

PCO 15576/2.2

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IN CONFIDENCE

High Court Amendment Rules (No 2) 2012

Governor-General

Order in Council

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 (No 2) 2012.

2 Commencement

These rules come into force on 1 September 2012.

3 Principal rules

These rules amend the High Court Rules set out in Schedule 2 of the Judicature Act 1908 (the **principal rules**).

4 Rule 1.3 amended (Interpretation)

In rule 1.3(1), definition of **case management conference**, replace “rule 7.3” with “subpart 1 of Part 7”.

5 Rule 1.9 amended (Amendment of defects and errors)

Replace rule 1.9(4) with:

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

6 Rule 2.6 amended (Additional jurisdiction for certain Registrars)

Replace rule 2.6(a)(ii) with:

“(ii) rule 8.15:”.

7 Rule 4.18 amended (Right to give notice)

In rule 4.18, replace “setting down” with “close of pleadings”.

8 New rule 5.73A inserted (Notice of service to Registrar)

After rule 5.73, insert:

“5.73A Notice of service to Registrar

- “(1) The plaintiff must notify the Registrar of the date of service of the statement of claim and notice of proceeding on each defendant or other person directed to be served.
- “(2) Notification under subclause (1) must be made within 7 working days after service and in writing.”

Part 1 Case management

9 Subpart 1 of Part 7 replaced

Replace subpart 1 of Part 7 with:

“Subpart 1—Case management

“7.1 Proceedings subject of case management

- “(1) Case management in accordance with this subpart will be applied to proceedings in order to promote their just, speedy, and inexpensive determination.
- “(2) Subclause (1) is subject to subclause (8).
- “(3) The purpose of a case management conference is to enable the Judge to assist the parties—
 - “(a) to identify, define, and refine the issues requiring judicial resolution; and
 - “(b) to determine what steps need to be taken in order to prepare the proceeding for hearing or trial; and
 - “(c) to decide how best to facilitate the conduct of the hearing or trial; and
 - “(d) to ensure that the costs of the proceeding are proportionate to the subject matter of the proceeding.
- “(4) In this rule,—
“complex defended proceeding means one that, in a Judge’s opinion, needs intensive case management and therefore needs more than 1 case management conference before a fixture is allocated

“**ordinary defended proceeding** means one that, in a Judge’s opinion, does not require intensive case management and therefore does not need more than 1 case management conference before a fixture is allocated.

- “(5) For the purposes of this subpart, a proceeding must be classified as—
- “(a) an ordinary defended proceeding; or
 - “(b) a complex defended proceeding; or
 - “(c) an application under Part 24 (insolvency) or Part 31 (companies liquidation); or
 - “(d) an application for leave to appeal, or an appeal, under Part 20 (appeals) or Part 26 (Arbitration Act 1996); or
 - “(e) an undefended proceeding; or
 - “(f) an application commenced by originating application under Part 19 (originating applications); or
 - “(g) a proceeding on the commercial list.
- “(6) The proper classification of a proceeding as either an ordinary defended proceeding or a complex defended proceeding in terms of subclause (5) must be—
- “(a) resolved by a Judge not later than the date of the first case management conference; and
 - “(b) promptly advised to the parties.
- “(7) A Judge may at any time review the classification assigned under subclause (5) and decide whether to maintain or alter it.
- “(8) A proceeding falling within subclause (5)(c) to (g) is not to be the subject of case management unless a Judge so directs.

“Compare: 1908 No 89 Schedule 2 r 7.1 prior to 1 September 2012

“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 conference, the Judge may give directions to secure the just, speedy, and inexpensive determination of the proceedings, including the fixing of timetables and directing how the hearing or trial is to be conducted.

“Compare: 1908 No 89 Schedule 2 r 7.2 prior to 1 September 2012

“7.3 First case management conferences

- “(1) Unless otherwise ordered by a Judge, if a statement of defence is filed in a proceeding 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 20 working days after the date when the first statement of defence is filed in the proceeding but in any event not less than 45 working days after the filing of the proceeding.
- “(2) Subclause (1) does not apply to an appeal within rule 7.14.
- “(3) 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; and
 - “(e) other appropriate matters that have already been discussed by the parties.
- “(4) The parties must either file a joint memorandum addressing the Schedule 5 matters, or file separate memoranda addressing those matters in accordance with subclause (5).
- “(5) 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 sequence in which they appear in the title of the proceeding unless the other parties agree to vary that sequence), 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.
- “(6) Memoranda filed under subclause (4) or (5) may also address matters falling within subclause (3)(e).

- “(7) The joint memorandum referred to in subclause (4) may be combined with any joint memorandum filed in relation to discovery under rule 8.11.
- “(8) A separate memorandum referred to in subclause (5) may be combined with any separate memorandum filed in relation to discovery under rule 8.11.
- “(9) The parties must agree on a timetable for filing memoranda that ensures that the last memorandum is filed not later than 3 working days before the conference.

“Compare: 1908 No 89 Schedule 2 r 7.3 prior to 1 September 2012

“7.4 Further case management conferences

- “(1) The Judge at the first case management conference of any defended proceeding may require a further case management conference or order one on the application of a party.
- “(2) The agenda for a conference under this rule—
 - “(a) will be set out in the order directing the conference, but a party may add a further item or items (if practicable, giving advance notice to the other parties); and
 - “(b) will include or adapt the Schedule 5 matters; and
 - “(c) may prescribe steps to be taken in preparation for the conference.

“Compare: 1908 No 89 Schedule 2 r 7.3 prior to 1 September 2012

“7.5 Issues conferences

- “(1) The Judge may at any time, on the Judge’s own initiative or if the parties agree, order an issues conference for any defended proceeding to advance the identification and refinement of the issues, and set the date and agenda for that issues conference.
- “(2) The Judge may issue a direction before an issues conference that requires the attendance at the conference of all or any of the following:
 - “(a) instructing solicitors;
 - “(b) all counsel engaged;
 - “(c) the parties (or, in the case of corporate parties, their senior officers or authorised representatives).

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

“Compare: 1908 No 89 Schedule 2 r 7.3 prior to 1 September 2012

“7.6 Allocation of key dates

- “(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 (2), the Judge must fix a close of pleadings date.
- “(5) It is the duty of all parties to a proceeding for which a date for hearing or trial has been allocated to notify the Registrar, without delay, if the proceeding is settled.

“Compare: 1908 No 89 Schedule 2 rr 7.13, 7.17 prior to 1 September 2012

“7.7 Steps after close of pleadings date restricted

- “(1) No statement of defence or amended pleading or affidavit may be filed, and no interlocutory application may be made or step taken, after the close of pleadings date without the leave of a Judge.
- “(2) Subclause (1) does not apply to—
- “(a) an application for leave under that subclause; or
 - “(b) a pleading or an affidavit that merely brings up to date the information before the court; or

- “(c) an application for amendment of a defect or error under rule 1.9.

“Compare: 1908 No 89 Schedule 2 r 7.18 prior to 1 September 2012

“7.8 Pre-trial conferences

- “(1) The Judge or Registrar may order a pre-trial conference for a proceeding that is being or has been allocated a hearing or trial date.
- “(2) Any matter may be considered at a pre-trial conference, including—
- “(a) whether background facts can be agreed to avoid hearing uncontested evidence;
 - “(b) the size, contents, and format of the agreed bundle of documents;
 - “(c) the amount of detail in any chronology of facts;
 - “(d) whether it will be helpful to direct the provision of lists of enactments and cases likely to be referred to;
 - “(e) whether any oral evidence direction should be made under rule 9.10.
- “(3) The Judge at a pre-trial conference may give directions to secure the just, speedy, and inexpensive determination of the proceeding, including directions as to how the hearing or trial is to be conducted.

“7.9 Cancellation of conference

A Judge may cancel a case management or issues conference if, after reading the memoranda prepared for the conference, the Judge is satisfied that the parties have achieved the goals of this subpart and, in particular, that they have—

- “(a) identified, defined, and refined the issues requiring judicial resolution; and
- “(b) completed all steps needed to prepare the proceeding for hearing or trial; and
- “(c) devised an efficient way of conducting the hearing or trial that is proportionate to the subject matter.

“Compare: 1908 No 89 Schedule 2 r 7.6 prior to 1 September 2012

“7.10 Limitation of right of appeal

- “(1) The parties may agree to exclude or limit any right of appeal from any judgment or order made in the proceeding.
- “(2) Any agreement under subclause (1) may be recorded on the court file in any form the Judge directs.

“Compare: 1908 No 89 Schedule 2 r 7.8 prior to 1 September 2012

“7.11 Timetable and monitoring obligations

The Registrar must—

- “(a) arrange the date of the first case management conference under rule 7.3(1);
- “(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.

“7.12 Lists of proceedings

The Registrar must cause the following lists to be kept:

- “(a) a list of proceedings that have been allocated a hearing or trial date under rule 7.6(1) or (2); and
- “(b) a list of proceedings that have had their first case management conference but have not been allocated a date for hearing or trial.

“Compare: 1908 No 89 Schedule 2 r 7.15 prior to 1 September 2012

“7.13 Registrar’s functions in relation to hearing dates

- “(1) After a Judge has allocated a hearing or trial date for a proceeding under rule 7.6(1) or (2), the Registrar must promptly—
 - “(a) record the proceeding in the list kept under rule 7.12(a); and
 - “(b) record the hearing date and the close of pleadings date in that list; and
 - “(c) give written confirmation of both dates to all parties to the proceeding.
- “(2) The performance of the Registrar’s functions under this rule is subject to any direction by a Judge.

“Compare: 1908 No 89 Schedule 2 r 7.16 prior to 1 September 2012

“7.14 Case management conferences for appeals

- “(1) In the case of an appeal under Part 20 or 26 that is to be the subject of case management, the Registrar must make arrangements for a case management conference to be held on the first available date that is 15 working days after any of the following dates:
- “(a) the date on which a notice of appeal under rule 20.6 or an originating application under rule 26.3 is filed;
 - “(b) the date on which leave to appeal is granted on an application under rule 20.3 or 26.15.
- “(2) A case management conference under this rule may be held as part of an appeals list.
- “(3) The appellant must, as soon as practicable after being notified of the date of the case management conference, give notice of that date to everyone who has been, or is to be, served with a copy of the notice of appeal or the originating application.
- “(4) The parties must, not later than 2 working days before the case management conference,—
- “(a) file a joint memorandum; or
 - “(b) each file a memorandum.
- “(5) Any memorandum filed must—
- “(a) address the matters set out in Schedule 6; and
 - “(b) specify any directions in Schedule 6 that should be deleted or modified, and why; and
 - “(c) set out any additional directions sought, and why; and
 - “(d) set out the issues raised by the appeal if they are not fully set out, or are different from those set out, in the notice of appeal.
- “(6) The directions set out in Schedule 6 apply except to the extent that those directions are modified by directions given by the Judge.

“Compare: 1908 No 89 Schedule 2 r 7.5 prior to 1 September 2012

“7.15 Directions for conduct of appeal

- “(1) At a case management conference held under rule 7.14, the Judge will give directions for the conduct of the appeal that may, without limitation, include directions—

- “(a) as to service of the notice of appeal or the originating application, including service on persons not currently parties;
 - “(b) about any cross-appeal, including directions as to service;
 - “(c) in the case of an appeal under Part 20, as to how and when any application to adduce further evidence on appeal is to be dealt with;
 - “(d) in the case of an appeal under Part 26,—
 - “(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 7.14 apply as if the appeal or reference were an appeal under Part 20, except that the references in rule 7.14(5) and (6) to Schedule 6 must be read as references to Schedule 7.

“Compare: 1908 No 89 Schedule 2 r 7.5 prior to 1 September 2012

“7.16 Jury notice

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 to the other party not later than—

- “(a) 5 working days before the close of pleadings date for the proceeding; or
- “(b) a date fixed by a Judge for the purpose.

“Compare: 1908 No 89 Schedule 2 r 7.14 prior to 1 September 2012”.

10 Rule 7.48 amended (Enforcement of interlocutory order)

Replace rule 7.48(1) with:

- “(1) If a party (**the party in default**) fails to comply with an interlocutory order or any requirement imposed by or under sub-part 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.”

11 Rule 7.77 amended (Court to seek admissions and agreements)

Replace rule 7.77(10) with:

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

12 Rule 8.5 amended (Discovery orders to be made at case management conference)

- (1) In rule 8.5(1), delete “on the standard track”.
(2) Revoke rule 8.5(3).

13 Rule 8.9 amended (Presumption as to tailored discovery)

Replace rule 8.9(b) with:

“(b) that are on the commercial list; or”.

14 Rule 8.11 amended (Preparation for first case management conference)

- (1) In rule 8.11(2), replace “rule 7.4” with “rule 7.3”.
(2) In rule 8.11(2), replace “rule 7.4(3)” with “rule 7.3(2)”.

15 Rule 9.69 amended (Time for filing plaintiff’s affidavits)

In rule 9.69(1)(b), replace “setting down date determined under rule 7.13” with “close of pleadings date fixed under rule 7.6”.

16 Rules 31.7 and 31.8 revoked

Revoke rules 31.7 and 31.8.

17 Schedule 1, form G 2 replaced

In Schedule 1, replace form G 2 with the form G 2 set out in Schedule 1 of these rules.

18 Schedule 3 amended (Time allocations)

In Schedule 3, item 7, replace “setting down” with “fixing of close of pleadings date”.

19 Schedule 5 replaced

Replace Schedule 5 with the Schedule 5 set out in Schedule 2 of these rules.

Part 2 **Written briefs and common bundles**

20 Subpart 1 of Part 9 replaced

Replace subpart 1 of Part 9 with:

“Subpart 1—Briefs, oral evidence directions,
common bundles, and chronologies

“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) In this rule, **documents to be relied upon** means—
 - “(a) documents referred to in a brief or to be referred to by a witness; and
 - “(b) documents intended to be put to witnesses called by another party; and
 - “(c) documents to be referred to in opening.
- “(2) When a party discloses documents to be relied upon at the trial or hearing, that party must supply a list of those documents incorporating any list previously supplied, so that the other parties always have an up-to-date list of the documents that

party intends to rely upon. The list may be in any format and is to be labelled and referred to as that party's index.

- “(3) Documents to be relied upon at the trial or hearing but additional to those already disclosed may be disclosed at any time, but not later than a date fixed by the court at a case management, issues, or pre-trial conference.
- “(4) Subclause (3) does not affect a party's ongoing obligations in relation to discovery.

“9.3 Timing

- “(1) Unless otherwise ordered by the court, a common bundle of documents must not be prepared until all the briefs of the parties have been served.
- “(2) The common bundle must be prepared by the plaintiff (or a different party, if the court so orders) and filed and served by a date fixed by the court at a case management, issues, or pre-trial conference.

“9.4 Preparation of common bundle

- “(1) The parties must co-operate in the preparation of a bundle of documents (in this subpart referred to as the **common bundle**).
- “(2) The duty to co-operate includes—
 - “(a) advising the plaintiff or the plaintiff's counsel promptly, after the date when the last brief of any party is served under rule 9.7, of the documents that the party requires the plaintiff to include in the common bundle; and
 - “(b) taking all practicable steps to assist the plaintiff in the preparation of the common bundle, for example, by making copies of documents available, or agreeing to the excision of part of a document if that part cannot be relevant; and
 - “(c) conferring as to the format of the common bundle.
- “(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 9.6, the common bundle must contain all the documents listed in the index of each party, and no other documents.

- “(5) The common bundle must—
- “(a) arrange the documents chronologically, or in any other appropriate sequence or manner agreed by counsel and approved by the court;
 - “(b) number each page of the common bundle in a consecutive sequence;
 - “(c) set out before the first document a common bundle index that shows—
 - “(i) a short description of each document;
 - “(ii) its date;
 - “(iii) the party from whose custody each document has been produced;
 - “(iv) the page number of each document as it appears in the common bundle;
 - “(d) use a format that is, so far as possible, compatible with that used by the parties when listing documents under rule 8.16 (schedule appended to affidavit of documents).
- “(6) Unless the court directs otherwise, the common bundle must be served not later than 15 working days after the date when the last brief of any party is served under rule 9.7.

“Compare: 1908 No 89 Schedule 2 r 9.13 prior to 1 September 2012

“9.5 Consequences of incorporating document in common bundle

- “(1) Each document contained in the common bundle is, unless the court otherwise directs, to be considered—
- “(a) to be admissible; and
 - “(b) to be accurately described in the common bundle index; and
 - “(c) to be what it appears to be; and
 - “(d) to have been signed by any apparent signatory; and
 - “(e) to have been sent by any apparent author and to have been received by any apparent addressee; and
 - “(f) to have been produced by the party indicated in the common bundle index.
- “(2) If a party objects to the admissibility of a document included in the common bundle, or to the application of any of subclause (1)(b) to (f) to a document, the objection must, if practicable, be recorded in the common bundle, and must be determined

by the court at the hearing or at any prior time that the court directs.

- “(3) The fact that a document has been included in the common bundle is not relevant to the determination under subclause (2) of an objection that relates to the document.
- “(4) A document in the common bundle is automatically received into evidence (subject to the resolution of any objection to admissibility) when a witness refers to it in evidence or when counsel refers to it in submissions (made otherwise than in a closing address).
- “(5) A document in the common bundle may not be received in evidence except under subclause (4).
- “(6) The court may direct that this rule or any part of it is not to apply to a particular document.

“Compare: 1908 No 89 Schedule 2 r 9.14 prior to 1 September 2012

“9.6 Consequence of not incorporating document in common bundle

- “(1) A document not incorporated in the common bundle may be produced at the trial or hearing only with the leave of the court.
- “(2) The court may grant leave to produce a discovered document not so incorporated unless its production would cause an injustice.
- “(3) The court may refuse leave to produce a document not so incorporated and not discovered if its production might cause an injustice.

“Compare: 1908 No 89 Schedule 2 r 9.15 prior to 1 September 2012

“9.7 Requirements in relation to briefs

- “(1) In this subpart, **brief**, in relation to the evidence of a witness to be called by a party, means a written statement setting out evidence proposed to be given by that witness.
- “(2) The date by which the parties must complete and serve briefs upon each other, simultaneously or sequentially, must be determined by the court at a case management or issues conference, having regard to the needs of the case.

- “(3) Whether or not some evidence is directed to be led orally, the brief must contain the testimony intended to be taken from that witness on that subject.
- “(4) Every brief—
 - “(a) 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 that 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.

“Compare: 1908 No 89 Schedule 2 r 9.4 prior to 1 September 2012

“9.8 Supplementary briefs

- “(1) A party wishing to offer a supplementary brief must serve it as soon as possible.
- “(2) The acceptance and use of the supplementary brief in court will be at the discretion of the trial Judge.

“Compare: 1908 No 89 Schedule 2 r 9.5 prior to 1 September 2012

“9.9 Exchange of chronology of facts intended to be relied upon at trial or hearing

- “(1) The plaintiff must, not later than 15 working days after the common bundle has been served, file and serve a chronology of the facts it intends to rely upon at the trial or hearing.
- “(2) In preparing the chronology, the plaintiff must—

- “(a) set out the facts in chronological order; and
 - “(b) cross-reference the facts to either—
 - “(i) 1 or more documents; or
 - “(ii) 1 or more statements in written briefs; and
 - “(c) include, when available, common bundle index references or page references.
- “(3) The other parties must, not later than 15 working days after service of the plaintiff’s chronology, file and serve their responses to it, identifying which facts they dispute, and adding any other facts they intend to rely upon.
- “(4) In preparing their responses, the other parties must—
 - “(a) cross-reference disputed facts to different or contradictory facts in the plaintiff’s chronology; and
 - “(b) list any additional facts; and
 - “(c) comply with subclause (2)(b).
- “(5) The court may modify the requirements of this rule at a conference under rule 7.5.

“9.10 Oral evidence directions

- “(1) After the preparation and service of the chronologies of facts, the parties must bring significant facts that are disputed to the attention of the court.
- “(2) The obligation in subclause (1) may be discharged at a case management or issues or pre-trial conference or at another time but must in any event be discharged not later than 15 working days after service of the chronologies of fact has been completed.
- “(3) The court may, before the giving of evidence, and either before or at the trial or hearing, direct that evidence be given orally (an **oral evidence direction**).

“9.11 Compliance with Evidence Act 2006

- “(1) Any challenge to the admissibility of a brief, 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.

“9.12 Evidence-in-chief at trial

- “(1) A brief signed by a witness—
- “(a) must, subject to the terms of an oral evidence direction made under rule 9.10, be read by the witness at the trial as the witness’s evidence-in-chief; and
 - “(b) is, when read by the witness at the trial, the evidence-in-chief given by the witness at the trial; and
 - “(c) must, after being read by the witness at the trial, be endorsed by or on behalf of the Registrar with the words ‘Given in evidence on [date]’.
- “(2) Any portion of the brief that is the subject of an oral evidence direction under rule 9.10 becomes part of the evidence-in-chief of the witness only if and when it is given orally.

“Compare: 1908 No 89 Schedule 2 r 9.6 prior to 1 September 2012

“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.

“Compare: 1908 No 89 Schedule 2 rr 9.8, 9.9 prior to 1 September 2012

“9.14 Privilege and admissibility not affected by briefs

Nothing in this subpart—

- “(a) deprives any party of that party’s right to treat any communication as privileged; or
- “(b) changes inadmissible evidence into admissible evidence; or
- “(c) changes admissible evidence into inadmissible evidence; or

- “(d) deprives any party of that party’s right to cross-examine any party to a proceeding on a brief, 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.

“Compare: 1908 No 89 Schedule 2 r 9.10 prior to 1 September 2012

“9.15 Cross-examination duties

The exchange of briefs under this subpart does not affect the cross-examination duties referred to in section 92 of the Evidence Act 2006.

“Compare: 1908 No 89 Schedule 2 r 9.11 prior to 1 September 2012

“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.”

Part 3 Judgments by default

21 Subpart 2 of Part 15 replaced

Replace subpart 2 of Part 15 with:

“Subpart 2—Judgment by default

“15.3 Application where appearance

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

“Compare: 1908 No 89 Schedule 2 r 15.3 prior to 1 September 2012

“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.

“Compare: 1908 No 89 Schedule 2 r 15.4 prior to 1 September 2012

“15.5 When several causes of action

The plaintiff may proceed separately under rule 15.7 or 15.8 in respect of each cause of action to which no pleading by way of defence in a statement of defence has been filed.

“Compare: 1908 No 89 Schedule 2 r 15.5 prior to 1 September 2012

“15.6 When several defendants

The plaintiff may proceed against any 1 or more defendants under rule 15.7 or 15.8, and may, despite any judgment given under those rules, continue the proceeding against any other defendant against whom the cause of action subsists.

“Compare: 1908 No 89 Schedule 2 r 15.6 prior to 1 September 2012

“15.7 Liquidated demand

- “(1) If the relief claimed by the plaintiff is payment of a liquidated demand in money and the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, the plaintiff may seal judgment in accordance with this rule for a sum not exceeding the sum claimed in the statement of claim and—
- “(a) interest (if any) payable as of right calculated up to the date of judgment (if interest has been specifically claimed in the statement of claim); and
- “(b) costs and disbursements as fixed by the Registrar.
- “(2) If the plaintiff claims costs and disbursements, the plaintiff must file a memorandum setting out the amount claimed and how that amount is calculated, together with any submissions in support of the claim.
- “(3) A Judge or a Registrar may authorise the sealing of a judgment under subclause (1) if satisfied that the relief claimed by the plaintiff falls within this rule.

- “(4) A Registrar has the jurisdiction and powers of the court under these rules to fix costs and disbursements under subclause (1)(b).
- “(5) For the purpose of this rule and rule 15.9, **liquidated demand** means a sum that—
 - “(a) has been quantified in, or can be precisely calculated on the basis of, a contract relied on by the plaintiff; or
 - “(b) has been determined by agreement, mediation, arbitration, or previous litigation between the same parties; or
 - “(c) is a reasonable price for goods supplied or services rendered (when no contract quantifies the price).

“Compare: 1908 No 89 Schedule 2 r 15.7 prior to 1 September 2012

“15.8 Recovery of land or chattels

- “(1) If the relief claimed by the plaintiff is the recovery of land or chattels, and the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, the plaintiff may seal judgment that the person whose title is asserted in the statement of claim recover possession of the land or the chattels, together with costs and disbursements as fixed by the Registrar.
- “(2) A Registrar has the jurisdiction and powers of the court under these rules to fix costs and disbursements.

“Compare: 1908 No 89 Schedule 2 rr 15.8, 15.9 prior to 1 September 2012

“15.9 Formal proof for other claims

- “(1) This rule applies if, or to the extent that, the defendant does not file a statement of defence within the number of working days required by the notice of proceeding, and the plaintiff seeks judgment by default for other than a liquidated demand.
- “(2) The proceeding must be listed for formal proof.
- “(3) After a proceeding is listed for a formal proof hearing, no statement of defence may be filed without the leave of a Judge granted on the ground that there will or may be a miscarriage of justice if judgment by default is entered, and on such terms as to time or otherwise as the Judge thinks just.
- “(4) The plaintiff must, before or at the formal proof hearing, file affidavit evidence establishing, to a Judge’s satisfaction, each

cause of action relied on, and if damages are sought, providing sufficient information to enable the Judge to calculate and fix the damages.

- “(5) If the Judge before or at the formal proof hearing considers that any deponent of an affidavit filed under subclause (4) should attend to give additional evidence, the Judge may direct accordingly and adjourn the hearing for that purpose.

“Compare: 1908 No 89 Schedule 2 rr 15.10, 15.11, 15.12 prior to 1 September 2012

“15.10 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.

“Compare: 1908 No 89 Schedule 2 r 15.13 prior to 1 September 2012

“15.11 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 that—
“(a) the party applying for leave was entitled to effect service without leave under rule 6.27; and
“(b) there is no reason to believe that the service was effected, or may have been effected, contrary to the law of the country concerned relating to the method of serving documents in domestic actions on persons in that country; and
“(c) the service was effected in sufficient time to enable that party to appear.

“Compare: 1908 No 89 Schedule 2 r 15.14 prior to 1 September 2012”.

22 Rule 18.14A replaced (Interlocutory applications under section 174 of the Companies Act 1993)

Replace rule 18.14A with:

“18.14A Procedure under section 174 of Companies Act 1993

- “(1) In a proceeding under section 174 of the Companies Act 1993,—
 - “(a) the statement of claim must be in form C 2; and
 - “(b) the notice of proceeding must be in form C 3; and
 - “(c) an appearance in support or in opposition must be in form C 9.
- “(2) Subpart 2 of Part 7, which relates to interlocutory applications, applies to applications to the court that relate to a company in respect of which an application under section 174 of the Companies Act 1993 is pending.”

23 Schedule 6 replaced

Replace Schedule 6 with the Schedule 6 set out in Schedule 3 of these rules.

24 Schedule 8 revoked

Revoke Schedule 8.

**Part 4
Administration (including probate)****25 Rule 27.1 amended (Wills and intestacies to which this Part applies)**

In rule 27.1(1)(a), after “wills”, insert “(whenever made)”.

26 Rule 27.2 amended (Interpretation)

In rule 27.2, replace the definition of **executed** with:

“**executed**, for a will, means signed and witnessed in accordance with the requirements of section 11(3) and (4) of the Wills Act 2007”.

27 Rule 27.17 replaced (Valid execution)

Replace rule 27.17 with:

“27.17 Evidence of validity

Each of the following is evidence that a will is valid:

“(a) a statement by each of the witnesses on the will as provided in section 11(5) of the Wills Act 2007;

- “(b) evidence given under rule 27.16 satisfying the court that the will complies with section 11(3) and (4) of the Wills Act 2007;
- “(c) a copy of an order of the court made under section 14 of the Wills Act 2007.”

28 Rule 27.21 amended (Changes)

Replace rule 27.21(1)(c) with:

- “(c) the change was not made by a means described in section 15 of the Wills Act 2007.”

29 Schedule 1, form PR 12 amended

In Schedule 1, form PR 12, replace paragraphs 2 and 3 with:

- “2 *For this paragraph select the statement that applies.*

Statement A

On [date], the deceased signed the will by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of the will.

*Select one.

Statement B

On [date], the deceased directed another person to sign the will on his/her* behalf in his/her* presence, intending the signing of that person’s name as it now appears on the will to be a valid signing of the will.

*Select one.

Statement C

On [date], the deceased acknowledged that he/she* had earlier signed the will by signing his/her* name as it now appears on the will, intending the signing to be a valid signing of the will.

*Select one.

Statement D

On [date], the deceased acknowledged that he/she* had earlier directed another person to sign the will on his/her* behalf in his/her* presence, intending the signing of that person’s name as it now appears on the will to be a valid signing of the will.

*Select one.

- “3 *For this paragraph select—*

Statement A, if you selected Statement A in paragraph 2; or Statement B, if you selected Statement B in paragraph 2; or Statement C, if you selected Statement C or D in paragraph 2.

Statement A

The signing referred to in paragraph 2 was completed in my presence and in the presence of [full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

Statement B

The directing referred to in paragraph 2 was completed in my presence and in the presence of [full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

Statement C

The acknowledging referred to in paragraph 2 was completed in my presence and in the presence of [full name, place of residence, and occupation of other witness, or both witnesses if you are not a witness] and both of us/they* then signed the will as witnesses in the presence of the deceased.

*Select one.

Schedule 1
New form G 2 inserted

r 17

Form G 2
Notice of proceeding

rr 5.23(2), 5.57(4)

To complete this notice,—

- *complete and insert the heading as set out in form G 1;*
- *complete and attach the memorandum as set out in form G 3.*

To the defendant/defendants* and any other person directed to be served.

*Select one.

This document notifies you that you must file in this registry of the court a statement of defence to the plaintiff's claim (a copy of which is served with this notice). You must do this within 25 working days after the date on which you have been served with this notice. If you do not, the plaintiff may seek judgment against you without further notice to you.

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:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

If you file a statement of defence in the court, you will be notified of the date and time of the first case management conference.

The purpose of the conference is to assist the parties in the just, speedy, and inexpensive determination of the proceeding, to make directions as to the conduct of the proceeding, and, where practicable, to make interlocutory orders. The parties will also be assisted to identify, define, and refine the issues in dispute.

You must prepare for and attend the first case management conference. You will be expected to have discussed with the plaintiff the matters set out in Schedule 5 of the High Court Rules. You or your

Form G 2—continued

solicitor must file a memorandum relating to the procedural matters set out in rule 7.3 of the High Court Rules.

Include the following paragraph if it applies, otherwise omit.

The court has directed that this notice and the statement of claim be served not only on the defendant/defendants* but also on the following persons: [full name, place of residence, and occupation of each person or entity directed to be served].

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

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

Schedule 2

r 19

Schedule 5 replaced

Schedule 5

rr 7.3, 7.4

**Matters for consideration at case
management conference**

Note: The presiding Judge will expect the parties at the first case management conference to have—

- (a) carefully considered the pleadings and the principal documents disclosed with them;
- (b) discussed and endeavoured to agree on an appropriate discovery order and the manner in which inspection will take place, in accordance with rule 8.11;
- (c) discussed and endeavoured to agree on the matters for consideration listed in this schedule;
- (d) filed and served a joint memorandum or separate memoranda in accordance with rules 7.3 and 8.11.

Issues

- 1 Resolution and refinement of the issues, and as a consequence whether the pleadings require amendment.
- 2 Whether additional parties should be joined.
- 3 Whether this proceeding has been appropriately categorised and is either an ordinary defended proceeding or a complex defended proceeding.

Discovery and other interlocutory applications

- 4 The scope, terms, and timetable for any discovery.
- 5 If any interlocutory applications have been filed or will be filed, whether they can be heard and disposed of at the case management conference.

Readiness for trial

- 6 Is the case sufficiently ready for a fixture date to be allocated in the near future?
- 7 If there are still outstanding issues, whether a further case management conference or an issues conference should be timetabled.

*Schedule 5—continued***Fixture or hearing**

- 8 If the proceeding is ready to go for a hearing or a trial,—
- (a) when should the close of pleadings date be?
 - (b) should there be a pre-trial conference?
 - (c) what is the estimated length of trial? (The Judge will estimate this by the number of witnesses and their estimated duration.)
 - (d) what timetable is required for written briefs?
 - (e) is expert evidence required and, if so, what are the proposals for that evidence (including prior exchange and how the witnesses are to be heard)?
 - (f) are there any special resources or requirements needed for the hearing?
 - (g) can the proceeding be placed on a short-notice list or put down as a back-up fixture?
 - (h) is alternative dispute resolution suitable to try to facilitate settlement prior to trial?
 - (i) what is the categorisation of the proceeding in relation to costs?

Other

- 9 Any other matters, provided that those matters have been discussed between the parties at least 5 working days before the conference.
-

Schedule 3

r 23

Schedule 6 replaced**Schedule 6**

r 7.14

Standard directions for appeals

- 1 The appeal will be heard at [*time, date*]/at a time and date to be allocated by the Registrar*.

*Select one.

- 2 The time for the hearing is estimated to be [*half days or days*].
- 3 The appeal is categorised as a category [*type*] proceeding for the purposes of rule 14.3.
- 4 The appeal is to proceed as determined by rule 20.8(1) or by any direction given under rule 20.8(3) in the [*specify*] registry.
- 5 The appellant must pay security in the sum of \$[*amount*] not later than 10 working days after the conference.
- 6 Unless detailed and specific points on appeal have been included in the notice of appeal, the appellant must file and serve, not later than 10 working days after the conference, points on appeal that clearly state the issues on appeal.
- 7 If the appeal involves a significant issue under the New Zealand Bill of Rights Act 1990, or an issue affecting New Zealand's international obligations or the Crown's obligations under the Treaty of Waitangi, or an issue arising in the appeal is otherwise of significant public interest, the Judge may direct that the Solicitor-General be served with the notice of appeal, and with documents subsequently filed in the appeal. In other cases the parties must advise the Judge whether they consider that an amicus curiae should be appointed.
- 8 The appellant must file and serve, not later than 20 working days after the conference, a common bundle of paginated and indexed copies of all relevant documents, including, if applicable,—
- (a) the reasons for the decision; and
 - (b) the sealed order or judgment appealed from; and
 - (c) the pleadings; and
 - (d) the statements of evidence or affidavits; and
 - (e) the exhibits; and
 - (f) the notes of evidence, to the extent that they are relevant to the issues on appeal; and
 - (g) any other documents, if possible in date sequence.

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, not later than 25 working days after the conference,—
 - (a) the appellant's submissions; and
 - (b) a chronology (if relevant).
- 11 The appellant's submissions must 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.

These rules, which come into force on 1 September 2012, amend the High Court Rules (the **principal rules**).

Part 1 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 20 working days after the filing of the first statement of defence in the proceeding. The rules prescribe the agenda for, and procedures at, subsequent case management, issues, and pre-trial conferences, and for case management conferences for appeals. The fixing of close of pleadings dates will replace the present setting-down procedure. A simpler notice of proceeding form (G 2) will be substituted. The procedure in applications under section 174 of the Companies Act 1993 will be clarified.

Part 2 requires parties to prepare and serve an index when disclosing documents that 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.

Part 3 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.

Part 4 makes changes consequential on the Wills Amendment Act 2012. The Wills Amendment Act 2012 substituted (with effect on 1 November 2007) section 11(3) and (4) of the Wills Act 2007 relating to the signing and witnessing of wills, and also removed the requirement that wills made before 1 November 2007 be signed at their foot or end. Accordingly, these rules change consequentially the requirements for establishing the validity of a will. In particular, the affidavit in form PR 12 in Schedule 1 of the principal rules is

amended to enable evidence to be given of the will-maker acknowledging that a previously signed signature on the will is his or her signature, or of the will-maker directing another person to sign the will on his or her behalf and in his or her presence. The amendments made by the Wills Amendment Act 2012, and by *Part 4* of these rules, are subject to the savings in section 40A(3) of the Wills Act 2007 for grants, payments, and other actions made or taken before 25 February 2012.

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.
