



## Supreme Court Amendment Rules 2018

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 14th day of May 2018

Present:

The Right Hon Jacinda Ardern presiding 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 that Act (of whom at least 1 was a Judge of the High Court).

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## Rules

### 1 Title

These rules are the Supreme Court Amendment Rules 2018.

## 2 Commencement

These rules come into force on the 28th day after the date of their notification in the *Gazette*.

## 3 Principal rules

These rules amend the Supreme Court Rules 2004 (the **principal rules**).

## 4 Rule 3 amended (Interpretation)

(1) In rule 3, insert in its appropriate alphabetical order:

**application for leave to appeal** includes a Solicitor-General's reference leave application

(2) In rule 3, definition of **civil appeal**, replace “within the meaning of the Supreme Court Act 2003” with “as defined in section 65 of the Senior Courts Act 2016”.

(3) In rule 3, definition of **permanent Judge**, replace “has the same meaning as in the Supreme Court Act 2003” with “means a Judge of the Supreme Court, other than a Judge appointed under section 110 or 111 of the Senior Courts Act 2016”.

(4) In rule 3, insert in its appropriate alphabetical order:

**pre-trial leave application** means an application for leave to appeal against a decision made under subpart 2 of Part 6 of the Criminal Procedure Act 2011

(5) In rule 3, insert in its appropriate alphabetical order:

**Solicitor-General's reference leave application** means an application by the Solicitor-General for leave to refer a question of law to the Supreme Court under subpart 11 of Part 6 of the Criminal Procedure Act 2011

(6) In rule 3, replace the definition of **working day** with:

**working day** has the same meaning as in section 4 of the Senior Courts Act 2016

## 5 New rule 3A inserted (Transitional, savings, and related provisions)

After rule 3, insert:

### 3A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

## 6 Rule 5 amended (Directions)

(1) In rule 5(1A), delete “or a Judge” and “or the Judge”.

(2) In rule 5(2), replace “the Court must dispose” with “the Court may dispose”.

**7 Rule 6 amended (Effect of non-compliance with rules)**

In rule 6(1),—

- (a) replace “does not render void” with “or a direction of the Court does not invalidate”; and
- (b) replace “set aside” with “dismissed”.

**8 Rule 7 amended (Power under rules to determine ancillary matters may be exercised by a Judge)**

In rule 7, replace “permanent Judge of the Court” with “permanent Judge”.

**9 Rule 8 amended (Heading, point size, and margin)**

(1) Replace rule 8(1)(a) and (b) with:

- (a) the words “In the Supreme Court of New Zealand” and, in te reo Māori, the words “I Te Kōti Mana Nui” (in the same manner as in form 1 of Schedule 1); and
- (b) the name of each applicant or appellant, followed by the word “Applicant” or “Appellant” (as appropriate); and

(2) In rule 8(2), after “not less than 12 point size”, insert “with not less than 1.5 line spacing”.

**10 Rule 10A amended (Practice note about electronic format)**

In rule 10A, replace “have regard to” with “comply with”.

**11 Rule 11 amended (Time for making application for leave)**

Replace rule 11(1) with:

- (1) An appellant must apply for leave to appeal—
  - (a) within the time specified in the enactment under which the application is brought; or
  - (b) if the enactment under which the application for leave to appeal is brought does not specify the time within which the application must be made, within 20 working days after the date of the decision that the appellant wishes to appeal against.

**12 Rule 12 amended (Forms for applications for leave)**

- (1) In rule 12, replace “form 1 or form 2 of the Schedule” with “form 1, 2, or 3A of Schedule 1”.
- (2) In rule 12, insert as subclause (2):
  - (2) A Solicitor-General’s reference leave application must be accompanied by an explanatory memorandum.

**13 Rule 15 amended (Matters to be stated in application for leave)**

In rule 15(1)(b), replace “section 13 of the Supreme Court Act 2003” with “section 74 of the Senior Courts Act 2016”.

**14 Rule 20 amended (Written submissions on leave application)**

- (1) In rule 20(2)(d), replace “section 13 of the Supreme Court Act 2003” with “section 74 of the Senior Courts Act 2016”.
- (2) In rule 20(5), delete “contrary”.
- (3) After rule 20(5), insert:
- (6) Subclauses (1)(a) and (3)(b) do not apply to an application for leave to appeal that is a pre-trial leave application.

**15 New rule 20AA inserted (Written submissions on pre-trial leave application)**

After rule 20, insert:

**20AA Written submissions on pre-trial leave application**

- (1) If the application for leave to appeal is a pre-trial leave application,—
  - (a) any written submissions by an applicant must be—
    - (i) filed in the Registry within 5 working days after the application is filed; and
    - (ii) promptly served on the respondent; and
  - (b) any written submissions by a respondent must be—
    - (i) filed in the Registry within 5 working days after the date of service of the applicant’s submissions; and
    - (ii) promptly served on the applicant.
- (2) Any application for an extension of time for the filing of submissions under subclause (1) must be accompanied by a memorandum outlining why the extension is required and how much additional time is sought.
- (3) The memorandum must,—
  - (a) in the case of an applicant, be included in, or accompany, the pre-trial leave application; and
  - (b) in the case of a respondent, be filed in the Registry not later than 4 pm on the first working day following the date of service of the applicant’s submissions.
- (4) Subject to subclauses (1) to (3), rule 20 applies to written submissions on a pre-trial leave application.

**16 Rule 20A replaced (Notice in respondent's submission that judgment will be supported on other grounds)**

Replace rule 20A with:

**20A Notice that judgment will be supported on other grounds**

If a respondent does not wish the judgment appealed from to be varied but intends to support it on another ground (being a ground that the court appealed from did not decide or decided erroneously), the respondent must give notice of that intention—

- (a) in the respondent's written submissions in relation to the application for leave to appeal; or
- (b) by notice in writing given not later than 10 working days after the Court gives leave to appeal.

**17 Rule 24 amended (Oral submissions on leave application)**

In rule 24(1)(a) and (b), replace "15 minutes" with "30 minutes".

**18 Rule 25 amended (Respondent's appeal may be sole appeal)**

In rule 25, after "but may", insert ", if the respondent has applied for leave to appeal,".

**19 Rule 27 amended (Delivery of judgment on leave to appeal)**

(1) Replace rule 27(1) with:

(1) A judgment on an application for leave to appeal may be delivered—

- (a) through the Registrar of the Court; or
- (b) in open court by no fewer than 2 permanent Judges.

(2) After rule 27(2), insert:

(3) The Registrar of the Court must promptly advise the parties and the Registrar of the court appealed from as to whether the Court has given leave.

**20 Rule 28 amended (Notice of appeal not required if leave given)**

Revoke rule 28(2).

**21 Rule 29 amended (Appeal confined to approved grounds)**

(1) Replace rule 29(1) with:

(1) If the decision giving leave specifies approved grounds of appeal, the grounds that may be argued in support of the appeal are confined to those approved grounds.

(2) In rule 29(2), replace "at any time allow the grounds for an appeal to be amended" with "permit or direct another ground to be advanced in argument".

**22 Rule 31 amended (Security for costs in civil appeal)**

In rule 31(4), delete “, on application of the respondent,”.

**23 Rule 32 amended (Allocation of hearing date)**

Replace rule 32(1) and (2) with:

- (1) After the Court gives leave to appeal, the Registrar must, after consulting the parties or their lawyers, promptly—
  - (a) allocate a hearing date; and
  - (b) give the parties written notification of that hearing date.
- (2) Subclause (1) does not apply if the Court has set the hearing date in the decision giving leave to appeal.

**24 Rule 33 revoked (Timetable may be fixed for criminal appeals)**

Revoke rule 33.

**25 Rule 34 amended (Obligations of parties in preparing draft case on appeal in civil appeals)**

In rule 34(5), after “the date on which the Court gives leave to appeal”, insert “(or any longer period allowed by the Registrar)”.

**26 Rule 36 amended (Written submissions on appeals)**

Replace rule 36(2) and (3) with:

- (2) The appellant’s written submissions must be accompanied by a chronology.
- (2A) If all parties are represented by counsel, those counsel must use reasonable endeavours to agree on the chronology by the date on which the appellant’s written submissions must be filed.
- (2B) If counsel are unable to agree on the chronology, the respondent’s written submissions must be accompanied by a marked-up copy of the appellant’s chronology that highlights areas of disagreement.
- (3) The appellant’s written submissions must be filed and served on the other party not later than—
  - (a) 30 working days after the date on which the Registrar gives the parties written notification of the date of the hearing of the appeal; or
  - (b) if the date of the hearing is specified in the decision of the Court giving leave, not later than 30 working days after the date of that decision.

**27 New rule 36A inserted (Outline of oral argument on appeals)**

After rule 36, insert:

**36A Outline of oral argument on appeals**

- (1) Each party to an appeal may provide the Court with an outline of the oral argument to be advanced on that party's behalf at the hearing of the appeal.
- (2) An outline may be provided—
  - (a) by filing it in the Registry, at any time up to and including the date of the hearing of the appeal; or
  - (b) by handing it up to the Court at the hearing of the appeal, before the beginning of the oral submissions on behalf of the party.
- (3) The outline of the oral argument must be contained in a document of not more than 3 pages that complies with the requirements of rule 8(2) and (3).

**28 Rule 39 amended (Abandonment of civil appeal by party)**

Replace rule 39(3) with:

- (3) The Court may make any order as to costs that seems just in respect of an abandoned appeal.

**29 Rule 42 amended (Delivery of judgment)**

Replace rule 42(1) with:

- (1) A judgment of the Court on appeal may be delivered—
  - (a) in open court by no fewer than 2 permanent Judges; or
  - (b) through the Registrar of the Court.

**30 New rule 43A inserted (Correction of accidental slip or omission)**

After rule 43, insert:

**43A Correction of accidental slip or omission**

- (1) A judgment or an order may be corrected by the Court or the Registrar who made it if it—
  - (a) contains a clerical mistake or an error or omission arising from an accidental slip or omission, whether made by an officer of the Court or not; or
  - (b) is drawn up so that it does not express what was decided or intended.
- (2) The Court or the Registrar may make the correction on—
  - (a) the Court's or the Registrar's own initiative; or
  - (b) an interlocutory application.

**31 Rule 44 amended (Costs and disbursements)**

- (1) In rule 44(1), replace “or an application to bring such an appeal” with “or an application for leave to bring such an appeal, or any application relating to such an appeal or application for leave”.



- (2) Replace rule 44(4) with:
- (4) The Court may direct the Registrar to fix the types and amounts of disbursements payable to any party under an order made under subclause (1).
- (5) If the Court orders that usual disbursements are payable to a party, or that usual disbursements be charged on any fund, estate, or assets, the order is taken to direct the Registrar to fix the types and amounts of disbursements as defined in subclause (6).
- (6) For the purposes of this rule, **disbursements** means disbursements as defined in rule 14.12(1) of the High Court Rules 2016 as well as the reasonable travel and accommodation expenses of counsel or of an unrepresented party.

### 32 New Schedule 1AA inserted

Insert the Schedule 1AA set out in Schedule 1 of these rules as the first schedule to appear after the last rule of the principal rules.

### 33 Schedule amended

In the Schedule heading, replace “**Schedule**” with “**Schedule 1**”.

### 34 Schedule, form 1 amended

- (1) In the Schedule, form 1, replace “*In the Supreme Court of New Zealand*” with:

**In the Supreme Court of New Zealand  
I Te Kōti Mana Nui**

- (2) In the Schedule, form 1, paragraph 2,—
- (a) after “give leave to hear”, insert “and determine”; and
- (b) replace “section 13 of the Supreme Court Act 2003” with “section 74 of the Senior Courts Act 2016”.
- (3) In the Schedule, form 1, note to paragraph 2,—
- (a) replace “Section 13 of the Supreme Court Act 2003 provides as follows:” with “Section 74 of the Senior Courts Act 2016 provides as follows:”; and
- (b) renumber section 13 as section 74; and
- (c) in subsection (1), delete “proposed”; and
- (d) in subsection (3), replace “subsection (2)” with “subsection (2)(a)”; and
- (e) in subsection (5), after “subsection (1)”, delete “;”.

### 35 Schedule, form 2 amended

- (1) In the Schedule, form 2, replace “*In the Supreme Court of New Zealand*” with:

**In the Supreme Court of New Zealand  
I Te Kōti Mana Nui**

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- (2) In the Schedule, form 2, paragraph 2, replace “section 13 of the Supreme Court Act 2003” with “section 74 of the Senior Courts Act 2016”.
- (3) In the Schedule, form 2, note to paragraph (2),—
- (a) replace “Section 13 of the Supreme Court Act 2003 provides as follows:” with “Section 74 of the Senior Courts Act 2016 provides as follows:”; and
  - (b) renumber section 13 as section 74; and
  - (c) in subsection (1),—
    - (i) replace “the Court” with “the court”; and
    - (ii) delete “proposed”; and
  - (d) in subsection (3), replace “subsection (2)” with “subsection (2)(a)”; and
  - (e) in subsection (5), after “subsection (1)”, delete “;”.

**36 Schedule, new form 3A inserted**

In the Schedule, after form 2, insert the form 3A set out in Schedule 2 of these rules.

**Schedule 1**  
**New Schedule 1AA inserted**

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**Schedule 1AA**  
**Transitional, savings, and related provisions**

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**Part 1**  
**Provisions relating to Supreme Court Amendment Rules 2018**

**1 Interpretation**

In this Part,—

**amended rules** means the Supreme Court Rules 2004 as in force immediately after the commencement of the amendment rules

**amendment rules** means the Supreme Court Amendment Rules 2018

**specified appeal**—

- (a) means an application for leave to appeal, made before the amendment rules commence, that is pending or in progress at the time of the commencement; and
- (b) includes an appeal for which leave is granted before the amendment rules commence and that is in progress at the time of the commencement.

**2 Transitional provision**

- (1) Specified appeals may be continued and completed under the amended rules and the amendment rules, so far as practicable, apply to those appeals.
- (2) However, in so far as it is not practicable for any provision of the amended rules to be applied to a specified appeal, the rules as in force immediately before the commencement of the amendment rules apply to the extent necessary.
- (3) If, in any specified appeal, a question arises as to the application of any of the amended rules or the rules as in force immediately before the commencement of the amendment rules, the Court or, on the direction of the Court, the Registrar may determine the question and make any order that the Court or the Registrar thinks fit.

## Schedule 2

### New form 3A inserted into Schedule

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#### Form 3A

Notice of application for leave to refer question of law by Solicitor-General

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**In the Supreme Court of New Zealand**  
**I Te Kōti Mana Nui**

**To the Registrar of the Supreme Court**

I, [full name], the Solicitor-General, give you notice that I apply for the leave of the Supreme Court to refer the following question(s) of law to the Supreme Court [set out the question or questions of law and state particulars of the appeal in the Court of Appeal in which the question or questions of law arose].

- 1 What are the grounds on which you make the application?
- 2 Why should the Supreme Court give leave for the proposed reference?
- 3 What should the answer to the question(s) of law be? In addition, briefly set out the grounds for that answer or those answers.
- 4 What else do you wish the Supreme Court to do in addition to answering the question(s) of law?
- 5 You have 60 working days from the date of the determination by the Court of Appeal to make the application for leave. The Court may extend this time. If this application is out of time, what are your reasons for saying that the Court should nevertheless extend the time and consider your application?

Dated this [date] day of [month] [year]:

Signature of Solicitor-General:

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 amend the Supreme Court Rules 2004 (the **principal rules**). They come into force on the 28th day after the date of their notification in the *Gazette*.

The rules make a number of changes to the principal rules that are necessary as a consequence of the Senior Courts Act 2016, which repealed and superseded the Supreme Court Act 2003, and a number of miscellaneous and unrelated changes. The changes include—

- changes to provide for procedural matters relating to applications by the Solicitor-General for leave to refer a question of law to the Court under subpart 11 of Part 6 of the Criminal Procedure Act 2011 (a **Solicitor-General’s reference leave application**). The main changes are to—
  - rule 3, which is the interpretation provision for the principal rules (*see* new definitions of application for leave to appeal and Solicitor-General’s reference leave application):
  - the schedule of forms, to add *new form 3A* (notice of application for leave to refer question of law by Solicitor-General):
- an amendment to rule 3 to include a definition of the term permanent Judge (a term that was a defined term in the Supreme Court Act 2003 but for which there is no equivalent definition in the Senior Courts Act 2016 that can be relied on for the purposes of the principal rules):
- amendments to rule 8 and forms 1 and 2 of the Schedule, which set out what must be shown in the heading to each document filed in the Court. Currently, the heading must include the words “In the Supreme Court of New Zealand”. Under the amendments, the heading must also include the te reo Māori words “I te Kōti Mana Nui”, which show the Maori name adopted by the Court (Te Kōti Mana Nui):
- the insertion of a *new rule 20A* to change the time at which a respondent who wants to support a judgment on grounds other than those in the judgment appealed from must give notice of that intention. Currently, the rule requires a respondent to give that notice in written submissions in relation to the application for leave to appeal. To take account of the difficulty that a respondent may have in giving notice of the intention before the respondent knows whether the appellant will be granted leave to appeal, *new rule 20A* enables a respondent either to notify the respondent’s intention in the respondent’s submissions or to give notice of the intention, in writing, within 10 working days of the Court giving leave to appeal:
- amendments to rule 27, which provides for how a judgment on an application for leave to appeal must be delivered. The effect of the amendments is that if a leave judgment is delivered in open court it no longer has to be delivered by all the Judges who heard the application—it may be delivered by any 2 permanent Judges:
- an amendment to rule 29(2) to provide that the Court may permit some other ground of appeal to be argued in support of an appeal, in addition to the grounds approved in the order in which the Court granted leave to appeal:

- an amendment to rule 32, which sets out the procedure for allocating a hearing date for an appeal. The amendment provides for the Registrar to allocate a hearing date after consulting with the parties, rather than having to wait for the parties to make formal submissions on the appropriate date for the appeal:
- an amendment to rule 39(3) to clarify the Court’s power to award costs in relation to an abandoned appeal:
- an amendment to rule 42(1) to allow a judgment of the Court on an appeal to be delivered through the Registrar as an alternative to delivery in open court by at least 2 permanent Judges of the Court (as is currently required under the provision):
- the insertion of a *new rule 43A* to provide for the Court or a Registrar who made a judgment or an order to correct certain accidental slips or omissions in that judgment or order. The correction may be made on the Court’s or the Registrar’s own initiative or on an interlocutory application:
- an amendment to rule 44, which gives the Court discretion to make orders concerning the payment of costs and disbursements of a civil appeal or an application for leave to appeal. The definition of costs and disbursements in rule 44(6) is amended so that the Court’s discretion extends to orders concerning the payment of travel and accommodation costs of an unrepresented party.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 May 2018.

These rules are administered by the Ministry of Justice.