



Court of Appeal (Civil) Amendment Rules 2021

Patsy Reddy, Governor-General

Order in Council

At Wellington this 19th day of April 2021

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 the Senior Courts Act 2016 (of whom at least 1 was a Judge of the High Court).

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Rules

1 Title

These rules are the Court of Appeal (Civil) Amendment Rules 2021.

2 Commencement

These rules come into force on 20 May 2021.

3 Principal rules

These rules amend the Court of Appeal (Civil) Rules 2005.

4 Rule 10 replaced (Filing and service of documents)

Replace rule 10 with:

10 Filing and service of documents

- (1) A document may be filed in the Registry—
 - (a) by delivering it to the Registry by hand; or
 - (b) by sending it to the Registry—
 - (i) by mail to a postal address published by the Registrar; or
 - (ii) in electronic form—
 - (A) to an electronic address to which the person filing the document has been directed by the Court or the Registrar to send any documents that are to be filed electronically in the proceeding; or
 - (B) where no such direction has been made in respect of the proceeding, to an electronic address published by the Registrar for the purpose of allowing the electronic filing of documents.
- (2) A document may be served on a party—
 - (a) at the address for service notified by the party in the proceeding in the court appealed from, or at an address for service notified by the party for the purposes of the appeal; or
 - (b) by sending it by mail to a postal address supplied by the party for the purposes of the appeal; or
 - (c) by email to an email address supplied by the party for the purposes of the appeal.
- (3) If a document is, in accordance with this rule, filed by sending it by mail to the Registry, the document is filed on the day on which the Registry receives it.
- (4) If a document is, in accordance with this rule, served by sending it by mail to a postal address, the document is served on the earlier of—

- (a) the fifth working day after the day on which it is sent by mail; or
 - (b) the day on which it is received.
- (5) If a document is, in accordance with this rule, filed or served by sending it to an electronic address, the document is filed or served at the time it is received by the relevant electronic communications or information management, retrieval, or storage system.
- (6) However, if the document is received by the relevant electronic communications or information management, retrieval, or storage system on a day that is not a working day or at a time that is not between 9 am and 5 pm, the document is filed or served at 9 am on the first working day after that receipt.
- (7) The Court may require an original copy of a document filed electronically to be produced.
- (8) Despite subclauses (1) and (2),—
- (a) a case on appeal must be filed and served in accordance with rule 40; and
 - (b) a written synopsis of argument on appeal must be filed and served in accordance with rule 40E; and
 - (c) a bundle of authorities must be filed and served in accordance with rule 42; and
 - (d) a list of issues to be determined on the appeal must be filed and served in accordance with rule 42A.
- (9) In this rule,—
- electronic address** means any method by which a document communicated in electronic form may be directed to the attention of a particular user of an electronic communications or information management, retrieval, or storage system, and includes email addresses and remotely accessible locations in file directories located on computer hard drives, servers, or Internet-based servers
- published** means having been made available at all reasonable times on a website maintained by or on behalf of a Registrar.

5 Rule 10A replaced (Practice note about electronic format)

Replace rule 10A with:

10A Practice note about electronic format

If, under these rules, or with the authority of the Court, any document or bundle of documents is to be served or filed electronically by any party, the party must comply with any practice note issued from time to time by the President of the Court of Appeal about electronic format.

6 Rule 16 amended (When application for leave is brought)

Replace rule 16(1)(a) with:

(a) the applicant files the application in the Registry; and

7 Rule 31 amended (Mode of bringing appeal)

Replace rule 31(1)(a) with:

(a) the appellant files the notice of appeal in the Registry; and

8 Rule 32 amended (Mode of bringing cross-appeal)

Replace rule 32(1)(a) with:

(a) the respondent files the notice of cross-appeal in the Registry; and

9 Rule 43 amended (Appeal abandoned if not pursued)

Replace rule 43(1A) with:

(1A) Subclause (1) is subject to any suspension granted under subclause (1B) or extension of time granted under subclause (2) or rule 5A(1)(c).

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 20 May 2021, amend the Court of Appeal (Civil) Rules 2005 (the **principal rules**).

The rules replace rule 10 of the principal rules to update the way documents may be filed and served. *New rule 10* allows for a document to be filed and served in an electronic form and sets out when a document is considered to have been received by the relevant electronic system.

The rules make a change to rule 10A of the principal rules, which incorporated by reference the Senior Courts Civil Electronic Document Protocol (the **Protocol**). The Protocol that was in force at the time rule 10A was inserted in the principal rules in 2019 was published on 22 May 2017. It is this 2017 Protocol that was incorporated by reference in rule 10A.

However, on 1 March 2019, a revised Protocol was published (and later amended on 15 May 2019). Rule 10A is replaced with *new rule 10A* (which is former rule 12A that was revoked on 1 March 2019) to eliminate the need to amend the rules every time the Protocol is amended. *New rule 10A* requires parties to have regard to any practice note issued by the President of the Court Appeal rather than referring expressly to the Protocol.

The rules also make changes to the principal rules to—

- allow the Court of Appeal to receive electronic filing of civil initiating documents; and
- clarify the distinction between the extensions of time or suspensions the Court of Appeal or a Registrar may grant under rules 43(1B) and (2) and 5A(1)(c) of the principal rules.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 22 April 2021.

These rules are administered by the Ministry of Justice.