



## **High Court Amendment Rules (No 3) 2013**

Jerry Mateparae, Governor-General

### **Order in Council**

At Wellington this 30th day of September 2013

Present:

His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee established under section 51B of the Judicature Act 1908 (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 3) 2013.

### 2 Commencement

These rules come into force on 11 November 2013.

### 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 5.40 amended (Change of representation or address for service)

In rule 5.40(5)(a), after “address for service”, insert “or specifying an address for a method of service set out in rule 6.1(1)(d)”.

### 5 Rule 5.42 amended (Address for service of party whose solicitor has ceased to act)

In rule 5.42(2)(b)(i), after “service”, insert “or specifying an address for a method of service set out in rule 6.1(1)(d)”.

### 6 Rule 5.44 amended (Memorandum at end of first document filed by party)

Replace rule 5.44(1)(e) with:

“(e) any post office box address, document exchange box number, fax number, or email address by which the solicitor or the party in person will accept service in the course of the proceeding.”

- 7 Rule 5.49 amended (Appearance and objection to jurisdiction)**  
In rule 5.49(8), delete “in all respects as though the application were an application for directions under rule 7.9”.
- 8 Rule 6.1 amended (Methods of service)**  
In rule 6.1(1)(d), replace “solicitor for the party or person has, under rule 5.44(1)(e)” with “solicitor for the party or person, or the party or person, has, under rule 5.40(5)(a), 5.42(2)(b)(i), or 5.44(1)(e)”.
- 9 Rule 6.6 amended (Service by means of post office box, document exchange, fax, or email)**  
In rule 6.6(1), replace “rule 6.1(d)(i) or (ii)” with “rule 6.1(1)(d)(i) or (ii)”.
- 10 New rule 7.1AA inserted (Outline of case management procedures for different types of proceedings)**  
Before rule 7.1, insert:  
**“7.1AA Outline of case management procedures for different types of proceedings**  
“(1) An ordinary defended proceeding or a complex defended proceeding—  
“(a) is subject to a first case management conference (*see* rule 7.3);  
“(b) may be the subject of 1 or more further case management conferences (*see* rule 7.4);  
“(c) may also be the subject of an issues conference (*see* rule 7.5);  
“(d) if the proceeding is being, or has been, allocated a hearing or trial date, may be the subject of a pre-trial conference (*see* rule 7.8).  
“(2) An application for leave to appeal, or an appeal, under Part 20 (appeals), Part 21 (case stated), or Part 26 (Arbitration Act 1996) is subject to case management under different provisions (*see* rules 7.14 and 7.15).

- “(3) A proceeding commenced by originating application is subject to limited case management through the ability of the parties to seek directions (*see* rules 19.11 and 7.43A).
- “(4) A proceeding on the commercial list is subject to limited case management through the ability of parties to seek directions (*see* rules 29.10 to 29.12).
- “(5) An application for judicial review may be subject to case management under section 10 of the Judicature Amendment Act 1972 and any rules relating to the case management of such proceedings.
- “(6) The following proceedings are not subject to case management:
- “(a) undefended proceedings:
  - “(b) an application under Part 24 (insolvency) or Part 31 (companies: liquidation).
- “(7) This rule operates only as a guide, and if any other provision of these rules or any other enactment is inconsistent with this rule, that other provision or enactment prevails.”

**11 Rule 7.1 amended (Proceedings subject of case management)**

- (1) Replace rule 7.1(1) and (2) with:
- “(1) Case management in accordance with this subpart will be applied to the following proceedings in order to promote their just, speedy, and inexpensive determination:
- “(a) ordinary or complex defended hearings:
  - “(b) an application for leave to appeal, or an appeal, under Part 20 (appeals), Part 21 (cases stated), or Part 26 (Arbitration Act 1996).”
- (2) In rule 7.1(5)(d), after “Part 20 (appeals)”, insert “, Part 21 (cases stated)”.
- (3) Replace 7.1(8) with:
- “(8) Proceedings under subclause (5)(f) and (g) are subject to limited case management through the ability of the parties to seek directions.
- “(9) The following proceedings are not subject to case management:
- “(a) undefended hearings:

“(b) an application under Part 24 (insolvency) or Part 31 (companies: liquidation).”

**12 Rule 7.14 amended (Case management conferences for appeals)**

In rule 7.14(1), delete “that is to be subject to case management”.

**13 New rule 7.43A inserted (Directions as to conduct of proceedings)**

After rule 7.43, insert:

**“7.43A Directions as to conduct of proceedings**

“(1) A Judge may, by interlocutory order,—

“(a) fix the time by which a step in a proceeding must be taken:

“(b) fix the time by which all interlocutory steps must be completed:

“(c) direct the steps that must be taken to prepare a proceeding for a substantive hearing:

“(d) direct how the hearing is to be conducted:

“(e) make any other direction or order that the court may make under these rules.

“(2) A party or intended party may apply without notice to a Judge for directions if in doubt about—

“(a) whether it is correct or appropriate to join a person as a party; or

“(b) the proper court in which to commence or take a step in a proceeding; or

“(c) the correct method of proceeding under these rules.”

**14 Rule 7.55 amended (Preservation of property)**

In rule 7.55(4), replace “rule 7.9” with “rule 7.43A”.

**15 Rule 7.56 amended (Sale of perishable property before hearing)**

In rule 7.56(2), replace “rule 7.9” with “rule 7.43A”.

**16 Rule 9.4 amended (Preparation of common bundle)**

- (1) In rule 9.4(2)(c), after “bundle”, insert “and, in particular, whether an electronic format of the common bundle is appropriate”.
- (2) After rule 9.4(5), insert:  
“(5A) If the parties have agreed to use an electronic format for the common bundle, the parties must have regard to any practice note on electronic formats issued from time to time by the Chief High Court Judge.”

**17 Rule 9.56 amended (Affidavit evidence under order of court)**

In rule 9.56(3), replace “rule 7.9” with “rule 7.2 or 7.8, as the case requires”.

**18 Rule 10.10 amended (When both parties appear)**

In rule 10.10(5)(a), replace “rule 7.9” with “rule 7.2 or 7.8, as the case requires”.

**19 Rule 12.5 replaced (Service out of New Zealand)**

Replace rule 12.5 with:

**“12.5 Service out of New Zealand**

A plaintiff who makes an application under rule 12.2 or 12.3 must serve the documents referred to in rule 12.4(4) on a defendant who is overseas not less than 25 days before the date for hearing the application.”

**20 Rule 12.7 amended (Time for service)**

In rule 12.7(1), replace “15” with “25”.

**21 Rule 15.10 amended (Judgment may be set aside or varied)**

In rule 15.10, replace “rule 15.7 or 15.8” with “rule 15.7, 15.8, or 15.9”.

**22 Rule 18.4 amended (Commencement of proceedings)**

- (1) Replace rule 18.4(1)(b) with:

“(b) accompanied by an application for directions as to service and representation under rule 18.7.”

(2) Revoke rule 18.4(3).

**23 New rule 19.5A inserted (Directions as to filing of statement of claim and defence)**

After rule 19.5, insert:

**“19.5A Directions as to filing of statement of claim and defence**

A Judge may, by interlocutory order, on the Judge’s own initiative direct the parties to file a statement of claim and a statement of defence respectively.”

**24 Rule 19.11 amended (Directions as to parties and conduct of applications)**

In rule 19.11, replace “Rule 7.9” with “Rule 7.43A”.

**25 Rule 24.9 amended (Service of bankruptcy notice in New Zealand)**

(1) In rule 24.9(1), replace “1 month” with “6 months”.

(2) Replace rule 24.9(2) and (3) with:

“(2) The creditor may before or after the expiry of the period referred to in subclause (1) apply to the court for an order extending the period of service.

“(3) The court may extend the period for service for a further 3 months from the expiry of the period referred to in subclause (1) if the court is satisfied that—

“(a) reasonable efforts have been made to effect service; or  
“(b) for any other good reason an extension of the period for service is desirable.”

(3) After rule 24.9(3), insert:

“(4) A bankruptcy notice must be served in accordance with Part 6 (service).”

**26 Rule 29.10 amended (Application for directions)**

In rule 29.10(1), replace “rule 7.9” with “rule 7.43A”.



**27 Rule 29.12 amended (Hearing of application for directions)**

- (1) In rule 29.12(1), replace “rule 7.9” with “rule 7.43A”.
- (2) In rule 29.12(2), replace “rule 7.9” with “rule 7.43A”.
- (3) In rule 29.12(4), replace “rule 7.9” with “rule 7.43A”.

**28 Rule 31.36 amended (Applications involving allegations of fraud, negligence, misfeasance, or similar behaviour)**

In rule 31.36(3), replace “under rule 7.9” with “as to the conduct of proceedings under rule 7.43A”.

**29 Schedule 1 amended**

- (1) In Schedule 1, form G 10, before Statement B, insert:

“Documents for service on the filing party may be left at that address for service or may be—

  - “(a) posted to the party at [*post office box address*]; or
  - “(b) left for the party at a document exchange for direction to [*document exchange box number*]; or
  - “(c) transmitted to the party by fax to [*fax number*]; or  
*Omit this paragraph if email service will not be accepted.*
  - “(d) emailed to the party at [*email address*].”
- (2) In Schedule 1, form G 11, replace paragraph (2) with:

“(2) The address for service of the plaintiff/defendant/third party\* is now [*address complying with definition of address for service in rule 1.3*]. Service may also now be effected by—

  - “(a) posting it to the party/party’s solicitor\* at [*post office box address*]; or
  - “(b) leaving it for the party/party’s solicitor\* at a document exchange for direction to [*document exchange box number*]; or
  - “(c) transmitting it to the party/party’s solicitor\* by fax to [*fax number*]; or  
*Omit this paragraph if email service will not be accepted.*
  - “(d) emailing it to the party/party’s solicitor\* at [*email address*].

\*Select one.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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### **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 11 November 2013, make a mixture of substantive and technical changes to the High Court Rules (the **principal rules**).

First, the principal rules (*see rules 4 to 8*) are amended to allow unrepresented parties to specify post office boxes, document exchange boxes, fax numbers, or email addresses as addresses for service as well as a physical address (in order to place unrepresented parties in the same position as represented parties).

Secondly, *rules 10 to 12 and 22* insert a new provision containing an outline of the case management procedures for different types of proceedings and make minor changes to the operation of the case management provisions.

Thirdly, *rule 13* sets out a *new rule 7.43A* containing a power to give directions as to the conduct of proceedings by interlocutory order. In related changes, a number of other rules alter cross-references in other rules to this new rule, or delete or replace references to rule 7.9 (which previously contained a similar power of direction).

Fourthly, *rule 16* amends rule 9.4 of the principal rules to require parties using an electronic format for common bundles to have regard to any practice note issued by the Chief High Court Judge relating to electronic formats for common bundles.

Fifthly, *rules 19 and 20* make amendments that extend the general period for service of certain documents (including an interlocutory application on notice, a supporting affidavit, a notice of proceeding, a statement of claim, and a statement of defence) from 15 working days to 25 working days before the date of hearing. This will reduce the need for applications to the court to extend the time for filing a notice of opposition and an affidavit.

Sixthly, *rule 25* amends rule 24.9 of the principal rules to extend the period of service for bankruptcy notices from 1 month to 6 months, to provide criteria to guide decisions about the further extension of

that period, and to provide that bankruptcy notices are to be served in accordance with Part 6 of the principal rules.

Finally, these rules correct referential and other minor errors in the principal rules.

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Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 3 October 2013.  
These rules are administered by the Ministry of Justice.

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