



High Court Rules 2016 Amendment Rules (No 2) 2017

Patsy Reddy, Governor-General

Order in Council

At Wellington this 7th day of August 2017

Present:

Her Excellency the Governor-General in Council

These rules are made under section 148 of the Senior Courts Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee continued under section 155 of the Senior Courts Act 2016 (of whom at least 1 was a Judge of the High Court).

Contents

	Page
1 Title	2
2 Commencement	3
3 Principal rules	3
4 Rule 1.3 amended (Interpretation)	3
5 Rule 2.1 amended (Jurisdiction and powers)	3
6 Rule 5.7 amended (Cover sheet, numbering, and fastening of document)	3
7 Rule 5.11 amended (Heading on statement of claim and counterclaim)	3
8 New rules 5.35A to 5.35C and cross-heading inserted	3
<i>Striking out proceeding before service</i>	
5.35A Registrar may refer plainly abusive proceeding to Judge before service	3

	5.35B	Judge's powers to make orders and give directions before service	4
	5.35C	Requirement for signature and release of proceeding in certain circumstances	4
9		Rule 5.49 amended (Appearance and objection to jurisdiction)	4
10		Rule 6.8 amended (Substituted service)	5
11		Rule 6.29 amended (Court's discretion whether to assume jurisdiction)	5
12		Rule 7.1AA amended (Outline of case management procedures for different types of proceedings)	5
13		Rule 7.3 replaced (First case management conferences)	5
	7.3	First case management review	5
	7.3A	First case management conference	7
14		Rule 7.6 amended (Allocation of key dates)	7
15		Rule 7.23 replaced (Application without notice)	7
	7.23	Application without notice	7
16		Rule 8.11 amended (Preparation for first case management conference)	8
17		Rule 9.7 amended (Requirements in relation to briefs)	8
18		Rule 9.77 amended (Exhibits to affidavits)	9
19		Rule 9.85 amended (Authority to take affidavits in New Zealand)	9
20		Rule 14.2 amended (Principles applying to determination of costs)	9
21		Rule 14.12 amended (Disbursements)	9
22		Rule 19.2 amended (Applications under certain enactments)	10
23		Rule 23.4 amended (Method of application for registration)	10
24		Rule 27.4 amended (Applications without notice)	10
25		Rule 27.10 replaced (Where application is filed)	10
	27.10	Where application is filed	10
26		Rule 27.14 amended (Registrars may make some orders)	11
27		Schedule 1 amended	11
28		Schedule 4 amended	12
		Schedule 1	13
		Form G 1 replaced	
		Schedule 2	15
		Form G 32 replaced	
		Schedule 3	17
		New form PR 1AA inserted	

Rules

1 Title

These rules are the High Court Rules 2016 Amendment Rules (No 2) 2017.

2 Commencement

These rules come into force on 1 September 2017.

3 Principal rules

These rules amend the High Court Rules 2016 (the **principal rules**).

4 Rule 1.3 amended (Interpretation)

In rule 1.3(1), insert in it its appropriate alphabetical order:

application without notice has the same meaning as in rule 7.23

5 Rule 2.1 amended (Jurisdiction and powers)

Replace rule 2.1(3) with:

- (3) Despite subclause (1), an Associate Judge does not have jurisdiction or powers—
- (a) in relation to the matters specified in section 22(4) of the Act; or
 - (b) under rules 5.35A to 5.35C.

6 Rule 5.7 amended (Cover sheet, numbering, and fastening of document)

In rule 5.7(4), after “must be securely fastened together”, insert “at the time of filing and service”.

7 Rule 5.11 amended (Heading on statement of claim and counterclaim)

In rule 5.11(1)(b), after “the registry of the court in which it is filed”, insert “, in both English and te reo Māori (*see* form G 1 in Schedule 1, which sets out the name, in both languages, of each registry of the court)”.

8 New rules 5.35A to 5.35C and cross-heading inserted

After rule 5.35, insert:

Striking out proceeding before service

5.35A Registrar may refer plainly abusive proceeding to Judge before service

- (1) This rule applies if a Registrar believes that, on the face of a proceeding tendered for filing, the proceeding is plainly an abuse of the process of the court.
- (2) The Registrar must accept the proceeding for filing if it meets the formal requirements for documents set out in rules 5.3 to 5.16.
- (3) However, the Registrar may,—
 - (a) as soon as practicable after accepting the proceeding for filing, refer it to a Judge for consideration under rule 5.35B; and
 - (b) until a Judge has considered the proceeding under that rule, decline to sign and release the notice of proceeding and attached memorandum for the plaintiff or the applicant (as appropriate) to serve the proceeding.

5.35B Judge's powers to make orders and give directions before service

- (1) This rule applies if a Judge to whom a Registrar refers a proceeding under rule 5.35A is satisfied that the proceeding is plainly an abuse of the process of the court.
- (2) The Judge may, on his or her own initiative, make an order or give directions to ensure that the proceeding is disposed of or, as the case may be, proceeds in a way that complies with these rules, including (without limitation) an order under rule 15.1 that—
 - (a) the proceeding be struck out;
 - (b) the proceeding be stayed until further order;
 - (c) documents for service be kept by the court and not be served until the stay is lifted;
 - (d) no application to lift the stay be heard until the person who filed the proceeding files further documents as specified in the order (for example, an amended statement of claim or particulars of claim).
- (3) Rule 7.43(3) does not apply. However, if a Judge makes an order on the Judge's own initiative without giving the person who filed the proceeding an opportunity to be heard, the order must contain a statement of that person's right to appeal against the decision.
- (4) A copy of a Judge's decision to strike out a proceeding must, if practicable, also be served on the person named as a party or, if more than 1 person is named, those persons named as parties to the proceeding.
- (5) *See* rule 2.1(3)(b) concerning the exclusion of the jurisdiction and powers of a Judge under this rule from the jurisdiction and powers of an Associate Judge.

5.35C Requirement for signature and release of proceeding in certain circumstances

The Registrar must, after a Judge has considered a proceeding under rule 5.35B, release the notice of proceeding and attached memorandum for service if—

- (a) the Judge decides not to exercise the discretion in rule 5.35B; or
- (b) the Judge makes an order or gives directions under which the proceeding must be released for service.

9 Rule 5.49 amended (Appearance and objection to jurisdiction)

- (1) Revoke rule 5.49(4).
- (2) Replace rule 5.49(6) with:
- (6) The court hearing an application under subclause (3) or (5) must,—
 - (a) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss the proceeding; and

- (b) if it does not dismiss the proceeding under paragraph (a), set aside the appearance.

10 Rule 6.8 amended (Substituted service)

In rule 6.8, insert as subclause (2):

- (2) If a direction is given under subclause (1)(a) in respect of a document, the document must be treated as having been served at the place—
- (a) at which the document is likely to have come to the notice of the person to be served; or
- (b) where that person was or is likely to have been on the happening of the event or the expiry of the time specified under subclause (1)(a)(ii).

11 Rule 6.29 amended (Court’s discretion whether to assume jurisdiction)

After rule 6.29(3), insert:

- (4) This rule is subject to section 27(1) of the Trans-Tasman Proceedings Act 2010 (*see* rule 5.49(7A)).

12 Rule 7.1AA amended (Outline of case management procedures for different types of proceedings)

Replace rule 7.1AA(1)(a) with:

- (a) is subject to a first case management review (*see* rule 7.3):
- (aa) may be subject to a first case management conference (*see* rule 7.3A):

13 Rule 7.3 replaced (First case management conferences)

Replace rule 7.3 with:

7.3 First case management review

Application

- (1) This rule applies unless—
- (a) no statement of defence has been filed in a proceeding; or
- (b) the proceeding is an appeal that falls within rule 7.14.

Requirements for joint memorandum or separate memoranda

- (2) Not later than 15 working days after the first statement of defence is filed, the parties must file a joint memorandum or each party must file a separate memorandum addressing the following matters:
- (a) the Schedule 5 matters; and
- (b) the making of a discovery order under rule 8.5; and
- (c) the hearing and, if practicable, the disposal of any outstanding interlocutory application; and
- (d) the fixing of—

- (i) a close of pleadings date; and
- (ii) a trial or hearing date for a proceeding that is classified as an ordinary defended proceeding and the making of appropriate trial directions; and
- (iii) a date and arrangements for any further case management conference, issues conference, or pre-trial conference; and
- (e) other appropriate matters that the parties have already discussed.

Requirements for separate memoranda

- (3) The following provisions apply if each party files a separate memorandum:
 - (a) the plaintiff must file the first memorandum not later than 15 working days after the statement of defence is filed;
 - (b) the plaintiff's memorandum must state the plaintiff's position on each of the matters specified in subclause (2);
 - (c) each other party to the proceeding must, not later than 5 working days after the plaintiff files the first memorandum, file a memorandum stating—
 - (i) whether the party agrees or disagrees with the plaintiff's statement on each matter; and
 - (ii) in each case where the party disagrees, the reasons for disagreeing and the different position that the party contends for on the matter.
- (4) Separate memoranda filed under subclause (2) may also address matters that fall within subclause (2)(e).

Judge's powers on consideration of memorandum or memoranda

- (5) The Registrar must, as soon practicable after receiving the joint memorandum or separate memoranda, refer the memorandum or memoranda to a Judge to consider whether each document meets the requirements in subclause (2).
- (6) The Judge may, if the Judge is satisfied that the memorandum or memoranda meet the requirements in subclause (2),—
 - (a) allocate a trial date, in which case the Judge may also give the directions required (if any) to ready the proceeding for trial; or
 - (b) direct that a case management conference or issues conference be held and that there is no requirement for a first case management conference.
- (7) A case management conference or issues conference under subclause (6)(b) must be held—
 - (a) on the date that the Judge directs; or
 - (b) if the Judge does not give a direction as to the date on which the conference is to be held, within 25 working days after the date on which the Judge directs the Registrar to convene the conference.
- (8) A memorandum under this rule may be filed by fax or email.

7.3A First case management conference

- (1) This rule applies if the Judge, after considering the joint memorandum or separate memoranda under rule 7.3, is not satisfied that the memorandum or memoranda meet the requirements in rule 7.3(2).
- (2) The Judge may direct the Registrar to convene a first case management conference.
- (3) The Registrar must arrange for the first case management conference to be held not later than 15 working days after the Judge directs the Registrar to convene the conference.
- (4) The agenda for the first case management conference is the matters specified in rule 7.3(2).

14 Rule 7.6 amended (Allocation of key dates)

After rule 7.6(4), insert:

- (4A) If the Judge does not fix a date for the close of pleadings under subclause (4), the close of pleadings date is the later of—
 - (a) the date that is 60 working days before the hearing or trial date allocated; and
 - (b) the date on which the hearing or trial date is allocated.

15 Rule 7.23 replaced (Application without notice)

Replace rule 7.23 with:

7.23 Application without notice

- (1) A person who wants to make an application to the court and have the application determined without any other party having been served (in these rules referred to as an **application without notice**) must use form G 32.
- (2) An application without notice may be made only—
 - (a) on 1 or more of the following grounds:
 - (i) that requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant;
 - (ii) that the application affects only the applicant;
 - (iii) that the application relates to a routine matter;
 - (iv) that an enactment expressly permits the application to be made without serving notice of the application;
 - (v) that the interests of justice require the application to be determined without serving notice of the application; and
 - (b) if the applicant has made all reasonable inquiries and taken all reasonable steps to ensure that the application and supporting documents contain all material that is relevant to the application, including any defence

- that might be relied on by any other party and any facts that would support the position of any other party.
- (3) An applicant who makes an application without notice must, if the application is of a kind that is likely to be contested if it were made on notice, file a memorandum with the application that sets out—
 - (a) the background to the proceeding (including the material facts that relate to the proceeding); and
 - (b) the grounds on which each order is sought; and
 - (c) an explanation of the grounds on which each order is sought without notice; and
 - (d) all information known to the applicant that is relevant to the application, including any known grounds of opposition or defence that any other party might rely on, or any facts that would support opposition to the application or defence of the proceeding by any other party.
 - (4) Failure to disclose all relevant matters to the court or to comply with subclause (3) may result in the court—
 - (a) dismissing the application; or
 - (b) if 1 or more orders have been made by the court in reliance on the application, rescinding those orders.
 - (5) This rule does not apply to an application for a grant of letters of administration without notice (*see* rule 27.4).

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

In rule 8.11(2), replace “under rule 7.3(3)” with “under rule 7.3(2)”.

17 Rule 9.7 amended (Requirements in relation to briefs)

- (1) In rule 9.7(4)(a), replace “is made” with “is provided”.
- (2) Replace rule 9.7(6) with:
- (6) A party intending to call a person as a witness must, if that person has not provided a brief,—
 - (a) serve a notice on the other parties to the proceeding informing them that the party intends to call the person as a witness; and
 - (b) include the following information in the notice:
 - (i) the name of the intended witness;
 - (ii) the steps that have been taken to obtain a brief from the intended witness;
 - (iii) the reasons for the intended witness not providing a brief;
 - (iv) an explanation of the relevance of the evidence of the intended witness;

- (v) details of the evidence that the party expects the intended witness to give.
- (7) At the trial or hearing, the person called as a witness must give his or evidence in accordance with rules 9.10 and 9.12, subject to any directions that the court may give or any terms or conditions that the court may specify.
- (8) The party serving a brief or a notice under subclause (6) must, as soon as practicable after the brief or notice is served, advise the Registrar of what the party has served, on whom it was served, and the date of service.

18 Rule 9.77 amended (Exhibits to affidavits)

- (1) In rule 9.77(1)(b), after “annexed to the affidavit”, insert “at the time of filing and service”.
- (2) In rule 9.77(2)(a), after “securely bound” insert “at the time of filing and service”.

19 Rule 9.85 amended (Authority to take affidavits in New Zealand)

- (1) In rule 9.85(1), replace “solicitor of the court” with “lawyer”.
- (2) Replace rule 9.85(2) with:
 - (2) An affidavit that is sworn before a lawyer who lacks, or may appear to lack, the necessary independence may not be read or used without the leave of the court, except if the affidavit is sworn in respect of a non-contentious proceeding.
- (3) Replace rule 9.85(4) with:
- (4) In this rule, **Registrar** includes—
 - (a) a Deputy Registrar of the High Court:
 - (b) a Registrar of the District Court:
 - (c) a Deputy Registrar of the District Court.

20 Rule 14.2 amended (Principles applying to determination of costs)

In rule 14.2, insert as subclauses (2) and (3):

- (2) Despite subclause (1)(f), costs for legal professional services provided in relation to a proceeding may be awarded to a party under this Part even though the services are provided under a conditional fee agreement.
- (3) In subclause (2), **conditional fee agreement** means an agreement under which a party to a proceeding and a person who provides legal professional services agree that the party to the proceeding is liable for payment of some or all of the person’s fees and expenses depending on the outcome of the proceeding.

21 Rule 14.12 amended (Disbursements)

After rule 14.12(5), insert:

- (6) Where an expert witness provides services in relation to a proceeding, disbursements in respect of the witness's fees and expenses may be included in costs awarded under this Part even though the services are provided under a conditional fee agreement.
- (7) In subclause (6), **conditional fee agreement** has the same meaning as in rule 14.2(3), except that the reference to legal professional services must be read as if it were a reference to expert witness services.
- (8) Nothing in subclause (6) affects the application of subclauses (3) to (5).

22 Rule 19.2 amended (Applications under certain enactments)

In rule 19.2(d), after "41,", insert "75,".

23 Rule 23.4 amended (Method of application for registration)

In rule 23.4(2), delete " , and if so made the requirement of certification in rule 7.23 applies".

24 Rule 27.4 amended (Applications without notice)

- (1) Replace rule 27.4(3) with:
- (3) The application must be made in form PR 1AA.
- (2) Revoke rule 27.4(4) and (8).

25 Rule 27.10 replaced (Where application is filed)

Replace rule 27.10 with:

27.10 Where application is filed

- (1) An application without notice under rule 27.4 and all documents relating to that application must be filed in the registry of the court at Wellington (irrespective of where the deceased resided immediately before he or she died).
- (2) An application in solemn form under rule 27.6 and all documents relating to that application must be filed in the registry of the court nearest to where the deceased resided immediately before he or she died.
- (3) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in only 1 place in New Zealand, the application and documents must be filed in the registry of the court nearest, by the most practicable route, to the place where his or her property is situated.
- (4) If the deceased did not reside in New Zealand when he or she died and his or her property is situated in more than 1 place in New Zealand, the application and documents must be filed in the registry of the court at Wellington or a registry specified under subclause (6).
- (5) If the deceased did not reside in New Zealand when he or she died and left no property in New Zealand, the application and documents must be filed in the registry of the court at Wellington or a registry specified under subclause (6).

- (6) If subclause (4) or (5) applies,—
- (a) the applicant may make an interlocutory application for an order specifying the registry of the court in which the application and documents are to be filed; and
 - (b) the court may make an order specifying the registry.
- (7) If an application or a document is filed in the wrong registry of the court, the court may order the transfer of the application or document to the appropriate registry.

26 Rule 27.14 amended (Registrars may make some orders)

In rule 27.14(1)(b), delete “in the Auckland Registry”.

27 Schedule 1 amended

- (1) In Schedule 1, replace form G 1 with the form G 1 set out in Schedule 1 of these rules.
- (2) In Schedule 1, replace form G 32 with the form G 32 set out in Schedule 2 of these rules.
- (3) In Schedule 1, before form PR 1, insert the form PR 1AA set out in Schedule 3 of these rules.
- (4) In Schedule 1, form PR 2, replace paragraph 12 with:

12 *Omit this paragraph if it does not apply.*

I am the deceased’s surviving spouse/surviving civil union partner/surviving de facto partner*.

I am a beneficiary under the will.

[in the case of a surviving spouse or surviving civil union partner] I have not ceased to be a beneficiary under the will under section 19 of the Wills Act 2007 *[if the will was made on or after 1 November 2007]*/section 19, as modified by section 40(2)(q), of the Wills Act 2007 *[if the will was made before 1 November 2007]**.

[in every case] I have not ceased to be a beneficiary under the will under section 61 of the Property (Relationships) Act 1976. I choose option B under section 61. I lodged a notice of choice of option under section 65(2)(c) of that Act in this court on *[date]*/at the same time as I filed this application*. A copy is attached and marked *[specify]*.

*Select one.

- (5) In Schedule 1, form PR 3, paragraph 6, Statement A, replace paragraph (c) with:

(c) *[in every case]* by the choice I make between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I choose option B under section 61 and I lodged a notice of choice of

option under section 65(2)(c) of that Act in this court on [date]/at the same time as I filed this application*. A copy is attached and marked [specify].

*Select one.

- (6) In Schedule 1, form PR 3, paragraph 6, Statement B replace paragraph (a) with:
- (a) I am the surviving de facto partner of the deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected by the choice I make between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I choose option B under section 61 and I lodged a notice of choice of option under section 65(2)(c) of that Act in this court on [date]/at the same time as I filed this application*. A copy is attached and marked [specify].
- *Select one.
- (7) In Schedule 1, form B 2, under the heading “Costs”, note, replace “item 17” with “item 44”.

28 Schedule 4 amended

In Schedule 4, after clause 2, insert:

- 2A If an expert witness is engaged under a conditional fee agreement, the expert witness must disclose that fact to the court and the basis on which he or she will be paid.
- 2B In subclause 2A, **conditional fee agreement** has the same meaning as in rule 14.2(3), except that the reference to legal professional services must be read as if it were a reference to expert witness services.

Schedule 1

Form G 1 replaced

r 27(1)

Form G 1

General heading for documents filed in proceeding

rr 5.11(2), 19.9(1)

In the High Court of New Zealand

**[Name of registry in English. Select from the table below.]* Registry

I te Kōti Matua o Aotearoa

[Name of registry in te reo Māori. Select from the table below.] Rohe

No: *[number of proceeding]*

Under the *[name of Act under which the proceeding is authorised]*

In the matter of *[specify matter to which proceeding relates]*

Between *[full name, place of residence, occupation]*
(plaintiff)

And *[full name, place of residence, occupation]*
(defendant)

Include the following if there is a counterclaim against both the plaintiff and another person.

Between *[full name, place of residence, occupation]*
(defendant)

And *[full name, place of residence, occupation]*
(plaintiff)

And *[full name, place of residence, occupation]*
(counterclaim defendant)

Names of registries

Name of registry in English	Name of registry in te reo Māori
Auckland	Tāmaki Makaurau
Blenheim	Waiharakeke
Christchurch	Ōtautahi
Dunedin	Ōtepoti
Gisborne	Tūranganui-a-Kiwa
Greymouth	Māwhera
Hamilton	Kirikiroa

Name of registry in English	Name of registry in te reo Māori
Invercargill	Waihōpai
Masterton	Te Whakaoriori
Napier	Ahuriri
Nelson	Whakatū
New Plymouth	Ngāmotu
Palmerston North	Te Papaiōea
Rotorua	Te Rotorua-nui-ā-Kahu
Tauranga	Tauranga Moana
Timaru	Te Tihi-ō-Maru
Wellington	Te Whanganui-ā-Tara
Whanganui	Whanganui
Whangarei	Whāngarei Terenga Parāoa

Schedule 2
Form G 32 replaced

r 27(2)

Form G 32
Interlocutory application without notice

rr 7.19(4), 7.23(1)

To the Registrar of the High Court at *[place]*

This document notifies you that—

1 The applicant, *[name, place of residence, occupation]*, applies for an order/orders* *[specify orders sought, numbering them if more than 1]*.

*Select one.

2 The grounds on which each order is sought are as follows: *[specify concisely the grounds on which each order is sought]*/set out in the accompanying memorandum*.

*Select one.

3 The application is made in reliance on *[specify any particular provision of an enactment, principle of law, or judicial decision relied on]*.

4 The application is made without notice to any other party on the following ground(s):*

- (a) that requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant:
- (b) that the application affects only the applicant:
- (c) that the application relates to a routine matter:
- (d) that an enactment expressly permits the application to be made without serving notice of the application:
- (e) that the interests of justice require the application to be determined without serving notice of the application.

*Select the ground or grounds that are applicable. At least one of the grounds must apply.

5 I certify that—

- (a) the grounds set out in paragraph 4 on which the application relies are made out; and
- (b) all reasonable inquiries and all reasonable steps have been made or taken to ensure that the application contains all relevant information, including any opposition or defence that might be relied on by any other party, or any facts that would support the position of any other party.

Date:

Signature:

(applicant *or* solicitor/counsel* for applicant)

Phone number:

(applicant *or* solicitor/counsel* for applicant)

*Select one.

Schedule 3

New form PR 1AA inserted

r 27(3)

Form PR 1AA

Application without notice for obtaining grant of probate/letters of administration with the will annexed/letters of administration on intestacy*

r 27.4(3)

*Select one.

In the High Court of New Zealand

[Name of registry] Registry

No: [number of proceeding]

In the estate of [full name, place of residence, occupation] (deceased)

To the Registrar of the High Court at Wellington

This document notifies you that—

1 *For this paragraph select the statement that applies.**Statement A*

The applicant(s) [name, place of residence, occupation] applies/apply* for an order that probate of the will of the deceased be granted to the applicant(s)*/applies/apply* for the following orders:* [list the orders being sought].

*Select one.

Statement B

The applicant(s) [name, place of residence, occupation] applies/apply* for an order that letters of administration with the will annexed of the estate of the deceased be granted to the applicant(s)*/applies/apply* for the following orders:* [list the orders being sought].

*Select one.

Statement C

The applicant(s) [name, place of residence, occupation] applies/apply* for an order that letters of administration of the estate of the deceased be granted to the applicant(s)*/applies/apply* for the following orders:* [list the orders being sought].

*Select one.

2 The grounds on which the order/each order* is sought are as follows: [specify concisely the grounds on which the order/each order* is sought. If more than 1, list each one or list them all].

*Select one.

3 The application is made in reliance on section 5 of the Administration Act 1969 and rule 27.4 of the High Court Rules 2016 [*specify any other particular provision of an enactment, principle of law, or judicial decision relied on*].

4 The application is made without notice to any other person on the following grounds: [*select grounds that apply*]

- (a) the application affects only the applicant:
- (b) other persons who have an equal or higher entitlement to apply have been given notice of or have consented to the application:
- (c) rule 27.5 of the High Court Rules 2016 applies and the application contains proof of each matter stated in rule 27.5(3) of the High Court Rules 2016:
- (d) the application relates to a routine matter.

Date:

Signature:

(applicant(s) *or* solicitor/counsel(s)* for applicant(s))

Name of signatory: [*please print legibly*]

This application is filed by:

[*name of solicitor*]

(solicitor for the applicant(s))

of [*name of firm*]

PO Box and DX numbers:

Place:

Telephone and fax numbers, email address:

Physical street address:

Michael Webster,
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 2017, amend the High Court Rules 2016 (the **principal rules**) as follows:

- rule 1.3, which is an interpretation provision for the principal rules, is amended by inserting a definition of the term application without notice. This is consequential on the replacement of rule 7.23:
- rule 2.1, which relates to the jurisdiction and powers of Associate Judges, is amended as a consequence of *new rules 5.35A to 5.35C*. The amendment has the effect that only Judges can exercise the jurisdiction and powers conferred by these new rules; the jurisdiction and powers cannot be exercised by Associate Judges:
- rule 5.7, which sets out requirements that a document tendered for filing in a proceeding must meet, is amended so that the time at which a document is required to be securely fastened together is fixed as the time of filing and service:
- rule 5.11 is amended to require the heading of a statement of claim and of a counterclaim to show the name of the court registry in which the documents are filed in both te reo Māori and English. The general form for proceedings (form G 1 in Schedule 1 of the principal rules) is consequentially amended to show this new requirement and list the names of all registries of the court, in both English and te reo Māori, so that users can correctly insert the appropriate names in their documents (*see rule 27* of these rules):
- *new rules 5.35A to 5.35C* provide for a Registrar who believes that a proceeding accepted for filing is, on the face of it, plainly an abuse of the process of the court to refer the proceeding to a Judge for consideration before releasing the documents that would enable the proceeding to be served. If the Judge to whom the proceeding is referred is satisfied that the proceeding is plainly an abuse of the process of the court, the Judge may make an order striking out the proceeding before it is served and unnecessary costs are incurred by any person named as a party to the proceeding. Alternatively, the Judge may make orders or give directions for the purpose of ensuring that the proceeding is conducted in a way that complies with the principal rules. The new rules also incorporate the following powers and obligations:
 - a Judge may make orders or give directions on his or her own initiative without hearing from the person who filed the proceeding. However, if that person is not heard, the order must contain a statement of the person's right to appeal against the decision (*new rule 5.35B(3)*):

- if a claim is struck out, *new rule 5.35B(4)* requires a copy of the Judge's decision to be served on the person or persons named as parties to the proceeding:
- the Registrar is required to sign and release the documents enabling the proceeding to be served if the Judge to whom the proceeding is referred does not make an order or give a direction under the rules, or the Judge makes an order or gives directions under which the documents must be released for service (*new rule 5.35C*):
- rule 5.49, which sets out the procedure enabling a defendant to file an appearance to object to the jurisdiction of the court to hear a proceeding, is amended so that when a proceeding is served within the jurisdiction the onus will be on the defendant to establish that the court does not have jurisdiction, whether the court is hearing an application by the defendant to dismiss the proceeding or hearing an application by the plaintiff under subclause (5) to set aside the defendant's appearance:
- rule 6.8, which deals with the situation where it has not been possible to serve a document in accordance with the rules and enables the court to direct the steps that are to be taken in substitution for service, is amended to extend the court's current powers so that, in addition to being able to give directions specifying when the document is to be treated as having been served, the court may give directions specifying the place at which the document is to be treated as having been served:
- rule 6.29, which relates to the court's discretion to assume jurisdiction in certain circumstances where a process has been served outside the jurisdiction, is amended to clarify that the rule is subject to section 27(1) of the Trans-Tasman Proceedings Act 2010. Under that provision, a New Zealand court cannot stay a proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act:
- the rules concerning first case management conferences are amended as follows to provide for a Judge to review a proceeding after a statement of defence is filed and before a first case management conference is allocated:
 - rule 7.1AA(1) (which outlines the case management procedures for different types of proceedings) is amended consequentially on *new rules 7.3 and 7.3A*:
 - rule 7.3 is replaced with *new rules 7.3 and 7.3A* as follows:
 - *new rule 7.3* requires the parties to file either a joint memorandum or separate memoranda providing the information specified in *new rule 7.3(2) and (3)*. If the Judge is satisfied that the memorandum or memoranda filed meet the requirements of those provisions, the Judge may exercise certain powers, including allocating a hearing date and, if necessary, giving directions for readying the proceeding for trial, or waiving the requirement for a first case manage-

ment conference to be held and giving directions for a case management conference or issues conference to be convened:

- *new rule 7.3A* provides for the Judge to direct the Registrar to convene a first case management conference if the Judge is not satisfied that the memorandum or memoranda filed meet the requirements of *new rule 7.3(2) and (3)*. Under *new rule 7.3A*, the first case management conference must then be held no later than 15 working days after the Judge gives that direction:
- rule 7.6 is amended to specify a default close of pleadings date in the event that this date is not set at the first case management conference. The default date is 60 working days before the hearing or trial date allocated or the date on which the hearing or trial date is allocated, whichever is the later:
- rule 7.23, which sets out the requirements applying to an application made without notice, is replaced by a *new rule 7.23* to—
 - specify the circumstances in which a person can make an application without notice:
 - require the applicant to make all reasonable inquiries and ensure that the application and supporting documents contain all material relevant to the application, including any defence that may be relied on by any other party and any facts that would support the position of any other party:
 - require an applicant to file a memorandum, if the application is one that a respondent would be likely to contest were the application made on notice, that sets out specified information concerning the background to the application, the grounds on which the applicant is seeking each order, and what the applicant knows about grounds of opposition that a party might rely on and facts that would support a party's opposition:
 - provide for the consequences of an applicant failing to comply with the requirements in the rule:
- rule 9.7, which sets out requirements in relation to briefs of evidence, is amended to include particular requirements that must be met by a party that intends to call as a witness a person who has not provided a brief of evidence:
- rule 9.77 is amended to specify that the requirements under the rule for exhibits to be annexed to an affidavit, and, if filed with the affidavit in a separate bundle, to be securely bound, apply at the time at which the affidavit is filed and served. (*See also* the note on the related amendment to rule 5.7):

rule 9.85(2), which precludes an affidavit from being read or used in a proceeding, without the leave of the court, if it is sworn before a lawyer who is acting for a party to the proceeding or who has specified connections with another lawyer who is acting for a party to the proceeding, is amended to encompass all circumstances that may give rise to a lawyer not having, or potentially not having, the necessary independence. The provision does not apply to affidavits sworn in relation to non-contentious proceedings:

- rule 14.2 is amended to enable costs for legal professional services to be awarded to a party even though the services are provided under a conditional fee agreement (as defined in *new rule 14(7)*):
- rule 14.12 is amended to enable disbursements in respect of an expert witness's fees and expenses to be included in an award of costs even if the expert's services are provided under a conditional fee agreement. The code of conduct for expert witnesses in Schedule 4 of the principal rules is consequentially amended to require an expert witness engaged under a conditional fee agreement to disclose to the court that he or she is engaged under such an agreement and the basis on which he or she will be paid:
- rule 19.2 is amended so that an application to the court to review a coroner's decision under section 75 of the Coroners Act 2006 is required to be made to the court by way of originating application:
- provisions of the principal rules concerning applications for probate and letters of administration are amended to provide for a separate form (*new form PR IAA* in Schedule 1 of the principal rules) to be used for without notice applications for probate. The reason for the change is that not all of the requirements in rule 7.23 (applications without notice) are relevant to these applications. Under *new rule 27.10*, applications made in solemn form must be filed in the relevant registry of the court in accordance with the provisions of *new rule 27.10(2) to (7)*. There is no change to the requirement that all applications for probate made without notice must be filed in Wellington:
- rule 27.14, which currently allows only Senior Duty Registrars of the Auckland Registry of the High Court to deal with probate matters, is amended to enable other Senior Deputy Registrars of other registries of the court to exercise the same powers.

Issued under the authority of the Legislation Act 2012.

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These rules are administered by the Ministry of Justice.