practicable advise the Registrar what has been served, upon whom, and the date of service.

“9.8 Supplementary briefs and rebuttal evidence

- “(1) A party wishing to offer new or further evidence after a brief has been served on that party (not being evidence in response to any matter contained in that brief) may serve on every other party a supplementary brief.

- “(2) A supplementary brief served under subclause (1) must be served as soon as possible after the party wishing to offer the new or further evidence becomes aware of its existence or its relevance.
- “(3) The evidence contained in a supplementary brief served under this rule may be offered as evidence only with the leave of the court.
- “(4) A party who is permitted to give evidence in rebuttal of evidence contained in the brief of a witness called by any other party, or evidence in response to any matter contained in such a brief, may either file and serve a brief complying with rule 9.7(4) or give the evidence orally without doing so.

“9.9 Exchange of chronology of facts intended to be relied upon at the 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 hearing.
- “(2) In preparing the chronology, the plaintiff must—
 - “(a) set out the facts in chronological order; and
 - “(b) cross-reference the facts to either—
 - “(i) 1 or more documents; or
 - “(ii) 1 or more statements in written briefs:
 - “(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

“9.10 Evidence in chief at trial

- “(1) A brief signed by a witness—
- “(a) must, unless and to the extent the trial Judge otherwise directs, 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 written brief which the Judge has directed be given orally becomes part of the evidence-in-chief of the witness only if and when it is given orally, and the witness may be cross-examined on it.
- “(3) The endorsement made under subclause (1)(c) must be signed and dated by or on behalf of the Registrar.

“9.11 Oral evidence directions

- “(1) At a time fixed by the court, but after the preparation of the chronologies of fact, a party must bring facts which are disputed to the attention of the court.
- “(2) Facts are disputed when for example, witnesses differ in their recall, or because no records were made at the time of an event.
- “(3) The court may, before the giving of evidence, and either before or at the trial or hearing, direct that evidence be given orally if it relates to facts which are disputed or there is an issue as to the credibility of the witness.

“9.12 Compliance with Evidence Act 2006

- “(1) Any challenge to the admissibility of a brief, in whole or in part, must be notified to the party or parties concerned within 20 working days after receipt of the brief 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.
- “(3) If the issue has been drawn to the attention of the court the powers of the court to exclude inadmissible passages, applying

the Evidence Act 2006, include excluding the brief in whole or in part, and requiring the witness to give his or her evidence orally at trial, and the court may, if it so requires, postpone resolution of the admissibility issue for ruling in the course of the trial.

“9.13 Briefs not given in evidence

- “(1) If, by the time that a party opens the party’s case, the brief of another party’s witness has not been given in evidence, the party may, in opening, refer to that brief only with the leave of the trial Judge.
- “(2) When any part of the evidence contained in a brief is not given in evidence at the trial by the person who signed the brief, 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.
- “(3) When a brief served, or any part of the brief, has not been given in evidence, any party may, with the leave of the trial Judge, put that brief or that part of it to any witness in cross-examination.

“9.14 Privilege and admissibility not affected by briefs

Nothing in these rules 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, served under these rules, that is inconsistent with a statement previously made by that party; or
- “(e) allows a brief, served under these rules, to be made available, before it is given in evidence, for use for another purpose or proceeding.

“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.

“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.”

11 Rules 8.5 and 8.9 amended

- (1) Rule 8.5(1) is amended by omitting “on the standard track”.
- (2) Rule 8.5(3) is omitted.
- (3) Rule 8.9 is amended by omitting “or on the swift track (if an order is made under rule 8.5(3))” in paragraph (b).

Part 3 Judgments by default

12 New subpart 2 of Part 15 inserted

Subpart 2 of Part 15 is revoked and the following subpart inserted:

“Subpart 2—Judgment by default

“15.3 Application where appearance

- “(1) If the defendant has filed an appearance under rule 5.49, rule 15.7 and 15.8 do not apply.
- “(2) If the defendant has filed an appearance under rule 5.50 to 5.51, rules 15.7 and 15.8 apply subject to that appearance.

“15.4 Affidavits to be filed

Before judgment by default can be sealed, there must be filed—

- “(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.

“15.5 When several causes of action

The plaintiff may proceed separately under rule 15.7 or rule 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.

“15.6 When several defendants

The plaintiff may proceed against any 1 or more defendants under rule 15.7 or rule 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.

“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 (or less or nothing) 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 Registrar may authorise the sealing of 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 15.8 **liquidated demand** means a sum which—
- “(a) has been quantified in, or can be precisely calculated on the basis of, a contract 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).

“15.8 Formal proof for other claims

- “(1) This rule applies if, or to the extent that, a plaintiff seeks judgment by default for other than a liquidated demand, and the defendant does not file a statement of defence within the number of working days required by the notice of proceeding.
- “(2) The proceeding must be listed for formal proof.
- “(3) After a proceeding is listed for formal proof, 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) The deponents of affidavits filed under this rule must, unless excused by the Judge, attend the formal proof hearing without notice other than this rule so as to be able to give evidence (if the Judge so directs) clarifying or adding to their affidavits.

“15.9 Judgment may be set aside or varied

Any judgment obtained by default under rule 15.7 or 15.8 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.

“15.10 Overseas service cases

- “(1) When a document has been served on a party outside New Zealand under rule 6.27 and that person 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—
- “(a) that the party applying for leave was entitled to effect service without leave under rule 6.27; and

- “(b) that 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) that the service was effected in sufficient time to enable that party to appear.”

13 New Schedule 6 inserted

Schedule 6 is revoked and a new Schedule 6 set out in Schedule 3 of these rules is inserted.

14 Schedule 8 revoked

Schedule 8 of the High Court Rules is revoked.

Schedule 1

r 5

New form G 2 inserted

Form G 2

rr 5.23(2), 5.57(4)

Notice of proceeding

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 unless, within 25 working days after the date on which you are served with this notice, you file in the registry of this court a statement of defence to the plaintiff’s claim (a copy of which is served with this notice), the plaintiff may proceed to a hearing and judgment on the plaintiff’s claim 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.

Date:

Form G 2—*continued*

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Include the following paragraph (and signature block) 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.

A date for the first case management conference for this proceeding has been fixed by the court. It is *[specify date]* at *[specify time]*.

If you have not been served with this notice and statement of claim by *[insert the date that is 5 working days after the release of the notice by the court to the plaintiff for service]* this first case management hearing will be vacated and you will be notified of a later date. You either have been or will be notified whether this proceeding has been classified as an ordinary defended proceeding or as a complex defended proceeding (requiring more than 1 case management conference).

If you file a statement of defence you must also prepare for and attend that conference. You or your solicitor must file a memorandum relating to procedural matters in compliance with rule 7.3 of the High Court Rules.

The purpose of a conference is stated in rule 7.2. This includes assisting the parties to identify, define and refine the issues in their dispute.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Note: Please carefully read the memorandum attached to this notice.

Schedule 2 r 6
New Schedule 5 inserted
Schedule 5 rr 7.3, 7.4
**Matters for consideration at first case
management conference for proceeding
other than appeal**

Preparation

- 1 The presiding Judge will expect the parties at the first case management conference to have carefully considered the pleadings and the principal documents disclosed with them; and to have cooperated in accordance with rule 8.2 and endeavoured to agree standard or tailored discovery; and to have prepared for the conference as required by rule 8.11.
- 2 The joint memorandum or separate memoranda required by rule 7.3 and rule 8.11 must—
 - (a) 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; and
 - (b) describe the issues in the proceeding.
- 3 The parties must also have considered whether or not additional parties need to be added, and what particular interlocutory applications should be made, and indeed may have already separately lodged applications.

Agenda

- 4 Do the parties consider they have made sufficient progress so that the proceeding can now be allocated a fixture on a date that is a relatively short time in the future, for example a few months from the date of the conference?
- 5 If the answer is “no”, the Judge may order a second case management conference, or an issues conference if the proceeding is a complex defended proceeding, and make any necessary timetabling orders.
- 6 If the proceeding is ready to go for hearing or trial, the parties will be expected to discuss with the presiding Judge the issues requiring judicial resolution, the estimated length of trial, a timetable for the written briefs, any proposals for expert evidence including prior exchange and how the expert witnesses

Schedule 5—*continued*

will be heard, and any special needs required for an efficient and fair hearing of the proceeding, and whether there should be a pre-trial conference.

- 7 If the proceeding is ready to go for hearing or trial, each party must provide a list of witnesses and topics their evidence will cover, together with an estimate of how long each witness is likely to take (allowing for cross-examination).
 - 8 Should the proceeding be placed on a short notice list as suitable to be brought on for hearing on not less than 3 working days' notice, subject to the availability of counsel and (when appropriate) the parties and witnesses?
 - 9 Is the proceeding suitable as a back-up fixture to be brought on at 5 working days' notice?
 - 10 Is alternative dispute resolution suitable as a way of facilitating any settlement prior to trial? If that is favoured, the Judge may make suggestions as to integrating into the future timetable time for negotiation or ADR.
 - 11 The parties will be encouraged to bring to the meeting any other matters that they think are appropriate to be discussed, provided that they have discussed these matters with the other parties at least 5 working days before the telephone conference. The presiding Judge will be reluctant to allow the first case management conference to be the first occasion on which parties raise pre-trial issues with other parties.
-

Schedule 3
New Schedule 6 inserted
Schedule 6

r 7.5

Standard directions for appeals

- 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 registry in which the appeal is to proceed as determined by rule 20.8(1) or by any direction given under rule 20.8(3).]
- 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.

Schedule 6—*continued*

- 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.
- 10 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).
- 11 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.
- 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 10; 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 9 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.

Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

Part 1 of these amending rules changes the procedure relating to case management conferences. The present classifications of swift track and standard track proceedings will be replaced by a 5-fold classification, principally differentiating between “complex” and “ordinary” defended proceedings. The first case management conference will now be earlier than before – not less than 45 working days after the filing of the proceeding. The rules prescribe the agenda for, and procedures at, second case management, issues and pre-trial conferences, and for case management conferences for appeals. Setting down procedures will be adjusted.

Part 2 of these amending rules requires parties to prepare and serve an index when disclosing documents which are to be relied on at a trial. The new rule about “common bundles” is aimed at reducing their size (and therefore their cost). The present practice of preparing written briefs of evidence will be modified by empowering the making of directions that evidence be given orally when facts are disputed or an issue arises as to the credibility of a witness.

Part 3 of these amending rules simplifies the rules relating to obtaining judgment by default. Judgment for a liquidated demand will be readily obtainable if the appropriate formal affidavit evidence is filed. “Liquidated demand” is defined for the first time to eliminate some present uncertainty. Other types of claim will be dealt with by formal proof with no change in the present practice.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*:

These rules are administered by the Ministry of Justice.
