



District Courts Rules 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 26th day of May 2014

Present:

His Excellency the Governor-General in Council

Pursuant to section 122 of the District Courts Act 1947, section 11 of the Admiralty Act 1973, section 16 of the Arbitration Act 1996, section 42 of the Harassment Act 1997, section 81 of the Construction Contracts Act 2002, and section 213 of the Local Government Act 2002, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and (in relation to the jurisdiction conferred by the District Courts Act 1947, the Admiralty Act 1973, or the Construction Contracts Act 2002), with the concurrence of the Chief District Court Judge and at least 2 members of the Rules Committee established under section 51B of the Judicature Act 1908 (of whom at least 1 was a District Court Judge), makes the following rules.

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Schedule 2

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Schedule 3

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Schedule 5

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Rules

1.1 Title

These rules are the District Courts Rules 2014.

1.2 Commencement

These rules come into force on 1 July 2014.

Part 1

Rules of general application

Subpart 1—Objective and interpretation

1.3 Objective

The objective of these rules is to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application.

Compare: HCR 1.2

1.4 Interpretation

(1) In these rules, unless the context otherwise requires,—

Act means, except in Part 20, the District Courts Act 1947
address for service—

- (a) in relation to a party or other person, means the address of a place in New Zealand at which a document may be left for that party or other person, or to which it may be sent by post to that party or other person, under these rules; but
- (b) in relation to a party who is a defendant (as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010) who is served in Australia under section 13 of that Act with an initiating document for a proceeding, means the address of a place in New Zealand or Australia that, under section 18 of that Act, is or is to be treated as the defendant's address for service for the proceeding

approved form, in relation to any matter, means a form approved for the purpose of the matter under the Act by the chief executive of the Ministry of Justice

chattels includes all things that are not land

civil proceedings, in relation to the Crown, has the same meaning as in section 2(1) of the Crown Proceedings Act 1950

court—

- (a) means the District Court; and
- (b) includes a District Court Judge

court holiday means a day that is a holiday under rule 2.1

Crown has the same meaning as in section 2(2) of the Crown Proceedings Act 1950

defendant means a person served or intended to be served with a proceeding (other than a third or subsequent party served with a proceeding under these rules)

document means—

- (a) any material, whether or not it is signed or otherwise authenticated, that bears symbols (including words and figures), images, or sounds or from which symbols, images, or sounds can be derived, and includes—
 - (i) a label, marking, or other writing that identifies or describes a thing of which it forms part, or to which it is attached;
 - (ii) a book, map, plan, graph, or drawing;
 - (iii) a photograph, film, or negative; and
- (b) information electronically recorded or stored, and information derived from that information

enforce, in relation to a judgment, means enforce or execute the judgment under Part 6 of the Act

to **file**, in relation to a document, means to lodge the document in the form required by these rules in, or to send it by post or electronically in accordance with these rules to, the proper registry (as determined under rule 5.1), together with the filing fee (if any) that is payable

full trial means a full trial held under Part 10 of these Rules

HCF means High Court form (as prescribed by Schedule 1 of the High Court Rules)

HCR means High Court rule

High Court Rules means the rules from time to time set out in Schedule 2 of the Judicature Act 1908 (as amended from time to time)

incapacitated person has the same meaning as in rule 4.29

interlocutory application means application made in accordance with rule 1.15, 7.12, or 7.34

interlocutory order—

- (a) means an order or a direction of the court that—
 - (i) is made or given for the purposes of a proceeding or an intended proceeding; and

- (ii) concerns a matter of procedure or grants some relief ancillary to that claimed in a pleading; and
- (b) includes—
 - (i) an order for a new trial; and
 - (ii) an order striking out the whole or part of a pleading; and
 - (iii) an order varying or rescinding an interlocutory order

land includes any estate, right, title, or interest in land

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006

litigation guardian has the same meaning as in rule 4.29

Māori means a person of the Māori race of New Zealand, and includes any descendant of that person

minor has the same meaning as in rule 4.29

nearer or **nearest**, in relation to any place, means nearer or nearest by the most practicable route

opposite party means, in relation to any party, any other party whose interests are opposed to those of that party

plaintiff means the person by whom or on whose behalf a proceeding is brought

pleading includes a statement of claim, a statement of defence, a reply, a counterclaim, and an originating application

proceeding means any application to the court for the exercise of the civil jurisdiction of the court other than an interlocutory application

proper registry, in relation to a proceeding, means the registry determined under rule 5.1 for the purposes of the proceeding

Registrar includes a Deputy Registrar

registry includes an office of the court

short trial means a short trial held under Part 10 of these rules

simplified trial means a simplified trial held under Part 10 of these rules

unsuccessful judicial settlement conference means a judicial settlement conference at which the parties have been unable to settle the proceedings

will say statement, in relation to a witness, means a statement that records the essence of what the plaintiff or defendant (as the case may be) believes the witness will say at trial

working day means any day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
 - (b) a day in the period commencing with 25 December in any year and ending with 15 January in the following year.
- (2) A word or an expression used in a rule or form in these rules and not defined in these rules but defined in an enactment dealing with the subject matter of that rule or form, unless the context otherwise requires, has the meaning given to it by that enactment.
 - (3) In these rules, unless the context otherwise requires, a reference to a numbered form is a reference to the form so numbered in Schedule 2 of these rules.
 - (4) In a judgment, order, direction, or other document forming part of a proceeding or of an interlocutory application, unless the context otherwise requires,—

month means a calendar month

working day has the same meaning as in subclause (1).

Compare: HCR 1.3; SR 2009/257 rr 1.8, 1.9

Subpart 2—Application and compliance

1.5 Application of rules

- (1) These rules apply to—
 - (a) civil proceedings taken in the District Court under the District Courts Act 1947; and
 - (b) unless otherwise provided in these rules or any other enactment, other civil proceedings taken in the District Court or before a Judge.
- (2) These rules do not apply to proceedings to which the Family Courts Rules 2002 apply, namely—
 - (a) proceedings in the Family Court; or
 - (b) proceedings in the District Court acting under—

- (i) section 151 of the Children, Young Persons, and Their Families Act 1989; or
- (ii) section 15 of the Family Courts Act 1980.

Compare: HCR 1.4(1)–(3); SR 2009/257 r 1.5

1.6 Transitional and savings provisions

Transitional and savings provisions relating to the commencement of these rules are set out in Schedule 1.

1.7 Application issues

If, in any civil proceeding, any question arises as to the application of any provision of these rules or the High Court Rules, the court may, either on the application of a party or on its own initiative, determine the questions and give any directions it thinks just.

Compare: 1947 No 16 s 70A; HCR r 1.4(4)

1.8 Non-compliance with rules

- (1) A failure to comply with the requirements of these rules—
 - (a) must be treated as an irregularity; and
 - (b) does not nullify—
 - (i) the proceeding; or
 - (ii) any step taken in the proceeding; or
 - (iii) any document, judgment, or order in the proceeding.
- (2) Subject to subclauses (3) and (4), the court may, on the ground that there has been a failure to which subclause (1) applies, and on any terms as to costs or otherwise that it thinks just,—
 - (a) set aside, either wholly or in part,—
 - (i) the proceeding in which the failure occurred; or
 - (ii) any step taken in the proceeding in which the failure occurred; or
 - (iii) any document, judgment, or order in the proceeding in which the failure occurred; or
 - (b) exercise its powers under these rules to allow any amendments to be made and to make any order dealing with the proceeding generally as it thinks just.
- (3) The court must not wholly set aside any proceeding or the originating process by which the proceeding was begun on

the ground that the proceeding was required by the rules to be begun by an originating process other than the one employed.

- (4) The court must not set aside any proceeding or any step taken in a proceeding or any document, judgment, or order in any proceeding on the ground of a failure to which subclause (1) applies on the application of a party unless the application is made within a reasonable time and before the party applying has taken any fresh step after becoming aware of the irregularity.

Compare: HCR 1.5

1.9 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 or registry in which to commence or take a step in a proceeding.

Compare: HCR r 7.43A

1.10 Security

- (1) If any officer is empowered to take security from any person for any purpose, the security must be given by the number of sureties and in the form and for the amount that the officer empowered to take security thinks proper.
- (2) Any person required to give security may appeal to the court against any decision under subclause (1).

- (3) A party's solicitor may not be accepted as surety for a security that the party is required to give under rule 5.48(3).
- (4) If any surety becomes bankrupt or insolvent or makes a composition with his or her creditors, all further steps in the proceeding by the principal party to the security may be stayed by the court until another surety has been found.

Compare: HCR r 1.10

1.11 Cases not provided for

- (1) If any case arises for which no form of procedure is prescribed by any Act, rule, or regulation or by these rules, the court must dispose of the case as nearly as may be practicable in accordance with the provisions of the rules affecting any similar case or in accordance with the provisions of the High Court Rules.
- (2) If there are no relevant High Court Rules, the court must dispose of the case in the manner that the court thinks best calculated to promote the objective of these rules.

Compare: HCR 1.6; SR 2009/257 r 1.13

1.12 Amendment of defects and errors

- (1) The court or a Registrar may, before, at, or after the trial of any proceeding, amend any defects and errors in the pleadings or procedure in the proceeding, whether or not there is anything in writing to amend, and whether or not the defect or error is that of the party (if any) applying to amend.
- (2) The court may, at any stage of a proceeding, make, either on its own initiative or on the application of a party to the proceeding, any amendments to any pleading or the procedure in the proceeding that are necessary for determining the real controversy between the parties.
- (3) Amendments made under subclause (1) or (2) may be made with or without costs and on terms that the court thinks just.

Compare: HCR 1.9; SR 2009/257 r 1.14

1.13 Oral applications for relief

- (1) A Judge may grant relief on an oral application if the case is urgent and the interests of justice so require.

- (2) This rule applies despite any rule requiring a written application.
- (3) Relief may be granted on terms and conditions considered just.
Compare: HCR 1.7

1.14 Consent instead of leave of court

- (1) When, by these rules, the leave of the court is required in any matter of procedure, and all parties and persons who are affected consent to the grant of leave, a party may file a memorandum signed by all those parties and persons evidencing that consent and its terms and conditions.
- (2) The Registrar must either—
 - (a) make and seal an order in terms of the memorandum; or
 - (b) refer the memorandum to the court, in which case the memorandum must be treated as an interlocutory application for the leave.

Compare: HCR 1.8

Subpart 3—Use of Māori language, translations, and sign language

1.15 Speaking in Māori

- (1) This rule applies to a person entitled under section 4(1) of the Maori Language Act 1987 to speak Māori in a proceeding (including at the hearing of an interlocutory application or at a conference).
- (2) If a person to whom this rule applies wishes to speak Māori in a proceeding or at the hearing of an interlocutory application, that person, or if the person is a witness, the party intending to call that person, must file and serve on every other party to the proceeding a notice of his or her intention to speak Māori.
- (3) The notice must state that the person intends to speak Māori at—
 - (a) all conferences and hearings; or
 - (b) all conferences and hearings held after a specified conference or hearing; or
 - (c) a specified conference or hearing.
- (4) The notice must be in form 4.
- (5) The notice must be filed and served,—

- (a) if the person intends to speak Māori at all conferences and hearings, not less than 10 working days before the first conference or hearing; or
- (b) if the person intends to speak Māori at conferences and hearings held after a particular conference or hearing, not less than 10 working days before the first conference or hearing at which the person intends to speak Māori; or
- (c) if the person intends to speak Māori at a particular conference or hearing, not less than 10 working days before the conference or hearing.

Compare: HCR 1.11; SR 2009/257 r 3.5

1.16 Translation of documents into te reo Māori

- (1) A person upon whom in any proceeding a document is served is entitled to receive a translation of the document into the Māori language if he or she—
 - (a) applies, orally or in writing, to the Registrar in the place where the proceeding is pending, within 10 working days after the date of service, for a translation into the Māori language of the document; and
 - (b) states a postal address for the service of the translation (if an address for service has not already been given); and
 - (c) satisfies the Registrar that he or she is unable to read the document but could read it if it were translated into the Māori language.
- (2) The Registrar must require that translation to be prepared by the party or person on whose behalf the document was served.
- (3) The translation must be certified correct by a person holding an endorsed certificate of competency under section 18 of the Maori Language Act 1987.
- (4) The translation may be served—
 - (a) personally; or
 - (b) at the address for service (if any) of the person entitled to the translation; or
 - (c) by sending it by registered post addressed to that person at the stated postal address.

- (5) When the translation is sent by registered post, it is treated as having been served when it would be delivered or available for delivery at its address in the ordinary course of registered post.
- (6) The costs of preparing, certifying, and serving the translation are in the discretion of the court to be treated as costs in the proceeding.
- (7) Unless the court otherwise orders,—
 - (a) the document is treated as not having been served until the translation is served in accordance with subclause (4); and
 - (b) the proceeding in which the document is issued must be stayed as far as the person entitled to the translation is concerned until the translation is so served; and
 - (c) every subsequent document served on the person in the proceeding and every enforcement process or other process issued against the person to enforce any judgment entered or order made in the proceeding must, unless the person is at the time represented by a solicitor, be accompanied by a translation into the Māori language complying with this rule.

Compare: HCR 1.12; SR 2009/257 r 3.6

1.17 Failure to give notice

A failure to comply with rule 1.15 does not prevent a person speaking Māori at a conference or hearing, but—

- (a) the court may adjourn the conference or hearing to enable the Registrar to arrange for a person who holds a certificate of competency under section 15(2)(a) or (c) of the Maori Language Act 1987, or some other person competent to interpret Māori, to be available at the adjourned conference or hearing;
- (b) the court may treat the failure to comply as a relevant consideration in an award of costs.

Compare: HCR 1.13; SR 2009/257 r 3.7

1.18 Translation may be ordered by court

- (1) The court may at any time order that a translation into the Māori language, complying with rule 1.16(2) to (7), of any

document served, before or after the making of the order, upon a Māori person concerned in a proceeding be served on that person, whether or not the person has applied for it under rule 1.16(1).

- (2) An order may be made subject to such terms and conditions as the court thinks fit in the interests of justice.
- (3) The court may, on ordering a translation under this rule, grant an adjournment of the proceeding if it thinks fit in the interests of justice.

Compare: HCR 1.14; SR 2009/257 r 3.8

1.19 Affidavit in language other than English

- (1) An affidavit in a language other than English (**non-English-language affidavit**) may be filed in a proceeding.
- (2) The non-English-language affidavit must be accompanied by an affidavit by an interpreter to which is exhibited—
 - (a) a copy of the non-English-language affidavit; and
 - (b) the interpreter's translation of the non-English-language affidavit.

Compare: HCR 1.15; SR 2009/257 r 3.9

1.20 Sign language

- (1) Any person permitted by the New Zealand Sign Language Act 2006 to use New Zealand Sign Language in a proceeding (including at the hearing of any interlocutory application, or at a conference), or if the person is a witness, the party intending to call that person, must give the court and all other parties 10 working days' notice of that person's intention to do so.
- (2) A Judge may at any time make any order that he or she thinks fit in the interests of justice relating to—
 - (a) providing, with the Registrar's assistance, a competent interpreter, and ensuring that the interpreter is available; and
 - (b) the interpretation of the sign language into English or Māori and the interpretation of English or Māori words used in court into sign language; and
 - (c) the costs of and incidental to any interpretation ordered; and

- (d) the method of making and recording the sign language communication.
- (3) A failure to give notice as required by subclause (1) does not prevent any permitted person using New Zealand Sign Language, but—
 - (a) the failure is a relevant consideration in an award of costs; and
 - (b) the Judge may adjourn the conference, hearing, or trial to enable the Registrar to arrange for a competent interpreter to be available at the adjourned conference, hearing, or trial.
- (4) In this rule, **competent interpreter** means an interpreter who meets the standards of competency specified in regulations made under the New Zealand Sign Language Act 2006, and in the absence of such regulations means a person who the Judge is satisfied is competent to translate from English or Māori (as the case requires) into New Zealand Sign Language and from New Zealand sign language into English or Māori (as the case requires).

Compare: HCR 1.16; SR 2009/257 r 3.10

Subpart 4—Time

1.21 Calculating periods of time

- (1) A period of time fixed by the rules or by a judgment, order, or direction or by a document in a proceeding must be calculated in accordance with this rule and rule 1.22.
- (2) When a time of 1 day or a longer time is to be reckoned by reference to a given day or event, the given day or the day of the given event must not be counted.
- (3) Nothing in this rule or in rules 1.22 and 1.23 affects the reckoning of a period of time fixed by the Limitation Act 2010 or any other statute or the application of the Interpretation Act 1999 in relation to the Limitation Act 2010 or any other statute.

Compare: HCR 1.17; SR 2009/257 r 1.16

1.22 When time expires when court registry is closed

When the time for doing any act at a registry of the court expires on a day on which that registry is closed, so that that act

cannot be done on that day, the act is in time if done on the next day on which that registry is open.

Compare: HCR 1.18; SR 2009/257 r 1.17

1.23 Extending and shortening time

- (1) The court may, in its discretion, extend or shorten the time appointed by these rules, or fixed by any order, for doing any act or taking any proceeding or any step in a proceeding, on such terms (if any) as the court thinks just.
- (2) The court may order an extension of time although the application for the extension is not made until after the expiration of the time appointed or fixed.
- (3) The court or a Registrar may order an extension of time on application made by written notice instead of by interlocutory application, if the parties consent.

Compare: HCR 1.19; SR 2009/257 r 1.18

Subpart 5—Lawyers’ obligations

1.24 Lawyers’ duties

- (1) The duties imposed by these rules on lawyers do not limit a lawyer’s obligations to a client or another lawyer or the court under the rules of conduct and client care for lawyers in New Zealand or other applicable ethical rules or guidelines.
- (2) A lawyer who acts for a party to a proceeding, or is a party to any proceeding, must not, without the leave of the court, act for any other party to the proceeding who does not have the same interest in the subject matter of the proceeding.
- (3) In this rule, **lawyer** includes the partner of a solicitor to whom subclause (1) applies.
- (4) In applying these rules, the court may have regard to the obligations referred to in subclause (1).

Compare: HCR 1.20

Subpart 6—Forms

1.25 Variation of forms

- (1) Variations may be made to any form directed or authorised by Schedule 2 or any other provisions of these rules to be used, as the circumstances of a particular case require, and—
 - (a) any information may be added as required for identification or other official purposes; and
 - (b) reformatted versions may be provided by the chief executive of the Ministry of Justice for general use and be received for filing (for example, such versions may use different type sizes or fonts or may reposition information or notes).
- (2) Subclause (1) does not apply if a Judge orders that a court document be prepared in a particular format or with prescribed content.

Compare: HCR 1.21

Subpart 7—International co-operation

1.26 Communication with foreign court

- (1) This rule applies if, and to the extent that, the court is required, or wishes, to seek the co-operation of a court in another country when dealing with an application under these rules.
- (2) The court is entitled to communicate with the foreign court if—
 - (a) the parties consent; and
 - (b) the communication is not prohibited by the law of the other country.
- (3) When the court acts under subclause (2), it must give the parties to the proceeding an opportunity to be heard on the form of the communication.
- (4) The communication and any reply must be treated as part of the record of the proceeding or interlocutory application.

Compare: HCR 1.22

Part 2

Court administration

Subpart 1—Registry hours and court holidays

2.1 Court holidays

- (1) Holidays must be observed in the court and the court's registries and on the following days:
 - (a) the days in the period beginning on Good Friday and ending with the close of the Monday following Easter:
 - (b) the days in the period beginning 25 December in any year and ending with the close of 2 January in the following year:
 - (c) Saturdays and Sundays:
 - (d) the Sovereign's birthday:
 - (e) Anzac Day:
 - (f) Labour Day:
 - (g) Waitangi Day:
 - (h) the day observed as the anniversary of the province in which the court is situated:
 - (i) in each place where a registry of the court is situated, any day which in that place is—
 - (i) a public holiday; or
 - (ii) a proclaimed holiday:
 - (j) any days on which any registry of the court is closed by an order under rule 2.3.
- (2) This rule is subject to the Holidays Act 2003.
Compare: HCR 3.2; SR 2009/257 r 1.19

2.2 Sittings on court holidays

- (1) The court may sit on a court holiday if a Judge considers it desirable to do so in order to dispose of business.
- (2) Despite subclause (1), the court may sit on a Sunday, Christmas Day, New Year's Day, or Good Friday only if a Judge is of the view that the business to be disposed of is extremely urgent.
- (3) If the court sits on a court holiday, it may—
 - (a) authorise the receipt or issue of any document complying with these rules:

- (b) authorise the service of any document received or issued under paragraph (a).

Compare: HCR 3.3; SR 2009/257 r 1.20

2.3 Closing or opening by special order

- (1) The Minister of the Crown who is responsible for the Ministry of Justice may by general or special order direct that the court or any registry of the court may be closed on any day specified in the order.
- (2) Despite rule 2.1, any registry of the court may from time to time be closed or opened by special order of a Judge.
- (3) If an order to close a registry is made under subclause (2), the Registrar must ensure that the order is advertised immediately in the manner directed by a Judge.

Compare: SR 2009/257 r 1.21

2.4 Registry hours

- (1) The court's registries must be open from 9 am to 5 pm on every day that is not a court holiday.
- (2) The Minister of the Crown who is responsible for the administration of the Act may from time to time authorise the closing of the court or any registry of the court for 1 hour.
- (3) If the Registrar is Registrar for 2 or more registries, or in any other special circumstances, those registries of the court must be open on the days and at the times from time to time determined by the Minister of the Crown who is responsible for the administration of the Act.
- (4) A notice of the registry hours must be posted in some convenient place accessible to the public.

Compare: HCR 3.1; SR 2009/257 r 1.22

2.5 Epidemics and emergencies

- (1) Despite rule 2.4, a Judge may order that the court and its registries be closed for a period specified in the order (not exceeding 1 week) if an epidemic or emergency exists in the place where the court is located.

- (2) A Registrar must ensure that an order made under this rule is immediately advertised in the manner the Judge directs.

Compare: HCR 3.4

Postal provision

2.6 Filing by post

- (1) Documents to be filed may be posted together with the applicable fee to the Registrar at the proper registry of the court.
- (2) A posted document is filed when the Registrar receives it with the applicable fee.
- (3) The Registrar must notify the applicant of the hearing date (if any) allocated for the application.
- (4) If the application is made without notice and does not require an appearance, the Registrar must notify the applicant of the result of the application.

Compare: SR 2009/257 r 1.23

Subpart 2—Registrars

2.7 Registrars' jurisdiction and powers relating to interlocutory applications

A Registrar has the jurisdiction and powers of a Judge to do the following:

- (a) hear and determine an application to extend or shorten the time for filing a statement of defence, counterclaim, third party notice, or notice of interlocutory application:
- (b) hear and determine an application under rule 6.24 (relating to service out of New Zealand):
- (c) adjourn a trial, reserving to the court the costs of, or arising out of, the adjournment:
- (d) order a stay of the proceeding or a step in the proceeding, if an order or a decision of a Registrar is subject to an application for review under rule 2.12:
- (e) make an order in an interlocutory application on notice—
- (i) if the consent of all relevant parties is endorsed on the application or filed; or

- (ii) on receiving a draft order consented to in writing by all relevant parties or by their solicitor or counsel.

Compare: HCR 2.5

2.8 Limits on jurisdiction

- (1) A Registrar must exercise jurisdiction under rule 2.7—
 - (a) in chambers; and
 - (b) subject to any judicial direction.
- (2) However, a Registrar may exercise his or her jurisdiction under that rule without further direction.
- (3) In exercising a jurisdiction conferred by these rules, a Registrar is not subject to direction by any person except a Judge acting under rule 2.12.

Compare: HCR 2.7

2.9 Powers ancillary to jurisdiction

A Registrar may exercise powers ancillary to jurisdiction under rule 2.7 if a Judge may exercise those ancillary powers in the same circumstances.

Compare: HCR 2.8

2.10 Jurisdiction in other registries

A Registrar may exercise jurisdiction under rule 2.7 in respect of an application filed in a registry of the court other than the one at which he or she is Registrar.

Compare: HCR 2.9

2.11 Form of order

An order made by a Registrar under rule 2.7 must—

- (a) be headed “Before the Registrar at [*place*], in chambers”; and
- (b) be signed by a Registrar or Deputy Registrar, and sealed with the seal of the court; and
- (c) state the rule under which it is made.

Compare: HCR 2.10

2.12 Review of Registrar's decision

- (1) An affected party to a proceeding or an intended proceeding may apply to a Judge by interlocutory application for a review of any of the following:
 - (a) a Registrar's exercise of jurisdiction;
 - (b) a Registrar's refusal to file a document tendered for filing;
 - (c) a Registrar's refusal to perform a duty placed on him or her under these rules.
- (2) The Judge may, on review, make any orders he or she thinks just.
- (3) Notice of an application for review must be filed,—
 - (a) if it is made by a party who was present or represented when the decision or refusal of the Registrar was given, within 5 working days of the decision or refusal; or
 - (b) if it is made by a party who was not present or represented, within 5 working days after the receipt by the party of notice of the decision or refusal.
- (4) An application for review under this rule is not a stay of proceeding or a step in the proceeding, unless a Judge, or a Registrar acting under rule 2.7, so directs.

Compare: HCR 2.11

Subpart 3—Investment of funds in court**2.13 Application for order**

- (1) Subclause (2) applies if money has been, or is to be, paid into court in a proceeding under—
 - (a) an order of the court; or
 - (b) a provision of these rules.
- (2) If this subclause applies, a party to the proceeding may apply to the court for an order directing the Registrar to invest the money on whatever security or securities the court thinks just.
- (3) Unless the court otherwise orders, an application may not be made until 15 working days after the money has been paid into court.

Compare: HCR 3.17

2.14 Powers of court in relation to application

- (1) The court may, when making an order for investment of money under rule 2.13,—
 - (a) direct that the security on which the money is invested must be taken in the name of the Registrar alone or with another person the court nominates; and
 - (b) also give—
 - (i) directions as to the form and the terms of the security; and
 - (ii) any other directions as may appear necessary or expedient.
- (2) An order may be varied by the court on the application of a party to the proceeding.
Compare: HCR 3.18

2.15 Disposal of securities and income

- (1) The court may, on the application of a party to a proceeding, direct that—
 - (a) the security on which money is invested under rule 2.13 be transferred to a party or parties in the shares or proportions the court thinks just; or
 - (b) the security be converted into money and the resulting capital and income be paid to a party or parties in the shares or proportions the court thinks just; or
 - (c) the capital be paid to a party or parties and the income be paid to another party or other parties in the shares or proportions the court thinks just.
- (2) An application may be made—
 - (a) at the time of making an order under rule 2.13; or
 - (b) at a later time.
- (3) Unless the court directs otherwise, the income received from an investment under an order under rule 2.13 must be paid to the party or parties who are found by the court to be entitled to the capital, in the shares or proportions the court thinks just.
Compare: HCR 3.19

Part 3

Access to court documents

3.1 Interpretation

In this Part, unless the context otherwise requires,—

access means to search, inspect, or copy under the supervision of an officer of the court

court file means a collection of documents in the custody or control of the court that relate to a proceeding (including any interlocutory application associated with the proceeding)

document—

- (a) means any written material in the custody or control of the court that relates to a proceeding (including any interlocutory application associated with the proceeding), whether or not kept on a court file; and
- (b) includes documentary exhibits, video recordings, records in electronic form, films, photographs, and images in electronic form; but
- (c) excludes—
 - (i) notes made by or for a Judge for his or her personal use; and
 - (ii) any material that relates to the administration of the court

formal court record means any of the following kept in a registry of the court:

- (a) a register or index;
- (b) any published list that gives notice of a hearing;
- (c) a document that—
 - (i) may be accessed under an enactment other than these rules; or
 - (ii) constitutes notice of its contents to the public;
- (d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge.

Compare: HCR 3.5; SR 2009/257 r 3.11

3.2 Application

- (1) This Part applies to documents while they are in the custody or control of the court and until they are transferred to Archives New Zealand.

- (2) This Part does not require any person to prepare a document that is not in existence at the time the document is sought.
- (3) Nothing in this Part applies to documents to which the Family Courts Rules 2002 apply.

Compare: HCR 3.6; SR 2009/257 r 3.12

3.3 General right of access to formal court record

Subject to rule 3.8, every person has the right to access the formal court record kept in a registry of the court.

Compare: HCR 3.7; SR 2009/257 r 3.13

3.4 Right of parties to access court file or documents

- (1) The parties to a proceeding, and their counsel, may (whether during or after the completion of the proceeding), under the supervision of an officer of the court,—
 - (a) search and inspect the court file or any document relating to the proceeding, without payment of a fee; and
 - (b) copy any part or parts of the court file or any document relating to the proceeding on payment of any prescribed fee.
- (2) Despite subclause (1), a record of court proceedings in electronic form may be copied only with the permission of the court.
- (3) Despite subclause (1), a Judge may direct that the court file or any document relating to the proceeding not be accessed by the parties or their counsel without the permission of the court.

Compare: HCR 3.8; SR 2009/257 r 3.14

3.5 Access to documents during substantive hearing stage

- (1) This rule applies during the hearing of a proceeding (other than the hearing of an interlocutory application) and until—
 - (a) the close of the 20th working day after the court has given the final judgment on the proceeding; or
 - (b) the discontinuance of the proceeding before the final judgment is given.
- (2) During the period to which this rule applies, any person may access any of the following documents relating to the proceeding:

- (a) any pleading, reference, notice, or application filed in the court;
 - (b) affidavits, depositions, or other written statements admitted into evidence for the purposes of the hearing;
 - (c) documents admitted into evidence for the purposes of the hearing;
 - (d) if any evidence given orally at the hearing has been transcribed, a transcript of that evidence.
- (3) Despite subclause (2), a Judge may, on his or her own initiative or on request, direct that any document, or part of a document, relating to the proceeding not be accessed without the permission of a Judge.
- (4) A request for access to a document under this rule is made informally to the Registrar by letter that—
 - (a) identifies the requested document; and
 - (b) gives the reasons for the request.
- (5) The following provisions apply when a request for access to a document is made under subclause (4):
 - (a) the Registrar must promptly give the parties or their counsel a copy of the request;
 - (b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 3.6), give written notice of the objection to the Registrar, to the person who made the request, and to the other parties or their counsel;
 - (c) on receipt of an objection, the Registrar must promptly refer the objection and the request to the Judge for determination;
 - (d) unless the document is subject to a restriction stated in subclause (3) or rule 3.8, the Registrar must promptly give the person who made the request access to the document—
 - (i) if the Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 3.6); or
 - (ii) if the parties or their counsel earlier agree that the person be given access to the document;
 - (e) every request that relates to a document that is subject to a restriction under subclause (3) or rule 3.8 is taken

to be a request for the permission of a Judge, and must be promptly referred to the Judge by the Registrar.

- (6) The Judge may determine an objection referred to the Judge under subclause (5)(c) or a request for permission under subclause (3) or (5)(e) in any manner the Judge considers just.
- (7) For the purposes of subclause (2)(b) and (c), **admitted into evidence** does not include evidence admitted provisionally.

Compare: HCR 3.9; SR 2009/257 r 3.15

3.6 Meaning of relevant deadline in rule 3.5

- (1) For the purpose of rule 3.5, where a party or counsel receives a copy of a request given to the party or counsel under that rule, **relevant deadline** means whichever of the following times is applicable:
 - (a) if the copy of the request is received on a day on which the hearing is proceeding, 3 pm on the first working day after the date on which the copy is received;
 - (b) if the copy of the request is received on any other day, 3 pm on the third working day after the date on which the copy is received.
- (2) For the purposes of subclause (1), a person is deemed to receive a copy of a request—
 - (a) on the day on which it is emailed, faxed, or handed to the person;
 - (b) on the day after the date on which it is posted to the person.
- (3) This rule overrides rule 6.6.

Compare: HCR 3.10; SR 2009/257 r 3.16

3.7 Access to court files, documents, and formal court record in other cases

If a person is not eligible to access a document, court file, or any part of the formal court record under any of rules 3.3 to 3.5, the person may access the document, court file, or any part of the formal court record with the permission of the court, given on an application made under rule 3.9.

Compare: HCR 3.11; SR 2009/257 r 3.17

3.8 Restrictions on access

- (1) Any right or permission conferred or given by these rules to access a document, court file, or any part of the formal court record is subject to—
 - (a) any enactment, court order, or direction limiting or prohibiting access or publication; and
 - (b) the payment of any prescribed fees for access.
- (2) A person may not access a document, court file, judgment, or order that relates to a proceeding brought under an enactment specified in subclause (3) unless—
 - (a) the person is a party to that proceeding; or
 - (b) the court permits the person to do so.
- (3) The enactments are as follows:
 - (a) Adoption Act 1955:
 - (b) Alcoholism and Drug Addiction Act 1966:
 - (c) Arbitration Act 1996:
 - (d) Care of Children Act 2004:
 - (e) Child Support Act 1991:
 - (f) Civil Union Act 2004:
 - (g) Domestic Violence Act 1995:
 - (h) Family Proceedings Act 1980:
 - (i) Family Protection Act 1955:
 - (j) Harassment Act 1997:
 - (k) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
 - (l) Marriage Act 1955:
 - (m) Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (n) Property (Relationships) Act 1976:
 - (o) Protection of Personal and Property Rights Act 1988:
 - (p) any former provisions corresponding to provisions of any of the Acts mentioned in paragraphs (a) to (o).
- (4) A person may search, inspect, or copy a document, court file, judgment, or order of a District Court relating to an application under rule 9.51 (which relates to the service of New Zealand subpoenas in Australia) only with the leave of a Judge.

Compare: HCR 3.12; SR 2009/257 r 3.18

3.9 Applications for permission to access documents, court file, or formal court record other than at hearing stage

- (1) This rule applies whenever the permission of the court is necessary under these rules and is sought to access a document, court file, or any part of the formal court record, except where access may be sought under rule 3.5.
- (2) An application under this rule is made informally to the Registrar by a letter that—
 - (a) identifies the document, court file, or part of the formal court record that the applicant seeks to access; and
 - (b) gives the reasons for the application.
- (3) The application is heard and determined by a Judge or, if a Judge directs the Registrar to do so, by the Registrar.
- (4) On receipt of an application made in accordance with subclause (2), the Judge or Registrar may direct that the person file an interlocutory application or originating application.
- (5) The applicant must give notice of the application to any person who is, in the opinion of the Judge or Registrar, adversely affected by the application.
- (6) The Judge or Registrar may dispense with the giving of notice under subclause (5) if it would be impracticable to require notice to be given.
- (7) The Judge or Registrar may deal with an application on the papers, at an oral hearing, or in any other manner the Judge or Registrar considers just.

Compare: HCR 3.13; SR 2009/257 r 3.19

3.10 Decisions on applications under rule 3.9

- (1) The Judge or Registrar may refuse an application made under rule 3.9 or grant it in whole or in part without conditions or subject to any conditions that the Judge or Registrar thinks appropriate.
- (2) A Judge may permit access to a series of files for the purposes of research.

Compare: HCR 3.14; SR 2009/257 r 3.20

3.11 Review of decisions by Registrar

- (1) Any decision by a Registrar under rule 3.10 is subject to review by a Judge on the application of the applicant or any person affected.
- (2) Rule 2.12 applies as if the reference in that rule to a party were a reference to the applicant or any person affected.

Compare: HCR 3.15; SR 2009/257 r 3.21

3.12 Matters to be taken into account

In determining an application under rule 3.9, or a request for permission under rule 3.5, or the determination of an objection under that rule, the Judge or Registrar must consider the nature of, and the reasons for, the application or request and take into account each of the following matters that is relevant to the application, request, or objection:

- (a) the orderly and fair administration of justice:
- (b) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:
- (c) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, court hearings and decisions:
- (d) the freedom to seek, receive, and impart information:
- (e) whether a document to which the application or request relates is subject to any restriction under rule 3.8:
- (f) any other matter that the Judge or Registrar thinks just.

Compare: HCR 3.16; SR 2009/257 r 3.22

Part 4**Parties****Subpart 1—Limit on parties****4.1 Limit on parties**

The number of persons named or joined as parties to a proceeding must be limited, as far as practicable, to—

- (a) persons whose presence before the court is necessary to justly determine the issues arising; and

- (b) persons who ought to be bound by any judgment given.
Compare: HCR 4.1

Subpart 2—Plaintiffs

4.2 Plaintiffs

- (1) Persons may be joined jointly, severally, or in the alternative as plaintiffs—
 - (a) if it is alleged that they have a right to relief in respect of, or arising out of, the same transaction, matter, event, instrument, document, series of documents, enactment, or bylaw; and
 - (b) if each of those persons brought a separate proceeding, a common question of law or fact would arise.
- (2) On the application of a defendant, the court may, if it considers a joinder may prejudice or delay the hearing of a proceeding, order separate trials or make any order it thinks just.
Compare: HCR 4.2

Subpart 3—Defendants

4.3 Defendants

- (1) Persons may be joined jointly, individually, or in the alternative as defendants against whom it is alleged there is a right to relief in respect of, or arising out of, the same transaction, matter, event, instrument, document, series of documents, enactment, or bylaw.
- (2) It is not necessary for every defendant to be interested in all relief claimed or every cause of action.
- (3) The court may make an order preventing a defendant from being embarrassed or put to expense by being required to attend part of a proceeding in which the defendant has no interest.
- (4) A plaintiff who is in doubt as to the person or persons against whom the plaintiff is entitled to relief may join 2 or more persons as defendants with a view to the proceeding determining—
 - (a) which (if any) of the defendants is liable; and
 - (b) to what extent.
Compare: HCR 4.3

Subpart 4—Third, fourth, and subsequent parties

4.4 Third parties

- (1) A defendant may issue a third party notice if the defendant claims any or all of the following:
 - (a) that the defendant is entitled to a contribution or an indemnity from a person who is not a party to the proceeding (a **third party**):
 - (b) that the defendant is entitled to relief or a remedy relating to, or connected with, the subject matter of the proceeding from a third party and the relief or remedy is substantially the same as that claimed by the plaintiff against the defendant:
 - (c) that a question or issue in the proceeding ought to be determined not only between the plaintiff and the defendant but also between—
 - (i) the plaintiff, the defendant, and the third party; or
 - (ii) the defendant and the third party; or
 - (iii) the plaintiff and the third party:
 - (d) that there is a question or an issue between the defendant and the third party relating to, or connected with, the subject matter of the proceeding that is substantially the same as a question or an issue arising between the plaintiff and the defendant.
- (2) A third party notice must be issued within—
 - (a) 10 working days after the expiry of the time for filing the defendant's statement of defence; or
 - (b) a longer time given by leave of the court.
- (3) A third party notice may be issued only with the leave of the court if an application for judgment is pending under rule 12.2 or 12.3.

Compare: HCR 4.4

4.5 Fourth parties

- (1) A third party claiming any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **fourth party**) may issue a fourth party notice.
- (2) A fourth party notice must be issued within—

- (a) 10 working days after the expiry of the time for filing the third party's statement of defence; or
- (b) a longer time given by leave of the court—
 - (i) on an application on notice to all existing parties; or
 - (ii) with the written consent of all existing parties.
- (3) Rule 4.4(3) applies to fourth party notices.
Compare: HCR 4.5

4.6 Subsequent parties

- (1) A fourth party who claims any or all of the matters in rule 4.4(1) in relation to a person who is not a party to the proceeding (a **subsequent party**) may issue a subsequent party notice and so on.
- (2) A subsequent party notice may be issued only with—
 - (a) the written consent of all existing parties; or
 - (b) the leave of the court made on an application on notice to all existing parties.
- (3) Rules 4.4(3) and 4.5(2) apply, with all necessary modifications, to subsequent party notices.
Compare: HCR 4.6

4.7 Status of third, fourth, and subsequent parties

- (1) A third, fourth, or subsequent party is a party to the proceeding from the time a notice is served on that party.
- (2) A third, fourth, or subsequent party has the same rights of defence as a defendant to the proceeding.
Compare: HCR 4.7

4.8 Court's power and discretion

- (1) On an application seeking leave to issue a third, fourth, or subsequent party notice, the court must have regard to all relevant circumstances, including delay to the plaintiff.
- (2) On the making of an application of that kind, the court may grant or refuse leave or grant leave on just terms.
Compare: HCR 4.8

4.9 Application of third party notice rules to fourth and subsequent party notices

Rules 4.10 to 4.17 apply, with all necessary modifications, to fourth and subsequent party notices.

Compare: HCR 4.9

4.10 Requirements of third party notice

- (1) A third party notice must be signed by the defendant and inform the third party of—
 - (a) the plaintiff's claim against the defendant; and
 - (b) the defendant's claim against the third party; and
 - (c) the steps the third party is required to take if the third party wishes to dispute either claim; and
 - (d) the consequences that will follow if the third party fails to dispute either claim.

- (2) A third party notice may be in form 5.

Compare: HCR 4.10

4.11 Filing of third party notice

- (1) A third party notice must be filed in the court together with a statement of the defendant's claim against the third party.
- (2) The statement of claim must—
 - (a) comply with rules 5.28 to 5.37; and
 - (b) state the nature of the question or issue to be determined; and
 - (c) state the nature and extent of any relief or remedy claimed against the third party; and
 - (d) be accompanied by a list of documents relied on by the defendant under rule 8.4 (*see also* rule 8.4 for related requirements to provide copies).

Compare: HCR 4.11

4.12 Service on third party

A defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the following on the third party:

- (a) a copy of the third party notice:

- (b) a copy of the defendant's statement of claim against the third party:
- (c) a copy of the plaintiff's statement of claim:
- (d) a copy of the notice of proceeding:
- (e) a copy of the defendant's statement of defence or appearance:
- (f) a list of other documents that have been served—
 - (i) by the plaintiff on the defendant; or
 - (ii) by the defendant on the plaintiff.

Compare: HCR 4.12

4.13 Service on plaintiff

- (1) The defendant must, within 25 working days after the date of the filing of the third party notice or the date of the order granting leave to issue the third party notice, serve the plaintiff with—
 - (a) a copy of the third party notice; and
 - (b) a copy of the defendant's statement of claim against the third party.
- (2) The plaintiff must not, without the leave of the court, do the following until the expiry of the time for the third party to file a defence:
 - (a) enter judgment in the proceeding; or
 - (b) apply for the allocation of a hearing date for the proceeding.
- (3) An application for leave to the court must be made on notice—
 - (a) to the defendant; and
 - (b) if the third party has been served, to the third party.

Compare: HCR 4.13

4.14 Filing and service of statement of defence

- (1) A statement of defence by a third party must be filed and served within 25 working days after the date of service of the third party notice.
- (2) Subclause (1) is subject to rule 6.31, which (unless the court otherwise orders) requires a defendant (as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010) who has been served out of New Zealand to file a statement of defence within 30 working days from the date of service.

- (3) The statement of defence must be accompanied by a list of documents relied on by the third party in form 6 (*see* rule 8.4 for related requirements to provide copies).
- (4) A third party must serve a copy of the third party's statement of defence on the plaintiff and the defendant.

Compare: HCR 4.14

4.15 Service of application for leave

If an application to the court for leave to issue a third party notice is required, it must be served on the other parties to the proceeding.

Compare: HCR 4.15

4.16 Setting aside third party notice

- (1) A third party may apply to the court have a third party notice issued and served with the leave of the court set aside.
- (2) A party to a proceeding served with a third party notice issued and served without leave of the court may apply to the court to have the notice set aside.
- (3) In either case, the court may—
 - (a) set the third party notice aside and dismiss the defendant's statement of claim against the third party—
 - (i) on the merits; or
 - (ii) without prejudice to the right of the defendant to pursue that claim against the third party in an independent proceeding; or
 - (b) give other directions.

Compare: HCR 4.16

4.17 Default in filing statement of defence

- (1) A third party defaulting in filing a statement of defence—
 - (a) admits the validity of, and is bound by,—
 - (i) any judgment (whether by consent, default, or otherwise) given in the proceeding; and
 - (ii) any decision on a question specified in the defendant's statement of claim; and

- (b) admits liability if a contribution, an indemnity, relief, or a remedy is claimed against the third party in the defendant's statement of claim.
- (2) Subclause (1) does not apply in third party proceedings against the Crown unless—
 - (a) an application is made to that effect and the court orders it; and
 - (b) the application was served on the Crown not less than 5 working days before the day for hearing the application.

Compare: HCR 4.17

Subpart 5—Claims between defendants

4.18 Right to give notice

If a defendant claims against another defendant in circumstances in which (had that other defendant not been a defendant) it would be permissible to issue and serve a third party notice on that other defendant, the claiming defendant may, at any time before the close of pleadings date for the proceeding, file and serve that other defendant and the plaintiff with a notice to that effect.

Compare: HCR 4.18

4.19 Statement of claim to be filed and served

- (1) A defendant who files a notice under rule 4.18 must file and serve with it a statement of that defendant's claim against the other defendant.
- (2) The statement of claim—
 - (a) must comply with the requirements of subpart 6 of Part 5; and
 - (b) in particular, must state the nature of the question or issue sought to be determined and the nature and extent of any relief or remedy claimed against the other defendant; and
 - (c) must be accompanied by a list of documents relied on by the defendant under rule 8.4 in form 6 (*see also* rule 8.4 for related requirements to provide copies).

Compare: HCR 4.19

4.20 Statement of defence

- (1) Unless a defendant served with a notice under rule 4.18 wishes to raise an affirmative defence to the claim made against that defendant by the defendant serving the notice, it is not necessary to file a statement of defence to that claim.
- (2) A statement of defence to a claim made in a notice served under rule 4.18 (accompanied by the list of documents referred to in rule 4.19(2)(c)) must, within 10 working days after the day of service of the notice, be filed and served—
 - (a) on the defendant serving the notice; and
 - (b) on the plaintiff.

Compare: HCR 4.20

4.21 Form of notice

- (1) A notice filed and served under rule 4.18 must be in form 7.
- (2) Every such notice must be signed by the defendant or the defendant's solicitor.

Compare: HCR 4.21

4.22 Effect of omission to give notice

Even if a defendant has not given a notice under rule 4.18, the court may give any judgment or grant any relief in favour of that defendant that might have been given or granted if such notice had been given.

Compare: HCR 4.22

Subpart 6—Impact of certain capacities

4.23 Trustees, executors, and administrators

- (1) Trustees, executors, and administrators may sue and be sued on behalf of, or as representing, the property or estate of which they are trustees, executors, or administrators.
- (2) There is no need to join persons beneficially interested in a trust or an estate to a proceeding, because the trustees, executors, and administrators represent those persons.
- (3) However, the court may, at any stage, order that a beneficially interested person be made a party, either in addition to or instead of the trustees, executors, or administrators.

Compare: HCR 4.23

4.24 Persons having same interest

One or more persons may sue or be sued on behalf of, or for the benefit of, all persons with the same interest in the subject matter of a proceeding—

- (a) with the consent of the other persons who have the same interest; or
- (b) as directed by the court on an application made by a party or intending party to the proceeding.

Compare: HCR 4.24

4.25 Partners

- (1) Any 2 or more persons making a claim as partners or alleged to be liable as partners may sue or be sued in the name of the firm (if any).
- (2) The opposite party may apply to the court for the names of the persons who are partners in the firm and, until an affidavit has been filed stating the names and addresses of the partners, all further steps in the proceeding on the part of the partners are stayed.

Compare: HCR 4.25

4.26 Person trading as firm

- (1) A person carrying on business in the name of a firm may be sued in the name of the firm.
- (2) The opposite party may apply to the court for an order—
 - (a) directing that an affidavit be filed stating the name and address of the person carrying on the business; and
 - (b) staying any further step in the proceeding on the part of the person carrying on the business until the affidavit has been filed.

Compare: HCR 4.26

4.27 Representation by other persons

In respect of a proceeding or intended proceeding, the court may, on an application by a party or an intending party or on its own initiative,—

- (a) direct an executor or a trustee to represent minors, unborn persons, absentees, or unrepresented persons:

- (b) appoint a counsel who agrees to represent minors, unborn persons, absentees, or unrepresented persons:
- (c) appoint a litigation guardian to represent a person if it appears necessary:
- (d) direct the Public Trust to represent a person or class of persons:
- (e) direct that the Attorney-General or the Solicitor-General be served:
- (f) direct, with the consent of the Attorney-General, that a head of a government department or other officer represent the public interest:
- (g) direct that a local authority, public body, or other representative body represent the inhabitants of a locality or any class of persons, unless their interests, or the interests of a considerable section of them, may be adverse to those of the local authority, public body, or other representative body:
- (h) if a local authority, public body, or other representative body is a plaintiff or a party whose interests appear to be adverse to those of the inhabitants of a locality or any class of persons, or a considerable section of them, direct the manner in which the inhabitants, class, or section are to be represented.

Compare: HCR 4.27

4.28 Relators

- (1) In this rule, a **relator** is a person who has been approved by the Attorney-General to bring a proceeding in the name of the Attorney-General.
- (2) A person who seeks to bring a proceeding in the name of the Attorney-General must obtain the approval of the Attorney-General.
- (3) A relator is liable for the costs of a proceeding.
- (4) A proceeding does not come to an end because a relator or all relators die or become incapable of acting.
- (5) However, the court may stay a proceeding until the name of a new relator, who has been approved by the Attorney-General, has been substituted.

- (6) A person must not be named as a relator in a proceeding until the person has authorised the solicitor issuing the proceeding to name him or her as a relator.
- (7) The authority must be—
 - (a) in writing; and
 - (b) signed by the proposed relator; and
 - (c) filed in the registry of the court in which the proceeding is to commence.

Compare: HCR 4.28

Subpart 7—Incapacitated persons

4.29 Incapacitated person, litigation guardian, and minor defined

For the purposes of these rules,—

incapacitated person means a person who by reason of physical, intellectual, or mental impairment, whether temporary or permanent, is—

- (a) not capable of understanding the issues on which his or her decision would be required as a litigant conducting proceedings; or
- (b) unable to give sufficient instructions to issue, defend, or compromise proceedings

litigation guardian

- (a) means—
 - (i) a person who is authorised by or under an enactment to conduct proceedings in the name of, or on behalf of, an incapacitated person or a minor (but only in a proceeding to which the authority extends); or
 - (ii) a person who is appointed under rule 4.35 to conduct a proceeding; and
- (b) has the same meaning as the expression guardian *ad litem*

minor means a person who has not attained the age of 18 years, and a person is of **full age** if he or she has attained the age of 18 years.

Compare: HCR 4.29

4.30 Incapacitated person must be represented by litigation guardian

- (1) An incapacitated person must have a litigation guardian as his or her representative in any proceeding, unless the court otherwise orders.
- (2) If a person becomes an incapacitated person during a proceeding, a party must not take any step in the proceeding without the permission of the court until the incapacitated person has a litigation guardian.

Compare: HCR 4.30

4.31 Minor must be represented by litigation guardian

- (1) A minor must have a litigation guardian as his or her representative in any proceeding, unless the court otherwise orders.
- (2) Subclause (1) does not apply to a minor who—
 - (a) is required by an enactment to conduct a proceeding without a litigation guardian; or
 - (b) is permitted by an enactment to conduct a proceeding without a litigation guardian and elects to do so; or
 - (c) is authorised under rule 4.32 to conduct a proceeding without a litigation guardian.

Compare: HCR 4.31

4.32 Minor may apply to conduct proceeding without litigation guardian

- (1) This rule applies to a minor who—
 - (a) is not required or permitted by an enactment to conduct a proceeding without a litigation guardian; and
 - (b) is not prohibited by an enactment from conducting a proceeding without a litigation guardian.
- (2) A minor who wishes to conduct a proceeding in his or her own name may apply to the court for authorisation to conduct the proceeding without a litigation guardian.
- (3) On an application under subclause (2), the court may make an order allowing the minor to conduct the proceeding without a litigation guardian if it is satisfied that—
 - (a) the minor is capable of making the decisions required or likely to be required in the proceeding; and

- (b) no reason exists that would make it in the interests of the minor to be represented by a litigation guardian.

Compare: HCR 4.32

4.33 Application of rules 4.34 to 4.46 to minors

Rules 4.34 to 4.46 apply to a minor to whom rule 4.31(1) applies, and every reference in those rules to an incapacitated person must be read as if it were also a reference to a minor.

Compare: HCR 4.33

4.34 Court may set aside step in proceeding

The court may set aside a step in a proceeding if an incapacitated person did not have a litigation guardian when that step was taken and the court considers that the incapacitated person was unfairly prejudiced.

Compare: HCR 4.34

4.35 Appointment of litigation guardian

- (1) This rule applies if an incapacitated person does not have a litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29.
- (2) The court may appoint a litigation guardian if it is satisfied that—
 - (a) the person for whom the litigation guardian is to be appointed is an incapacitated person; and
 - (b) the litigation guardian—
 - (i) is able fairly and competently to conduct proceedings on behalf of the incapacitated person; and
 - (ii) does not have interests adverse to those of the incapacitated person; and
 - (iii) consents to being a litigation guardian.
- (3) In deciding whether to appoint a litigation guardian, the court may have regard to any matters it considers appropriate, including the views of the person for whom the litigation guardian is to be appointed.
- (4) The court may appoint a litigation guardian under this rule at any time—

- (a) on its own initiative; or
- (b) on the application of any person, including a person seeking to be appointed as litigation guardian.

Compare: HCR 4.35

4.36 Application to be served on person for whom litigation guardian is to be appointed

- (1) Unless the court otherwise orders, an application under rule 4.35—
 - (a) may be made without notice; and
 - (b) must be served on the person for whom the litigation guardian is to be appointed.
- (2) When the person for whom the litigation guardian is to be appointed is a minor,—
 - (a) subclause (1)(b) does not apply; and
 - (b) unless the court otherwise orders, the application must be served instead on—
 - (i) the minor's parent or guardian; or
 - (ii) if there is no parent or guardian, a person of full age who has the care of the minor or with whom the minor lives.

Compare: HCR 4.36

4.37 Notification of appointment

- (1) A litigation guardian within the meaning of paragraph (a)(i) of the definition of litigation guardian in rule 4.29 must file a copy of the order or other document that empowers him or her to conduct the proceeding, at the same time as the first document relating to the proceeding is filed.
- (2) A person appointed under rule 4.35 as a litigation guardian of a party to a proceeding must give notice of the appointment to other parties in the proceeding as soon as practicable after the appointment.

Compare: HCR 4.37

4.38 Powers of litigation guardian

A litigation guardian may do anything in relation to a proceeding that the incapacitated person could do if he or she were not incapacitated.

Compare: HCR 4.38

4.39 Heading on documents when incapacitated person is represented

The heading of a document filed in a proceeding in which an incapacitated person is represented by a litigation guardian must state—

- (a) the name of the incapacitated person followed by the words “by his (*or* her) litigation guardian”; and
- (b) the litigation guardian’s name.

Compare: HCR 4.39

4.40 Service of documents

- (1) A party who knows that an incapacitated person has a litigation guardian must serve any document in a proceeding—
 - (a) on the litigation guardian, unless the litigation guardian has filed an address for service;
 - (b) where the litigation guardian has filed an address for service, at that address for service.
- (2) Subclause (3) applies to a party who believes on reasonable grounds that a person is an incapacitated person but does not know if that person has a litigation guardian.
- (3) The party—
 - (a) may apply to the court for the appointment of a litigation guardian under rule 4.35; and
 - (b) may apply for directions as to service; and
 - (c) must serve any documents in the proceeding in accordance with any directions as to service.

Compare: HCR 4.40

4.41 Representation to be disregarded in making award of costs

The fact that an incapacitated person is, or has been, represented by a litigation guardian must be disregarded in making

an award of costs under the rules in favour of or against the incapacitated person.

Compare: HCR 4.41

4.42 Award of costs enforceable against incapacitated person or litigation guardian

- (1) Unless the court otherwise orders, an award of costs made against an incapacitated person may be enforced against any 1 or more of the following:
 - (a) the incapacitated person;
 - (b) the person who is the litigation guardian of the incapacitated person at the time the costs determination is made;
 - (c) a person against whom an order for indemnity or contribution has been made under rule 4.43, to the extent of the amount of the indemnity or contribution.
- (2) Unless the court otherwise orders, a litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs paid under subclause (1)(b) or (c).

Compare: HCR 4.42

4.43 Liability of former litigation guardian for costs subsequently awarded against incapacitated person

The court may make an order—

- (a) directing a person who has ceased to be a litigation guardian of an incapacitated person (a **former litigation guardian**) to indemnify the incapacitated person or a current litigation guardian for any costs subsequently awarded against the incapacitated person in relation to steps taken in the proceeding by the former litigation guardian;
- (b) directing a former litigation guardian to indemnify the incapacitated person or the current litigation guardian on a basis specified by the court for any costs subsequently awarded against the incapacitated person in relation to steps taken in the proceeding after the former litigation guardian ceased to be the litigation guardian;
- (c) directing the former litigation guardian to make a contribution to the costs referred to in paragraph (a) or (b):

- (d) declaring that the former litigation guardian is not liable for any of the costs referred to in paragraph (a) or (b).

Compare: HCR 4.43

4.44 Compliance with liability order

- (1) A former litigation guardian may be required by the incapacitated person or the current litigation guardian to give effect to an order made under paragraph (a), (b), or (c) of rule 4.43.
- (2) The court may, on the application of a former litigation guardian, declare that the former litigation guardian is not required to comply with that order if it is satisfied, having regard to circumstances occurring after the order was made, that it is no longer just that the former litigation guardian be required to comply with the order.

Compare: HCR 4.44

4.45 Litigation guardian may be reimbursed for costs out of property of incapacitated person

Unless the court otherwise orders, a litigation guardian or former litigation guardian is entitled to be reimbursed out of the property of the incapacitated person for any costs (including solicitor and client costs) paid or incurred, or that are to be paid or incurred, by the litigation guardian or former litigation guardian on behalf of the incapacitated person.

Compare: HCR 4.45

4.46 Retirement, removal, or death of litigation guardian

- (1) A litigation guardian may retire only with the leave of the court.
- (2) Unless the court otherwise orders, the appointment of a litigation guardian under rule 4.35 ends if another person is subsequently authorised by or under an enactment to conduct the proceeding in the name of, or on behalf of, the incapacitated person.
- (3) A litigation guardian may be removed by the court when it is in the interests of the person he or she represents.
- (4) In the case of retirement, removal, or death of a litigation guardian, no further step may be taken in the proceeding with-

out the leave of the court until the incapacitated person is represented by another litigation guardian.

Compare: HCR 4.46

4.47 Procedure when person ceases to be incapacitated person

- (1) The court must make an order terminating the appointment of a litigation guardian if it is satisfied that the person the litigation guardian represents is no longer an incapacitated person.
- (2) The court may make an order at any time—
 - (a) on its own initiative; or
 - (b) on the application of—
 - (i) the incapacitated person; or
 - (ii) his or her litigation guardian; or
 - (iii) a party.
- (3) From the date of the order,—
 - (a) all subsequent steps in the proceeding must be carried on by the person formerly represented by the litigation guardian; and
 - (b) the person formerly represented by the litigation guardian is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had become a party to the proceeding when he or she was not an incapacitated person.

Compare: HCR 4.47

4.48 Procedure when minor attains full age

- (1) A minor who attains full age must file and serve an affidavit confirming that he or she is no longer a minor.
- (2) Unless the court otherwise orders, from the date a minor attains full age—
 - (a) the appointment of his or her litigation guardian ends; and
 - (b) all subsequent steps in the proceeding must be carried on by that person; and
 - (c) that person is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had commenced the proceeding or had

become a party to the proceeding when he or she was not a minor.

Compare: HCR 4.48

Subpart 8—Change of parties by death, bankruptcy, or devolution

4.49 Proceeding not to come to end

- (1) A proceeding does not come to an end on the death or bankruptcy of a party if a cause of action survives or continues.
- (2) A proceeding does not become defective because of the assignment, creation, or devolution of an estate or a title when the proceeding is pending.

Compare: HCR 4.49

4.50 Procedure on death, bankruptcy, and devolution

In the case of death, bankruptcy, or devolution of an estate of a party to a proceeding by operation of law in circumstances where the complete settlement of all the questions involved in the proceeding is necessary, the court—

- (a) must order that a personal representative, trustee, or other successor to the interest (if any) of that party be made a party to the proceeding, or be served with notice of it, in the prescribed manner and form on terms it thinks just; and
- (b) may make orders it thinks just for the disposal of the proceeding.

Compare: HCR 4.50

4.51 Devolution when proceeding pending

A proceeding may be continued by or against a person to or on whom an estate or title is assigned, created, or devolved if the assignment, creation, or devolution takes place when a proceeding is pending.

Compare: HCR 4.51

4.52 New parties order

- (1) Subclause (2) applies if, after a proceeding has commenced, there is an event causing a change or transmission of interest or liability (including death or bankruptcy) or an interested person comes into existence, making it necessary or desirable that—
 - (a) a person be made a party; or
 - (b) an existing party be made a party in another capacity.
- (2) An application without notice may be made for an order that the proceeding be carried on between the continuing parties and the new party (a **new parties order**).
- (3) The new parties order must, unless the court otherwise directs, be served on—
 - (a) the continuing parties to the proceeding; and
 - (b) each new party, unless the person making the application is the only new party.
- (4) The new parties order is binding on a person served from the time of service.
- (5) A person who is not already a party who is served with a new parties order must file a statement of defence in the same time frame and manner as a person served with a statement of claim.
Compare: HCR 4.52

4.53 Discharge or variation of new parties order

- (1) A person may apply to the court to discharge or vary a new parties order within 10 working days from the service of the order.
- (2) An incapacitated person who is served with a new parties order who does not have a litigation guardian may apply to the court within 10 working days from the appointment of a litigation guardian for the new parties order to be discharged or varied.
- (3) Until the period of 10 working days has expired, the new parties order has no force or effect on the incapacitated person.
Compare: HCR 4.53

Subpart 9—Adjusting parties

4.54 Change of name

A party's name that is incorrectly stated in pleadings or changed by marriage, civil union, deed poll, or other means, may be amended, without an application to the court, by a notice signed by the party and filed and served on all other parties.

Compare: HCR 4.54

4.55 Parties wrongly joined

- (1) A proceeding is not defeated by reason of parties having been wrongly joined.
- (2) Despite a misjoinder, the court may deal with a proceeding in accordance with the rights and interests of the parties.

Compare: HCR 4.55

4.56 Striking out and adding parties

- (1) A Judge may, at any stage of a proceeding, order that—
 - (a) the name of a party be struck out as a plaintiff or defendant because the party was improperly or mistakenly joined; or
 - (b) the name of a person be added as a plaintiff or defendant because—
 - (i) the person ought to have been joined; or
 - (ii) the person's presence before the court may be necessary to adjudicate on and settle all questions involved in the proceeding.
- (2) An order does not require an application and may be made on terms the court considers just.
- (3) Despite subclause (1)(b), no person may be added as a plaintiff without that person's consent.

Compare: HCR 4.56

Subpart 10—Interpleader

4.57 Interpretation

In this rule and rules 4.58 to 4.64, unless the context otherwise requires,—

applicant means a person entitled under section 94 or 111 of the Act to apply to the court for relief by way of interpleader

claimant means a person claiming against an applicant in terms of section 94 or 111 of the Act

execution creditor means a person who has issued an enforcement process under Part 19

execution debtor means a person against whose property an enforcement process has been issued under Part 19.

Compare: HCR 4.57

4.58 Right to interplead

- (1) When a person (**A**) is under a liability for any debt or other cause of action, money, or chattels for or in respect of which A is or expects to be sued by 2 or more persons making adverse claims, A may apply to the court in accordance with rules 4.59 to 4.64 for relief by way of interpleader under section 111 of the Act.
- (2) If a person (**B**) who is not a person against whom an enforcement process under Part 19 is issued claims money or chattels taken or intended to be taken by an officer giving effect to that process, or the proceeds or value of those chattels, the officer may apply to the court, serving notice on the execution creditor, the execution debtor, and B in accordance with rules 4.59 to 4.64, for relief under rule 4.63.
- (3) Subclause (2) applies—
 - (a) whether or not there has been a return of the enforcement process; and
 - (b) whether or not a proceeding has been commenced against the officer in respect of the money or chattels.

Compare: HCR 4.58

4.59 Form of application

- (1) When a claimant has issued a proceeding against the applicant in respect of the debt or money or chattels referred to in rule 4.58(1), and in cases within rule 4.58(2), the application must be an interlocutory application in the proceeding.
- (2) Subject to rules 4.61 to 4.64, subpart 2 of Part 7 of these rules applies to the application.

- (3) In other cases the application must be made by filing and serving a statement of claim and notice of proceeding under Part 5.
Compare: HCR 4.59

4.60 Affidavit in support

- (1) An application under rule 4.58 must be supported by an affidavit stating that—
- (a) the applicant claims no interest in the subject matter in dispute other than the charges or costs; and
 - (b) adverse claims (of which details must be given) have been made by the claimants and stating the steps already taken by the respective claimants in support of their claims; and
 - (c) the applicant is not colluding with any of the claimants to that subject matter; and
 - (d) the applicant is willing to pay or transfer that subject matter into court or dispose of it as the court may direct.
- (2) A copy of the affidavit must be served on each claimant when the application under rule 4.58 is served.

Compare: HCR 4.60

4.61 Time for applying

- (1) If a claimant has commenced a proceeding against the applicant to enforce the claim, an application under rule 4.58 must be made before a statement of defence has been filed by the applicant.
- (2) If no statement of defence has been filed by the applicant, it must be made before judgment has been entered against the applicant.

Compare: HCR 4.61

4.62 Claimants to file affidavits

- (1) Subject to subclauses (2) and (3), a claimant who wishes to justify a claim must, within 5 working days after service of an application made under rule 4.58(1) or (2), file and serve on other claimants and on the applicant an affidavit stating the facts and matters relied on.

- (2) When, in accordance with rule 4.59(3), a statement of claim and notice of proceeding have been filed and served together with an affidavit under rule 4.60, the claimant must file and serve a statement of defence with the claimant's affidavit.
- (3) If the claimant, had the claimant been a defendant, might have filed an appearance under rules 5.51 to 5.53, the claimant may, instead of filing and serving an affidavit under subclause (1), file and serve an appearance.
- (4) An appearance filed and served under subclause (3), for all the purposes of rules 4.63 and 4.64, has effect as though the claimant were a defendant in a proceeding brought by the applicant or by any other claimant referred to in the appearance.
Compare: HCR 4.62

4.63 Powers of court

- (1) On hearing an application under rule 4.58, the court may make whatever orders and directions justice requires.
- (2) In particular, and without limiting subclause (1), the court may—
 - (a) stay a proceeding commenced by a claimant:
 - (b) bar the claim of a claimant who has not filed and served either—
 - (i) an affidavit justifying the claim under rule 4.62(2); or
 - (ii) an appearance under rule 4.62(3):
 - (c) adjudicate upon the competing claims on the affidavits filed, or adjourn the application for that purpose:
 - (d) if the question appears to be one of law only, direct that the question be determined by the court:
 - (e) direct the trial of the issues involved by the method that the court directs:
 - (f) order that one of the claimants commence a proceeding against any other or others to try the question involved or, if a proceeding has been commenced by a claimant, order that any other claimant be joined as a defendant to that proceeding:
 - (g) order that the chattels in dispute or any part of them be sold, and that the proceeds of the sale be applied in such manner and on such terms as are just.

- (3) Subclause (4) applies to a claimant who has been served with an application and—
 - (a) does not appear on the hearing of the application; or
 - (b) having appeared, fails or refuses to comply with an order.
- (4) The court may make an order declaring that the claimant and all persons claiming under that claimant may not continue or subsequently prosecute that claim against the applicant and all persons claiming under the applicant, but that order does not affect the rights of the claimants as between themselves.
Compare: HCR 4.63

4.64 Costs of applicant

- (1) Unless the court otherwise orders, an applicant is entitled to the indemnity costs (as defined by rule 14.6(1)(b)) of and incidental to the application.
- (2) The court may order that the applicant's costs be paid by any 1 or more of the claimants and may apportion the liability between any 2 or more claimants, as it thinks just.
- (3) The court may charge any property in dispute, or the proceeds of the sale of it, or both, with payment of the costs of the applicant.
Compare: HCR 4.64

Part 5

Commencement of proceedings and filing of documents

Subpart 1—Proper registry of the court,
transfer to High Court, transfer to District
Court

5.1 How to determine proper registry

- (1) Documents that are required by these rules to be filed in the court must be filed in the registry—
 - (a) either—
 - (i) nearest to the residence or principal place of business of the defendant; or

- (ii) if the defendant is neither resident nor has a principal place of business in New Zealand, selected by the plaintiff; or
 - (b) nearest to the place where the actions or omissions that led to the claim happened; or
 - (c) nearest to the place where the property that is the subject of the claim is located; or
 - (d) determined by the court or Registrar on the court's or Registrar's own initiative or on application.
- (2) If it appears to a Judge or Registrar, on application by either of the parties, that the statement of claim has been filed in the wrong registry, he or she may direct that the statement of claim and all documents be transferred to the proper registry.
- (3) If it appears to a Judge or Registrar, on application by either of the parties, that a different registry would be more convenient to the parties, he or she may direct that the statement of claim or all documents be transferred to that registry, and that registry becomes the proper registry.
- Compare: HCR 5.1; SR 2009/257 r 3.1

Transfer from District Court to High Court

5.2 Transfer under section 43 of Act

- (1) A notice under section 43(1) of the Act must be in form 8 and must be filed by the defendant not later than 5 working days after service of the notice of proceeding on the defendant, including the day of service.
- (2) A notice under section 43(2) of the Act must be in form 9 and must be filed by the defendant not later than 5 working days after service of the notice of proceeding on the defendant, including the day of service.
- (3) An order transferring a proceeding must be in form 10.

Compare: SR 2009/257 r 3.2

5.3 Papers to be forwarded to High Court

On the making of an order transferring a proceeding from a District Court to the High Court, the Registrar must forward

all papers in the proceeding to the Registrar of the High Court whose registry is named in the order.

Compare: SR 2009/257 r 3.3

Proceedings transferred from High Court

5.4 Transfer under section 46 of Act

- (1) This rule applies to proceedings transferred to the court by the High Court under section 46 of the Act.
- (2) A Judge—
 - (a) must convene a case management conference under rule 7.5(1):
 - (b) in addition, may do 1 or more of the following:
 - (i) convene a judicial settlement conference:
 - (ii) allocate a short trial, simplified trial, or full trial:
 - (iii) make any directions he or she considers appropriate.

Compare: SR 2009/257 r 3.4

Subpart 2—Formal requirements for documents

5.5 Non-complying documents

- (1) A document that does not comply with these rules may be received for filing only by leave of a Judge or the Registrar.
- (2) The cost of an application under subclause (1) must be borne by the party making it, and may not be claimed as costs against another party under Part 14.
- (3) Despite subclause (1), a document presented for filing by a party who is not represented by a lawyer may be received and corrected by a Registrar, with the consent of that party.
- (4) Nothing in subpart 2 or 3 of this Part or in subpart 2 of Part 11 applies to a document to which any provision or Part 19 of these rules (Enforcement) or Part 6 of the Act applies.

Compare: HCR 5.2

5.6 Paper

- (1) The paper used must be of medium weight and good quality.

- (2) Each sheet of paper must be of international size A4.

Compare: HCR 5.3

5.7 Contents to be typed, etc

- (1) The contents of each document must be legible and clearly typewritten, printed, or produced in permanent form by photocopying.
- (2) Despite subclause (1), handwriting may be used for the date of the document.
- (3) Subclause (1) does not apply to the signature on a document.

Compare: HCR 5.4

5.8 Margin

- (1) A margin of at least one-quarter of the width of the paper must be left on the left-hand side of each page.
- (2) If, however, the reverse side of a page is used, a margin of that width must be left on the right-hand side of that page.

Compare: HCR 5.5

5.9 Signature to be original

If a document is signed,—

- (a) the signature must be an original signature; and
- (b) immediately below the original signature, the name of the signatory must be—
- (i) legibly typed, printed, or stamped; or
- (ii) legibly written in the style of printed matter.

Compare: HCR 5.6

5.10 Cover sheet, numbering, and fastening of document

- (1) The first sheet of a document must be a cover sheet, showing the matters specified in rules 5.11 and 5.14.
- (2) The cover sheet must not be numbered, even if the heading is continued on another sheet under rule 5.13.
- (3) Each page after the cover sheet must be numbered consecutively, starting with the number 1.
- (4) All sheets of a document must be securely fastened together.

Compare: HCR 5.7

5.11 Description of document

- (1) The cover sheet must show, immediately below the heading, an accurate description of the document.
- (2) The description must include—
 - (a) words indicating the party by whom or on whose behalf the document is filed; and
 - (b) the words “application without notice” in the case of an application so made.

Compare: HCR 5.8

5.12 Heading generally

All documents presented for filing must have the proper heading of the proceeding.

Compare: HCR 5.9

5.13 Format of cover sheet

- (1) The cover sheet of an originating document and of a notice of interlocutory application must—
 - (a) include only—
 - (i) the heading; and
 - (ii) the description of the document; and
 - (iii) if applicable, the next event date; and
 - (iv) if applicable, the name of the Judge to whom the proceeding has been assigned; and
 - (v) the information required by rule 5.19; and
 - (b) leave ample space between the description of the document and the information referred to in paragraph (a)(v) for the inclusion of a minute.
- (2) The heading may, if necessary, be continued on another sheet.
- (3) In subclause (1)(a)(iii), **next event date** means, if allocated, the date and nature of a hearing or conference that is to be held next after the date on which the document is filed.

Compare: HCR 5.10

Subpart 3—Heading of court documents

5.14 Heading on statement of claim and counterclaim

- (1) The heading of a statement of claim, and of any counterclaim intended to be served upon a person other than the plaintiff, must show—
 - (a) the number of the proceeding;
 - (b) the registry of the court in which it is filed;
 - (c) if the statement of claim or counterclaim seeks relief in reliance on jurisdiction conferred by an enactment, the title of that enactment;
 - (d) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an instrument other than a will, the name of the maker of, or the names of the parties to, the instrument and its date;
 - (e) if the relief sought in the statement of claim or counterclaim relates to the validity or interpretation of an enactment, the Title and the relevant section or sections of the enactment;
 - (f) the full name, and the place of residence and occupation, of every plaintiff and defendant, so far as they are known to the party presenting the document for filing.
- (2) Form 2 must be used for the purposes of subclause (1).
- (3) The names of parties in the heading of a statement of claim must not be repeated in the heading of a counterclaim, which may, for example, refer to the “Plaintiff and First Counterclaim Defendant”.

Compare: HCR 5.11

5.15 Heading on judgment and certain orders

The heading of a judgment and of an order that is required to be registered under any enactment must be the same as the heading on the statement of claim or other document by which the proceeding was commenced.

Compare: HCR 5.12

5.16 Heading on other documents

- (1) The heading of a document to which neither rule 5.14 nor 5.15 applies may be abbreviated as follows:

- (a) first names of persons may be denoted by initials only, unless full names are necessary to distinguish between persons having the same initials:
 - (b) if 2 or more persons are joined in the same interest, the name of the first-named person may be set out, followed by the words “and another” or “and others”, as the case may be:
 - (c) places of residence and descriptions of persons (unless necessary to distinguish 2 or more persons required to be named and with the same name) and indications of the interest in which a person is a party must be omitted:
 - (d) the names of corporations must be set out without abbreviation, but without stating the fact of incorporation or referring to the registered office or making other addition.
- (2) Despite subclause (1), a fuller title may be used upon change of parties or if any party considers that a person has in a previous document been wrongly named or described or for other sufficient reason.
- Compare: HCR 5.13

5.17 Division into paragraphs

- (1) Every document presented for filing must be divided into paragraphs which must be numbered consecutively, starting with the number 1.
- (2) Each paragraph must so far as possible be confined to a single topic.
- Compare: HCR 5.14

5.18 Numbers

Numbers must be expressed in figures and not in words.

Compare: HCR 5.15

5.19 Information at foot of cover sheet

- (1) The following information must appear at the foot of the cover sheet of every document for filing:
- (a) the name of the solicitor or firm of solicitors (if any) presenting it for filing and the name of any agent by whom the document is filed; and

- (b) when the document is presented for filing by or on behalf of a solicitor or firm of solicitors,—
 - (i) the name and telephone number of the principal or employee dealing with the proceeding; and
 - (ii) the address of any post office box or document exchange used by the solicitor or firm; and
 - (iii) any fax number and any email address used by the solicitor or firm.
 - (2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document is prima facie evidence that the document was filed by that solicitor or firm of solicitors.
- Compare: HCR 5.16

Subpart 4—Pleadings generally

5.20 Distinct matters to be stated separately

- (1) Distinct causes of action and distinct grounds of defence, founded on separate and distinct facts, must if possible be stated separately and clearly.
- (2) If a party alleges a state of mind of a person, that party must give particulars of the facts relied on in alleging that state of mind.
- (3) A state of mind includes a mental disorder or disability, malice, or fraudulent intention but does not include mere knowledge.

Compare: HCR 5.17

5.21 Denial of representative character

A denial must be specific if a party wishes to deny the right of another party to claim as executor or administrator or as trustee, or in a representative or other alleged capacity, or the alleged constitution of a partnership firm.

Compare: HCR 5.18

5.22 Denial of contract

- (1) A bare denial of a contract will be treated as denying only the making of the contract in fact, and a party must specifically plead an assertion as to the legality or enforceability of a contract, whether with reference to section 24 of the Property Law

Act 2007 or otherwise, or as to the interpretation of the contract advanced by that party.

- (2) A party asserting that a contract is illegal or unenforceable must plead the enactment or rule of law relied on.
- (3) A party asserting that the interpretation of a contract advanced by another party is wrong must assert its own interpretation.

Compare: HCR 5.19

5.23 Effect of document to be stated

If a party relies upon any document in whole or in part, it is sufficient to state its effect as briefly as possible, without setting it out, unless the precise words are material.

Compare: HCR 5.20

5.24 Notice requiring further particulars or more explicit pleading

- (1) A party may, by notice, require any other party—
 - (a) to give any further particulars that may be necessary to give fair notice of—
 - (i) the cause of action or ground of defence; or
 - (ii) the particulars required by these rules; or
 - (b) to file and serve a more explicit statement of claim or of defence or counterclaim.
- (2) A notice must indicate as clearly as possible the points on which the pleading is considered defective.
- (3) If the party on whom a notice is served neglects or refuses to comply with the notice within 5 working days after its service, the court may, if it considers that the pleading objected to is defective or does not give particulars properly required by the notice, order a more explicit pleading to be filed and served.
- (4) Even if no notice has been given under this rule, the court may on its own initiative order a more explicit pleading to be filed and served.

Compare: HCR 5.21

Subpart 5—Notice of proceeding

5.25 Notice of proceeding to be filed with statement of claim

A notice of proceeding must be filed with every statement of claim.

Compare: HCR 5.22

5.26 Requirements as to notice of proceeding

- (1) The notice of proceeding must—
 - (a) be signed by the plaintiff or the plaintiff's solicitor;
 - (b) state the place for the filing of a statement of defence and the time within which the statement of defence is required to be filed, in accordance with these rules;
 - (c) warn the defendant that if a statement of defence is not filed within the required time, the plaintiff may at once proceed to judgment on the plaintiff's claim and judgment may be given in the absence of the defendant.
- (2) The notice of proceeding must be in form 1.
- (3) If the court has directed that any person other than the defendant named in the title of the proceeding be served, a statement to that effect signed by the Registrar and setting out the name, place of residence, and occupation of that person must be annexed to the notice of proceeding.
- (4) A memorandum signed by the Registrar in form 3 must be attached to the notice of proceeding.

Compare: HCR 5.23

5.27 When not necessary to file notice of proceeding

Despite rule 5.25, a notice of proceeding need not be filed, unless the court so orders,—

- (a) if no relief against any person is claimed in the statement of claim (as, for example, in the case of a company's application to be put into liquidation by the court, or a person's application to be adjudicated bankrupt); or
- (b) if service of the notice is dispensed with—
 - (i) by statute; or
 - (ii) under these rules; or
 - (iii) by order of the court.

Compare: HCR 5.24

Subpart 6—Statement of claim

5.28 Proceeding commenced by filing statement of claim

- (1) A proceeding must be commenced by filing a statement of claim in the proper registry.
- (2) Subclause (1) does not apply to—
 - (a) an appeal under Part 17 or 18;
 - (b) a proceeding commenced by originating application under subpart 2 of Part 20;
 - (c) a proceeding, commenced in accordance with the Trans-Tasman Proceedings Regulations and Rules 2013, to register under subpart 5 of Part 2 of the Trans-Tasman Proceedings Act 2010 a registrable Australian judgment.
- (3) Despite subclause (1), the statement of claim may be filed in any registry of the court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that registry.
- (4) The statement of claim must be accompanied by a list of documents relied on by the plaintiff under rule 8.4 in form 6 (*see also* rule 8.4 for related requirements to provide copies).

Compare: HCR 5.25

5.29 Statement of claim to show nature of claim

The statement of claim—

- (a) must show the general nature of the plaintiff's claim to the relief sought; and
- (b) must give sufficient particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances to inform the court and the party or parties against whom relief is sought of the plaintiff's cause of action; and
- (c) must state specifically the basis of any claim for interest and the rate at which interest is claimed; and
- (d) in a proceeding against the Crown that is instituted against the Attorney-General, must give particulars of the government department or officer or employee of the Crown concerned.

Compare: HCR 5.26

5.30 Statement of claim to specify relief sought

- (1) The statement of claim must conclude by specifying the relief or remedy sought.
- (2) If the statement of claim includes 2 or more causes of action, it must specify separately the relief or remedy sought on each cause of action immediately after the pleading of that cause of action.

Compare: HCR 5.27

5.31 Inclusion of several causes of action

- (1) A plaintiff may include several causes of action in the same statement of claim.
- (2) Despite subclause (1), claims by or against an Official Assignee in bankruptcy, or a liquidator or a receiver of a company, in that capacity, must not, without leave of the court, be joined with any claim by or against that person in any other capacity.
- (3) Despite subclause (1), claims by or against an executor or administrator or trustee, in that capacity, must not be joined with claims by or against that person in a personal capacity unless those personal claims are alleged to arise with reference to the estate or trust in respect of which the person sues or is sued as executor or administrator or trustee.

Compare: HCR 5.28

5.32 Joint plaintiffs

Claims by plaintiffs jointly may be joined with separate claims by them or any of them against the same defendant.

Compare: HCR 5.29

5.33 Representative capacity of party

A party to a proceeding who sues or is sued in a representative capacity must show in what capacity the party sues or is sued in the statement of claim.

Compare: HCR 5.35

5.34 Specifying relief sought

- (1) The relief claimed must be stated specifically, either by itself or in the alternative.
- (2) Despite subclause (1), it is not necessary to ask for general or other relief but the court may, if it thinks just, grant any other relief to which the plaintiff is entitled, even though that relief has not been specifically claimed and there is no claim for general or other relief.

Compare: HCR 5.31

5.35 Amount of money claim

A statement of claim seeking the recovery of a sum of money must state the amount as precisely as possible.

Compare: HCR 5.32

5.36 Special damages

A plaintiff seeking to recover special damages must state their nature, particulars, and amount in the statement of claim.

Compare: HCR 5.33

5.37 Set-off

A plaintiff who wishes to allow a set-off or to give up a portion of the plaintiff's claim must show the amount allowed or given up in the statement of claim.

Compare: HCR 5.34

Subpart 7—Authority of solicitors to act

5.38 Authority to file documents

- (1) No solicitor may file a document on behalf of a party unless the solicitor is—
 - (a) authorised by, or on behalf of, the party to file the document; and
 - (b) the holder of a current practising certificate as a solicitor or as a barrister and solicitor issued under section 39 of the Lawyers and Conveyancers Act 2006.
- (2) Subclause (1) does not prevent a person from filing a document on behalf of a party if the person is authorised by, or on behalf of, the party to file the document, and—

- (a) is not the holder of a current practising certificate as a barrister or as a barrister and solicitor issued under section 39(1) of the Lawyers and Conveyancers Act 2006; but
 - (b) is allowed to appear for, or to represent, the party, in connection with the proceedings, under section 27(1)(b)(i) or (ii) of the Lawyers and Conveyancers Act 2006.
- (3) The following rules allow certain Australian solicitors to represent a party by filing certain documents:
 - (a) rule 5.39 (documents in certain trans-Tasman proceedings);
 - (b) rule 9.53(1)(b) (application to set aside New Zealand subpoena served on witness in Australia).

Compare: HCR 5.36

5.39 Authority of certain Australian solicitors in certain trans-Tasman proceedings

- (1) This rule applies to a defendant and a solicitor if the defendant is served with an initiating document in Australia under section 13 of the Trans-Tasman Proceedings Act 2010 and the solicitor is—
 - (a) entitled to practice as a solicitor of a Supreme Court of a State or Territory of Australia; and
 - (b) authorised by, or on behalf of, the defendant to file a document for the defendant in respect of, or in, the proceeding to which the initiating document relates.
- (2) The solicitor may file the document if the court has under section 38 of the Trans-Tasman Proceedings Act 2010 given the solicitor leave or, as the case requires, he or she is entitled under section 23(4) of that Act, to appear remotely in 1 or more hearings relating to the proceeding.
- (3) The solicitor may file the document even though the solicitor has neither sought, nor been given, leave under section 38 of the Trans-Tasman Proceedings Act 2010 or, as the case requires, he or she has neither made, nor had accepted, a request under section 23(4)(c) of that Act, if the document is—
 - (a) an appearance or response document (as defined in section 17(2) of that Act); or

- (b) an application under section 22 of that Act for a stay of the proceeding; or
 - (c) a request under section 23(4)(c) of that Act to appear remotely in a hearing to determine an application under section 22 of that Act; or
 - (d) an application for leave under section 38 of that Act; or
 - (e) a document related to a document, application, or request in any of paragraphs (a) to (d).
- (4) A solicitor who files a document under subclause (3) may, even if not the holder of a current practising certificate as a barrister or as a barrister and solicitor issued under section 39(1) of the Lawyers and Conveyancers Act 2006, be the solicitor on the record under rule 5.41 until—
 - (a) the court declines an application by the solicitor for leave under section 38 of that Act; or
 - (b) a document to which subclause (3) does not apply is filed in the proceeding by or on behalf of the defendant and, when that document is filed, the court has not given the solicitor leave under section 38 of that Act.
- (5) Subclause (4) does not enable the solicitor to appear remotely in a hearing relating to the proceeding without leave under section 38 of the Trans-Tasman Proceedings Act 2010 or, as the case requires, without being entitled to do so under section 23(4) of that Act.

Compare: HCR 5.36A

5.40 Solicitor's warranty as to authorisation to file documents

A solicitor by whom, or on whose behalf, a document is filed in the court is to be treated as warranting to the court and to all parties to the proceeding that he or she is authorised, by the party on whose behalf the document purports to be filed, to file the document.

Compare: HCR 5.37

5.41 Solicitor on record

- (1) The solicitor on the record for a party to a proceeding is the solicitor whose name appears on the memorandum located at the end of the first document filed by the party in accordance with rule 5.47.

- (2) This rule is subject to rules 5.39(4) and 5.45.

Compare: HCR 5.38

5.42 Authority to sign documents

- (1) A document required, by these rules, to be signed by a party may be signed on behalf of the party by the party's solicitor on the record unless the party's personal signature is expressly required.
- (2) Subclause (1) does not limit the authority of counsel to sign documents.

Compare: HCR 5.39

5.43 Change of representation or address for service

- (1) A party must file and serve on every other party to the proceeding a notice of change of representation if—
- (a) the party has acted in person and appoints a solicitor to act for that party; or
 - (b) the party wishes to change that party's solicitor; or
 - (c) the party for whom a solicitor has acted wishes to act in person.
- (2) If the party's address for service after the change of representation will be different from that which applied before the change, the party must also serve a copy of the notice at the address that was, immediately before the change, the party's address for service.
- (3) The notice—
- (a) must be signed by the party personally or by the party's attorney; and
 - (b) in the case of a notice under subclause (1)(a) or (b), must contain the information about the new solicitor required by rule 5.47(1)(b) to (e); and
 - (c) in the case of a party referred to in subclause (1)(c), must state that the party's intention is to act in person and state the party's preferred method of service (being a method of service prescribed by rule 6.1(1)(d)).
- (4) For the purpose of the proceeding, the change of representation takes effect on the filing of an affidavit proving service in accordance with subclause (1).

- (5) A party may change that party's address for service by—
 - (a) filing a notice of the change showing the new address for service or specifying an address for a method of service set out in rule 6.1(1)(d); and
 - (b) serving a copy of the notice on every other party.
- (6) A change of address for service may be combined with a notice under subclause (1).
- (7) A notice of change of address for service need not be filed under subclause (5)(a) if an affidavit is filed under subclause (4).
- (8) Form 11 may be used.
Compare: HCR 5.40

5.44 Withdrawal of solicitor who has ceased to act for party

- (1) If the solicitor on the record for a party to a proceeding has ceased to act for the party, the solicitor may apply to the court for an order declaring that the solicitor has ceased to be the solicitor on the record for the party in that proceeding, and the court may make the order.
- (2) It is not necessary to make an application if—
 - (a) the party has effected a change of solicitor in accordance with rule 5.43; or
 - (b) the party—
 - (i) has filed a notice stating that the party intends to act in person and the party's new address for service; and
 - (ii) has served a copy of the notice on the solicitor on the record and on every other party to the proceeding who has given an address for service; and
 - (iii) has filed an affidavit proving that service and attaching and verifying a copy of the notice served.
- (3) Unless subclause (2)(a) or (b) applies, the solicitor on the record for a party to a proceeding, for the purposes of that proceeding, is the solicitor on the record for that party until the final conclusion of the proceeding unless and until the solicitor—
 - (a) obtains an order under subclause (1); and

- (b) serves on every party to the proceeding who has given an address for service a copy of the order obtained under that subclause; and
 - (c) files an affidavit proving that service.
- (4) Every application under subclause (1) must be made by interlocutory application and must be supported by an affidavit giving the grounds of the application.
- (5) Unless the court otherwise directs, notice of every application under subclause (1), and a copy of the affidavit in support of the application, must be served on the party for whom the solicitor acted, and that notice must inform the party of the effect that rule 5.45 will have on the party's address for service if the solicitor obtains an order under subclause (1).
- (6) An order made under subclause (1) does not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

Compare: HCR 5.41

5.45 Address for service of party whose solicitor has ceased to act

- (1) This rule applies whenever the solicitor on the record for a party has obtained an order under rule 5.44(1) and has complied with rule 5.44(3)(b) and (c).
- (2) The last known address of the party, or, when the party is a body corporate, its registered or principal registry is, for the purpose of serving the party with any document not required to be served personally, the party's address for service until the party—
 - (a) appoints another solicitor and complies with rule 5.43; or
 - (b) if the party intends to act in person,—
 - (i) files a notice stating that the party intends to act in person and showing the party's new address for service and the party's preferred method of service (being a method of service prescribed by rule 6.1(1)(d) or specifying an address for a method of service set out in rule 6.1(1)(d)); and
 - (ii) serves on the solicitor who obtained the order under rule 5.44(1) and on every other party to the

- proceeding who has given an address for service a copy of that notice; and
- (iii) files an affidavit proving that service and attaching and verifying a copy of the notice served.

Compare: HCR 5.42

5.46 Solicitors to inform clients of orders or directions

The solicitor on the record for a party must notify the party of an order or direction that affects that party promptly after it is made.

Compare: HCR 5.43

Subpart 8—Memorandum on first document

5.47 Memorandum at end of first document filed by party

- (1) At the end of the first document filed by a party there must be a memorandum stating—
 - (a) that the document is filed by a party in person, or by the party's solicitor, as the case may be; and
 - (b) if it is filed by a solicitor,—
 - (i) the name of the solicitor; and
 - (ii) if the solicitor is a member of a firm or practises under a firm's name, the name of the firm; and
 - (c) if it is filed by a solicitor who has another solicitor acting as the solicitor's agent in the proceeding,—
 - (i) the name of the agent or of the agent's firm (if any); and
 - (ii) the postal address of the party's solicitor; and
 - (d) an address for service; and
 - (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 of documents in the course of the proceeding.
- (2) The memorandum may be in one of the paragraphs of form 12.

Compare: HCR 5.44

Subpart 9—Security for costs

5.48 Power to make order for security for costs

- (1) This rule applies if the court is satisfied, on the application of a defendant,—
 - (a) that a plaintiff—
 - (i) is resident outside New Zealand; or
 - (ii) is a corporation incorporated outside New Zealand; or
 - (iii) is, within the meaning of section 158 of the Companies Act 1955 or section 5 of the Companies Act 1993, as the case may be, a subsidiary of a corporation incorporated outside New Zealand; or
 - (b) that there is reason to believe that a plaintiff will be unable to pay the costs of the defendant if the plaintiff is unsuccessful in the plaintiff's proceeding.
- (2) When this rule applies, the court may, if it thinks fit in all the circumstances, order the giving of security for costs.
- (3) An order under subclause (2)—
 - (a) must require the plaintiff or plaintiffs against whom the order is made to give security for costs in respect of the sum that the court considers sufficient—
 - (i) by paying that sum into court; or
 - (ii) by giving, to the satisfaction of the Registrar, security for that sum; and
 - (b) may stay the proceeding until the sum is paid or the security given, as the case may be.
- (4) The court may treat a plaintiff as being resident out of New Zealand even though the plaintiff is temporarily resident in New Zealand.
- (5) The court may make an order under subclause (2) even if the defendant has taken a step in the proceeding before applying for security.
- (6) References in this rule to a **plaintiff** or **defendant** are references to the person (however described on the record) who, because of a document filed in the proceeding (for example, a counterclaim), is in the position of plaintiff or defendant.

Compare: SR 2009/257 r 4.20

Subpart 10—Statement of defence and appearance

5.49 Filing and service of statement of defence

- (1) A defendant who intends to defend the proceeding must,—
 - (a) within the number of working days stated in the notice of proceeding, file in the registry of the court named in that notice a statement of defence to the plaintiff's claim; and
 - (b) serve a copy of the statement of defence on the plaintiff and any other party.
- (2) Unless otherwise ordered by the court,—
 - (a) the place for filing the statement of defence must be the registry of the court in which the statement of claim was filed or into which it has been transferred:
 - (b) the time within which the statement of defence is required to be filed is 25 working days after the day on which the statement of claim and notice of proceeding are served on the defendant.
- (3) Subclause (2)(b) is subject to rule 6.31 (which, unless the court otherwise orders, requires a defendant who has been served out of New Zealand to file a statement of defence within 30 working days from the date of service).
- (4) The statement of defence must be accompanied by the list of documents required under rule 8.4 in form 6 (*see also* rule 8.4 for related requirements to provide copies).

Compare: HCR 5.47

5.50 Requirements of statement of defence

- (1) The statement of defence must either admit or deny the allegations of fact in the statement of claim, but a defendant does not have to plead to an allegation that does not affect that defendant.
- (2) A denial of an allegation of fact in the statement of claim must not be evasive. Points must be answered in substance. If, for example, it is alleged that the defendant received a sum of money, it is not sufficient to deny receipt of the particular amount. Rather, the defendant must deny receipt of that sum or any part of it, or set out how much was received. When a

matter is alleged with circumstances it is not sufficient to deny it as alleged with those circumstances. In all cases a fair and substantial answer must be given.

- (3) An allegation not denied is treated as being admitted.
- (4) An affirmative defence must be pleaded.
- (5) The statement of defence must give particulars of time, place, amounts, names of persons, nature and dates of instruments, and other circumstances sufficient to inform the court, the plaintiff, and any other parties of the defendant's defence.

Compare: HCR 5.48

5.51 Appearance and objection to jurisdiction

- (1) A defendant who objects to the jurisdiction of the court to hear and determine the proceeding may, within the time allowed for filing a statement of defence and instead of so doing, file and serve an appearance stating the defendant's objection and the grounds for it.
- (2) The filing and serving of an appearance does not operate as a submission to the jurisdiction of the court.
- (3) A defendant who has filed an appearance may apply to the court to dismiss the proceeding on the ground that the court has no jurisdiction to hear and determine it.
- (4) The court hearing an application under subclause (3) must,—
 - (a) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss the proceeding; but
 - (b) if it is satisfied that it has jurisdiction to hear and determine the proceeding, dismiss the application and set aside the appearance.
- (5) At any time after an appearance has been filed, the plaintiff may apply to the court by interlocutory application to set aside the appearance.
- (6) The court hearing that application must,—
 - (a) if it is satisfied that it has jurisdiction to hear and determine the proceeding, set aside the appearance; but
 - (b) if it is satisfied that it has no jurisdiction to hear and determine the proceeding, dismiss both the application and the proceeding.

- (7) To the extent that an application under this rule relates to service of process effected outside New Zealand under rules 6.23 and 6.24, it must be determined under rule 6.25.
- (8) However, both this rule and rule 6.25 are subject to section 27(1) of the Trans-Tasman Proceedings Act 2010, which provides that a New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act.
- (9) The court, in exercising its powers under this rule, may do so on any terms and conditions the court thinks just, and, in particular, on setting aside the appearance it may extend the time within which the defendant may file and serve a statement of defence and may give any directions that appear necessary regarding any further steps in the proceeding.
- (10) If the appearance set aside has been filed in relation to a proceeding in which the plaintiff has applied for judgment under rule 12.2 or 12.3, the court—
 - (a) must fix the time within which the defendant may file and serve—
 - (i) a notice of opposition; and
 - (ii) an affidavit by or on behalf of the defendant in answer to the affidavit by or on behalf of the plaintiff; and
 - (b) may, under subclause (9), give any other directions that appear necessary regarding any further steps in the proceeding.

Compare: HCR 5.49

5.52 Appearance for ancillary purposes

A defendant who does not oppose the plaintiff's claim but who wishes to be heard on any ancillary matter (including costs) may, without filing a statement of defence, file and serve an appearance stating those matters, which must not subsequently be determined without notice to that defendant.

Compare: HCR 5.50

5.53 Appearance reserving rights

- (1) This rule applies to a defendant who does not oppose the plaintiff's claim but who wishes to reserve the defendant's rights in the event that—
 - (a) any other person may become a party to the proceeding; or
 - (b) any person, already a party, may take some steps in the proceeding adverse to the defendant's interests.
- (2) The defendant—
 - (a) may, without filing a statement of defence, file and serve an appearance reserving those rights; and
 - (b) is subsequently entitled to be served with all documents relevant to the rights so reserved that are filed in the proceeding by a person who is or becomes a party.
- (3) A defendant who has filed an appearance under subclause (2) may at any time, by leave of the court, file and serve a statement of defence and any other document within the time and upon any terms and conditions prescribed by the court when granting leave.

Compare: HCR 5.51

5.54 Forms

Forms 13 to 15 (whichever is appropriate) may be used for the purpose of entering an appearance under rules 5.51 to 5.53.

Compare: HCR 5.52

Subpart 11—Counterclaims**5.55 Counterclaim against plaintiff only**

- (1) A defendant who intends to raise a counterclaim against the plaintiff only must file a statement of counterclaim in the registry of the court in which the statement of defence must be filed.
- (2) This rule is subject to rule 5.56.

Compare: HCR 5.53

5.56 Heading of counterclaim

A counterclaim must be headed with the word “Counterclaim”, but in all other respects it must conform with rule 5.14 and the rules applying to statements of claim.

Compare: HCR 5.54

5.57 Filing and service

A counterclaim must be filed in the court and a copy served on the plaintiff within the time stated in the notice of proceeding for filing a statement of defence or, if no such time is stated, within a time fixed by the court.

Compare: HCR 5.55

5.58 Defence to counterclaim

- (1) A plaintiff who intends to defend a counterclaim that has been served must, within 25 working days after the day on which the counterclaim is served, file a statement of defence to it and serve a copy on the defendant.
- (2) The statement of defence must be headed with the words “Defence to Counterclaim”, but in all other respects it must conform with the rules applying to statements of defence.

Compare: HCR 5.56

5.59 Counterclaim against plaintiff and another person

- (1) A defendant who has a counterclaim against the plaintiff along with any other person (whether a party to the proceeding or not) for any relief relating to or connected with the original subject matter of the proceeding may, within the time allowed for filing a statement of defence, file a statement of the counterclaim and serve a copy on the plaintiff and that other person (to be referred to as a counterclaim defendant).
- (2) Subclause (1) is subject to rule 5.63.
- (3) A counterclaim defendant must file a statement of defence to a counterclaim within 25 working days after the day on which the counterclaim was served.
- (4) A notice of proceeding in form 1 must be served with each copy of a counterclaim served under subclause (1).

- (5) Rules 5.55 to 5.58 apply with respect to the counterclaim and any defence to it.
- (6) The court may at any time order that a counterclaim to which subclause (1) applies be struck out, upon such terms as it thinks just, if it appears—
 - (a) that, by reason of the counterclaim, the plaintiff is likely to be unduly delayed in obtaining relief; or
 - (b) that the trial (if a trial is necessary) is to be held at a place where it could not be held if a counterclaim defendant had been made defendant to an independent proceeding by the defendant in respect of the subject matter of the counterclaim; or
 - (c) that the relief sought in the counterclaim is not related to or connected with the original subject matter of the proceeding.

Compare: HCR 5.57

5.60 Place of trial of counterclaim

- (1) A counterclaim must be tried at the same place as the statement of claim in the original proceeding and either simultaneously or immediately afterwards.
- (2) Despite subclause (1), if it appears to the court that a counterclaim and the statement of claim can more fairly or conveniently be tried separately, it may, subject to such conditions as it thinks fit, make an order that the counterclaim be tried at some other place or time.
- (3) Subject to subclauses (1) and (2), after a counterclaim has been served it must proceed in the same manner as if the defendant had commenced an independent proceeding against the plaintiff.

Compare: HCR 5.58

5.61 Status of counterclaim if proceeding stayed

If a defendant sets up a counterclaim against the plaintiff, whether alone or along with any other person, and the proceeding of the plaintiff is stayed, discontinued, or dismissed, that defendant may nevertheless proceed with the counterclaim.

Compare: HCR 5.59

5.62 Counterclaim by counterclaim defendant

- (1) Rules 5.58 to 5.61 apply to a counterclaim by a counterclaim defendant in the same way as if the counterclaim defendant were a defendant in a separate proceeding brought by the defendant.
- (2) In a case referred to in subclause (1), the term **defendant** includes the counterclaim defendant and the term **plaintiff** includes the defendant who has joined the counterclaim defendant.

Compare: HCR 5.60

5.63 Restriction when the Crown involved

- (1) In a proceeding by the Crown for the recovery of taxes, duties, or penalties, a defendant is not entitled to advance any set-off or counterclaim.
- (2) In a proceeding of any nature by the Crown, a defendant is not entitled to advance any set-off or counterclaim arising out of a right or claim to payment in respect of any taxes, duties, or penalties.
- (3) In a proceeding by or against the Crown, being a proceeding to which neither subclause (1) nor (2) applies, a defendant is not entitled, without leave of the court, to advance a set-off or counterclaim—
 - (a) if the Crown sues or is sued either—
 - (i) in the name of the Attorney-General on behalf of a government department or an officer or employee of the Crown; or
 - (ii) in the name of a government department or an officer or employee of the Crown; and
 - (b) if the subject matter of the set-off or counterclaim does not relate to that department or officer.
- (4) An application for leave under subclause (3) that is made by a defendant other than the Crown must be served on the Crown not less than 5 working days before the date specified for hearing the application.

Compare: HCR 5.61

Subpart 12—Reply

5.64 Duty to file and serve reply

If a statement of defence asserts an affirmative defence or contains any positive allegation affecting any other party, the plaintiff or that other party must, within 10 working days after the day on which that statement of defence is served, file a reply and serve it on every party who has given an address for service.

Compare: HCR 5.62

5.65 Contents of reply

- (1) A reply must be limited to answering the affirmative defence or positive allegation and otherwise must comply with the rules governing statements of defence so far as they are applicable.
- (2) An affirmative defence or positive allegation in a statement of defence that is not denied is treated as being admitted.

Compare: HCR 5.63

Subpart 13—Service of statement of claim, notice of proceeding, and list of documents relied on

5.66 Service generally

- (1) Except as otherwise provided by any Act or these rules or an order made under these rules, a statement of claim and notice of proceeding must be served—
 - (a) on every defendant named in it; and
 - (b) on every other person directed to be served with it.
- (2) Despite subclause (1), in a civil proceeding against the Crown in which the Attorney-General is named as defendant or is directed to be served on behalf of the Crown or in which the Attorney-General is joined as a party or third or subsequent party, service on the Crown must be effected in accordance with section 16 of the Crown Proceedings Act 1950.
- (3) The plaintiff's list of documents relied on in form 6 must be served together with the statement of claim.

Compare: HCR 5.70

5.67 Personal service required

- (1) Except when the court directs or these rules require or permit a different mode of service, the statement of claim and notice of proceeding must be served personally.
- (2) Rule 5.69(2) overrides subclause (1).

Compare: HCR 5.71

5.68 Prompt service required

- (1) The statement of claim and notice of proceeding must be served—
 - (a) as soon as practicable after they are filed; or
 - (b) when directions as to service are sought, as soon as practicable after the directions have been given.
- (2) Unless service is effected within 12 months after the day on which the statement of claim and notice of proceeding are filed or within such further time as the court may allow, the proceeding must be treated as having been discontinued by the plaintiff against any defendant or other person directed to be served who has not been served.

Compare: HCR 5.72

5.69 Extension of time for service

- (1) The plaintiff may, before or after the expiration of the period referred to in rule 5.68, apply to the court for an order extending that period in respect of any person (being a defendant or other person directed to be served) who has not been served.
- (2) The court or the Registrar, if satisfied that reasonable efforts have been made to effect service on that defendant or person, or for other good reason, may extend the period of service for 6 months from the date of the order and so on from time to time while the proceeding has not been disposed of.

Compare: HCR 5.73

5.70 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.
Compare: HCR 5.73A

Part 6

Service

Subpart 1—Methods and proof of service

6.1 Methods of service

- (1) Any of the following methods may be used for serving a document that is required by these rules to be served:
- (a) by personal service;
 - (b) by service at an address for service given in accordance with these rules;
 - (c) by service at an address directed by the court or a Registrar as the address for service for the party or person;
 - (d) if the solicitor for the party or person, or the party or person, has, under rule 5.43(5)(a), 5.45(2)(b)(i), or 5.47(1)(e), specified a post office box address, document exchange box number, fax number, or email address,—
 - (i) by posting the document to that post office box address; or
 - (ii) by leaving the document at a document exchange for direction to that document exchange box number; or
 - (iii) by transmitting the document electronically to that fax number or email address;
 - (e) if a defendant (as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010) has been served in Australia under section 13 of the Trans-Tasman Proceedings Act 2010 with an initiating document for the proceeding, by posting the document to an address for service of the party or person to be served.
- (2) In any case not provided for by these rules, service must be effected by the method and at the place the court directs.
- (3) This rule does not apply if an Act or a rule requires a special and exclusive method of service.

Compare: HCR 6.1

6.2 Service of copies

Unless an Act or a rule expressly requires an original document to be served, service of a true copy is to be treated as service of the document.

Compare: HCR 6.2

6.3 Notices

Rules 6.1 and 6.2 and rules 6.4 to 6.22 apply to any notice that by these rules, or by any order made under these rules, is required to be given to any person, whether or not that person is a party or the notice is required to be filed in the court.

Compare: HCR 6.3

6.4 Personal service on spouses or partners

- (1) This rule applies when defendants to a proceeding are—
 - (a) a married couple; or
 - (b) civil union partners; or
 - (c) de facto partners.
- (2) Service on one spouse, civil union partner, or de facto partner is not to be treated as service on the other unless the court so orders.

Compare: HCR 6.4

6.5 Service at address for service

A document may be served at an address for service by leaving the document at that address at any time between 9 am and 5 pm.

Compare: HCR 6.5

6.6 Service by means of post office box, document exchange, fax, or email

- (1) When a document is served on a party or person in accordance with rule 6.1(1)(d)(i) or (ii), that document must,—
 - (a) if posted to a post office box address, be treated as served on the earlier of—
 - (i) the third working day after the day on which it was posted; or
 - (ii) the day on which it was received; and

- (b) if left at a document exchange, be treated as served on the earlier of—
 - (i) the second working day after the day on which it was left; or
 - (ii) the day on which it was received.
- (2) A document served on a party or person in accordance with rule 6.1(1)(d)(iii) must—
 - (a) be treated as dispatched at the time the electronic communication first enters an information system outside the control of its originator; and
 - (b) be treated as received,—
 - (i) in the case of a party who has designated an information system for the purpose of receiving electronic communications, at the time the electronic communication enters that information system; or
 - (ii) in any other case, at the time the electronic communication comes to the attention of the party or person being served, or the solicitor or other agent of that party or person.
- (3) When a document is received electronically on a day that is not a working day, or after 5 pm on a working day, it must be treated as served on the first subsequent working day.
- (4) When a document is served electronically under this rule, the party or person served must, on receiving the document, immediately give to the person who served the document, or that person's solicitor or agent, an acknowledgement in writing or electronically—
 - (a) that the document has been received; and
 - (b) of the date and time of receipt.
- (5) In this rule, **information system** means a system for producing, sending, receiving, storing, displaying, or otherwise processing electronic communications.
- (6) Subclauses (7) to (11) apply to a document to be served in a proceeding if—
 - (a) the proceeding is one an initiating document for which is to be or has been served on a defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010; and

- (b) the document is one to be served—
 - (i) by a party in New Zealand and on a party in Australia; or
 - (ii) by a party in Australia and on a party in New Zealand.
- (7) Despite subclause (1), when a document is served in accordance with rule 6.1(1)(d)(i) or (ii) or (e), it is to be treated as served on the earlier of—
 - (a) the sixth working day after the day on which it was posted; and
 - (b) the day on which it was received.
- (8) Subclause (9) applies to a document that is—
 - (a) a document in response to a requirement of or under these rules; and
 - (b) served in accordance with rule 6.1(1)(d)(i) or (ii) or (e).
- (9) The party serving the document is entitled to an extra 5 working days within which to comply with that requirement.
- (10) Despite subclause (8), subclause (9) does not apply when a rule requires a document to be served a prescribed number of days before a hearing or other specified event.
- (11) Despite subclause (3), when a document is, under rule 6.1(1)(d)(iii) transmitted electronically to the fax number or email address of a solicitor in a State or territory of Australia at a time later than 5 pm in that State or territory, it is to be treated as having been served on the first subsequent working day.

Compare: HCR 6.6

6.7 Service under agreement

Service by a method agreed to in writing by a party is sufficient service on that party.

Compare: HCR 6.7

6.8 Substituted service

If reasonable efforts have been made to serve a document by a method permitted or required under these rules, and either the document has not come to the knowledge of the person to be

served or it cannot be promptly served, the court or a Registrar may—

- (a) direct—
 - (i) that instead of service, specified steps be taken that are likely to bring the document to the notice of the person to be served; and
 - (ii) that the document be treated as served on the happening of a specified event, or on the expiry of a specified time:
- (b) when steps have been taken for the purpose of bringing, or which have a tendency to bring, the document to the notice of the person on whom it is required to be served, direct that the document be treated as served on that person on a specified date:
- (c) subject to any conditions that the court thinks just to impose, dispense with service of a document on a person and give to the party by whom the document is required to be served leave to proceed as if the document had been served.

Compare: HCR 6.8

6.9 Notices to be given by Registrar

When notice is required to be given by the Registrar to a person, whether a party or not, it may be given,—

- (a) if the person is acting by a solicitor, by sending it by ordinary post addressed to the solicitor at the address for service (if given) or at the solicitor's place of business:
- (b) if the person is not acting by a solicitor, by sending it by ordinary post addressed to that person at that person's address for service (if given) or last known or usual place of residence or business in New Zealand:
- (c) in any other manner the court directs.

Compare: HCR 6.9

6.10 Proof of service

- (1) The service of a document may be proved on oath before the court or by affidavit in form 16.

- (2) If the service of a document is proved by affidavit in form 16, it is unnecessary, unless the court otherwise directs, for a copy of that document to be annexed if—
- (a) either the original of the document or a copy of the document has, at the time of service, been filed in the registry of the court; and
 - (b) the affidavit contains a description of the document that—
 - (i) is sufficient to enable the document to be identified; and
 - (ii) includes the date of the document (if the document is dated).

Compare: HCR 6.10

6.11 Personal service

A document may be personally served by leaving the document with the person to be served, or, if that person does not accept it, by putting it down and bringing it to the notice of that person.

Compare: HCR 6.11

Subpart 2—Corporations, partners, attorneys, and agents

6.12 Personal service on New Zealand corporations

- (1) A document may be served on a company incorporated under the Companies Act 1993 in accordance with section 387 of that Act.
- (2) A document may be served on a corporation incorporated in New Zealand other than a company incorporated under the Companies Act 1993—
 - (a) by service in accordance with rule 6.11 on—
 - (i) the mayor, chairman, president, town clerk, managing director, secretary, treasurer, or other similar officer of the corporation; or
 - (ii) any member, officer, or employee of the corporation at the corporation's head office or principal place of business; or

- (b) by leaving the document at the corporation's registered office; or
- (c) by serving the document on a member, officer, or employee of the corporation in any manner that the court directs; or
- (d) by complying with any enactment that provides for service of a document on a corporation.

Compare: HCR 6.12

6.13 Personal service in New Zealand on foreign corporations

- (1) An overseas company (within the meaning of section 2(1) of the Companies Act 1993) that is served in New Zealand must be personally served in accordance with section 389 of the Companies Act 1993.
- (2) A corporation (other than an overseas company within the meaning of section 2(1) of the Companies Act 1993) may be served in New Zealand in accordance with rule 6.11 by service on a person appearing to have control of the business of that corporation at the principal or only place of business of that corporation in New Zealand if the corporation—
 - (a) is incorporated outside New Zealand; and
 - (b) has a place or places of business in New Zealand.

Compare: HCR 6.13

6.14 Personal service on Australian corporations, partnerships, and attorneys

A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—

- (a) on a company registered in Australia under the Corporations Act 2001 (Aust) in the same way as if it were a company to which section 387 of the Companies Act 1993 applies;
- (b) on a corporation incorporated in Australia (other than a company specified in paragraph (a)) in the same way as if it were a corporation to which rule 6.12(2) applies;
- (c) on a partnership, or on a person carrying on business in the name of a firm apparently consisting of more than 1

person, by serving it in accordance with rule 6.11 either on any partner or on that person, or—

- (i) on any person appearing to have control of the business of the partnership or apparent partnership; and
 - (ii) at the principal place in Australia of the business of the partnership or apparent partnership:
- (d) on a person who is out of Australia and New Zealand by serving, in accordance with rule 6.11, an attorney or agent of the person in Australia if the attorney or agent is authorised—
- (i) to transact that person's affairs generally and to defend proceedings; or
 - (ii) to transact the person's affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

Compare: HCR 6.13A

6.15 Personal service in Australia on foreign corporations

- (1) A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—
- (a) on a foreign company registered under section 601CE of the Corporations Act 2001 (Aust) as follows:
 - (i) by delivery to a person named in the register kept for the purposes of Division 2 of Part 5B.2 of that Act as a director of the foreign company and who is resident in Australia; or
 - (ii) by delivery to a person named in that register as being authorised to accept service in Australia of documents on behalf of that foreign company; or
 - (iii) by delivery to an employee of the foreign company at the foreign company's place of business in Australia or, if the foreign company has more than 1 place of business in Australia, at the foreign company's principal place of business in Australia; or

- (iv) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceeding; or
 - (v) in accordance with an agreement made with the foreign company:
- (b) on a foreign corporation of the kind specified in subclause (2) by serving it in accordance with rule 6.11—
 - (i) on a person appearing to have control of the business of that corporation; and
 - (ii) at the principal place of business of that corporation in Australia.
- (2) Subclause (1)(b) applies to a foreign corporation that—
 - (a) is not a foreign corporation registered under section 601CE of the Corporations Act 2001 (Aust); and
 - (b) is incorporated but not in Australia and not in New Zealand; and
 - (c) has a place of business in Australia; and
 - (d) does not have a place of business in New Zealand.

Compare: HCR 6.13B

6.16 Personal service on unincorporated societies

A document may be served on an unincorporated society by serving the president, chairperson, secretary, or any similar officer of the society under rule 6.11.

Compare: HCR 6.14

6.17 Personal service on partnership or apparent partnership

A document may be served on a partnership or on a person carrying on business in the name of a firm apparently consisting of more than 1 person by serving it in accordance with rule 6.11—

- (a) on any partner or on that person; or
- (b) at the principal place in New Zealand of the business of the partnership or apparent partnership, on any person appearing to have control of the business there.

Compare: HCR 6.15

6.18 Personal service on attorney or agent of absentee

A document may be served on a person who is out of New Zealand by serving, in accordance with rule 6.11, an attorney or agent of that person in New Zealand if the attorney or agent is authorised—

- (a) to transact that person's affairs generally and to defend proceedings; or
- (b) to transact that person's affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

Compare: HCR 6.16

6.19 Service on representatives

- (1) This rule applies to a person (a **representative**) who—

- (a) is appointed by the court to represent any person or persons, or any class of persons; or
- (b) sues or defends on behalf of himself or herself and any other person or persons.

- (2) Service on the representative is to be treated as service on behalf of all persons whom the representative has been appointed to represent or on whose behalf the representative sues or defends.

Compare: HCR 6.17

6.20 Service on solicitor

A document is treated as served on a person on the date on which the solicitor for that person signs on a copy of the document a note accepting service of it, or a proved earlier date.

Compare: HCR 6.18

6.21 Service of statement of claim on certain days void

A statement of claim must not be served on Christmas Day, New Year's Day, or Good Friday.

Compare: HCR 6.19

6.22 Failure to give address for service

A party to a contentious proceeding who has not given an address for service is not entitled to be served with notice of any

step in the proceeding or with copies of any further documents filed in the proceeding or to address the court.

Compare: HCR 6.20

Subpart 3—Service out of New Zealand

6.23 When allowed without leave

- (1) This rule applies to a document that initiates a civil proceeding, or is a notice issued under subpart 4 of Part 4 (Third, fourth, and subsequent parties), that under these rules is required to be served but cannot be served in New Zealand under these rules (an **originating document**).
- (2) An originating document may be served out of New Zealand without leave in the following cases:
 - (a) when a claim is made in tort and—
 - (i) any act or omission in respect of which damage was sustained was done or occurred in New Zealand; or
 - (ii) the damage was sustained in New Zealand:
 - (b) when a contract sought to be enforced or rescinded, dissolved, annulled, cancelled, otherwise affected or interpreted in any proceeding, or for the breach of which damages or other relief is demanded in the proceeding,—
 - (i) was made or entered into in New Zealand; or
 - (ii) was made by or through an agent trading or residing within New Zealand; or
 - (iii) was to be wholly or in part performed in New Zealand; or
 - (iv) was by its terms or by implication to be governed by New Zealand law:
 - (c) when there has been a breach in New Zealand of any contract, wherever made:
 - (d) when the claim is for—
 - (i) a permanent injunction to compel or restrain the performance of any act in New Zealand; or
 - (ii) interim relief in support of judicial or arbitral proceedings commenced or to be commenced outside New Zealand:

- (e) when the subject matter of the proceeding is land or other property situated in New Zealand, or any act, deed, will, instrument, or thing affecting such land or property:
- (f) when any relief is sought against any person domiciled or ordinarily resident in New Zealand:
- (g) when any person out of the jurisdiction is—
 - (i) a necessary or proper party to proceedings properly brought against another defendant served or to be served (whether within New Zealand or outside New Zealand under any other provision of these rules), and there is a real issue between the plaintiff and that defendant that the court ought to try; or
 - (ii) a defendant to a claim for contribution or indemnity in respect of a liability enforceable by proceedings in the court:
- (h) when the claim arises under an enactment and—
 - (i) any act or omission to which the claim relates was done or occurred in New Zealand; or
 - (ii) any loss or damage to which the claim relates was sustained in New Zealand; or
 - (iii) the enactment applies expressly or by implication to an act or omission that was done or occurred outside New Zealand in the circumstances alleged; or
 - (iv) the enactment expressly confers jurisdiction on the court over persons outside New Zealand (in which case any requirements of the enactment relating to service must be complied with):
- (i) when the person to be served has submitted to the jurisdiction of the court.

Compare: HCR 6.27

6.24 When allowed with leave

- (1) In any proceeding in which service is not allowed under rule 6.23, an originating document may be served out of New Zealand with the leave of the court.

- (2) An application for leave under this rule must be made on notice to every party other than the party intended to be served.
- (3) A sealed copy of every order made under this rule must be served with the document to which it relates.
- (4) An application for leave under this rule must be supported by an affidavit stating any facts or matters related to the desirability of the court assuming jurisdiction under rule 6.25, including the place or country in which the person to be served is or possibly may be found, and whether or not the person to be served is a New Zealand citizen.
- (5) The court may grant an application for leave if the applicant establishes that—
 - (a) the claim has a real and substantial connection with New Zealand; and
 - (b) there is a serious issue to be tried on the merits; and
 - (c) New Zealand is the appropriate forum for the trial; and
 - (d) any other relevant circumstances support an assumption of jurisdiction.

Compare: HCR 6.28

6.25 Court's discretion whether to assume jurisdiction

- (1) If service of process has been effected out of New Zealand without leave, and the court's jurisdiction is objected to under rule 5.51, the court must dismiss the proceeding unless the party effecting service establishes—
 - (a) that—
 - (i) there is a good arguable case that the claim falls wholly within 1 or more of the paragraphs of rule 6.23(2); and
 - (ii) the court should assume jurisdiction by reason of the matters set out in rule 6.24(5)(b) to (d); or
 - (b) that, had the party applied for leave under rule 6.24,—
 - (i) leave would have been granted; and
 - (ii) it is in the interests of justice that the failure to apply for leave should be excused.
- (2) If service of process has been effected out of New Zealand under rule 6.24, and the court's jurisdiction is objected to under rule 5.51, and it is claimed that leave was wrongly granted under rule 6.24, the court must dismiss the proceeding unless

the party effecting service establishes that in the light of the evidence now before the court leave was correctly granted.

- (3) When service of process has been validly effected within New Zealand, but New Zealand is not the appropriate forum for trial of the action, the defendant may apply for a stay, or for a dismissal of the proceeding under rule 15.1.

Compare: HCR 6.29

6.26 Service of other documents outside New Zealand

Any document other than an originating document required by any rule to be served personally may be served abroad with the leave of the court, which may be given with any directions that the court thinks just.

Compare: HCR 6.30

6.27 Notice to defendant served outside New Zealand

If a defendant is to be served out of New Zealand, the memorandum required by rule 5.26(4) must also include a notice, which may be in HCF G 6, informing the defendant of—

- (a) the scope of the jurisdiction of the court in respect of claims against persons who are not resident in New Zealand; and
- (b) the grounds alleged by the plaintiff in relying on that jurisdiction; and
- (c) the defendant's right to enter an appearance and objection to the jurisdiction of the court under rule 5.51.

Compare: HCR 6.31

6.28 Service outside New Zealand

- (1) An originating document permitted under these rules to be served outside New Zealand may be served by a method—
 - (a) specified in rule 6.1; or
 - (b) permitted by the law of the country in which it is to be served; or
 - (c) provided for in rules 6.29 and 6.30.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) When a convention relating to service of process is in force between New Zealand and the country where service is to be

effected, service must be effected in accordance with a method provided for, or permitted by, that convention.

- (4) No service outside New Zealand is valid if effected contrary to the law of the country where service is effected.

Compare: HCR 6.32

6.29 Service through official channels

- (1) When a party seeks service outside New Zealand through official channels, the request must be sent by the Registrar to the Secretary for Justice, who must forward it to the Secretary of Foreign Affairs and Trade for further transmission to the appropriate authorities in the foreign country.
- (2) Proof of service must be returned to the Registrar through the same channels.
- (3) In respect of each person to be served, the request for service must be accompanied by—
- (a) the document to be served; and
 - (b) a copy of the document to be exhibited to the evidence verifying service; and
 - (c) when the language of the person to be served is not English,—
 - (i) a translation of the document into the language (verified as correct to the satisfaction of the Registrar) of the person to be served for service with the document; and
 - (ii) a copy of that translation, which must be exhibited to the evidence verifying service.
- (4) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a New Zealand consular officer, is sufficient proof of that fact and date.
- (5) This rule is subject to any relevant convention that requires or permits any other method of service through official channels.

Compare: HCR 6.33

6.30 Service in convention countries

- (1) This rule applies when—

- (a) a convention is in force between New Zealand and any other country relating to the service of documents in proceedings in the courts of the respective countries; and
 - (b) a party to a proceeding in New Zealand desires to take advantage of any provision made in the convention for service in that other country by official means.
- (2) When this rule applies, the party seeking service may file a request in HCF G 18 stating the official means of service desired and containing the undertaking set out in that form covering the payment of expenses.
- (3) Subclause (2) is subject to the provisions of the convention.
- (4) In respect of each person to be served, the request for service must be accompanied by—
 - (a) the document to be served; and
 - (b) a copy of it exhibited to the evidence verifying service; and
 - (c) when the language of the person to be served is not English,—
 - (i) a translation of the document into his or her language (verified as correct to the satisfaction of the Registrar) for service with the document; and
 - (ii) a copy of that translation to be exhibited to the evidence verifying service.
- (5) The document and translation to be served must be sealed by the Registrar with the seal of the court and the documents required to accompany the request for service forwarded by the Registrar to the Secretary for Justice for transmission through the appropriate channels to the country concerned for service in accordance with the request for service.
- (6) A certificate establishing the fact and date of service and given by the competent authority of the country concerned, or by a British or New Zealand consular officer, and transmitted by the Secretary for Justice to the Registrar is sufficient proof of that service.
- (7) A certificate filed by the Registrar is equivalent to an affidavit of service of the documents referred to in the certificate.

Compare: HCR 6.34

6.31 Time for filing defence

Except when the court otherwise orders, a defendant (as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010) who has been served out of New Zealand must file a statement of defence or appearance within 30 working days from the date of service.

Compare: HCR 6.35

6.32 Subpart does not apply to service in Australia of documents for or in certain trans-Tasman proceedings

This subpart (which contains rules on service out of New Zealand) does not apply to service in Australia of an initiating document for, or of any other document to be served in or for, a proceeding an initiating document for which may be served in Australia under subpart 1 of Part 2 of the Trans-Tasman Proceedings Act 2010.

Compare: HCR 6.36

Part 7

Case management

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) 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.

Compare: HCR 7.1(1), (3)

7.2 First case management conference

- (1) This rule applies unless—
 - (a) no statement of defence has been filed in a proceeding; and
 - (b) no other response prescribed or otherwise required by these rules has been filed in a proceeding.
- (2) Unless otherwise ordered by a Judge, 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 25 working days after the date when the first statement of defence is filed in the proceeding, but, in any event, not less than 50 working days after the filing of the proceeding.
- (3) The agenda for the conference is—
 - (a) the matters set out in Part A of Schedule 3 (with any adaptations ordered by the Judge for the purposes of that conference); and
 - (b) the hearing, and if practicable the disposal, of any outstanding interlocutory application; and
 - (c) determining in accordance with rule 10.1 whether the mode of trial is to be a short trial; and
 - (d) if a short trial is not allocated, directing that a judicial settlement conference under rule 7.3 must be held as soon as practicable after disposal of the matters referred to in paragraphs (a) and (b) unless—
 - (i) the Judge directs otherwise; or
 - (ii) the parties agree to participate in alternative dispute resolution; and
 - (e) other appropriate matters that have already been discussed by the parties.
- (4) The parties must either file a joint memorandum addressing the Part A of Schedule 3 matters and the other matters referred to in subclause (3) no later than 10 days before the conference, 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 on the matters in Part A of Schedule 3 and the other matters referred to in subclause (3). That memorandum must be filed 10 working days before the conference, followed no later than 5 work-

ing days before the conference by memoranda from the other parties, 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 that fall within subclause (3)(e).

Compare: HCR 7.3

7.3 Judicial settlement conference

- (1) This rule applies unless—
- (a) in any case—
- (i) no statement of defence has been filed in a proceeding; and
- (ii) no other response prescribed or otherwise required by these rules has been filed in a proceeding; or
- (b) the court orders that a short trial is to be held before a date is set for a judicial settlement conference.
- (2) The purpose of a judicial settlement conference is to give the parties to the proceeding an opportunity to negotiate a settlement of the claim or any issue.
- (3) The parties must file and serve on the other parties copies of their will say statements and a memorandum identifying the issues and any settlement negotiations at least 10 working days before the date set for the conference.
- (4) Will say statements and the memorandum required by subclause (3) that are produced at a judicial settlement conference are not admissible at any trial of the proceeding.
- (5) A judicial settlement conference must be convened by a Judge and held in chambers.
- (6) A Judge who convenes a judicial settlement conference may assist the parties in their negotiations, but that Judge must not preside at the trial (if any) unless—
- (a) all parties taking part in the conference consent; or
- (b) the only matter for resolution at the hearing is a question of law.

- (7) A proceeding is treated as having been discontinued 30 working days after the date on which the Judge endorses the proceeding as having been settled, unless—
 - (a) the parties, by notice to the Judge given before the close of that 30-day period, consent to an extension of that period, and in that case the Judge must direct accordingly and the discontinuance takes effect on the close of that extended period; or
 - (b) in any other case, the Judge, in the interests of justice, directs that the proceeding be discontinued with effect on and after some other date stated by the Judge.
- (8) If the Judge assisting the parties at a judicial settlement conference is satisfied that the parties are unable to settle the claim or issue, the Judge must, as soon as practicable,—
 - (a) indicate that he or she has formed that view; and
 - (b) adjourn the proceeding to a second case management conference under rule 7.4.
- (9) The court may order any proceeding treated as having been discontinued under subclause (7) to be reinstated on good cause shown by either party and on any terms it thinks just.

7.4 Second case management conference

- (1) Unless otherwise ordered by a Judge, no later than 10 working days after a judicial settlement conference is held under rule 7.3, the Registrar must fix the date for the second case management conference for the proceeding.
- (2) The agenda for the second case management conference is set out in Part B of Schedule 3.
- (3) The parties must either file a joint memorandum addressing the Part B of Schedule 3 matters no later than 10 working days before the conference, or file separate memoranda addressing those matters in accordance with this rule.
- (4) If separate memoranda are filed, the plaintiff or applicant must file the first memorandum stating that party's position on the matters in Part B of Schedule 3. That memorandum must be filed no later than 10 working days before the conference, followed no later than 5 working days before the conference by memoranda from the other parties, each memorandum stat-

ing 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.

- (5) The joint memorandum referred to in subclause (3) may be combined with any joint memorandum filed in relation to discovery under rule 8.11.
- (6) A separate memorandum referred to in subclause (4) may be combined with any separate memorandum filed in relation to discovery under rule 8.11.
- (7) The second case management conference may be adjourned if the Judge declines to certify that the proceeding is ready for allocation of a hearing or trial date by the Registrar.
- (8) 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.

7.5 Additional case management conferences

- (1) In addition to case management conferences under rules 7.2 and 7.4, a Judge—
 - (a) may hold a case management conference at any time;
 - (b) must hold a case management conference if rule 5.4(2)(a) applies.
- (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.

7.6 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 an amendment under rule 1.12.

Compare: HCR 7.7

7.7 Cancellation of case management conference

A Judge may cancel a case management conference if, after reading the memoranda prepared for the conference, the Judge is satisfied that the parties have achieved the goals of this sub-part 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: HCR 7.9

7.8 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: HCR 7.10

7.9 Timetable and monitoring obligations

The Registrar must—

- (a) arrange the date of the first, second, and any subsequent case management conferences held under these rules;
- (b) remind parties or their counsel of the timetable obligations associated with any case management or pretrial 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.

Compare: HCR 7.11

7.10 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; 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: HCR 7.12

7.11 Registrar's functions in relation to hearing dates

- (1) After a Judge or Registrar has allocated a hearing or trial date for a proceeding, the Registrar must promptly—
 - (a) record the proceeding in the list kept under rule 7.10(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: HCR 7.13

Subpart 2—Interlocutory applications and interlocutory orders

7.12 Contents, form, and filing of interlocutory application

- (1) An interlocutory application must—
 - (a) state the relief sought and the grounds justifying that relief; and
 - (b) refer to any particular enactments or principles of law or judicial decisions on which the applicant relies.
- (2) The application need not ask for general or other relief.
- (3) The application is made by filing it in the court.
- (4) The application must be in form 17 or 18.
- (5) This subpart applies to the application.

Compare: HCR 7.19

7.13 Affidavit to be filed with application

Any affidavit in support of the application must be filed at the same time as the application.

Compare: HCR 7.20

7.14 Filing by post

- (1) An applicant may post an application and related documents together with the applicable fee to the Registrar at the proper registry.
- (2) A posted application is filed when that Registrar receives it with the applicable fee.
- (3) The Registrar must acknowledge the receipt of all documents sent by post and notify the applicant of the hearing date (if any) allocated for the application.
- (4) If the application is made without notice and does not require any attendance by or on behalf of the applicant, the Registrar must notify the applicant of the result of the application.

Compare: HCR 7.21

7.15 Service of application and supporting affidavit

- (1) After filing an application and any affidavit in support of it, the applicant must promptly serve a copy of the application and affidavit on every party.
- (2) After the applicant is notified of the hearing date for the application, the applicant must promptly notify every respondent of the hearing date.
- (3) This rule does not apply to an application made without notice in accordance with rule 7.16.

Compare: HCR 7.22

7.16 Application without notice

- (1) If the applicant wishes the application to be determined without any other party being served (in these rules referred to as an **application without notice**), the applicant must use form 18.
- (2) An application without notice must contain a certificate that—
 - (a) uses the words “I certify that this application complies with the rules”; and
 - (b) is personally signed by the applicant’s lawyer.
- (3) The lawyer who signs the certificate must, before signing it, be personally satisfied that—
 - (a) the application and every affidavit filed in support of it complies with these rules;
 - (b) the order sought is one that ought to be made;

- (c) there is a proper basis for seeking the order in an application without notice.
- (4) The lawyer is responsible to the court for those matters.
- (5) Despite subclause (2), a Judge may dispense with the certificate if the applicant is unrepresented and justice so requires, and if dispensation is sought, the applicant must state the reasons for the absence of a lawyer's certificate.
Compare: HCR 7.23

7.17 Notice of opposition to application

- (1) A respondent who intends to oppose an application must file and serve on every other party a notice of opposition to the application within—
 - (a) the period of 10 working days after being served with the application; or
 - (b) if the hearing date for the application is within that period, 3 working days before the hearing date.
- (2) The notice of opposition must—
 - (a) state the respondent's intention to oppose the application and the grounds of opposition; and
 - (b) refer to any particular enactments or principles of law or judicial decisions on which the respondent relies.
- (3) The notice of opposition must be in form 19.
Compare: HCR 7.24

7.18 Affidavit to be filed with notice of opposition

Any affidavit setting out evidence in opposition to the application must be filed and served at the same time as the notice of opposition.

Compare: HCR 7.25

7.19 Affidavit in reply

- (1) Any reply by the applicant to the respondent's notice of opposition or affidavit must be by affidavit, which must be filed and served—
 - (a) within the period of 5 working days after service of the notice of opposition; or

- (b) if the hearing date for the application is within that period, by 1 pm on the working day before that hearing date.
- (2) The affidavit in reply must be limited to new matters raised in the notice of opposition or in an affidavit filed by the respondent.
Compare: HCR 7.26

7.20 Evidence normally given by affidavit

- (1) Evidence relating to interlocutory applications is given by affidavit.
- (2) Despite subclause (1), in special circumstances, a Judge may accept oral evidence.
Compare: HCR 7.27

7.21 Cross-examination of maker of affidavit

A Judge may in special circumstances, on the application of a party, order the attendance for cross-examination of a person who has made an affidavit in support of, or in opposition to, an interlocutory application.
Compare: HCR 7.28

7.22 Rules governing affidavits

Rules 9.65 to 9.78 apply, with all necessary modifications, to affidavits filed for interlocutory applications.
Compare: HCR 7.29

7.23 Statements of belief in affidavits

- (1) A Judge may accept statements of belief in an affidavit in which the grounds for the belief are given if—
 - (a) the interests of no other party can be affected by the application; or
 - (b) the application concerns a routine matter; or
 - (c) it is in the interests of justice.
- (2) Subclause (1) overrides rule 7.22.
Compare: HCR 7.30

7.24 When admissions binding

An admission of a fact expressly made only for the purpose of an application binds the party only for the application.

Compare: HCR 7.31

7.25 Previous affidavits and agreed statements of fact

- (1) Affidavits already filed in the court and agreed statements of fact, if made in the same proceeding or, with the leave of a Judge, in any other proceeding between the same parties, may be used on the disposal of any application if—
 - (a) prior notice of the intention to use them has been given to the opposite party (whether in the notice of application or in the notice of opposition or otherwise); or
 - (b) in the case of an application without notice, they are referred to in the notice of application.
- (2) Subclause (1) does not apply to an affidavit or to an agreed statement to the extent that the affidavit or statement contains any admission of the kind described in rule 7.24.

Compare: HCR 7.32

7.26 Allocation of hearing date

On or following the filing of an application (other than an application without notice), the Registrar must allocate a hearing date for the application.

Compare: HCR 7.33

7.27 Mode of hearing

- (1) An interlocutory application for which a hearing is required must be heard in chambers unless a Judge otherwise directs.
- (2) On the Judge's own initiative or on the application of 1 or more of the parties, the Judge may conduct a hearing in chambers by telephone or video link.

Compare: HCR 7.34

7.28 Publication about hearing in chambers

Particulars of the hearing in chambers of an interlocutory application or of the decision or both (including the reasons for

the decision) may be published unless a Judge or Registrar, exercising jurisdiction in chambers, otherwise directs.

Compare: HCR 7.35

7.29 Application for summary judgment to be heard in open court

Despite rule 7.27(1), every application for summary judgment must be heard in open court.

Compare: HCR 7.36

7.30 No hearing required if respondents consent or do not oppose

- (1) Subclause (2) applies if each respondent to an interlocutory application has stated on the application or in a memorandum filed in the court that the respondent consents to, or does not oppose, the orders sought in the application.
- (2) A Judge may—
 - (a) make the orders sought without holding a hearing; or
 - (b) direct that the application be heard on the hearing date allocated under rule 7.26.
- (3) If the Judge makes the orders without holding a hearing, the Registrar must promptly advise the parties of the orders made and the cancellation of the hearing date.

Compare: HCR 7.37

7.31 Respondent who consents, or who does not oppose, need not attend hearing

- (1) If a hearing of an interlocutory application is held, a respondent need not attend the hearing if the respondent consents to, or does not oppose, the application and has notified the court in writing.
- (2) Subclause (1) does not apply if, on the hearing date allocated for the interlocutory application, a case management conference is also due to be held.

Compare: HCR 7.38

7.32 Synopsis of argument

- (1) This rule applies to a defended interlocutory application unless, or to the extent that, a Judge directs otherwise.
 - (2) The applicant must file and serve a synopsis of argument (**synopsis**) on every other party,—
 - (a) if the respondent has filed a notice of opposition under rule 7.17(1)(a), at least 3 working days before the hearing of the interlocutory application; or
 - (b) if the respondent has filed a notice of opposition under rule 7.17(1)(b), at least 2 working days before the hearing of the interlocutory application.
 - (3) The applicant's synopsis must—
 - (a) identify the general nature of the case;
 - (b) include a chronology of the material facts;
 - (c) outline the applicant's principal submissions;
 - (d) be accompanied by or have annexed to it—
 - (i) an indexed and paginated set of relevant documents; and
 - (ii) a list of authorities.
 - (4) The material required to be included in the applicant's synopsis under subclause (3)(a) to (c) must not exceed 10 pages.
 - (5) The respondent must, at least 1 working day before the hearing, file and serve a synopsis on every other party.
 - (6) The respondent's synopsis must—
 - (a) identify any material facts that are not referred to in the applicant's synopsis;
 - (b) state any facts that are disputed;
 - (c) outline the respondent's principal submissions;
 - (d) be accompanied by or have annexed to it—
 - (i) an indexed and paginated set of any relevant documents not included in the applicant's synopsis; and
 - (ii) a list of any authorities not included in the applicant's synopsis.
 - (7) The material required to be included in the respondent's synopsis under subclause (6)(a) to (c) must not exceed 10 pages.
- Compare: HCR 7.39

7.33 Failure to attend

- (1) If a party is neither present nor represented at the hearing of an application, the Judge may—
 - (a) determine the application in the party's absence in any manner that appears just; or
 - (b) adjourn the application; or
 - (c) strike out the application.
- (2) If an order determining an application is made in the absence of a party, a Judge may, if the Judge thinks it just to do so, recall the order at any time before a formal record of it has been drawn up and sealed.
- (3) A Judge may, in any manner that the Judge thinks just, reinstate an application that has been struck out for non-appearance.
- (4) A Judge may make a determination referred to in subclause (2) or (3) on the Judge's own initiative or on the application of a party.
- (5) Notice of an application under subclause (4) must be filed and served,—
 - (a) if it is made by a party who was present or represented at the hearing, within 5 working days after the hearing;
 - (b) if it is made by a party who was neither present nor represented, within 5 working days after receipt by the party of notice of the decision given at the hearing.

Compare: HCR 7.40

7.34 Certain applications may be made orally at hearing

- (1) At a hearing, the Judge may agree to hear an oral application for an interlocutory order if—
 - (a) all parties interested consent to the order sought; or
 - (b) these rules permit the application to be made without filing a notice of the application; or
 - (c) the order sought has been outlined in a memorandum filed for a case management conference, and no party will be unduly prejudiced by the absence of a formal notice of the application; or
 - (d) because of the nature of the order sought, no party will be unduly prejudiced by the absence of a formal notice.

- (2) If the Judge agrees to hear an oral application, the Judge may make any interlocutory order or grant any interlocutory relief the Judge could have made or granted on a formal notice of the application.
- (3) This rule overrides rule 7.12.
Compare: HCR 7.41

7.35 Adjournment

The hearing of an application may, from time to time, be adjourned on any terms that the Judge thinks just.

Compare: HCR 7.42

7.36 Making of interlocutory orders

- (1) A Judge may make any interlocutory order that—
 - (a) is provided for in these rules; or
 - (b) may be made under rule 1.11.
- (2) An interlocutory order may be made—
 - (a) on the interlocutory application of a party; or
 - (b) on a Judge’s own initiative.
- (3) Before making an order under subclause (2)(b), the Judge must give the parties an opportunity to be heard.

Compare: HCR 7.43

7.37 Power to grant interlocutory order or interlocutory relief

A Judge may make any interlocutory order or grant any interlocutory relief the Judge thinks just, even though the order or relief has not been specifically claimed and there is no claim for general or other relief.

Compare: HCR 7.44

7.38 Interlocutory orders may be made subject to conditions

A Judge may make an interlocutory order subject to any just terms or conditions, including, without limitation, any condition that—

- (a) a party give an undertaking;
- (b) the order operate only for a specified period.

Compare: HCR 7.45

7.39 Determination of application without notice

- (1) The Registrar must refer an application without notice to a Judge for direction or decision.
- (2) The Judge, on receiving an application without notice, must determine whether the application can properly be dealt with without notice.
- (3) The Judge may determine that an application can properly be dealt with without notice only if the Judge is satisfied that—
 - (a) requiring the applicant to proceed on notice would cause undue delay or prejudice to the applicant; or
 - (b) the application affects only the applicant; or
 - (c) the application relates to a routine matter; or
 - (d) an enactment expressly permits the application to be made without serving notice of the application; or
 - (e) the interests of justice require the application to be determined without serving notice of the application.
- (4) If the Judge determines that the application can properly be dealt with without notice, the Judge may—
 - (a) make the order sought in the application; or
 - (b) make any other order that the Judge thinks just in the circumstances; or
 - (c) dismiss the application.
- (5) If the Judge determines that the application cannot properly be dealt with without notice, the Judge may—
 - (a) give directions as to service and adjourn the determination of the application until the application has been served on persons who are affected by the application; or
 - (b) if the Judge considers that the application has no chance of success, dismiss the application.

Compare: HCR 7.46

7.40 Drawing up and sealing interlocutory order

- (1) A party may draw up an interlocutory order and submit it to the Registrar for sealing.
- (2) Despite subclause (1), a party who obtains an interlocutory order must draw up the order and submit it to the Registrar for sealing if the order—

- (a) affects a person who is not a party; or
 - (b) joins a person as a party; or
 - (c) directs that it be served on a person.
- (3) If a party elects to have an order sealed, or is required by the court or by these rules to have an order sealed, the following provisions apply:
- (a) the party must file an original order together with sufficient copies so that the party and the other parties who have given an address for service can each receive a duplicate sealed order:
 - (b) the order must be in form 20:
 - (c) the order must specify both the date on which it was made and the date on which it was sealed:
 - (d) the Registrar, when satisfied with the form of the order, must sign and seal the original and every copy:
 - (e) the Registrar must mark every copy with the word “duplicate”:
 - (f) the Registrar must retain the original on the file:
 - (g) the party who submitted the order for sealing must promptly serve a sealed copy on every other party who has given an address for service and on any person affected by the order.

Compare: HCR 7.47

7.41 Enforcement of interlocutory order

- (1) If a party (the **party in default**) fails to comply with an interlocutory order or any requirement imposed by or under subpart 1 (case management), a Judge may, subject to any express provision of these rules, make any order that the Judge thinks just.
- (2) The Judge may, for example, order—
- (a) that any pleading of the party in default be struck out in whole or in part:
 - (b) that judgment be sealed:
 - (c) that the proceeding be stayed in whole or in part:
 - (d) that the party in default be committed:
 - (e) if any property in dispute is in the possession or control of the party in default, that the property be sequestered:
 - (f) that any fund in dispute be paid into court:

- (g) the appointment of a receiver of any property or of any fund in dispute.
- (3) An order must not be enforced by committal unless the order has been served personally on the party in default or that party had notice or knowledge of the order within sufficient time for compliance with the order.
Compare: HCR 7.48

7.42 Order relating to management of proceeding may be varied if circumstances change

- (1) This rule applies to an order or direction (a **determination**) that—
 - (a) relates to the management of a proceeding; and
 - (b) has been made by a Judge in chambers.
- (2) If there has been a change in circumstances affecting a party or the party's solicitor or counsel since the making of a determination, a Judge may, on application, vary the determination.
Compare: HCR 7.50(1), (2)

7.43 Order may be rescinded if fraudulently or improperly obtained

- (1) A Judge may rescind any order that has been fraudulently or improperly obtained.
- (2) The Judge may grant any further relief by way of costs that the interests of justice require.
- (3) This rule does not limit any other remedies of a party who has been adversely affected by an order that has been fraudulently or improperly obtained.
Compare: HCR 7.51

7.44 Limitation as to second interlocutory application

- (1) A party who fails on an interlocutory application must not apply again for the same or a similar order without first obtaining the leave of a Judge.
- (2) A Judge may grant leave only in special circumstances.
Compare: HCR 7.52

Subpart 3—Interim relief

7.45 Application for injunction

- (1) An application for an interlocutory injunction may be made by a party before or after the commencement of the hearing of a proceeding, whether or not an injunction is claimed in the party's statement of claim, counterclaim, or third party notice.
- (2) The plaintiff may not make an application for an interlocutory injunction before the commencement of the proceeding except in case of urgency, and any injunction granted before the commencement of the proceeding—
 - (a) must provide for the commencement of the proceeding; and
 - (b) may be granted on any further terms that the Judge thinks just.
- (3) An interlocutory injunction to which section 42(2) of the Act applies (restraining a party to a proceeding from removing from New Zealand, or otherwise dealing with, assets in New Zealand) must be in form 21.
- (4) For the purposes of subclause (3),—
 - (a) an application for a Mareva injunction (freezing order) must be made by interlocutory application under rule 7.12:
 - (b) an applicant for a freezing order without notice to a respondent must fully and frankly disclose to the court all material facts, including—
 - (i) any possible defences known to the applicant; and
 - (ii) information casting doubt on the applicant's ability to discharge the obligation created by the undertaking as to damages:
 - (c) an applicant for a freezing order must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the respondent for any damage sustained in consequence of the freezing order:
 - (d) the freezing order must not prohibit the respondent from dealing with the assets covered by the order for the purpose of—
 - (i) paying ordinary living expenses; or

- (ii) paying legal expenses related to the freezing order; or
 - (iii) disposing of assets, or making payments, in the ordinary course of the respondent's business, including business expenses incurred in good faith:
- (e) unless there are special circumstances, the court must require the applicant for a freezing order to give appropriate undertakings, including an undertaking as to damages:
- (f) if the applicant has, or may later have, insufficient assets within New Zealand to discharge the obligation created by an undertaking as to damages, the court may require the applicant to provide security for that obligation in a form and in an amount fixed by a Judge or, if the Judge so directs, the Registrar:
- (g) a freezing order must reserve leave to the respondent to apply to the court to discharge or vary the freezing order on whatever period of notice to the applicant the court considers just:
- (h) an application by the respondent to discharge or vary the freezing order must be treated as an urgent application by the court:
- (i) a freezing order made without notice to the respondent must state that it is limited to a particular date, which should be as early as practicable after the freezing order is made:
- (j) the respondent must be informed that on that date the respondent will have an opportunity to be heard by the court:
- (k) on the date referred to in paragraph (i) the applicant has the onus of satisfying the court that the freezing order should be continued or renewed:
- (l) the court may make any order as to costs it considers just in relation to an order referred to subclause (k):
- (m) without limiting the generality of paragraph (l), an order as to costs includes an order as to the costs of any person affected by a freezing order.

- (5) This subpart does not affect the jurisdiction of the court under any enactment to make an order freezing assets.

Compare: HCR 7.53, 32.3, 32.5, 32.6(3) to (5), 32.7–32.10

7.46 Undertaking as to damages

- (1) An applicant for an interlocutory injunction under rule 7.45 must file a signed undertaking that the applicant will comply with any order for the payment of damages to compensate the other party for any damage sustained through the injunction.
- (2) The undertaking must be referred to in the order granting the interlocutory injunction and is part of it.

Compare: HCR 7.54

7.47 Preservation of property

- (1) A Judge may at any stage in a proceeding make orders, subject to any conditions specified by the Judge, for the detention, custody, or preservation of any property.
- (2) An order may authorise a person to enter any land or to do any other thing for the purpose of giving effect to the order.
- (3) The Judge may order that a fund be paid into court or otherwise secured if the proceeding concerns the right of a party to the fund.
- (4) The Judge may treat an application under this rule as an application for directions and give directions accordingly.

Compare: HCR 7.55

7.48 Sale of perishable property before hearing

- (1) A Judge may, on application, make an order authorising a person to sell property (other than land) in a manner and subject to any conditions stated in the order if—
- (a) the proceeding concerns the property or raises, or may raise, questions about the property; and
 - (b) the property—
 - (i) is perishable or likely to deteriorate; or
 - (ii) should for any other reason be sold before the hearing.

- (2) The Judge may treat an application under this rule as an application for directions and give directions accordingly.
Compare: HCR 7.56

7.49 Order to transfer part of property to person with interest in property

- (1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that a part of the property be transferred or delivered to a person who has an interest in the property.
- (2) The order may be made if the Judge is satisfied—
- (a) that the part of the property transferred or delivered is not required for the provision that ought to be made to meet the claims on the property; and
 - (b) that the order is necessary or desirable—
 - (i) to exclude the part of the property from an injunction or other order; or
 - (ii) to protect the person who is to transfer or deliver the property.

Compare: HCR 7.57

7.50 Interim payment of income to person with interest in income

- (1) At any stage of a proceeding concerning property a Judge may order, subject to any conditions, that the whole or part of the income from the property be paid, during a period stated in the order, to 1 or more persons who have an interest in the income.
- (2) The order may be made if the Judge is satisfied—
- (a) that the income stated in the order is not required for any provision that ought to be made to meet the claims on the property or its income; and
 - (b) that the order is necessary or desirable—
 - (i) to exclude the income from a Mareva injunction or other order; or
 - (ii) to protect the person who is to pay the income.

Compare: HCR 7.58

Subpart 4—Receivers

7.51 Application

Rules 7.52 to 7.59 apply to a receiver appointed under an order of the court to the extent that the order does not expressly provide otherwise.

Compare: HCR 7.59

7.52 Address for service

The receiver must, within 5 working days after appointment, file a notice specifying an address for service.

Compare: HCR 7.60

7.53 Receiver must give security

- (1) A Judge may give directions as to the security that the receiver is required to give in accordance with this rule.
- (2) If a Judge directs that a receiver be appointed, no appointment may be made until the person to be appointed has given security in accordance with this rule.
- (3) Any security given under this rule must be approved by the Registrar.
- (4) The Registrar must be satisfied that the security is sufficient to ensure that the receiver will—
 - (a) account for everything received in his or her capacity as receiver; and
 - (b) comply with any direction given by a Judge.
- (5) A Judge may vary any directions given and may, in particular, order that the security be varied or discharged.
- (6) Subclauses (1) and (2) are subject to any enactment.

Compare: HCR 7.61

7.54 Remuneration of receiver

- (1) A receiver must be paid the remuneration fixed by a Judge.
- (2) A Judge may, in the order appointing a receiver or in a later order, name the party or parties who must pay the remuneration and, if more than 1 party is named, the proportion to be paid by each party.
- (3) A Judge may order any party or parties to give security for the receiver's remuneration.

- (4) Subclause (3) does not affect subclause (2).

Compare: HCR 7.62

7.55 Accounts of receiver

A receiver must file accounts at the intervals or on the dates specified in directions given by a Judge.

Compare: HCR 7.63

7.56 Examination of accounts

- (1) The receiver must,—
- (a) on filing the accounts, request the Registrar to examine the accounts and to allocate a date and time for that examination; and
 - (b) serve on each party interested who has given an address for service in the proceeding—
 - (i) a copy of the accounts; and
 - (ii) a notice of the date and time allocated for the examination of the accounts.
- (2) The receiver must, unless a Judge otherwise orders, attend at the examination of the accounts.

Compare: HCR 7.64

7.57 Default by receiver

- (1) A Judge may make any orders and give any directions that the Judge thinks fit if a receiver does not comply with a requirement, under these rules or an order or a direction,—
- (a) to file any accounts or an affidavit; or
 - (b) to attend at the examination of the accounts; or
 - (c) to do any other thing.
- (2) Orders and directions made under subclause (1) may include orders and directions for—
- (a) the discharge of the receiver; and
 - (b) the appointment of another receiver; and
 - (c) the payment of costs.
- (3) If a receiver does not comply with a requirement under these rules or an order or direction of a Judge to pay into court a sum shown by the accounts as due from the receiver, a Judge may

order the receiver to pay interest at the rate prescribed under section 62B of the Act.

- (4) This rule does not limit the powers of the court to enforce orders or to punish contempt.
- (5) Subclause (3) does not limit subclause (1) or (2).

Compare: HCR 7.65

7.58 Powers of receiver

- (1) A Judge may authorise a receiver to do (either in the receiver's own name or in that of 1 or more parties) any act or thing that 1 or more parties could do if of full age and capacity.
- (2) An authority given under subclause (1)—
 - (a) may apply generally or be limited to a particular instance; and
 - (b) has effect even if 1 or more parties are not of full age and capacity.
- (3) This rule does not limit the powers of a Judge to authorise a receiver to do any act or thing.

Compare: HCR 7.66

7.59 Accounts on death of receiver

- (1) If the receiver in any proceeding dies, a Judge may, on application, make any orders the Judge thinks fit for the filing and examining of accounts by the personal representatives of the deceased receiver and for the payment into court of any amount shown to be due.
- (2) A Judge may not make any order under subclause (1) unless notice of the application has been served on the personal representatives.
- (3) Notice of the application may be served in any manner in which a statement of claim may be served.

Compare: HCR 7.67

Subpart 5—Interim payments

7.60 Interpretation

In rules 7.61 to 7.68, **interim payment** means a payment on account of any damages, debt, or other sum (excluding costs)

that the defendant in a proceeding may be held liable to pay to, or for the benefit of, the plaintiff in that proceeding.

Compare: HCR 7.68

7.61 Application for interim payment

- (1) The plaintiff in a proceeding may, at any time after the time for the filing of a statement of defence by the defendant has expired, apply to the court for an order requiring the defendant to make an interim payment.
- (2) An application under subclause (1) must be supported by an affidavit—
 - (a) stating the amount of the damages, debt, or other sum to which the application relates and the reasons for making the application; and
 - (b) attaching any documentary evidence relied on by the plaintiff in support of the application.
- (3) The application and a copy of the affidavit in support and any documents annexed to it must be served on the defendant against whom the order is sought at least 10 working days before the date allocated for the hearing of the application.
- (4) A second or subsequent application for an interim payment may be made if it is shown to be justified, even if such an order has previously been made or refused.

Compare: HCR 7.69

7.62 Order for interim payment in respect of damages

- (1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge is satisfied that—
 - (a) the defendant against whom the order is sought has admitted liability for the plaintiff's damages; or
 - (b) the plaintiff has a judgment against the defendant for damages to be assessed; or
 - (c) on a trial of the proceeding, the plaintiff would obtain judgment for substantial damages against the defendant or, if there are several defendants, against 1 or more of them.

- (2) A Judge may, within the limits in subclause (3), order the defendant to make an interim payment of an amount that the Judge thinks just.
- (3) The amount must not exceed a reasonable proportion of the damages the plaintiff is, in the opinion of the Judge, likely to recover after taking into account—
 - (a) any relevant contributory negligence; and
 - (b) any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.

Compare: HCR 7.70

7.63 Order for interim payment in respect of sums other than damages

- (1) A Judge may make an order under subclause (2) if, on hearing the application, the Judge is satisfied—
 - (a) that the plaintiff has obtained an order for an account to be taken as between the plaintiff and the defendant and for the payment of any amount certified to be payable on the basis of that account; or
 - (b) in the case of a claim for the possession of land, that even if the proceeding was finally determined in favour of the defendant, the defendant would still be required to compensate the plaintiff for the defendant's use and occupation of the land before the determination of the proceeding; or
 - (c) that, on the trial of the proceeding, the plaintiff is likely to obtain judgment against the defendant for a substantial sum of money apart from any damages or costs.
- (2) A Judge may order that the defendant pay an amount the Judge thinks just, after taking into account any set-off, cross-claim, or counterclaim on which the defendant may be entitled to rely.
- (3) The order does not prejudice any contentions of the parties as to the nature or character of the sum to be paid by the defendant.

Compare: HCR 7.71

7.64 Method of payment

- (1) The amount of any interim payment ordered to be made must be paid to the plaintiff unless the order provides for it to be paid into court.
- (2) If the amount is paid into court, a Judge may, on the application of the plaintiff, order the whole or any part of it to be paid out to the plaintiff at a time or times the Judge thinks just.
- (3) If the person entitled to an interim payment or to a part of an interim payment belongs to a class of persons stated in subclause (4), acceptance of the interim payment is subject to the approval of a Judge and payment out of court may not be made without the leave of a Judge.
- (4) The classes are—
 - (a) minors (not including a minor to whom rule 4.31(2) applies);
 - (b) persons subject to a property order under the Protection of Personal and Property Rights Act 1988;
 - (c) incapacitated persons within the meaning of rule 4.29.
- (5) An application under subclause (2) for money in court to be paid out may be made without notice, but a Judge hearing the application may direct that notice of the application be served on the other party.
- (6) An interim payment may be ordered to be made in 1 sum or by any instalments a Judge thinks just.
- (7) If a payment is ordered in respect of the defendant's use and occupation of land, the order may provide for periodical payments to be made while the proceeding awaits determination.
- (8) Subclause (1) is subject to subclause (3).

Compare: HCR 7.72

7.65 Directions on interim payment application

When an application is made under rule 7.61, a Judge may give any directions as to the further conduct of the proceeding that the Judge thinks just, and may, in particular, order an early trial of the proceeding.

Compare: HCR 7.73

7.66 Non-disclosure of interim payment

- (1) The fact that an order has been made under rule 7.62(2) or 7.63(2) must not be pleaded.
- (2) The fact that the order has been made or that an interim payment has been made, whether voluntarily or under an order, must not be disclosed at the trial, or hearing, of any question or issue as to liability or damages.
- (3) Subclause (2) does not prevent the disclosure of any fact—
 - (a) to the extent that the defendant consents to, or a Judge directs, the disclosure; or
 - (b) after all questions of liability and amount have been determined.

Compare: HCR 7.74

7.67 Adjustment on final judgment or order or on discontinuance

- (1) A Judge may, on the application of a party, make an order with respect to an interim payment made under an order or voluntarily that the Judge thinks just.
- (2) A Judge may, in particular, make an order for—
 - (a) the repayment by the plaintiff of all or part of the interim payment; or
 - (b) the variation or discharge of the interim payment; or
 - (c) the payment by another defendant of part of the interim payment, if the defendant who made the interim payment is entitled to recover from the other defendant an amount—
 - (i) by way of contribution or indemnity; or
 - (ii) in respect of a remedy or relief relating to, or connected with, the plaintiff's claim.
- (3) A Judge may make an order under this rule—
 - (a) when giving or making a final judgment or order; or
 - (b) when granting the plaintiff leave to discontinue the proceeding or to withdraw the claim in respect of which the interim payment has been made; or
 - (c) at any other stage of the proceeding.

Compare: HCR 7.75

7.68 Counterclaims and other proceedings

Rules 7.60 to 7.67 apply, with all necessary modifications, to any counterclaim or proceeding in which one party seeks an order for an interim payment from another.

Compare: HCR 7.76

Subpart 6—Amendment of pleading**7.69 Filing of amended pleading**

- (1) A party may before trial file an amended pleading and serve a copy of it on the other party or parties.
- (2) An amended pleading may introduce, as an alternative or otherwise,—
 - (a) relief in respect of a fresh cause of action that is not statute barred; or
 - (b) a fresh ground of defence.
- (3) An amended pleading may introduce a fresh cause of action whether or not that cause of action has arisen since the filing of the statement of claim.
- (4) If a cause of action has arisen since the filing of the statement of claim, it may be added only by leave of the court. If leave is granted, the amended pleading must be treated, for the purposes of the law of limitation defences, as having been filed on the date of the filing of the application for leave to introduce that cause of action.
- (5) Subclause (4) overrides subclause (1).
- (6) If an amended pleading introduces a fresh cause of action, the other party must file and serve that party's defence to it within 10 working days after the day on which the amended pleading is actually served on the other party.
- (7) When an amended pleading does not introduce a fresh cause of action, the other party may, within 5 working days after the day on which the amended pleading is served on that other party, file and serve an amended defence to it.
- (8) If an amended pleading has been filed under this rule, the party filing the amended pleading must bear all the costs of and occasioned by the original pleading and any application for amendment, unless the court otherwise orders.

- (9) This rule does not limit the powers conferred on the court by rule 1.12.
 - (10) This rule is subject to rule 7.6 (which prohibits steps after the close of pleadings date without leave).
- Compare: HCR 7.77

Subpart 7—Recovery of specific property subject to lien

7.70 Recovery of specific property subject to lien or other security

- (1) This rule applies if a party (**A**) seeks to recover specific property other than land and the party from whom recovery is sought (**B**) does not dispute the title of A, but claims to retain the property by virtue of a lien or otherwise as security for a sum of money.
 - (2) The court may order that A may pay into court the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as the court directs, and money so paid in must be held by the court until the result of the proceeding is known.
 - (3) If payment into court is made, the court may order that the property claimed be delivered to its claimant.
 - (4) Subclause (1) is applicable as soon as the claim to retain the property appears from the statement of defence or otherwise.
- Compare: HCR 7.78

Subpart 8—Arbitration

7.71 Arbitration by consent

- (1) The parties to a proceeding may agree to arbitration of their dispute or any part of it under the Arbitration Act 1996 at any time during the course of the proceeding.
- (2) If an arbitration agreement entered into during the course of a proceeding relates to all the matters in dispute in the proceeding, the court must, on application by a party, stay the proceeding.
- (3) If an arbitration agreement entered into during the course of a proceeding relates to some but not all of the matters in dis-

pute in the proceeding, the court must, on application by a party, stay those parts of the proceeding to which the arbitration agreement relates.

- (4) The court may make the stay on terms as to costs or other ancillary matters.
- (5) Subclauses (2) and (3) do not apply if the court finds that the agreement has no effect or is inoperative or incapable of being performed.
- (6) This rule does not affect section 61 of the Act.

Compare: HCR 7.80

Part 8

Discovery, inspection, and interrogatories requirements

Subpart 1—Discovery and inspection

8.1 Interpretation

In this subpart,—

discovery order means an order that requires each party to a proceeding to discover the existence of documents to every other party

standard discovery means discovery that complies with rule 8.7

tailored discovery means discovery that complies with rule 8.8.

Compare: HCR 8.1

8.2 Co-operation

- (1) The parties must co-operate to ensure that the processes of discovery and inspection are—
 - (a) proportionate to the subject matter of the proceeding; and
 - (b) facilitated by agreement on practical arrangements.
- (2) The parties must, when appropriate,—
 - (a) consider options to reduce the scope and burden of discovery; and
 - (b) achieve reciprocity in the electronic format and processes of discovery and inspection; and

- (c) ensure technology is used efficiently and effectively; and
- (d) employ a format compatible with the subsequent preparation of an electronic bundle of documents for use at trial.

Compare: HCR 8.2

8.3 Preservation of documents

- (1) As soon as a proceeding is reasonably contemplated, a party or prospective party must take all reasonable steps to preserve documents that are, or are reasonably likely to be, discoverable in the proceeding.
- (2) Without limiting the generality of subclause (1), documents in electronic form that are potentially discoverable must be preserved in readily retrievable form even if they would otherwise be deleted in the ordinary course of business.

Compare: HCR 8.3

8.4 List of documents relied on

- (1) After filing a pleading, a party must, unless subclause (3) applies, serve on the other parties, at the same time as the service of that pleading, a list in form 6 consisting of—
 - (a) all the documents referred to in that pleading; and
 - (b) any additional principal documents in the filing party's control that that party has used when preparing the pleading and on which that party intends to rely at the trial or hearing.
- (2) A party who serves a list under subclause (1) must, on request by any other party who is served with the list, give to that other party a copy of any document on the list requested by that party within 5 working days of the request.
- (3) A party need not comply with subclause (1) or (2) if—
 - (a) the circumstances make it impossible or impracticable to comply with subclause (1) or (2); and
 - (b) a certificate to that effect, setting out the reasons why compliance is impossible or impracticable, and signed by counsel for that party, is filed and served at the same time as the pleading.

- (4) Despite subclause (1) or (2), a party does not need to provide any document that—
 - (a) is the subject of a claim of public interest immunity; or
 - (b) is reasonably apprehended by the party to be the subject of such a claim.
 - (5) Documents may be provided either electronically or in hard copy form.
 - (6) If an amended pleading is filed, this rule applies to that amended pleading if it—
 - (a) refers to documents not referred to in any earlier pleading filed by the party who files the amended pleading; or
 - (b) pleads additional facts.
- Compare: HCR 8.4

8.5 Discovery orders to be made at second case management conferences

- (1) A Judge must make a discovery order for a proceeding unless he or she considers that the proceeding can be justly disposed of without any discovery.
 - (2) An order under subclause (1) must be made at the second case management conference that is held for the proceeding, unless there is good reason for making the order later.
- Compare: HCR 8.5

8.6 Two kinds of discovery

Discovery orders made under this subpart may direct either—

- (a) standard discovery; or
- (b) tailored discovery.

Compare: HCR 8.6

8.7 Standard discovery

Standard discovery requires each party to disclose the documents that are or have been in that party's control and that are—

- (a) documents on which the party relies; and
- (b) documents that adversely affect that party's own case; and

- (c) documents that adversely affect another party's case;
and
- (d) documents that support another party's case.

Compare: HCR 8.7

8.8 Tailored discovery

Tailored discovery must be ordered when the interests of justice require an order involving more or less discovery than standard discovery would involve.

Compare: HCR 8.8

8.9 Presumption as to tailored discovery

It is to be presumed, unless the Judge is satisfied to the contrary, that the interests of justice require tailored discovery in proceedings—

- (a) where the costs of standard discovery would be disproportionately high in comparison with the matters at issue in the proceeding; or
- (b) that involve 1 or more allegations of fraud or dishonesty; or
- (c) in which the parties agree that there should be tailored discovery.

Compare: HCR 8.9

8.10 Obligation of party ordered to make tailored discovery

Tailored discovery requires a party against whom it is ordered to disclose the documents that are or have been in that party's control either in categories as indicated in clause 3(2) of Schedule 9 of the High Court Rules or under some other method of classification that facilitates the identification of particular documents.

Compare: HCR 8.10

8.11 Preparation for second case management conference

- (1) The parties must, not less than 10 working days before the second case management conference, discuss and endeavour to agree on an appropriate discovery order, and the manner in which inspection will subsequently take place, having ad-

dressed the matters in the discovery checklist in accordance with Part 1 of Schedule 9 of the High Court Rules.

- (2) The joint memorandum, or separate memoranda, filed under rule 7.4 must, in addition to the matters required to be addressed under rule 7.4(3), set out the terms of the discovery order that the Judge is requested to make and the reasons for a discovery order in those terms.
- (3) If the parties agree to vary the listing and exchange protocol set out in Part 2 of Schedule 9 of the High Court Rules, they need advise the Judge only that variation has been agreed, not the details of that variation.

Compare: HCR 8.11

8.12 Orders that may be made

- (1) At the second case management conference the Judge may, under rule 8.5, make—
 - (a) an order dispensing with discovery; or
 - (b) an order for standard discovery; or
 - (c) an order for tailored discovery, setting out categories (by, for example, subject headings and date periods) or another method of classification by which documents are to be identified.
- (2) A discovery order may—
 - (a) incorporate the listing and exchange protocol set out in Part 2 of Schedule 9 of the High Court Rules; or
 - (b) vary that protocol; or
 - (c) contain other obligations that are considered appropriate.
- (3) A discovery order may include specific directions as to the manner of discovery.
- (4) A discovery order does not require a party to discover electronically stored information that is not primary data.
- (5) Despite subclause (4), the Judge may order a party to discover electronically stored information that is not primary data if the Judge is satisfied that the need for, and the relevance and materiality of, the non-primary data sought justify the cost and burden of retrieving and producing that data.

- (6) For the purposes of this rule, **primary data** means active data and readily retrievable archival data.

Compare: HCR 8.12

8.13 Solicitor's discovery obligations

As soon as practicable after a party becomes bound to comply with a discovery order, the solicitor who acts for the party in the proceeding must take reasonable care to ensure that the party—

- (a) understands the party's obligations under the order; and
- (b) fulfils those obligations.

Compare: HCR 8.13

8.14 Extent of search

- (1) A party must make a reasonable search for documents within the scope of the discovery order.
- (2) What amounts to a reasonable search depends on the circumstances, including the following factors:
 - (a) the nature and complexity of the proceeding; and
 - (b) the number of documents involved; and
 - (c) the ease and cost of retrieving a document; and
 - (d) the significance of any document likely to be found; and
 - (e) the need for discovery to be proportionate to the subject matter of the proceeding.

Compare: HCR 8.14

8.15 Affidavit of documents

- (1) Each party must file and serve an affidavit of documents that complies with this rule, subject to any modifications or directions contained in a discovery order.
- (2) In the affidavit of documents, the party must—
 - (a) refer to the discovery order under which the affidavit is made; and
 - (b) state that the party understands the party's obligations under the order; and
 - (c) give particulars of the steps taken to fulfil those obligations; and

- (d) state the categories or classes of documents that have not been searched, and the reason or reasons for not searching them; and
 - (e) list or otherwise identify the documents required to be discovered under the order in a schedule that complies with rule 8.16 and Part 2 of Schedule 9 of the High Court Rules; and
 - (f) state any restrictions proposed to protect the claimed confidentiality of any document.
- (3) The affidavit may be in form 22.
 - (4) Each party must file and serve the affidavit of documents within such time as the court directs or, if no direction is made, within 20 working days after the date on which the discovery order is made.
- Compare: HCR 8.15

8.16 Schedule appended to affidavit of documents

- (1) The schedule referred to in rule 8.15(2)(e) must, in accordance with that discovery order, list or otherwise identify each document that—
 - (a) is in the control of the party giving discovery and for which the party does not claim privilege or confidentiality;
 - (b) is in the control of the party giving discovery for which privilege is claimed, stating the nature of the privilege claimed;
 - (c) is in the control of the party giving discovery for which confidentiality is claimed, stating the nature and extent of the confidentiality;
 - (d) has been, but is no longer, in the control of the party giving discovery, stating when the document ceased to be in that control, and what has become of it;
 - (e) has not been in the control of the party giving discovery but which that party knows would be discoverable if that party had control of them.
- (2) Subject to Part 2 of Schedule 9 of the High Court Rules, documents of the same nature falling within subclause (1)(b), (d), or (e) may be described as a group or groups.

- (3) The description of documents for which privilege is claimed under subclause (1)(b) must be sufficient to inform the other parties of the basis on which each document is included in a group under subclause (2).
- (4) The schedule must include documents that have previously been disclosed under rule 8.4.
- (5) The schedule need not include—
 - (a) documents filed in court; or
 - (b) correspondence that may reasonably be assumed to be in the possession of all parties.

Compare: HCR 8.16

8.17 Variation of discovery order

- (1) A party may apply for an order varying the terms of a discovery order.
- (2) The variation may be granted by a Judge on the ground that—
 - (a) compliance or attempted compliance with the terms of the order has revealed a need for a variation; or
 - (b) there has been a change of circumstances that justifies reconsideration.

Compare: HCR 8.17

8.18 Continuing obligations

- (1) Each party against whom a discovery order is made has a continuing obligation to give discovery and offer inspection at all stages of the proceeding, even if that party has filed and served an affidavit of documents that complies with this subpart.
- (2) A party must discover a document if, in the course of complying with an order for tailored discovery, that party becomes aware of a document that is not required to be discovered under the order, but that—
 - (a) adversely affects that party's own case; or
 - (b) adversely affects another party's case; or
 - (c) supports another party's case.

Compare: HCR 8.18

8.19 Order for particular discovery against party after proceeding commenced

If at any stage of the proceeding it appears to a Judge, from evidence or from the nature or circumstances of the case or from any document filed in the proceeding, that there are grounds for believing that a party has not discovered 1 or more documents or a group of documents that should have been discovered, the Judge may order that party—

- (a) to file an affidavit stating—
 - (i) whether the documents are or have been in the party's control; and
 - (ii) if they have been but are no longer in the party's control, the party's best knowledge and belief as to when the documents ceased to be in the party's control and what has become of them; and
- (b) to serve the affidavit on the other party or parties; and
- (c) if the documents are in the person's control, to make those documents available for inspection, in accordance with rule 8.27, to the other party or parties.

Compare: HCR 8.19

8.20 Order for particular discovery before proceeding commenced

- (1) This rule applies if it appears to a Judge that—
 - (a) a person (the **intending plaintiff**) is or may be entitled to claim in the court relief against another person (the **intended defendant**) but that it is impossible or impracticable for the intending plaintiff to formulate the intending plaintiff's claim without reference to 1 or more documents or a group of documents; and
 - (b) there are grounds to believe that the documents may be or may have been in the control of a person (the **person**) who may or may not be the intended defendant.
- (2) The Judge may, on the application of the intending plaintiff made before any proceeding is brought, order the person—
 - (a) to file an affidavit stating—
 - (i) whether the documents are or have been in the person's control; and

- (ii) if they have been but are no longer in the person's control, the person's best knowledge and belief as to when the documents ceased to be in the person's control and what has become of them; and
- (b) to serve the affidavit on the intending plaintiff; and
- (c) if the documents are in the person's control, to make those documents available for inspection, in accordance with rule 8.27, to the intending plaintiff.
- (3) An application under subclause (2) must be by interlocutory application made on notice—
 - (a) to the person; and
 - (b) to the intended defendant.
- (4) The Judge may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

Compare: 1947 No 16 s 56A; HCR 8.20

8.21 Order for particular discovery against non-party after proceeding commenced

- (1) This rule applies if it appears to a Judge that a person who is not a party to a proceeding may be or may have been in the control of 1 or more documents or a group of documents that the person would have had to discover if the person were a party to the proceeding.
- (2) The Judge may, on application, order the person—
 - (a) to file an affidavit stating—
 - (i) whether the documents are or have been in the person's control; and
 - (ii) if the documents have been but are no longer in the person's control, the person's best knowledge and belief as to when the documents ceased to be in the person's control and what has become of them; and
 - (b) to serve the affidavit on a party or parties specified in the order; and
 - (c) if the documents are in the control of the person, to make those documents available for inspection, in accordance

with rule 8.27, to the party or parties specified in the order.

- (3) An application for an order under subclause (2) must be made on notice to the person and to every other party who has filed an address for service.

Compare: 1947 No 16 s 56B; HCR 8.21

8.22 Costs of discovery

- (1) If it is manifestly unjust for a party to have to meet the costs of complying with an order made under this subpart, a Judge may order that another party meet those costs, either in whole or in part, in advance or after the party has complied.
- (2) Despite subclause (1), the court may subsequently discharge or vary an order made under that subclause if satisfied that a different allocation of those costs would be just.
- (3) If an order is made under rule 8.20(2) or 8.21(2), the Judge may, if the Judge thinks it just, order the applicant to pay to the person from whom discovery is sought the whole or part of that person's expenses (including solicitor and client costs) incurred in relation to the application and in complying with any order made on the application.

Compare: HCR 8.22

8.23 Incorrect affidavit of documents to be amended

If, by reason of any change of circumstances or an error or omission, an affidavit of documents filed in response to a discovery order appears to the person making discovery to be defective or erroneous, the person must promptly file and serve an affidavit that corrects or supplements the affidavit of documents.

Compare: HCR 8.23

8.24 Who may swear affidavit of documents

- (1) When a Judge makes a discovery order, the Judge may—
 - (a) specify by name or otherwise the person who has to make the affidavit of documents; or

- (b) specify by description or otherwise a group of persons or a class of persons each of whom may make the affidavit.
- (2) If the Judge does not specify the person or the group or class of persons, the affidavit of documents may be made as follows:
 - (a) if the person required to make discovery is an individual person, by that individual person;
 - (b) if the person required to make discovery is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 9.72;
 - (c) if the person required to make discovery is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a government department, by an officer of the Crown.

Compare: HCR 8.24

8.25 Challenge to privilege or confidentiality claim

- (1) If a party challenges a claim to privilege or confidentiality made in an affidavit of documents, the party may apply to the court for an order setting aside or modifying the claim.
- (2) In considering the application, a Judge may require the document under review to be produced to the Judge and may inspect it for the purpose of deciding the validity of the claim.
- (3) The Judge may—
 - (a) set aside the claim to privilege or confidentiality; or
 - (b) modify the claim to privilege or confidentiality; or
 - (c) dismiss the application; or
 - (d) make any other order with respect to the document under review that the Judge thinks just.

Compare: HCR 8.25

8.26 Crown documents and public interest

An order made under section 27(1) of the Crown Proceedings Act 1950 must be construed as not requiring disclosure of the existence of any document if—

- (a) the Prime Minister certifies that the disclosure of the existence of that document would be likely to prejudice—

- (i) the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - (ii) any interest protected by section 7 of the Official Information Act 1982; or
- (b) the Attorney-General certifies that the disclosure of the existence of that document would be likely to prejudice the prevention, investigation, or detection of offences.

Compare: HCR 8.26

8.27 Inspection of documents

- (1) As soon as a party who is required to make discovery has filed and served an affidavit of documents, that party must, subject to rule 8.28, make the documents that are listed in the affidavit and that are in that party's control available for inspection by way of exchange.
- (2) Documents must be exchanged in accordance with the listing and exchange protocol in Part 2 of Schedule 9 of the High Court Rules.
- (3) If a discovery order exempts a party from giving discovery and inspection electronically, that party must make the documents listed in the affidavit of documents available for inspection in hard copy form and must promptly make those documents available for copying if requested.
- (4) A party who has received a document electronically under this rule may, on giving reasonable notice in writing, require the person giving discovery to produce the original document for inspection.
- (5) This rule also applies to documents listed in an affidavit filed and served under rule 8.20 or 8.21.
- (6) This rule is subject to the terms of any discovery order made under rule 8.5.

Compare: HCR 8.27

8.28 Privilege and confidentiality

- (1) A party is not required to make privileged documents available for inspection.

- (2) If a document contains both privileged and non-privileged information, a party must make the document available for inspection, but may redact the privileged information by rendering the privileged information in the document unreadable.
- (3) A party may limit inspection of confidential documents to the persons specified in the affidavit of documents, subject to the restrictions proposed in the affidavit.
Compare: HCR 8.28

8.29 Order facilitating inspection

- (1) A Judge may, on application, make any order the Judge thinks appropriate to facilitate the efficient inspection of documents.
- (2) An order under subclause (1) may, for example, require the person who is to produce the documents for inspection to do either or both of the following:
 - (a) arrange the documents in a stated manner or order;
 - (b) assist the party inspecting the documents to locate and identify particular documents or groups of documents.Compare: HCR 8.29

8.30 Use of documents

- (1) A party to whom a document has been made available electronically or is produced for inspection under rule 8.27 or 8.29 may make copies of the document.
- (2) On the application of a party to whom a document is produced for inspection under rule 8.27 or 8.29, a Judge may order the person who has control of the document to give the applicant a legible copy.
- (3) An order under subclause (2) may be made on any terms the Judge thinks just, and, in particular, the Judge may order that—
 - (a) the applicant pay the reasonable expenses of the other party;
 - (b) the document be marked to the effect that it is a copy given for purposes of inspection only.
- (4) A party who obtains a document by way of inspection or who makes a copy of a document under this rule—
 - (a) may use that document or copy only for the purposes of the proceeding; and

- (b) except for the purposes of the proceeding, must not make it available to any other person (unless it has been read out in open court).

Compare: HCR 8.30

8.31 Effect of failure to include document

A document that should have been included in a party's affidavit of documents may be produced in evidence at the hearing only with the consent of the other party or parties or the leave of the court.

Compare: HCR 8.31

8.32 Notice to produce documents or things

- (1) A party to a proceeding may serve on another party a notice requiring the other party to produce a document or thing for the purpose of evidence at the hearing of the proceeding, or before a Judge, an officer, an examiner, or any other person who has authority to take evidence in the proceeding.
- (2) If the document or thing is in the control of the party who is served with the notice, the party must, unless a Judge otherwise orders, produce the document or thing in accordance with the notice, without the need for a subpoena for production.
- (3) The notice must be treated as an order of the court to produce the document or thing specified in the notice.

Compare: HCR 8.32

8.33 Contempt of court

- (1) Every person is guilty of contempt of court who, being a person against whom a discovery order or other order under this subpart has been made, wilfully and without lawful excuse disobeys the order or fails to ensure the order is complied with.
- (2) This rule does not limit or affect any power or authority of the court to punish a person for contempt of court.

Compare: HCR 8.33

Subpart 2—Interrogatories

8.34 Interrogatories by notice

- (1) After a statement of defence has been filed, a party who has filed a pleading may file and serve on another party who has filed a pleading a notice requiring that party to answer specified interrogatories relating to any matter in question in the proceeding between the interrogating party and the party served.
- (2) The notice may require that the answers be verified even if the interrogating party has not previously required any answers to interrogatories to be verified.
- (3) The notice must be in form 23.

Compare: HCR 8.34

8.35 Duties of party served

- (1) A party required by notice under rule 8.34 to answer interrogatories must answer the interrogatories within the period specified in the notice.
- (2) The period specified commences on the first working day after the day on which the notice under rule 8.34 is served and may not be less than 10 working days (or, if the party is resident out of New Zealand, 20 working days).
- (3) The party required to answer the interrogatories must file and serve on the party requiring the answers,—
 - (a) if the answers do not have to be verified, a statement in accordance with rule 8.39; or
 - (b) if the answers do have to be verified, an affidavit verifying the statement together with the statement verified unless it has already been filed and served.
- (4) This rule is subject to rule 8.36.

Compare: HCR 8.35

8.36 Limitation of interrogatories by notice

- (1) A Judge may, on the application of a party required to answer interrogatories, order that answers to interrogatories under rule 8.34 by that party—
 - (a) are not required; or

- (b) need to be given only to specified interrogatories or classes of interrogatories or to specified matters that are in question in the proceeding.
 - (2) The application may be made before or after the party has been served with a notice under rule 8.34.
 - (3) In determining the application, the Judge must make any orders required to prevent unnecessary or oppressive interrogatories or unnecessary answers to interrogatories.
- Compare: HCR 8.36

8.37 Multiple parties

If there are more than 2 parties, a party who is required under rule 8.34 to answer interrogatories must serve the documents required to be served under that rule on every party who has given an address for service.

Compare: HCR 8.37

8.38 Order to answer

- (1) A Judge may, at any stage of any proceeding, order any party to file and serve on any other party (whether the interrogating party or not) a statement prepared in accordance with rule 8.39 in answer to interrogatories specified or referred to in the order.
- (2) The interrogatories must relate to matters in question in the proceeding.
- (3) The order may require the statement to be verified by affidavit.
- (4) The Judge must not make an order under subclause (1) unless satisfied that the order is necessary at the time when it is made.

Compare: HCR 8.38

8.39 Contents of statement

- (1) A statement in answer to interrogatories must, unless a Judge otherwise orders, comply with this rule.
- (2) A statement in answer to interrogatories must deal with each interrogatory specifically,—
 - (a) by answering the substance of the interrogatory without evasion; or

- (b) by objecting to answer the interrogatory on 1 or more of the grounds mentioned in rule 8.40(1) and briefly stating the facts on which the objection is based.
- (3) The statement must set out above or opposite to each answer or objection the interrogatory to which it relates.

Compare: HCR 8.39

8.40 Objection to answer

- (1) A party may object to answer an interrogatory on the following grounds only:
 - (a) that the interrogatory does not relate to a matter in question between the parties involved in the interrogatories;
 - (b) that the interrogatory is vexatious or oppressive;
 - (c) that the information sought is privileged;
 - (d) that the sole object of the interrogatory is to ascertain the names of witnesses.
- (2) It is not a sufficient objection that the answer to an interrogatory will determine a substantial issue in the proceeding.
- (3) On an application under rule 8.36 in respect of an interrogatory, a Judge may—
 - (a) require the applicant to specify on what grounds the applicant objects to answer that interrogatory; and
 - (b) determine the sufficiency of the objection.
- (4) If the Judge determines that the objection is not sufficient, the applicant is not entitled to object to answer the interrogatory.

Compare: HCR 8.40

8.41 Who may swear affidavit verifying statement in answer to interrogatories

- (1) An affidavit verifying a statement of a party in answer to interrogatories may be made as follows:
 - (a) by the person required to make the statement;
 - (b) if the person required to make the statement is a minor (other than a minor to whom rule 4.31(2) applies) or is an incapacitated person within the meaning of rule 4.29, by the person's litigation guardian;
 - (c) if the person required to make the statement is a corporation or a body of persons empowered by law to sue

or to be sued (whether in the name of the body or in the name of the holder of a registry), by a person who meets the requirements of rule 9.72:

- (d) if the person required to make the statement is the Crown, or an officer of the Crown who sues or is sued in an official capacity, or as representing a government department, by an officer of the Crown.
- (2) Despite subclause (1), if paragraph (c) or (d) of that subclause applies, and if the affidavit is to be filed and served in accordance with an order, a Judge may—
- (a) specify by name or otherwise the person who has to make the affidavit; or
 - (b) specify by description or otherwise a group or class of persons, any one of whom may make the affidavit.

Compare: HCR 8.41

8.42 Insufficient answer

If a party fails to answer an interrogatory sufficiently, a Judge may, in addition to acting under rule 7.41,—

- (a) if the party has made an insufficient answer, order the party to make a further answer verified by affidavit in accordance with rule 8.38; or
- (b) order the party, or any of the persons mentioned in rule 8.41(1)(b) to (d), as the case requires, to attend to be orally examined.

Compare: HCR 8.42

8.43 Incorrect answer to be amended

- (1) If, by reason of a change of circumstances or an error or omission, a statement filed in response to a notice given or order made under rule 8.34, 8.38, or 8.42 appears to the party who filed it or on whose behalf it was filed to be defective or erroneous, that party must promptly file and serve a further statement that corrects or supplements the original statement.
- (2) If the original statement was verified, the further statement must also be verified.

Compare: HCR 8.43

8.44 Answers as evidence

- (1) A party may give in evidence—
 - (a) 1 or more answers to interrogatories without giving the other answer;
 - (b) part of an answer to an interrogatory without giving the whole of the answer.
- (2) If a party proposes to give in evidence an answer (or part of an answer) to an interrogatory (**answer A**), the Judge may look at the other answers, and if the Judge considers that answer A is so connected with another answer (**answer B**) that answer A ought not to be received without answer B, the Judge may refuse to receive answer A unless answer B is also given in evidence.

Compare: HCR 8.44

8.45 Public interest

The rules that relate to interrogatories do not affect any rule of law that authorises or requires the withholding of a matter on the ground that its disclosure would be injurious to the public interest.

Compare: HCR 8.45

8.46 Defamation proceedings

If, in a proceeding for defamation, the defendant pleads that the words or matters complained of are honest opinion on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant's sources of information or grounds of belief may be allowed unless the interrogatories are necessary in the interests of justice.

Compare: HCR 8.46

Subpart 3—Notice to admit facts

8.47 Notice to admit facts

- (1) A party who is entitled to serve a notice under rule 8.34 may at any time serve on another party a notice requiring the party to admit, for the purpose of the proceeding only, the facts specified in the notice.
- (2) The notice must be in form 24.

- (3) An admission made in compliance with a notice under subclause (1)—
- (a) may be amended or withdrawn by the party by whom it was made at any time if a Judge so allows, and this may be done on any terms the Judge thinks just;
 - (b) must not be used against the party by whom it was made in a proceeding or interlocutory application other than the proceeding or interlocutory application for which it was made.
- (4) If the party on whom a notice to admit facts has been served under subclause (1) refuses or neglects to admit the facts within 5 working days after the day of service or within any longer time allowed by a Judge, the costs of proving the facts must be paid by that party, unless a Judge otherwise orders.
- Compare: HCR 8.47

8.48 Judgment on admission of facts

A judgment or order may be made on an admission of facts under rule 15.12.

Compare: HCR 8.48

Part 9 Evidence

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.

Compare: HCR 9.1

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 provided by these rules or fixed by the court at a case management conference.
- (4) Subclause (3) does not affect a party's ongoing obligations in relation to discovery.

Compare: HCR 9.2

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).

Compare: HCR 9.3

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 references in subclause (2) to the plaintiff are to be read as references 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) the date of each document;
 - (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) 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 District Court Judge.
 - (7) Unless the court directs otherwise, the common bundle must be filed and served not later than 10 working days after the date when the last brief of any party is served under rule 9.7.
- Compare: HCR 9.4

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: HCR 9.5

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 refuse leave to produce a document not so incorporated and not discovered if it is satisfied that the production of that document might cause an injustice.

Compare: HCR 9.6

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 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: HCR 9.7

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: HCR 9.8

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—
 - (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 case management conference.

Compare: HCR 9.9

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 pretrial 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**).

Compare: HCR 9.10

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.

Compare: HCR 9.11

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: HCR 9.12

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: HCR 9.13

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: HCR 9.14

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: HCR 9.15

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.

Compare: HCR 9.16

Subpart 2—Evidence by depositions

9.17 Order for examination of witness or for letters of request

- (1) When, in a proceeding or on an interlocutory application, a party desires to have the evidence of a person or persons taken otherwise than at the trial or the hearing of that interlocutory application, the court or a Registrar may, on application by that party, make orders on any terms the court thinks just—
 - (a) for the examination of a person on oath before a Judge, Registrar, or Deputy Registrar or before a person that the court appoints (in rules 9.18 to 9.23 referred to as the **examiner**) at any place whether in or out of New Zealand; or
 - (b) for the sending of a letter of request to the judicial authorities of another country, to take, or cause to be taken, the evidence of a person.
- (2) On the application of an opposite party, the court or a Registrar may, if it is satisfied that the party who obtained the order under subclause (1) is not implementing the order with due diligence, rescind the order and may make any other order justice requires.

Compare: HCR 9.17

9.18 Security for costs for taking evidence outside New Zealand

The court or a Registrar may, as a condition of making an order under rule 9.17 for the taking of evidence outside New Zealand, require the party applying to give security for—

- (a) the estimated fees and expenses of the examiner, or other person by or before whom the evidence is to be taken; and
- (b) the costs of any opposite party of and incidental to the taking of the evidence, for the amount the court or Registrar thinks just, but not exceeding the estimated reasonable indemnity costs and disbursements of that opposite party.

Compare: HCR 9.18

9.19 Documents for examiner

- (1) The party obtaining an order for examination before an examiner must, unless the examination is conducted by the Registrar or Deputy Registrar at the registry of the court where the file of the proceeding is held, furnish the examiner with copies of those documents in the proceeding that are necessary to inform the examiner of the matters to which the examination is to relate.
- (2) If the documents in the proceeding are not sufficient to inform the examiner of the matters to which the examination is to relate, the court must, in the order for examination or in a later order, state those matters.

Compare: HCR 9.19

9.20 Procedure for examination before examiner

- (1) On receipt of a copy of the order for examination, the examiner must appoint a time and place for the examination and notify in form 25 all parties of the time and place.
- (2) The examiner may adjourn the examination from time to time and from place to place as is necessary or expedient.
- (3) The examiner may administer an oath to each witness examined and each witness may be examined, cross-examined, and re-examined as at the trial of a proceeding.
- (4) The examiner must ensure that evidence given at the examination is recorded, together with notes of any objections to the evidence.
- (5) The depositions so taken must be signed on each page by the witness and by the examiner.
- (6) The depositions when taken must be securely fastened together and must, together with the exhibits and the report of the examiner, be sent without delay to the registry of the court in which the file of the proceeding is for the time being held.
- (7) The examiner may send to the registry of the court in which the file of the proceeding is for the time being held a certificate stating that—
 - (a) at the time and place appointed for the examination or at any adjournment, there was no appearance by or on behalf of the party obtaining the order; or

- (b) the witness did not attend at that time and place; or
 - (c) at that time and place, the applicant intimated that it was not intended to proceed with the taking of the evidence.
- (8) On application to the Registrar a party may inspect any depositions taken under this rule and make copies of them or extracts from them.

Compare: HCR 9.20

9.21 Examination of additional persons

- (1) The examiner may, with the consent in writing of all parties to the proceeding, take the examination of a person in addition to the person named or referred to in the order for examination.
- (2) The consent of each of the parties must be attached to the deposition of that person.

Compare: HCR 9.21

9.22 Objection to question

When objection is taken to a question to a person being examined before an examiner, or a witness takes objection to answering a question or to producing a document or a thing,—

- (a) the examiner must give the parties the examiner's opinion on the objection, but must not rule on it; and
- (b) the question, the ground for the objection, the opinion of the examiner, and the answer (if any) to the question must be set out in the deposition of the witness or in a statement attached to the deposition; and
- (c) the court may, on application by a party, decide the validity of the objection.

Compare: HCR 9.22

9.23 Form of report

The report of the examiner may be in form 26.

Compare: HCR 9.23

9.24 Depositions as evidence

Depositions taken in accordance with these rules under an order under rule 9.17 may be produced as evidence at the trial

of the proceeding and must be received subject to any objection on the ground of admissibility.

Compare: HCR 9.24

Subpart 3—Inspection and testing

9.25 Order for inspection, etc

- (1) The court may, for the purpose of enabling the proper determination of any matter in question in a proceeding, make orders, on terms, for—
 - (a) the inspection of any property:
 - (b) the taking of samples of any property:
 - (c) the observation of any property:
 - (d) the measuring, weighing, or photographing of any property:
 - (e) the conduct of an experiment on or with any property:
 - (f) the observation of a process.
- (2) An order may authorise a person to enter any land or do anything else for the purpose of getting access to the property.
- (3) In this rule, **property** includes any land and any document or other chattel, whether in the control of a party or not.

Compare: HCR 9.34

9.26 Notice of application

A party applying for an order under rule 9.25 must, so far as practicable, serve notice of the application on each person who would be affected by the order if made.

Compare: HCR 9.35

Subpart 4—Experts

9.27 Appointment of court expert

- (1) In a proceeding that is to be tried by Judge alone and in which a question for an expert witness arises, the court may at any time, on its own initiative or on the application of a party, appoint an independent expert, or, if more than 1 such question arises, 2 or more such experts, to inquire into and report upon any question of fact or opinion not involving questions of law or of construction.

- (2) An expert appointed under subclause (1) is referred to in this rule and in rules 9.28 to 9.33 as a **court expert**.
- (3) A court expert in a proceeding must, if possible, be a person agreed upon by the parties and, failing agreement, the court must appoint the court expert from persons named by the parties.
- (4) A person appointed as an independent expert in a proceeding under rule 9.35(3) may not be appointed as a court expert unless the parties agree.
- (5) In this rule, **expert**, in relation to a question arising in a proceeding, means a person who has the knowledge or experience of, or in connection with, that question that makes that person's opinion on it admissible in evidence.
Compare: HCR 9.36

9.28 Submission of question to court expert

The question to be submitted to the court expert and the instructions (if any) given to the court expert must, failing agreement between the parties, be settled by the court.

Compare: HCR 9.37

9.29 Report of court expert

- (1) The court expert must send his or her report to the court, together with whatever number of copies the court directs.
- (2) The Registrar must send copies of the report to the parties or their solicitors.
- (3) The court may direct the court expert to make a further or supplemental report.
- (4) Any part of the court expert's report not accepted by all the parties must be treated as information furnished to the court and given appropriate weight.

Compare: HCR 9.38

9.30 Experiments and tests

- (1) If the court expert is of the opinion that an experiment or test of any kind (other than one of a trifling character) is necessary for the making of a satisfactory report, the court expert—
 - (a) must inform the parties or their solicitors; and

- (b) must, if possible, make an arrangement with the parties or their solicitors about—
 - (i) the expenses involved; and
 - (ii) the persons to attend the experiment or test; and
 - (iii) any other relevant matters.
- (2) The court must settle any matters on which the parties or their solicitors are unable to agree.
Compare: HCR 9.39

9.31 Cross-examination of court expert

- (1) Any party may, within 10 working days after receiving a copy of the court expert's report, apply to the court for an order under subclause (2).
- (2) On an application under subclause (1), the court must make an order for the cross-examination of the court expert by all parties—
 - (a) at the trial; or
 - (b) before an examiner at such time and place as may be specified in the order.

Compare: HCR 9.40

9.32 Remuneration of court expert

- (1) The remuneration of the court expert must be fixed by the court and include—
 - (a) a fee for the report; and
 - (b) a proper sum for each day during which he or she is required to be present either in court or before an examiner.
- (2) The court may, by the order appointing the court expert or subsequently, make any order it thinks just for and incidental to the payment of the remuneration of the court expert including either or both of the following:
 - (a) an order directing that the remuneration of the court expert must be paid by 1 or more of the parties and, if more than 1, in the proportions the court thinks just;
 - (b) an order that any party or parties give security, on any terms the court thinks just, for the remuneration of the court expert.

- (3) When the court appoints the court expert on its own initiative, the court, instead of making an order under subclause (2), may, by the order appointing the expert or subsequently, order that the remuneration of the court expert must be paid by the chief executive of the Ministry of Justice out of money appropriated by Parliament for the purpose.
- (4) Subclauses (2) and (3) do not affect the power of the court to make an order providing for the payment of the court expert's remuneration as part of the costs of the proceeding.

Compare: HCR 9.41

9.33 Calling of expert witnesses

- (1) If a court expert is appointed in a proceeding or an interlocutory application, a party may call 1 expert witness, or with leave more than 1, to give evidence on the question reported on by the court expert, if the party gives notice of the intention to do so a reasonable time before the trial.
- (2) The court must not grant leave under subclause (1) unless the circumstances are exceptional.

Compare: HCR 9.42

9.34 Expert witness to comply with code of conduct

- (1) A party to a proceeding who engages an expert witness must give the expert witness a copy of the code of conduct set out in Schedule 4 of the High Court Rules.
- (2) An expert witness must—
 - (a) state in any written statement of the proposed evidence of the expert witness served under rule 9.7, or at the time of giving any oral evidence, or in any affidavit containing the evidence of the expert witness, that the expert witness has read the code of conduct and agrees to comply with it;
 - (b) comply with the code of conduct in preparing any written statement of the proposed evidence of the expert witness to be served under rule 9.7 or in giving any oral or affidavit evidence in any proceeding.

- (3) The evidence of an expert witness who has not complied with subclause (2)(a) may be offered only with the leave of the court.

Compare: HCR 9.43

9.35 Court may direct conference of expert witnesses

- (1) The court may, on its own initiative or on the application of a party to a proceeding, direct expert witnesses to—
- (a) confer on specified matters:
 - (b) confer in the absence of the legal advisers of the parties:
 - (c) try to reach agreement on matters in issue in the proceeding:
 - (d) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement:
 - (e) prepare the joint witness statement without the assistance of the legal advisers of the parties.
- (2) The court must not give a direction under subclause (1)(b) or (e) unless the parties agree.
- (3) The court may, on its own initiative or on the application of a party to the proceeding,—
- (a) appoint an independent expert to convene and conduct the conference of expert witnesses:
 - (b) give any directions for convening and conducting the conference the court thinks just.
- (4) The court may not appoint an independent expert or give a direction under subclause (3) unless the parties agree.
- (5) Subject to any subsequent order of the court as to costs, the court may determine the remuneration of an independent expert and the party by whom it must be paid.
- (6) The matters discussed at the conference of the expert witnesses must not be referred to at the hearing unless the parties by whom the expert witnesses have been engaged agree.
- (7) An independent expert appointed under subclause (3) may not give evidence at the hearing unless the parties agree.

Compare: HCR 9.44

9.36 Status of joint witness statement by expert witnesses

- (1) A joint witness statement prepared by expert witnesses under rule 9.35—
- (a) must be circulated by the parties to the proceeding by whom the expert witnesses have been engaged to every other party who has given an address for service; and
 - (b) may be produced in evidence by any expert witness who signed the statement; and
 - (c) may, if the parties to the proceeding agree, be produced in evidence without the need to call any of the expert witnesses who signed the statement.
- (2) Rules 9.7 to 9.11 apply, with all necessary modifications, to a joint witness statement.
- (3) An expert witness is not precluded from giving evidence on any matter at the hearing simply because the expert witness has participated in the preparation of a joint witness statement under rule 9.35.

Compare: HCR 9.45

9.37 Evidence of expert witnesses at trial

The court may, at the hearing, direct that the evidence of expert witnesses is given after all or certain factual evidence is given or in a sequence the court thinks best suited to the circumstances of the proceeding.

Compare: HCR 9.46

Subpart 5—Preserving evidence**9.38 Right to preserve evidence**

A person may apply by originating application for an order for the examination of a witness whose evidence may be material for establishing a right or claim—

- (a) to any estate or interest in property, or to any other relief, to which the person would, in the circumstances alleged to exist, become entitled, on the happening of a future event; and
- (b) that cannot be established before the happening of the future event.

Compare: HCR 9.47

9.39 Procedures in which the Crown may have interest

If the Crown may have an estate or interest in the property or in the right or claim, the applicant may join the Crown as a respondent.

Compare: HCR 9.48

9.40 Examination of witness

An application under rule 9.38 is not to be set down for hearing but the court may make an appropriate order under rules 9.17 to 9.19 for the examination of a witness (whether offered by the applicant or another party).

Compare: HCR 9.49

9.41 Subsequent admissibility

Evidence taken under rule 9.40 may subsequently be offered at the trial of a proceeding to enforce the claim or interest to which it relates and is admissible unless it is inadmissible in whole or in part under the Evidence Act 2006.

Compare: HCR 9.50

Subpart 6—Evidence at trial

9.42 Evidence to be given orally

Unless otherwise directed by the court or required or authorised by these rules or by an Act, disputed questions of fact arising at the trial of any proceeding must be determined on evidence given by means of witnesses examined orally in open court.

Compare: HCR 9.51

9.43 Issue of witness summonses

- (1) A witness summons in form 27 to require the attendance of a witness at the trial to testify or to produce documents, or both, may be obtained by any party, at any time after the filing of the statement of claim.
- (2) A party requiring the issue of a witness summons must file a written request to obtain it.

- (3) The names of more than 1 witness may be included in a witness summons, but it is not necessary to show the names on the written request.
- (4) Upon receiving a written request under this rule, the Registrar must issue the summons requested.

Compare: HCR 9.52

9.44 Service of summons

A witness summons must be served on the witness personally, by leaving a sealed copy of it with the witness, together with any allowances and travelling expenses under the Witnesses and Interpreters Fees Regulations 1974.

Compare: HCR 9.53

9.45 Evidence of person in custody

An application for an order under section 65 of the Corrections Act 2004 may be made without notice.

Compare: HCR 9.54

9.46 Affidavit evidence by agreement

- (1) In a proceeding heard by a Judge alone, the parties may file an agreement signed by the parties that the evidence, or any part of the evidence, is to be given by affidavit.
- (2) Despite an agreement filed under subclause (1), the court may direct that evidence of any disputed fact or issue be given in accordance with rule 9.42.

Compare: HCR 9.55

9.47 Affidavit evidence under order of court

- (1) The court may, even though no agreement for the giving of evidence by affidavit has been made, at any time for sufficient reason order, on reasonable conditions,—
 - (a) that any particular fact or facts may be proved by affidavit; or
 - (b) that the evidence of any witness may be given by affidavit read at the trial or on any application for judgment.
- (2) Despite subclause (1), an order must not be made authorising the evidence of the witness to be given by affidavit if—

- (a) an opposite party desires the production of a witness for cross-examination; and
 - (b) the witness can be produced.
- (3) Subclause (2) is subject to any order made under these rules.
Compare: HCR 9.56

9.48 Agreed statement of facts

- (1) If the parties so agree, the evidence at the trial of any proceeding heard by a Judge alone, or any issue in that proceeding, may be given, without examining any witnesses or filing any affidavits, by a statement of facts agreed upon by the parties.
- (2) Despite the agreement, the court may direct that evidence of any fact or matter be given in accordance with rule 9.42 or 9.47.
- (3) Every agreement under subclause (1) must be in writing signed by the parties and must be filed.
- (4) The agreement must set out the facts agreed upon, and the court is entitled to draw any necessary inferences from the agreed facts.

Compare: HCR 9.57

**Subpart 7—Evidence in trans-Tasman
proceedings**

9.49 Interpretation

In rules 9.50 to 9.57, unless the context otherwise requires, terms that are defined in the Evidence Act 2006 have the meanings given to them by that Act.

Compare: HCR 9.58

9.50 Issue of subpoenas by District Court for service in Australia

- (1) An order of subpoena for service on a witness in Australia that requires the witness to testify, whether or not it also requires the witness to produce documents or things, must be in form 28.
- (2) An order of subpoena for service on a witness in Australia that requires the witness to produce documents or things, but does not require the witness to testify, must be in form 29.

- (3) An order of subpoena referred to in subclause (1) or (2) may be obtained in the same manner and subject to the same conditions as a witness summons under rule 9.43.
- (4) Leave to issue a subpoena for service in Australia must be obtained from the relevant court as defined in section 154 of the Evidence Act 2006 and rule 9.51.
Compare: HCR 9.59

9.51 Leave to serve New Zealand subpoena on witness in Australia

- (1) An application for leave to serve a New Zealand subpoena on a witness in Australia must be made without notice by originating application and subpart 2 of Part 20 applies, with all necessary modifications, to the application.
- (2) Every application for leave to serve a New Zealand subpoena on a witness in Australia must be accompanied by an affidavit stating—
 - (a) the name, occupation, and residential address of the witness;
 - (b) proof that the witness has attained the age of 18 years;
 - (c) if the subpoena requires the witness to testify and to attend at the New Zealand court, whether consideration has been made to requiring the witness to testify from Australia by remote appearance medium and the reason it is not considered appropriate that the witness do so;
 - (d) the latest date proposed for service of the subpoena;
 - (e) if the subpoena requires the witness to attend at the New Zealand court or at any other place,—
 - (i) the availability of suitable means of transport to enable the witness to comply with the subpoena;
 - (ii) an estimate of the length of time that the witness will be required to attend at the court or other place;
 - (iii) an estimate of the cost of transport and accommodation likely to be incurred by the witness in complying with the subpoena;
 - (f) the amounts or the amounts represented by vouchers, as the case may be, proposed to be paid or tendered

to the witness to enable the witness to comply with the subpoena:

- (g) if the applicant is aware of any fact or circumstance that may constitute a ground for setting the subpoena aside under section 160 of the Evidence Act 2006, the fact or circumstance.
- (3) A Judge may direct that a New Zealand subpoena be served in Australia on a body corporate by serving the subpoena on a member, officer, or employee of the body corporate in the manner the Judge directs.
 - (4) The file relating to an application must be kept separate from the file relating to the proceeding to which the subpoena relates.
 - (5) As provided in rule 3.8(4), no document relating to an application under this rule may be searched, inspected, or copied without the leave of a Judge.

Compare: HCR 9.60

9.52 Service of subpoena on witness in Australia

Every statement that, in accordance with section 156 of the Evidence Act 2006, is required to accompany a subpoena that is served on a witness in Australia must be in HCF G 28.

Compare: HCR 9.61

9.53 Application to set aside New Zealand subpoena

- (1) An application to set aside a New Zealand subpoena served on a witness in Australia may be filed by—
 - (a) a person who is entitled to file documents under these rules; or
 - (b) a person who is entitled to practise as a solicitor of a Supreme Court of a State or territory of Australia.
- (2) The application—
 - (a) may state (for the purposes of rule 9.55(1)) that a hearing is required to determine the application; and
 - (b) may be filed by sending it by fax or email to the registry of the relevant court in which leave to serve the subpoena was given.

- (3) Every application must be made by way of interlocutory application.
- (4) The heading on the application may be the same as the heading on the order granting leave to serve the subpoena.
- (5) Every application—
 - (a) must state an address in New Zealand or Australia that is the applicant's address for service;
 - (b) may state a fax number in New Zealand or Australia to which documents relating to the application may be sent to the applicant.
- (6) If the application is filed by fax or email, the Registrar—
 - (a) must send by fax or email to the applicant or the applicant's solicitor, as the case may be, an acknowledgment that the application has been received;
 - (b) may, if the application is not clear or legible, require the applicant or the applicant's solicitor, as the case may be, to transmit the application by fax or email again.

Compare: HCR 9.62

9.54 Service of documents on applicant

- (1) A document relating to an application to set aside a New Zealand subpoena may be served on the applicant by—
 - (a) leaving it at, or posting it to, the address for service of the applicant stated in the application; or
 - (b) if a fax number is stated in the application, sending it by fax to that number.
- (2) If a document relating to the application is served on the applicant by post in accordance with subclause (1)(a), it is to be treated as having been served on the earlier of—
 - (a) the sixth working day after the date on which it was posted; and
 - (b) the day on which it was received.
- (3) If a document relating to the application is served on the applicant by fax, the document must, subject to subclauses (4) and (5), be treated as having been served on the day on which it was sent.
- (4) If a document is sent by fax to a fax number in a State or territory of Australia at a time later than 5 pm in that State

or territory, the document must, subject to subclause (4), be treated as having been served on the first working day after the day on which it was sent.

- (5) A document sent to a fax number in Australia must, unless the contrary is proved, be treated as having been received in a complete and legible condition.

Compare: HCR 9.63

9.55 Hearing of application

- (1) Despite any other rule, if neither the applicant for an order to set aside a New Zealand subpoena nor the person at whose request the subpoena was issued states that a hearing is required, the court may determine an application to set the subpoena aside without a hearing.
- (2) For the purposes of determining an application, the court may, if it thinks fit, hold a hearing by remote appearance medium under section 168 of the Evidence Act 2006.
- (3) Subject to the Evidence Act 2006, the court must hold a hearing by remote appearance medium if the applicant requests, either in the application or within a reasonable time after the filing of the application, that a hearing be held by remote appearance medium.

Compare: HCR 9.64

9.56 Failure to comply with subpoena

A certificate under section 161 of the Evidence Act 2006 must be in HCF G 29.

Compare: HCR 9.65

9.57 Evidence and submissions by remote appearance medium from Australia

- (1) An application under section 168 of the Evidence Act 2006 for a direction that evidence be given from Australia or submissions be made from Australia by remote appearance medium may be made without notice. Except in the case of an application under section 160 of that Act, the application must be accompanied by an affidavit stating—
- (a) the nature of the evidence or the submissions:

- (b) the place in Australia from which the evidence is to be given or the submissions are to be made:
 - (c) if it is proposed that evidence be given or submissions be made by audiovisual link, particulars of the audio-visual link facilities available at the courtroom or other place where the court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:
 - (d) if it is proposed that evidence be given or submissions be made by audio link, particulars of the audio link facilities available at the courtroom or other place where the court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:
 - (e) in a case where evidence is proposed to be given, an estimate of the time the examination of the witness will take:
 - (f) whether issues of character or credibility are likely to be raised:
 - (g) in a case in which submissions are proposed to be made, an estimate of the time required to make the submissions.
- (2) When the court gives a direction under section 168 of the Evidence Act 2006, it must instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions that the court may make.
- (3) Without limiting subclause (2), the court may—
- (a) direct that the evidence be given or the submissions be made at an Australian court or at another place in Australia:
 - (b) request that an officer of an Australian court or other person approved by the Judge be present to assist in the transmission of evidence or submissions, and in particular to—
 - (i) introduce witnesses giving evidence or a barrister or solicitor (or both) making submissions:
 - (ii) assist with the administration of oaths:

- (iii) assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions.
- (4) In this rule, **evidence** includes the related examination of a person giving evidence.
Compare: HCR 9.67

Subpart 8—Procedure when evidence given by affidavit

9.58 Application of rules 9.59 to 9.64

- (1) Rules 9.59 to 9.64 apply subject to a direction by the court and to any rule affecting a particular kind of proceeding.
- (2) In this subpart, **taker** means the person before whom an affidavit is sworn or an affirmation is made.
Compare: HCR 9.68

9.59 Time for filing plaintiff's affidavits

- (1) In this rule, **the prescribed date** means,—
 - (a) if the parties have agreed under rule 9.46 that evidence be given by affidavit, the date when the agreement was filed;
 - (b) when these rules provide that the evidence be given by affidavit, the close of pleadings date referred to in rule 7.6.
- (2) Within 10 working days after the prescribed date the plaintiff must, subject to rule 1.9, file the plaintiff's affidavits and serve copies on the other parties.
Compare: HCR 9.69

9.60 Time for filing defendant's affidavits

The defendant must, within 10 working days after service of the plaintiff's affidavits, file the defendant's affidavits and serve copies of them on the plaintiff and on any other party.
Compare: HCR 9.70

9.61 Time for filing affidavits in reply

Within 10 working days after service on the plaintiff of the defendant's affidavits, the plaintiff must file the plaintiff's af-

fidavits in reply and serve copies of them on the defendant and on any other party.

Compare: HCR 9.71

9.62 Use of affidavits

- (1) No affidavit may be read or used until it has been filed.
- (2) When an affidavit has been filed, it may be used by any party.
- (3) An affidavit may not be taken off the file without the leave of the court.

Compare: HCR 9.72

9.63 Swearing of affidavits

- (1) An affidavit may be read and used in a proceeding only if it complies either with subclause (2) or (3).
- (2) A sworn affidavit must be sworn—
 - (a) in accordance with the Oaths and Declarations Act 1957; and
 - (b) before a person authorised to administer oaths under that Act or under rule 9.75 or 9.76.
- (3) An affirmed affidavit must comply with the Oaths and Declarations Act 1957.

Compare: HCR 9.73

9.64 Cross-examination of person who has sworn affidavit

- (1) A party desiring to cross-examine a person who has sworn or affirmed an affidavit on behalf of an opposite party may serve on that opposite party a notice in writing (which may be by letter addressed to the opposite party's solicitor) requiring the production of that person for cross-examination before the court at the trial.
- (2) The notice must be served, and copies of it filed in the court and delivered to all other parties who have taken any step in the proceeding, not less than 3 working days before the day fixed for the trial.
- (3) The affidavit of a person who is not produced must not be used as evidence unless the evidence is routine, or there are exceptional circumstances, and in either case the court grants leave.

- (4) The party to whom the notice is given is entitled to compel the attendance of the person who has sworn an affidavit for cross-examination in the same way as that party might compel the attendance of a witness to be examined.

Compare: HCR 9.74

9.65 Person refusing to make affidavit

- (1) If a person having information relevant to a proceeding or an interlocutory application refuses to make an affidavit as to that information, a party may apply for an order directing the person to appear and be examined on oath before the court, or any person the court appoints, as to that information.
- (2) The court may—
- (a) make any orders the court thinks just for the attendance of that person before the court, or before the person named in the order, for the purpose of being examined, and for the production of any documents specified in the order; and
 - (b) impose any terms the court thinks just, as to the examination and the costs of and incidental to the application and examination.

Compare: HCR 9.75

9.66 Form and contents of affidavits

- (1) An affidavit—
- (a) must be expressed in the first person; and
 - (b) must state the full name, occupation, and place of residence of the person making it; and
 - (c) must either—
 - (i) be signed by that person; or
 - (ii) if that person cannot write, have that person's mark set to it by that person; and
 - (d) must be confined—
 - (i) to matters that would be admissible if given in evidence at trial by the deponent; and
 - (ii) if in reply, to matters strictly in reply.
- (2) The court—
- (a) may refuse to read an affidavit that—

- (i) unnecessarily sets forth any argumentative matter or copies of or extracts from documents; or
 - (ii) being in reply, introduces new matter; and
 - (b) may order that the costs incurred in respect of or occasioned by an affidavit to which paragraph (a) applies be paid by the party filing the affidavit.
 - (3) The taker must sign the affidavit after the signature of the person making it, and must state the date and place of swearing or affirming the affidavit and the taker's qualification (in this subpart referred to as the **statement by the taker**).
 - (4) If an affidavit has more than 1 page,—
 - (a) the deponent must initial or set the deponent's mark on each page (not including the cover sheet) that precedes the page on which the statement by the taker in accordance with subclause (3) appears; and
 - (b) the taker must initial each of those pages.
 - (5) This rule does not limit the extent to which subpart 2 of Part 5 applies in respect of affidavits.
- Compare: HCR 9.76

9.67 Exhibits to affidavits

- (1) Exhibits to an affidavit—
 - (a) must be marked, in each case, with a distinguishing letter or number or both; and
 - (b) must be annexed to the affidavit—
 - (i) if this is practicable; and
 - (ii) if none of them exceed international size A4; and
 - (c) must, in each case, be identified by a note made on it and signed by the taker.
- (2) Exhibits that are not annexed to the affidavit must, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle must—
 - (a) be securely bound; and
 - (b) include a sheet bearing a proper heading, endorsement, and subscription.
- (3) If the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1)(b) or (2), that exhibit must

have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.

Compare: HCR 9.77

9.68 Interlineation, alteration, or erasure in affidavit

- (1) An affidavit having in the statement by the taker or its contents an interlineation, alteration, or erasure must not, without leave of the court, be read or made use of in a proceeding unless the requirements set out in subclause (2) are satisfied.
- (2) The requirements are that—
 - (a) the interlineation or alteration (other than by erasure) must be authenticated by the initials of the taker; or
 - (b) in the case of an erasure, where replacement words or figures are written over the erasure, those words must also be rewritten in the margin and signed or initialled by the taker.

Compare: HCR 9.78

9.69 Irregularity in form of affidavit

The court may receive any affidavit sworn or affirmed for the purpose of being used in any proceeding, despite any defect by misdescription of parties in the title or statement by the taker, or any other irregularity in its form, and may direct that a note be made on the document that it has been so received.

Compare: HCR 9.79

9.70 Service copies of affidavits

Every service copy of an affidavit must be legible and, when practicable, include legible copies of all exhibits.

Compare: HCR 9.80

9.71 Affidavit may be sworn on Sunday

An affidavit may be sworn or affirmed on any day, including Sunday.

Compare: HCR 9.81

9.72 Affidavits made on behalf of corporation

A person may make an affidavit on behalf of a corporation or body of persons empowered by law to sue or to be sued (whether in the name of the body or in the name of the holder of an office) if the person—

- (a) knows the relevant facts; and
- (b) is authorised to make the affidavit.

Compare: HCR 9.82

9.73 Affidavit by 2 or more persons

In an affidavit made by 2 or more persons, the names of each of those persons must be inserted in the statement by the taker. If, however, the affidavit of those persons is sworn (or affirmed) at the same time before the same person, it is sufficient to state that it was sworn (or affirmed) by both (or all) of the “persons named above”.

Compare: HCR 9.83

9.74 Affidavit by blind or illiterate person

If it appears to the taker that the person making the affidavit is wholly or partially blind, or (whether because of physical handicap or otherwise) is unable to read or has severe difficulty in reading, the taker must certify in the affidavit—

- (a) that the affidavit was read and explained by him or her to the person; and
- (b) that the person appeared perfectly to understand the affidavit; and
- (c) that the person wrote his or her signature or made his or her mark in the presence of the taker.

Compare: HCR 9.84

9.75 Authority to take affidavits in New Zealand

- (1) An affidavit may be sworn in New Zealand before a solicitor of the court or a Registrar or a Justice of the Peace.
- (2) No affidavit, other than one sworn in respect of a non-contentious proceeding, may be read or used if it was sworn before a solicitor who, at the time of taking it, was acting as—
 - (a) the solicitor of a party to the proceeding; or

- (b) a partner in, or a solicitor employed or engaged by, the firm of the solicitor of a party to the proceeding; or
 - (c) the agent of the solicitor of a party to the proceeding.
- (3) Subclause (2) overrides subclause (1).
- (4) In this rule,—
Registrar includes—
 - (a) a Deputy Registrar of the High Court;
 - (b) a Registrar of a District Court;
 - (c) a Deputy Registrar of a District Court**solicitor** means a person enrolled as a barrister and solicitor of the High Court.
Compare: HCR 9.85

9.76 Authority to take affidavits in places outside New Zealand

- (1) An affidavit may be sworn in a place outside New Zealand before—
 - (a) a Commissioner of the High Court of New Zealand who has authority in that place; or
 - (b) a person who is authorised to administer oaths by the law of that place; or
 - (c) a person who is authorised by a Judge to administer the oath required for the affidavit.
- (2) The person administering an oath under subclause (1) must state in the affidavit which qualification that person has.
- (3) An affidavit that appears to comply with subclauses (1) and (2) must be taken to have been properly sworn unless the court requires verification by evidence or other means of any matter relating to compliance with either of those subclauses.
- (4) Nothing in this rule affects the administering of oaths under the Oaths and Declarations Act 1957.
Compare: HCR 9.86

9.77 Meaning of authenticated deposition

In rules 9.78 and 9.79, **authenticated deposition** means a written statement—

- (a) made in a place outside New Zealand before a court or a judicial or other authority or person; and

- (b) the maker of which is, under the law in force in the place in which the statement is made, liable to punishment if the statement is false; and
- (c) that purports to be—
 - (i) signed by a person holding judicial office or by an official exercising authority under the law in force in the place in which the statement is made; or
 - (ii) sealed with an official or public seal or with the seal of a Minister of State, or with the seal of a department or an official of the government exercising authority in the place in which the statement is made; or
 - (iii) endorsed with or accompanied by a certificate, given by a person having authority under the law in force in the place in which the statement is made to give the certificate, that the statement complies with the requirements of the law in force in that place and that, under that law, the maker of the statement is liable to punishment if the statement is false.

Compare: HCR 9.87

9.78 Admissibility of authenticated deposition

Evidence that may, under these rules, be given by affidavit, may be given in an authenticated deposition.

Compare: HCR 9.88

9.79 Application of other rules

- (1) Rules 9.59 to 9.65 apply, with any necessary modifications, in relation to an authenticated deposition as if the deposition were an affidavit.
- (2) Rule 9.78 and this rule do not affect rules 9.17 to 9.24.

Compare: HCR 9.89

Part 10

Trial

Subpart 1—Mode of trial

10.1 Criteria for mode of trial

- (1) The modes of trial available in a proceeding are—
 - (a) the short trial:
 - (b) the simplified trial:
 - (c) the full trial.
- (2) In deciding the appropriate mode of trial, the court may have regard to the following:
 - (a) the number of parties:
 - (b) the complexity of the issues:
 - (c) the amount at stake:
 - (d) proportionality:
 - (e) the nature of the action:
 - (f) party requests:
 - (g) any other matter the court considers relevant.
- (3) The short trial is intended for claims where the court considers that 1 or more of the following apply:
 - (a) the case can come to a hearing quickly:
 - (b) the issues are relatively uncomplicated or a modest amount is at stake:
 - (c) the trial time is not likely to exceed a day.
- (4) The simplified trial is intended for claims where the court considers that 1 or more of the following apply:
 - (a) the duration of the hearing is not likely to exceed 3 days:
 - (b) there is some complexity raised by the issues:
 - (c) the amount of money involved is more than modest:
 - (d) 1 or more expert witnesses will be giving evidence.
- (5) If the court considers that neither subclause (3) nor subclause (4) applies, the court must allocate a full trial.

Compare: SR 2009/257 rr 2.40, 2.41

10.2 Mode of trial may be changed before trial

Before any trial is due to commence, the court may, either on the application of any party made in form 30 or of its own motion, change the mode of trial determined for the proceeding and give any directions it considers necessary for the purpose.

Short trial

10.3 Timetable for short trial

If the court decides that a short trial is to be held,—

- (a) the court or Registrar must set a date for the trial; and
- (b) within 15 working days after the date of the decision to hold a short trial, each party must file and serve on the other parties—
 - (i) that party's affidavits of evidence-in-chief; and
 - (ii) copies of any further documents on which that party intends to rely; and
- (c) once a party has received the affidavits of evidence-in-chief, the receiving party must, by notice given to the other party within 10 working days after the date of receipt of those affidavits, specify which of the other party's witnesses the receiving party requires to be available for cross-examination at the short trial; and
- (d) rules 9.2 to 9.6, 9.8, 9.11, and 9.14 apply to a short trial as if the references in those rules to briefs or to briefs served under rule 9.7 were references to affidavits of evidence served under this rule.

Compare: SR 2009/257 r 2.44

10.4 Features of short trial

- (1) The features of the short trial procedure are as follows:

Steps	Requirements
1 Affidavits of evidence	The only evidential statements allowed to be produced are the affidavits of evidence.
2 Oral evidence	Supplementary evidence or oral evidence in reply is allowed.
3 Production of bundles of documents for trial	Bundles are required.
4 Judicial settlement conference	This conference is not required.

- (2) The total time for the presentation of a party's case must not exceed the total time calculated as follows:

Item	Time limit (minutes)
1 Examination of witnesses	15 per witness
2 Cross-examination of witnesses	45 per witness

Item	Time limit (minutes)
3 Re-examination of witness	10 per witness
4 Submissions for a party	30 per party
- (3) However, the court may, for good reason consistent with the objective of these rules, extend the total time available to a party.
- (4) The other provisions of these rules that relate to interlocutory applications, evidence, and the conduct of a trial apply to proceedings to be dealt with by a short trial only to the extent that the Judge so orders.
- Compare: SR 2009/257 r 2.45

Simplified trial

10.5 Affidavits of evidence and copies of documents for simplified trial

- (1) A plaintiff must serve on each other party, at least 45 working days before the simplified trial,—
- (a) the plaintiff's affidavits of evidence-in-chief; and
 - (b) copies of any further documents on which the plaintiff intends to rely at trial.
- (2) A defendant must serve on each other party, at least 30 working days before the simplified trial,—
- (a) the defendant's affidavits of evidence-in-chief; and
 - (b) copies of any further documents on which the defendant intends to rely at trial.
- (3) Each other party must serve on each other party, at least 15 working days before the simplified trial,—
- (a) that party's affidavits of evidence-in-chief; and
 - (b) copies of any further documents on which that party intends to rely at trial.
- (4) Rules 9.2 to 9.6, 9.8, 9.11, and 9.14 apply to a simplified trial as if the references in those rules to briefs or to briefs served under rule 9.7 were references to affidavits of evidence served under this rule.

Compare: SR 2009/257 r 2.51

10.6 Witnesses at simplified trial

- (1) A witness need appear at a simplified trial only if—
- (a) a party has served a notice to cross-examine the witness in form 31 and filed it before the trial starts; or
 - (b) the Judge so requests.
- (2) Each party is limited to 1 expert witness per specialist discipline unless the court allows more witnesses by leave.
- Compare: SR 2009/257 r 2.52

10.7 Features of simplified trial

- (1) The features of the simplified trial are as follows:

Steps	Requirements
1 Affidavits of evidence and copies of documents	This is to be in accordance with rule 10.5.
2 Oral evidence	Supplementary evidence or oral evidence in reply is allowed.
3 Witnesses	As allowed under rule 10.6.
4 Production of bundles of documents for trial	Bundles are required.

- (2) The total time for the presentation of a party's case must not exceed the total time calculated as follows:

Description of proceeding	Time limit (minutes)
1 Examination of witnesses	20 per witness
2 Cross-examination of witnesses	60 per witness
3 Re-examination of witnesses	10 per witness
4 Submissions for a party	30 per party

- (3) However, the court may, for good reason consistent with the objective of these rules, extend the total time available to a party.
- (4) The other provisions of these rules that relate to interlocutory applications, evidence, and the conduct of a trial apply to proceedings to be dealt with by a simplified trial only to the extent that the Judge so orders.

Compare: SR 2009/257 r 2.53

*Full trial***10.8 Full procedure applies to full trial**

Parts 8 and 9 apply without limitation to proceedings to be dealt with by a full trial.

Compare: SR 2009/257 r 2.54

Subpart 2—Place**10.9 Venue and changing it**

- (1) The place of trial is the town where the registry of the court in which the statement of defence is to be filed is situated.
- (2) Despite subclause (1), the court may at any time order that the proceeding be tried at a place—
 - (a) that the parties consent to; or
 - (b) where the proceeding can be more conveniently or more fairly tried.
- (3) When the court orders a change of venue, it may direct that all subsequent steps in the proceeding be taken at the place where the trial is to take place.

Compare: HCR 10.1

Subpart 3—Adjournments, methods of trial**10.10 Adjournment of trial**

The court may, before or at the trial, if it is in the interests of justice, postpone or adjourn the trial for any time, to any place, and upon any terms it thinks just.

Compare: HCR 10.2

10.11 Method of trial

A proceeding must be tried before a Judge alone.

Compare: HCR 10.3

10.12 Court may order separate trials

When justice requires, the court may order separate trials of causes of action, and it may also direct the sequence of the separate trials and make any supplementary order that is just.

Compare: HCR 10.4

10.13 When neither party appears

- (1) If neither party appears when the proceeding is called, the court may order it to be struck out.
- (2) The court may order the proceeding to be reinstated on good cause shown by either party and on any terms it thinks just.

Compare: HCR 10.6

10.14 When only plaintiff appears

If the plaintiff appears and the defendant does not, the plaintiff must prove the cause of action so far as the burden of proof lies on the plaintiff.

Compare: HCR 10.7

10.15 When only defendant appears

If the defendant appears but the plaintiff does not, the defendant,—

- (a) if the claim is not admitted, is entitled to judgment dismissing the proceeding; and
- (b) if there is a counterclaim, must prove it so far as the burden of proof lies on the defendant.

Compare: HCR 10.8

10.16 Judgment following non-appearance may be set aside

Any judgment obtained when one party does not appear at the trial may be set aside or varied by the court on any terms that are just if there has been, or may have been, a miscarriage of justice.

Compare: HCR 10.9

10.17 When both parties appear

- (1) If both the plaintiff and the defendant appear, the plaintiff or any other party that has the right to begin must open the case and offer any evidence in support of it.
- (2) When the party who begins has closed that party's case, the other party must state his or her case and offer any evidence in support of it.

- (3) After the evidence has been given, the party who did not begin may address the court generally on the case, and then the other party may address the court in reply.
 - (4) If, however, the party who did not begin has not offered evidence, the sequence stated in subclause (3) is reversed.
 - (5) This rule applies subject—
 - (a) to any directions given under rule 7.2, 7.4, or 7.5; and
 - (b) to the provisions of any Act.
- Compare: HCR 10.10

Subpart 4—Consolidation of proceedings

10.18 When order may be made

The court may order that 2 or more proceedings be consolidated on terms it thinks just, or may order them to be tried at the same time or one immediately after another, or may order any of them to be stayed until after the determination of any other of them, if the court is satisfied—

- (a) that some common question of law or fact arises in both or all of them; or
- (b) that the rights to relief claimed in those proceedings are in respect of or arise out of—
 - (i) the same event; or
 - (ii) the same transaction; or
 - (iii) the same event and the same transaction; or
 - (iv) the same series of events; or
 - (v) the same series of transactions; or
 - (vi) the same series of events and the same series of transactions; or
- (c) that for some other reason it is desirable to make an order under this rule.

Compare: HCR 10.12

10.19 Application of rule 10.18

Rule 10.18 applies even though—

- (a) the relief claimed in the proceedings is not the same; or
- (b) 1 or more of the proceedings—
 - (i) is pending in the court in the exercise of its admiralty jurisdiction; or

- (ii) is brought under the provisions of an Act conferring special jurisdiction on the court.

Compare: HCR 10.13

Subpart 5—Separate decision of questions

10.20 Definition of question

In rules 10.21 to 10.26, **question** includes any question or issue in any proceeding, whether of fact or of law or partly of fact and partly of law, and whether raised by pleadings, agreement of parties, or otherwise.

Compare: HCR 10.14

10.21 Orders for decision

The court may, whether or not the decision will dispose of the proceeding, make orders for—

- (a) the decision of any question separately from any other question, before, at, or after any trial or further trial in the proceeding; and
- (b) the formulation of the question for decision and, if thought necessary, the statement of a case.

Compare: HCR 10.15

10.22 Agreed result

- (1) The parties to a proceeding in which an order is sought or has been made under rule 10.21 may agree that, on any question being decided in the sense specified in the agreement, a specified direction for entry of judgment or a specified order will be made.
- (2) On that question being so decided, the court may make the agreed direction or order.
- (3) Where an agreement is made under subclause (1) before a case is stated, the terms of the agreement must be set out in the case stated.

Compare: HCR 10.17

10.23 Record, etc, of decision

When any question is decided under an order made under rule 10.21, the court must, subject to rule 10.24—

- (a) cause the decision to be recorded; or
- (b) direct the entry of an appropriate declaratory judgment or order.

Compare: HCR 10.18

10.24 Disposal of proceeding if proceeding substantially affected by decision of question

- (1) This rule applies if a decision of a question under an order made under rule 10.21—
 - (a) substantially disposes of the proceeding or of the whole or any part of any claim for relief in the proceeding; or
 - (b) renders unnecessary any trial or further trial in the proceeding or on the whole or any part of any claim for relief in the proceeding.
- (2) The court, at the time of deciding the question or at any subsequent time, may, as appropriate,—
 - (a) dismiss the proceeding or the whole or any part of any claim for relief in the proceeding; or
 - (b) direct the entry of any judgment; or
 - (c) make any other order.

Compare: HCR 10.19

10.25 Form and contents of case

A case stated under an order under rule 10.21 must—

- (a) be divided into paragraphs numbered consecutively; and
- (b) state concisely any facts, and attach any documents that are necessary to enable the court to hear and decide the questions arising on the case stated; and
- (c) state the questions and matters to be decided.

Compare: HCR 10.20

10.26 Insufficient case or disputed facts or documents

If a case stated does not state the facts and documents sufficiently to enable the court to decide the questions arising, or otherwise to hear and determine the questions and matters on the case stated, or in any case in which any relevant fact or document is disputed, the court may,—

- (a) with the consent of all parties interested, amend the case stated; or
- (b) receive evidence, make findings of fact, and amend the case stated in accordance with the findings of fact of the court.

Compare: HCR 10.21

Subpart 6—Counsel assisting

10.27 Counsel assisting

At the request of the court, the Solicitor-General must appoint counsel to appear and be heard as counsel assisting the court.

Compare: HCR 10.22

Part 11 Judgment

Subpart 1—General provisions

11.1 Interpretation

In this Part,—

delivery time has the meaning set out in rule 11.5

judgment includes a decree or order of the court

reasons for judgment means—

- (a) the written reasons given by a Judge for his or her decision; or
- (b) when the Judge gives reasons orally, a report, approved by the Judge, of those reasons.

Compare: HCR 11.1

11.2 Types of judgment

A judgment may—

- (a) be interim; or
- (b) be final; or
- (c) deal with any question or issue; or
- (d) order any accounts, inquiries, acts, or steps that the court considers necessary.

Compare: HCR 11.2

11.3 How judgment given

- (1) A Judge may give a judgment—
 - (a) in writing; or
 - (b) orally—
 - (i) if the conditions in subclause (2) apply; or
 - (ii) on an application without notice.
- (2) The conditions are that the affected parties or their counsel have been given a reasonable opportunity—
 - (a) to be present when the judgment is given; or
 - (b) to hear the Judge give the judgment, for example, by telephone, telephone conference call, or video link.

Compare: HCR 11.3

11.4 Time judgment given

- (1) A judgment is given orally when the Judge pronounces it, with or without reasons.
- (2) A written judgment is given at the delivery time directed or nominated under rule 11.5.

Compare: HCR 11.4

11.5 Delivery time of written judgment

The **delivery time** of a written judgment is—

- (a) the date and time directed by the Judge responsible for it; or
- (b) if no direction is given under paragraph (a), a date and time nominated by the Registrar under rule 11.14.

Compare: HCR 11.5

11.6 Form and certificates of judgments

- (1) Judgments must be drawn up in a form approved by the Registrar.
- (2) Forms 32 to 35 must be used, as appropriate.

Compare: HCR 11.6; SR 2009/257 r 12.11

11.7 Duplicate judgments

Duplicates of a judgment, with the word duplicate on the front page, may be issued to any party.

Compare: HCR 11.7

11.8 Death or incapacity of Judge before judgment

- (1) A Judge or the Registrar may give a judgment or deliver the reasons for a judgment signed by a Judge who becomes incapable or dies after signing and before giving the judgment or delivering the reasons.
- (2) A proceeding or issue must be retried if—
 - (a) subclause (1) does not apply; and
 - (b) a Judge who is sitting on the trial of the proceeding or issue becomes incapable of giving judgment or dies.

Compare: HCR 11.8(1), (3)–(5)

11.9 Recalling judgment

A Judge may recall a judgment given orally or in writing at any time before a formal record of it is drawn up and sealed.

Compare: HCR 11.9

11.10 Correction of accidental slip or omission

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

Compare: HCR 11.10

Subpart 2—Sealing and notification**11.11 Judgments to be sealed, dated, and served**

- (1) A Registrar must seal judgments with the seal of the court.
- (2) A judgment must be sealed—
 - (a) in accordance with any direction given by the Judge relating to the sealing of the judgment; or
 - (b) if no direction is given, at any time after the judgment is given.

- (3) Except with the leave of the court, a judgment must not be sealed until any application for the recall of the judgment under rule 11.9 is determined.
- (4) A sealed judgment must state the date on which the judgment is given.
- (5) A party who has a judgment sealed must immediately serve a sealed copy of it on—
 - (a) every other party who has given an address for service; and
 - (b) any other person who, although not a party, is affected by the judgment.

Compare: HCR 11.11

11.12 When judgment takes effect

- (1) A judgment takes effect when it is given.
- (2) Rule 11.13 overrides subclause (1).

Compare: HCR 11.12

11.13 Steps before judgment sealed

A step may be taken on a judgment before it is sealed only with the leave of a Judge.

Compare: HCR 11.13(1)

11.14 Registrar's role on receipt of judgment

- (1) The Registrar must endorse a written judgment with the delivery time when the Registrar receives it from the Judge responsible for it.
- (2) The date and time nominated by the Registrar under rule 11.5(b) must not be earlier than the date and time the Registrar endorses the judgment under subclause (1).
- (3) The Registrar must attempt to notify the parties of the delivery time, by telephone or otherwise, immediately after endorsing a judgment.
- (4) A party may request the Registrar to—
 - (a) send the party a copy of the written judgment by email or fax immediately after the delivery time; or

- (b) make a copy of the written judgment available for collection from the court registry immediately after the delivery time.
 - (5) The Registrar must, immediately after the delivery time, post a copy of the written judgment to a party that—
 - (a) has given an address for service; and
 - (b) does not make a request under subclause (4).
 - (6) A failure by the Registrar to comply with any of subclauses (3) to (5) does not affect a judgment's validity or its delivery time.
- Compare: HCR 11.14

Subpart 3—Giving effect to judgments

11.15 Conduct of proceedings after judgment

The court may give the conduct of the proceeding after judgment to whichever party the court thinks proper, if the court makes an order under rule 11.2(d).

Compare: HCR 11.20

11.16 Applying for dismissal because of inactivity

- (1) A party may apply to dismiss the proceeding if the opposite party has the conduct of the proceeding and does not—
 - (a) proceed with the accounts, inquiries, acts, or steps ordered; or
 - (b) take all necessary steps to have them completed.
- (2) On an application under subclause (1), the court may make any 1 or more of the following orders it considers just:
 - (a) an order as to the prosecution of the account, inquiries, acts, or steps;
 - (b) an order for the dismissal of the proceeding;
 - (c) an order giving the conduct of the proceeding to another party.

Compare: HCR 11.21

11.17 Judgment directing sale of property

- (1) Property to be sold because of a direction in a judgment or order must be sold in a way that ensures that the best price is obtained for it, unless the court directs otherwise.

- (2) The court may do any 1 or more of the following, when giving the judgment or making the order or at a later time:
 - (a) give directions about the method of the sale:
 - (b) give directions about the terms and conditions of sale:
 - (c) if the sale is by auction,—
 - (i) fix a reserve price, if appropriate; and
 - (ii) define the rights of parties to bid at the sale.
- (3) All parties must co-operate in effecting the sale of the property and do everything necessary to give effect to the sale, including signing any documents required to transfer or convey the property to the purchaser.
- (4) To effect the sale of the property, the court may—
 - (a) give all necessary directions, including directions in relation to the transfer or conveyance of the property sold; and
 - (b) appoint a person to sign any documents required to transfer or convey to the purchaser the property sold.

Compare: HCR 11.22

11.18 Judgment for balance of claim over counterclaim

The plaintiff is entitled to judgment on the cause of action for the balance of his or her claim, after deducting the amount of the counterclaim proved by the defendant, if a counterclaim is proved to an amount less than that recovered on the cause of action.

Compare: HCR 11.23

11.19 Judgment for balance of counterclaim

The defendant is entitled to judgment for the excess if a counterclaim is proved to an amount exceeding that recovered on the cause of action.

Compare: HCR 11.24

11.20 Cross judgments

- (1) Cross judgments may be set off against each other by leave of the court if they are between the same parties and for any 1 or more of the following:
 - (a) money:
 - (b) costs:

- (c) debt;
- (d) damages.
- (2) Leave must not be granted under subclause (1) if the set-off would prejudice any solicitor's lien for costs in the particular proceeding against which the set-off is sought.
Compare: HCR 11.25

11.21 Judgment if third party defends

- (1) The court may do the following if a third party files a statement of defence to a third party notice:
 - (a) order judgment to be entered for or against the defendant giving the notice against or for the third party; and
 - (b) grant to the defendant or to the third party any relief or remedy that might properly have been granted if the defendant had instituted a proceeding against the third party; and
 - (c) make another appropriate order, instead of or in addition to the orders in paragraphs (a) and (b).
- (2) The court may act under subclause (1)—
 - (a) at or after the trial; or
 - (b) on application, whether the proceeding is decided by trial or otherwise.
- (3) This rule applies, with all necessary modifications, whenever a fourth or subsequent party notice is issued.
Compare: HCR 11.26

11.22 Interest on judgment debt

A judgment debt carries interest as provided in section 65A of the Act.
Compare: HCR 11.27

11.23 Satisfaction of judgment

- (1) As soon as a judgment is satisfied by payment, by levy, or in another way, the party against whom the judgment was given is entitled to have satisfaction of that judgment formally entered.
- (2) For the purposes of subclause (1), the party against whom the judgment was given must produce and file in the registry of

the court an acknowledgment of satisfaction signed by or on behalf of the party obtaining judgment.

- (3) Despite subclause (2), the court may order satisfaction to be entered upon proof that the judgment has been satisfied.

Compare: HCR 11.28

Subpart 4—Retrial

11.24 Power to order retrial

- (1) A retrial may be ordered only if, in the opinion of the court, there has been a miscarriage of justice that justifies a retrial.
- (2) The court may order a retrial on any terms that the court thinks fit.
- (3) The court may hold that there has been a miscarriage of justice that justifies a retrial if—
 - (a) the judgment has been obtained by any unfair or improper practice of the successful party to the prejudice of the opposite party; or
 - (b) material evidence has been discovered since the hearing that could not reasonably have been foreseen or known before the trial; or
 - (c) any witness has been guilty of such misconduct as to affect the result of the trial.
- (4) Subclause (3) does not limit the circumstances in which the court may hold that there has been a miscarriage of justice that justifies a retrial.
- (5) If it appears to the court that the miscarriage of justice affects only part of the matter in dispute, the court may give final judgment on the part not affected and direct a retrial on the affected part only.
- (6) Despite subclause (5), the court must not direct a retrial on the affected part if—
 - (a) the amount of damages awarded in respect of it can be separately ascertained; and
 - (b) the plaintiff consents to reduce the whole sum awarded to him or her by that amount.
- (7) A retrial may be ordered on any question in a proceeding, whatever the grounds on which a retrial is applied for, without interfering with the decision on any other question.

- (8) If there is more than 1 defendant, a retrial may be ordered against any 1 or more of them.
Compare: SR 1992/109 r 493

11.25 Application for retrial

- (1) An application for a retrial must be made by interlocutory application filed within 15 working days after the date of delivery of judgment.
- (2) The application must state the circumstances alleged to have resulted in a miscarriage of justice. No other circumstances will be considered by the court.
- (3) The application does not operate as a stay of proceeding unless the court orders it.
- (4) The court must not receive—
- (a) any affidavit of any witness to explain or add to evidence given by the witness at the trial; or
 - (b) an affidavit of any facts that might have been given in evidence at the trial.
- (5) Despite subclause (4), the court may receive an affidavit from a material witness showing that he or she made a serious mistake in giving his or her testimony.

Compare: SR 1992/109 r 494

Part 12

Summary judgment

12.1 Application of summary judgment procedure

Rules 12.2 to 12.16 apply to all proceedings except proceedings under Part 17 or 18 (appeals) and except where otherwise provided in any enactment.

Compare: HCR 12.1

12.2 Judgment when there is no defence or when no cause of action can succeed

- (1) The court may give judgment against a defendant if the plaintiff satisfies the court that the defendant has no defence to any cause of action in the statement of claim or to a particular cause of action.

- (2) The court may give judgment against a plaintiff if the defendant satisfies the court that none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: HCR 12.2

12.3 Summary judgment on liability

The court may give judgment on the issue of liability, and direct a trial of the issue of amount (at the time and place it thinks just), if the party applying for summary judgment satisfies the court that the only issue to be tried is one about the amount claimed.

Compare: HCR 12.3

12.4 Interlocutory application for summary judgment

- (1) Application for judgment under rule 12.2 or 12.3 must be made by interlocutory application.
- (2) An application by a plaintiff may be made at or after the time when the statement of claim is served on the defendant until the expiry of 10 working days after the date on which the statement of defence is served on the plaintiff, or later by leave of the court.
- (3) If an application by a plaintiff is made at the time that the statement of claim is served on the defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010, the hearing date allocated (under rule 7.26) for the application must be after the period (under section 17(1)(a) or (b) of that Act) within which the defendant may file an appearance or response document.
- (4) An application by a defendant may be made at either at the time the statement of defence is served on the plaintiff, or later with the leave of the court.
- (5) The party making the application must file and serve on the other party the following documents:
- (a) an interlocutory application on notice in form 17;
 - (b) a supporting affidavit;
 - (c) if the party is a plaintiff applying at the time the statement of claim is served,—
 - (i) a notice of proceeding in form 1; and

- (ii) a statement of claim:
 - (d) if the party applying is a defendant applying at the time the statement of defence is served, a statement of defence.
- (6) The affidavit—
 - (a) must be by or on behalf of the person making the application:
 - (b) if given by or on behalf of the plaintiff, must verify the allegations in the statement of claim to which it is alleged that the defendant has no defence, and must depose to the belief of the person making the affidavit that the defendant has no defence to the allegations and set out the grounds of that belief.
 - (c) if given by or on behalf of the defendant, must show why none of the causes of action in the plaintiff's statement of claim can succeed.

Compare: HCR 12.4

12.5 Service out of New Zealand

A plaintiff who makes an application under rule 12.2 or 12.3 must serve the documents specified in rule 12.4(5) on a defendant who is overseas not less than 25 working days before the date for hearing the application.

Compare: HCR 12.5

12.6 Requirements as to notice of proceeding

Rule 5.26 does not apply to a proceeding under Part 12.

Compare: HCR 12.6

12.7 Time for service

- (1) The documents specified in rule 12.4(5) must be served on the other party to the proceeding not less than 25 working days before the date for hearing the application.
- (2) Rule 12.5 overrides this rule.

Compare: HCR 12.7

12.8 Postponement of hearing

If the documents specified in rule 12.4(5) have not been served within the time prescribed by rule 12.7(1), or rule 12.5 if applicable, the Registrar, on request, may postpone the hearing by—

- (a) deleting the original date of hearing shown in the notice of interlocutory application; and
- (b) inserting a new date; and
- (c) initialling the new date in the margin opposite the alteration.

Compare: HCR 12.8

12.9 Notice of opposition and affidavit in answer

- (1) A party who intends to oppose an application for judgment under rule 12.2 or 12.3 must, at least 3 working days before the date for hearing the application, file in the court and serve on the applicant—
 - (a) a notice of opposition in form 19; and
 - (b) an affidavit by or on behalf of the party intending to oppose the application in answer to the affidavit by or on behalf of the applicant.
- (2) For the purposes of subclause (1), **in answer to** means,—
 - (a) in the case of a defendant, setting out the defence to the cause or causes of action that are subject to the summary judgment application; or
 - (b) in the case of a plaintiff, setting out the reasons why the defendant's defences do not succeed against the plaintiff's cause or causes of action.
- (3) If an opposing party does not file and serve the documents required by subclause (1), the party may not be heard in opposition to the application without the leave of the court.
- (4) Rule 7.17(2) and (3) applies, with all necessary modifications, to a notice of opposition filed under subclause (1)(a).

Compare: HCR 12.9

12.10 Statement of defence

A defendant who has filed both a notice of opposition and an affidavit under rule 12.9 may, in addition, file a statement of

defence in the registry of the court in which the notice of opposition and the affidavit were filed.

Compare: HCR 12.10

12.11 Affidavits in reply

- (1) An affidavit may be filed by or on behalf of the party making the application in reply to an affidavit filed by or on behalf of the party opposing the application.
- (2) Every affidavit filed under subclause (1)—
 - (a) must be limited to new matters in the affidavit filed by the party opposing the application; and
 - (b) must be filed in the court and served on the party opposing the application not later than 1 pm on the last working day before the date for hearing the application.

Compare: HCR 12.11

12.12 Disposal of application

- (1) If the court dismisses an application for judgment under rule 12.2 or 12.3, the court must give directions as to the future conduct of the proceeding and mode of trial.
- (2) If it appears to the court on an application for judgment under rule 12.2 or 12.3 that the defendant has a counterclaim that ought to be tried, the court—
 - (a) may give judgment for the amount that appears just on any terms it thinks just; or
 - (b) may dismiss the application and give directions under subclause (1).

Compare: HCR 12.12

12.13 Time for filing statement of defence on dismissal of plaintiff's application

- (1) The statement of defence in the proceeding, if not already filed, must be filed within 10 working days after the date on which any application by a plaintiff for judgment under rule 12.2 or 12.3 is dismissed in whole or in part.
- (2) Rule 12.12(1) overrides this rule.

Compare: HCR 12.13

12.14 Setting aside judgment

A judgment given against a party who does not appear at the hearing of an application for judgment under rule 12.2 or 12.3 may be set aside or varied by the court on any terms it thinks just if it appears to the court that there has been, or may have been, a miscarriage of justice.

Compare: HCR 12.14

12.15 Discontinuance

- (1) The party making the application may, at any time before an application for judgment under rule 12.2 or 12.3 is heard, discontinue the application—
 - (a) by filing in the registry of the court in which the application is filed a memorandum of discontinuance; and
 - (b) by serving a copy of the memorandum on the other party to the application.
- (2) The court may give directions about the future conduct of the proceeding after an application for judgment under rule 12.2 or 12.3 is discontinued.

Compare: HCR 12.15

12.16 Application to counterclaims and claims against third parties

Rules 12.1 to 12.15 apply, with all necessary modifications, to counterclaims and to claims against third parties.

Compare: HCR 12.16

Part 13**Summary proceeding for recovery of land****13.1 Interpretation**

In this Part, **unlawful occupier** means a person who—

- (a) occupies or continues to occupy land of the plaintiff without the licence or consent of the plaintiff or the plaintiff's predecessor in title or in any other circumstances where section 31(1) of the Act applies; and
- (b) is not a tenant or subtenant holding over after the termination of a tenancy or subtenancy.

Compare: HCR 13.1

13.2 Application of Part

- (1) This Part applies to every proceeding in which the plaintiff claims the recovery of land that is occupied solely by 1 or more unlawful occupiers.
- (2) This Part does not affect the application of Part 12 (summary judgment) to a proceeding for the recovery of land.

Compare: HCR 13.2

13.3 Defendants

- (1) The plaintiff must name as a defendant in the statement of claim each unlawful occupier who is known to the plaintiff.
- (2) If no unlawful occupier is known to the plaintiff by name, the statement of claim need not name any person as defendant.
- (3) Subclause (1) is subject to subclause (2).

Compare: HCR 13.3

13.4 Affidavit in support

The plaintiff must file with the statement of claim an affidavit that—

- (a) states the interest of the plaintiff in the land; and
- (b) states the circumstances in which the land has been occupied without licence or consent and in which the claim for recovery of the land arises; and
- (c) if no person is named as defendant in the statement of claim, states that the plaintiff does not know the name of any of the unlawful occupiers.

Compare: HCR 13.4

13.5 Service

- (1) The plaintiff must serve the following documents on each defendant, if any, and on each unlawful occupier who is not a defendant:
 - (a) the statement of claim;
 - (b) the notice of proceeding;
 - (c) a copy of the affidavit required by rule 13.4;
 - (d) a copy of any exhibit referred to in that affidavit.
- (2) In the case of a defendant, service must be effected in accordance with rule 5.67.

- (3) In the case of an unlawful occupier who is not a defendant, service (unless the court directs or permits a different method of service) must be effected—
- (a) by affixing to some conspicuous part of the land the documents required to be served under subclause (1); and
 - (b) if practicable, by leaving in the letterbox or other receptacle for mail on the land the documents required to be served under subclause (1) (those documents must be enclosed in a sealed envelope addressed to “The Occupiers”).

Compare: HCR 13.5

13.6 Time for filing statement of defence

Despite rule 5.49(2)(b), if service is effected in accordance with rule 13.5(3), the statement of defence must be filed within 25 working days after the day on which that service is effected.

Compare: HCR 13.6

13.7 Power of court to make unlawful occupiers defendants

A Judge may order that an unlawful occupier who is not a defendant be made a defendant or be added as a defendant.

Compare: HCR 13.7

13.8 Judgment for possession

Rule 15.8 (which allows the plaintiff to seek judgment immediately upon certain defaults by the defendant) does not apply to proceedings to which this Part applies.

Compare: HCR 13.8

13.9 Possession order

- (1) Once 3 months have elapsed after the date on which a judgment is given in a proceeding to which this Part applies, a possession order to enforce the judgment may issue only with the leave of the court.
- (2) An application for leave under subclause (1) may be made without notice unless a Judge otherwise directs.

Compare: HCR 13.9

Part 14

Costs

14.1 Costs at discretion of court

- (1) All matters are at the discretion of the court if they relate to costs—
 - (a) of a proceeding; or
 - (b) incidental to a proceeding; or
 - (c) of a step in a proceeding.
- (2) Rules 14.2 to 14.10 are subject to subclause (1).
- (3) The provisions of any Act override subclauses (1) and (2).
Compare: HCR 14.1; SR 2009/257 r 4.1

14.2 Principles applying to determination of costs

The following general principles apply to the determination of costs:

- (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:
- (b) an award of costs should reflect the complexity and significance of the proceeding:
- (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding or interlocutory application:
- (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:
- (e) what is an appropriate daily recovery rate and what is a reasonable time should not depend on the skill or experience of the solicitor or counsel involved or on the time actually spent by the solicitor or counsel involved or on the costs actually incurred by the party claiming costs:
- (f) an award of costs should not exceed the costs incurred by the party claiming costs:
- (g) so far as possible the determination of costs should be predictable and expeditious.

Compare: HCR 14.2; SR 2009/257 r 4.2

14.3 Categorisation of proceedings

- (1) For the purposes of rule 14.2(b), proceedings must be classified as falling within 1 of the following categories:

Category 1 proceedings	Proceedings of a straightforward nature able to be conducted by counsel considered junior
Category 2 proceedings	Proceedings of average complexity requiring counsel of skill and experience considered average
Category 3 proceedings	Proceedings that because of their complexity or significance require counsel to have special skill and experience

- (2) The court may at any time determine in advance a proceeding's category, which applies to all subsequent determinations of costs in the proceeding, unless there are special reasons to the contrary.
- (3) Each step specified in item 19 of Schedule 4 of these rules must be treated as having been taken in a category 2 proceeding.
- (4) Unless the court otherwise directs, subclause (3) applies to a proceeding even if the court has, under subclause (2), determined the category of the proceeding.

Compare: HCR 14.3; SR 2009/257 r 4.3

14.4 Appropriate daily recovery rates

For the purposes of rule 14.2(c), the appropriate daily recovery rates for the categories of proceedings referred to in rule 14.3 (whether taken before or after the commencement of these rules)—

- (a) are the rates specified in Schedule 5; and
- (b) must be applied to those categories.

Compare: HCR 14.4; SR 2009/257 r 4.4

14.5 Determination of reasonable time

- (1) For the purposes of rule 14.2(c), a reasonable time for a step in a proceeding is—
- (a) the time specified for it in Schedule 4; or
 - (b) a time determined by analogy with that schedule, if Schedule 4 does not apply; or
 - (c) the time assessed as likely to be required for the particular step, if no analogy can usefully be made.

- (2) A determination of what is a reasonable time for a step in a proceeding under subclause (1) must be made by reference—
 - (a) to band A, if a comparatively small amount of time for the particular step is considered reasonable; or
 - (b) to band B, if a normal amount of time for the particular step is considered reasonable; or
 - (c) to band C, if a comparatively large amount of time is considered reasonable.

Compare: HCR 14.5; SR 2009/257 r 4.5

14.6 Increased costs and indemnity costs

- (1) Despite rules 14.2 to 14.5, the court may make an order—
 - (a) increasing costs otherwise payable under those rules (**increased costs**); or
 - (b) that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (**indemnity costs**).
- (2) The court may make the order at any stage of a proceeding in relation to any step in the proceeding.
- (3) The court may order a party to pay increased costs if—
 - (a) the nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or
 - (b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—
 - (i) failing to comply with these rules or a direction of the court; or
 - (ii) taking or pursuing an unnecessary step or an argument that lacks merit; or
 - (iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or
 - (iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or any other similar requirement under these rules; or

- (v) failing, without reasonable justification, to accept an offer of settlement, whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or
 - (c) the proceeding is of general importance to persons other than just the parties and it was reasonably necessary for the party claiming costs to bring the proceeding or participate in the proceeding in the interests of those affected; or
 - (d) some other reason exists that justifies the court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.
- (4) The court may order a party to pay indemnity costs if—
- (a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or
 - (b) the party has ignored or disobeyed an order or a direction of the court or breached an undertaking given to the court or another party to the proceeding; or
 - (c) costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or
 - (d) the person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to the proceeding; or
 - (e) the party claiming costs is entitled to indemnity costs under a contract or deed; or
 - (f) some other reason exists that justifies the court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: HCR 14.6; SR 2009/257 r 4.6

14.7 Refusal of, or reduction in, costs

Despite rules 14.2 to 14.5, the court may refuse to make an order for costs or may reduce the costs otherwise payable under those rules if—

- (a) the nature of the proceeding or the step in a proceeding was such that the time required by the party claiming costs would have been substantially less than the time allocated under band A; or
- (b) the property or interests at stake in the proceeding were of exceptionally low value; or
- (c) the issues at stake were of little significance; or
- (d) although the party claiming costs has succeeded overall, that party has failed in relation to a cause of action or issue that significantly increased the costs of the party opposing costs; or
- (e) the party claiming costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—
 - (i) failing to comply with these rules or a direction of the court; or
 - (ii) taking or pursuing an unnecessary step or an argument that lacks merit; or
 - (iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or
 - (iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or any other similar requirement under these rules; or
 - (v) failing, without reasonable justification, to accept an offer of settlement, whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or
- (f) some other reason exists that justifies the court refusing costs or reducing costs despite the principle that the determination of costs should be predictable and expeditious.

Compare: HCR 14.7; SR 2009/257 r 4.7

14.8 Costs in interlocutory applications

- (1) Costs on an opposed interlocutory application, unless there are special reasons to the contrary,—

- (a) must be fixed in accordance with these rules when the application is determined; and
 - (b) become payable when they are fixed.
- (2) Despite subclause (1), the court may reverse, discharge, or vary an order for costs on an interlocutory application if satisfied subsequently that the original order should not have been made.
- (3) This rule does not apply to an application for summary judgment.

Compare: HCR 14.8; SR 2009/257 r 4.8

14.9 Costs may be determined by different Judge

Costs may be determined by a Judge other than the Judge who heard the matter to which the costs relate, if the Judge who heard the matter to which the costs relate is not available conveniently to make the determination.

Compare: HCR 14.9; SR 2009/257 r 4.9

14.10 Written offers without prejudice except as to costs

- (1) A party to a proceeding may at any time make to any other party to the proceeding a written offer that—
 - (a) is expressly stated to be without prejudice except as to costs; and
 - (b) relates to an issue in the proceeding.
- (2) The fact that the offer has been made must not be communicated to the court until the question of costs is to be decided.

Compare: HCR 14.10; SR 2009/257 r 4.10

14.11 Effect on costs

- (1) The effect (if any) that the making of an offer under rule 14.10 has on the question of costs is at the discretion of the court.
- (2) Subclauses (3) and (4)—
 - (a) are subject to subclause (1); and
 - (b) do not limit rule 14.6 or 14.7; and
 - (c) apply to an offer made under rule 14.10 by a party to a proceeding (**party A**) to another party to it (**party B**).
- (3) Party A is entitled to costs on the steps taken in the proceeding after the offer is made, if party A—

- (a) offers a sum of money to party B that exceeds the amount of a judgment obtained by party B against party A; or
 - (b) makes an offer that would have been more beneficial to party B than the judgment obtained by party B against party A.
- (4) The offer may be taken into account if party A makes an offer that—
 - (a) does not fall within subclause (3)(a) or (b); and
 - (b) is close to the value or benefit of the judgment obtained by party B.

Compare: HCR 14.11; SR 2009/257 r 4.11

14.12 Disbursements

- (1) In this rule, **disbursement**, in relation to a proceeding,—
 - (a) means an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from professional services in a solicitor's bill of costs; and
 - (b) includes—
 - (i) fees of court for the proceeding;
 - (ii) expenses for serving documents for the purposes of the proceeding;
 - (iii) expenses for photocopying documents required by these rules or by a direction of the court;
 - (iv) expenses incurred in providing or complying with discovery by electronic means in accordance with these rules;
 - (v) expenses of conducting a conference by telephone or video link; but
 - (c) does not include counsel's fee.
- (2) A disbursement may be included in the costs awarded for a proceeding to the extent that the disbursement is—
 - (a) of a class that is—
 - (i) approved by the court for the purposes of the proceeding; or
 - (ii) specified in subclause (1)(b); and
 - (b) specific to the conduct of the proceeding; and
 - (c) necessary for the conduct of the proceeding; and

(d) reasonable in amount.

- (3) A Judge may direct a Registrar to exercise the powers of the court under this rule.

Compare: HCR 14.12; SR 2009/257 r 4.12

14.13 Joint and several liability for costs

The liability of each of 2 or more parties ordered to pay costs is joint and several, unless the court otherwise directs.

Compare: HCR 14.14; SR 2009/257 r 4.13

14.14 Defendants defending separately

The court must not allow more than 1 set of costs, unless it appears to the court that there is good reason to do so, if—

- (a) several defendants defended a proceeding separately; and
- (b) it appears to the court that all or some of them could have joined in their defence.

Compare: HCR 14.15; SR 2009/257 r 4.14

14.15 Claim and counterclaim both established

The court must award costs as if each party had succeeded in an independent proceeding, unless, in the court's opinion, the justice of the case otherwise requires, if—

- (a) the plaintiff succeeds in his or her proceeding; and
- (b) the defendant succeeds in a counterclaim.

Compare: HCR 14.16; SR 2009/257 r 4.15

14.16 Set-off if costs allowed to both parties

If opposite parties are awarded costs against each other, their respective costs must be set off and the lesser sum must be deducted from the greater, unless the court otherwise directs.

Compare: HCR 14.17; SR 2009/257 r 4.16

14.17 Solicitor acting in person

A solicitor who is a party to a proceeding and acts in person is entitled to solicitors' costs.

Compare: SR 2009/257 r 4.17

14.18 Proceeding transferred from High Court

- (1) This rule applies if a proceeding has been transferred from the High Court to the District Court and the amount remaining in dispute at the date on which the Registrar receives the documents referred to in section 47 of the Act is less than the amount originally claimed.
- (2) The costs incurred after that date must be allowed on the scale and subject to the rules applicable to the costs of a proceeding started in the District Court to recover the amount remaining in dispute.

Compare: SR 2009/257 r 4.18

14.19 Enforcement of order for costs

An order for the payment of costs may be enforced in the same manner as any other order of the District Court for the payment of money.

Compare: SR 2009/257 r 4.19

Part 15**Disposal other than by trial****Subpart 1—Dismissal or stay without trial****15.1 Dismissing or staying all or part of proceeding**

- (1) The court may strike out all or part of a pleading if it—
 - (a) discloses no reasonably arguable cause of action, defence, or case appropriate to the nature of the pleading; or
 - (b) is likely to cause prejudice or delay; or
 - (c) is frivolous or vexatious; or
 - (d) is otherwise an abuse of the process of the court.
- (2) If the court strikes out a statement of claim or a counterclaim under subclause (1), it may by the same or a subsequent order dismiss the proceeding or the counterclaim.
- (3) Instead of striking out all or part of a pleading under subclause (1), the court may stay all or part of the proceeding on such conditions as it considers just.

Compare: HCR 15.1

15.2 Dismissal for want of prosecution

Any opposite party may apply to have all or part of a proceeding or counterclaim dismissed or stayed, and the court may make such order as it thinks just, if—

- (a) the plaintiff fails to prosecute all or part of the plaintiff's proceeding to trial and judgment; or
- (b) the defendant fails to prosecute all or part of the defendant's counterclaim to trial and judgment.

Compare: HCR 15.2

Subpart 2—Judgment by default**15.3 Application where appearance**

- (1) If the defendant has filed an appearance under rule 5.51, rules 15.7 and 15.8 do not apply.
- (2) If the defendant has filed an appearance under rule 5.52 or 5.53, rules 15.7 and 15.8 apply subject to that appearance.

Compare: HCR 15.3

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: HCR 15.4

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: HCR 15.5

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: HCR 15.6

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 plus—
 - (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 purposes 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: HCR 15.7

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 seek 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 under subclause (1).
Compare: HCR 15.8

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 and no notice is required to be given to the defendant.
- (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: HCR 15.9

15.10 Judgment may be set aside or varied

Any judgment obtained by default under rule 15.7, 15.8, or 15.9 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: HCR 15.10

15.11 Overseas service cases

- (1) When a document has been served on a party outside New Zealand under rule 6.23 and that party 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 6.23; 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: HCR 15.11

Subpart 3—Judgment on admission**15.12 Judgment on admission of facts**

- (1) If a party admits facts (in the party's pleadings or otherwise), any other party to the proceeding may apply to the court for any judgment or order upon those admissions the other party may be entitled to, without waiting for the determination of any other question between the parties, and the court may give any judgment or order on the application as it thinks just.
- (2) This rule is not affected by rules 15.13 and 15.14.

Compare: HCR 15.15

15.13 Admission of cause of action

- (1) At any time after a party has been served with a notice of proceeding, that party may file and serve (separately from the party's pleadings) an admission of all, some, or part of the alleged causes of action on all other parties to the proceeding.
- (2) An admission can be withdrawn only with the leave of the court.
- (3) When an admission is filed and served under subclause (1), a party on whom the admission is served may seal judgment on

the cause of action admitted, without prejudice to that party's right (if any) to proceed on any other cause of action.

- (4) An admission under subclause (1) relating to any cause of action in which a sum of money is claimed must state the exact amount admitted.
- (5) Any judgment entered on an admission filed and served under subclause (1) may, upon application, be set aside by the court if—
 - (a) the plaintiff, being under a duty or obligation to the defendant not to enter judgment on the admission, acted contrary to that duty or obligation in entering judgment; or
 - (b) the plaintiff, in entering judgment, acted fraudulently, unconscionably, or in wilful or reckless disregard of the defendant's rights.
- (6) Upon an application under subclause (5), the court may direct that a proceeding be brought to determine whether judgment was wrongfully entered.
- (7) This rule does not affect rule 8.48.
Compare: HCR 15.16

15.14 Admission of defence

- (1) When a party's original or amended statement of defence alleges any ground of defence that goes to the whole of any cause of action alleged by the other party, the other party may file and serve an admission of that ground of defence.
- (2) If the admitted ground of defence arose after the filing of the pleading containing the cause of action to which it refers, the party filing and serving the admission is entitled to an order for that party's costs in respect of the cause of action to which the admission applies, up to the time of filing the statement of defence, unless the court otherwise orders.
- (3) Subject to subclause (2), a party on whom an admission has been served under subclause (1) may at any time afterwards seal judgment upon the cause of action to which the admission relates.
- (4) This rule does not affect rule 8.48.
Compare: HCR 15.17

Subpart 4—Discontinuance

15.15 Interpretation

For the purposes of rules 15.16 to 15.22, a reference to **discontinuing a proceeding** means discontinuing a proceeding against 1 or more defendants.

Compare: HCR 15.18

15.16 Right to discontinue proceeding

- (1) At any time before the giving of judgment or a verdict, a plaintiff may discontinue a proceeding by—
 - (a) filing a notice of discontinuance and serving a copy of the notice on every other party to the proceeding; or
 - (b) orally advising the court at the hearing that the proceeding is discontinued.
- (2) A notice of discontinuance under subclause (1)(a) must be in form 36.
- (3) This rule is subject to rule 15.17.

Compare: HCR 15.19

15.17 Restrictions on right to discontinue proceeding

- (1) A plaintiff may discontinue a proceeding only with the leave of the court if a party to the proceeding has given an undertaking to the court.
- (2) A plaintiff to whom an interim payment has been made, whether voluntarily or under an order made under rule 7.62 or 7.63, may discontinue the proceeding only with the written consent of the party by whom the payment was made or with the leave of the court.
- (3) A plaintiff may discontinue a proceeding in which there is more than 1 plaintiff only with the consent of every other plaintiff or with the leave of the court. If the plaintiff files a notice of discontinuance under rule 15.16(1)(a), the consent of every other plaintiff must be in writing.
- (4) If there is more than 1 defendant in a proceeding, a plaintiff may discontinue a proceeding against a particular defendant only with the consent of every other defendant or with the leave of the court. If the plaintiff files a notice of discontinu-

ance under rule 15.16(1)(a), the consent of every other defendant must be in writing.

Compare: HCR 15.20

15.18 Effect of discontinuance

- (1) A proceeding ends against a defendant or defendants on—
 - (a) the filing and service of a notice of discontinuance under rule 15.16(1)(a); or
 - (b) the giving of oral advice of the discontinuance at the hearing under rule 15.16(1)(b); or
 - (c) the making of an order under rule 15.17.
- (2) The discontinuance of a proceeding does not affect the determination of costs.
- (3) Rule 15.19 overrides this rule.

Compare: HCR 15.21

15.19 Court may set discontinuance aside

- (1) The court may, on the application of a defendant against whom a proceeding is discontinued, make an order setting the discontinuance aside if it is satisfied that the discontinuance is an abuse of the process of the court.
- (2) An application under subclause (1) must be made within 25 working days after discontinuance under rule 15.16.

Compare: HCR 15.22

15.20 Costs

Unless the defendant otherwise agrees or the court otherwise orders, a plaintiff who discontinues a proceeding against a defendant must pay costs to the defendant of and incidental to the proceeding up to and including the discontinuance.

Compare: HCR 15.23

15.21 Restriction on subsequent proceedings

A plaintiff who discontinues a proceeding (**proceeding A**) against a defendant may not commence another proceeding (**proceeding B**) against the defendant if proceeding B arises out of facts that are the same or substantially the same as those relating to proceeding A, unless the plaintiff has paid any costs

ordered to be paid to the defendant under rule 15.20 relating to proceeding A.

Compare: HCR 15.24

15.22 Certain remedies not affected

If a plaintiff discontinues a proceeding in which a defendant has issued a third party notice under rules 4.4 to 4.17 or has filed a notice under rules 4.18 to 4.21, the discontinuance does not affect the continuation of the proceeding in relation to the third party notice or the notice filed under rules 4.18 to 4.21.

Compare: HCR 15.25

Part 16

Accounts and inquiries

16.1 Interpretation

In this Part,—

account-taker has the meaning set out in rule 16.6

accounting party means—

- (a) the party required by an order for the taking of an account to account to the other party; and
- (b) in a case coming within rule 16.5, each party.

Compare: HCR 16.1

16.2 Orders for accounts and inquiries

The court may, on the application of any party, before, at, or after the trial of a proceeding, order an account or an inquiry, whether or not it has been claimed in that party's pleading.

Compare: HCR 16.2

16.3 Directions

- (1) At the time of ordering an account or an inquiry, or at another time, the court may—

- (a) give directions or further directions about the account or inquiry;
- (b) order additional accounts or inquiries;
- (c) direct that the relevant books of account are prima facie evidence of the truth of the matters contained in them.

- (2) An order or direction under subclause (1) overrides rules 16.6 to 16.20.

Compare: HCR 16.3

16.4 Summary order for accounts

- (1) If a party's pleading claims an account or makes a claim that involves taking an account, the court may, on application by that party at any stage of the proceeding, order—
- (a) an account; and
 - (b) that any amount certified on the account as due to any party be paid to that party.
- (2) The court must not make an order under subclause (1)—
- (a) if there is some preliminary question to be determined; or
 - (b) against a defendant who has not filed a statement of defence or an appearance, until the time for filing a statement of defence has expired.

Compare: HCR 16.4

16.5 Mutual accounts

- (1) The court may order that each party account to the other if it considers that each is accountable to the other because of—
- (a) the relationship between the parties; or
 - (b) their course of dealing; or
 - (c) any other reason.
- (2) At the time of making an order under subclause (1), or at any time afterwards, the court may direct—
- (a) that the result of the account be certified as the net balance found to be due to 1 party; or
 - (b) that the certificate show the amounts found to be due to each party.
- (3) An order under this rule overrides rules 16.6 to 16.20.

Compare: HCR 16.5

16.6 Account-taker

- (1) The court may order accounts to be taken before an **account-taker**, who may be—
- (a) the Registrar; or

- (b) an accountant; or
 - (c) the Registrar and an accountant.
- (2) Unless otherwise ordered, an accountant who takes an account must be a chartered accountant in public practice who is a member of the New Zealand Institute of Chartered Accountants.
- Compare: HCR 16.6

16.7 Direction as to evidence

The court may direct that any evidence relevant to the account be given to the account-taker, with any incidental order the court thinks just.

Compare: HCR 16.7

16.8 Remuneration of accountant

- (1) The court must fix the remuneration of an accountant who is an account-taker. The order doing so may cover incidental matters including (for example) 1 or both of the following:
- (a) that the remuneration be paid by 1 or more of the parties in any proportions;
 - (b) that 1 or more of the parties give security for the remuneration of the accountant, on terms the court thinks just.
- (2) Subclause (1) does not limit the court's power to make an order providing for the payment of the remuneration as part of the costs of the proceeding.

Compare: HCR 16.8

16.9 Form and verification of account

- (1) The items on each side of an account must be numbered consecutively.
- (2) An accounting party must verify the account by affidavit, and must attach the account as an exhibit.

Compare: HCR 16.9

16.10 Filing and service of account

Within 10 working days after the order to account has been served on an accounting party, that party must—

- (a) file the account and verifying affidavit; and
- (b) serve a copy of the account and verifying affidavit on each other party.

Compare: HCR 16.10

16.11 Notice of receipt that is not admitted

A party who alleges an accounting party has received an amount that is not admitted in the accounting party's account must, within 10 working days after being served with the account, notify the accounting party of the allegation, stating (as far as possible) the amount and brief particulars.

Compare: HCR 16.11

16.12 Notice of error

A party who alleges that any item in an accounting party's account is erroneous in amount or otherwise must, within 10 working days after being served with the account, notify the accounting party of the allegation, stating the grounds for alleging the error.

Compare: HCR 16.12

16.13 Admission of items

Except to the extent shown in a notice given under rule 16.11 or 16.12, all items in the account must be treated as correct.

Compare: HCR 16.13

16.14 Appointment and notice for taking accounts

As soon as possible after the accounting party has filed the account, the account-taker must—

- (a) appoint a time (no less than 15 working days after the filing date) and a place for taking the account (the **account hearing**); and
- (b) give notice of that time and place to the parties no less than 5 working days before the account hearing date.

Compare: HCR 16.14

16.15 Parties to attend account hearing

- (1) The parties or their solicitors or counsel must attend the account hearing.

- (2) If the account-taker is satisfied that notice of the time and place has been given and received, the account-taker may proceed with the account hearing, even if any party is absent.

Compare: HCR 16.15

16.16 Adjournment of account hearing

The account-taker may adjourn the time and place of the account hearing as necessary or expedient.

Compare: HCR 16.16

16.17 Power of summary decision

- (1) The account-taker may decide all disputed items of account summarily.
- (2) Despite subclause (1),—
- (a) any item may be referred for the decision of the court by—
 - (i) any party; or
 - (ii) the account-taker; and
 - (b) all items of account in respect of which the Registrar and an accountant disagree must be referred for the decision of the court.

Compare: HCR 16.17

16.18 Examination of accounting party

If an item has been referred to the court under rule 16.17(2), the court may, on the application of a party who has given a notice under rule 16.11 or 16.12, order that the accounting party appear before the court to be examined orally about the disputed item of account.

Compare: HCR 16.18

16.19 Production of documents

The accounting party must, when required by written notice, produce all invoices, statements of account, receipts, and any other documents in that party's possession or power relating to any disputed item of account specified in the notice at—

- (a) the taking of the account; or

- (b) the examination of the accounting party under rule 16.18.

Compare: HCR 16.19

16.20 Interest on debts of deceased person

A court ordering an account of the debts of a deceased person may order—

- (a) which debts carry interest; and
- (b) the date from which the debts carry interest (for example, from the date of the order); and
- (c) the rate of interest for each debt, which may be—
 - (i) the rate prescribed by the instrument or instruments creating the debt or debts; or
 - (ii) if no rate is so prescribed, the rate prescribed by or under section 62B of the Act.

Compare: HCR 16.20

16.21 Accounting and estimates

- (1) Any amount which has been paid or credited must be brought into account.
- (2) If there is no material before the account-taker which enables an amount to be ascertained with certainty, the account-taker may estimate the amount which in all the circumstances should reasonably be included.

Compare: HCR 16.22

16.22 Directions for inquiries

The court may direct the Registrar or any other person to make inquiries (in any manner and within any time period) about—

- (a) next of kin;
- (b) creditors;
- (c) other claimants;
- (d) any other similar matters.

Compare: HCR 16.23

16.23 Powers of persons taking accounts or making inquiries

The account-taker or the person whom the court directs to make an inquiry may—

- (a) issue advertisements; and

- (b) summon parties and witnesses; and
- (c) administer oaths; and
- (d) receive affidavits and acknowledgments; and
- (e) examine parties and witnesses either by interrogatories or by hearing them in person.

Compare: HCR 16.24

16.24 Duty of persons summoned to attend

- (1) A person must attend an account-taker or a person taking an inquiry—
 - (a) in accordance with a summons; and
 - (b) at any other time required without a further summons.
- (2) A person who fails to attend after being summoned is liable to the same extent as if he or she had disobeyed a court order.

Compare: HCR 16.25

16.25 Time for proving claims

- (1) The court must fix and advertise the time within which persons must prove their claims (for example, as creditors or next of kin).
- (2) The time must not be less than 25 working days after the date on which the advertisement is first published.

Compare: HCR 16.26

16.26 Statement of claim to be filed

A person claiming as a creditor, next of kin, or otherwise must file a statement of claim verified by an affidavit.

Compare: HCR 16.27

16.27 Failure to claim within time

- (1) A person who does not prove a claim within the advertised time is excluded from the benefit of the judgment or order directing accounts or inquiries.
- (2) Subclause (1) is subject to sections 75, 76, and 76A of the Trustee Act 1956.

Compare: HCR 16.28

16.28 Result to be certified

The result of any account or inquiry must be stated in a short certificate to the court, unless the court orders the result to be recorded in a formal report.

Compare: HCR 16.29

16.29 Party may ask for court's decision

At any time before the end of 10 working days after a certificate or report has been completed, but before it has been signed by a Judge, any party may ask for the court's decision on any particular point or on the result.

Compare: HCR 16.30

16.30 Certificate or report when approved to be signed by Judge

- (1) A Judge must sign a certificate or report stated or recorded under rule 16.28 when he or she has approved it.
- (2) The Registrar must file the signed certificate or report in the court.

Compare: HCR 16.31

16.31 Effect of certificate or report when filed

- (1) A certificate or report that has been filed in the court is binding on all parties to the proceeding, unless discharged or varied by the court after an application made within 25 working days.
- (2) Subclause (1) does not prevent the court from reopening a certificate or report at any time on the grounds of fraud, surprise, or mistake.

Compare: HCR 16.32

16.32 Distribution before all persons entitled are ascertained

The court may order the immediate payment of a party's share to that party—

- (a) even if the other persons who are entitled to shares are not ascertained and there is likely to be difficulty or delay in ascertaining those others; and
- (b) without reserving any part of the share to meet the subsequent costs of ascertaining those others.

Compare: HCR 16.33

16.33 Payment of share carried over to separate trust account

- (1) If the rights or circumstances of the parties at the time of judgment do not enable the court to order absolutely that payment be made to the persons entitled, the court may order any party's share that has not become absolute to be carried over on trust to a separate account.
- (2) A party that becomes entitled to a share held in trust under subclause (1) may apply for payment of the share on notice to the other persons interested in the matter, and the court may order payment to that party.

Compare: HCR 16.34

*Section 62 or 62A reports***16.34 Report under section 62 or 62A of Act**

- (1) A report under section 62 or 62A of the Act—
 - (a) must be in writing; and
 - (b) must be filed in the registry of the court; and
 - (c) is open to inspection by the parties.
- (2) The Registrar must, on the filing of the report, give notice of the report to all parties.
- (3) When the report has been filed,—
 - (a) if the further consideration of the proceeding has been adjourned to a particular day, any party may—
 - (i) apply on that day to a Judge to adopt the report; or
 - (ii) give not less than 3 working days' notice of the party's intention to make an application on that day to vary the report or to remit the report or any part of the report for further inquiry or report:
 - (b) if the further consideration has not been adjourned to a particular day, any party may, on not less than 3 working days' notice, apply to a Judge to—
 - (i) adopt or vary the report; or
 - (ii) remit the report or any part of the report for further inquiry and report.

Compare: SR 2009/257 r 3.77

*Abandonment of excess***16.35 Abandonment of excess if more than \$200,000 found due on taking of accounts**

- (1) This rule applies if, on taking an account, it appears that a plaintiff is entitled to a larger amount than \$200,000, and the plaintiff has not by the plaintiff's notice of claim or statement of claim abandoned the excess over \$200,000.
- (2) The plaintiff may, if the defendant does not agree to extend the jurisdiction of the court under section 37 of the Act, by leave of the court abandon the excess over \$200,000, and judgment may be entered accordingly.

Compare: SR 2009/257 r 3.78

Part 17**Appeals to High Court****17.1 Agreement not to appeal**

An agreement not to appeal must be in form 37 and must be filed in the court before the trial.

Compare: SR 2009/257 r 13.1

17.2 Leave to appeal

An application for leave to appeal must be made on notice in form 38.

Compare: SR 2009/257 r 13.2

Part 18**Appeals to District Court****Subpart 1—Preliminary provisions****18.1 Application of this Part**

This Part applies to appeals to the District Court in its civil jurisdiction.

Compare: HCR 20.1

18.2 Interpretation

In this Part,—

administrative office means the registry or office or other place at which the decision-maker gave the decision appealed against

administrative officer means the Registrar, secretary, or other officer responsible for the administration of the administrative office

decision includes a finding, an order, or a judgment made by a decision-maker

decision-maker means a tribunal, person, or body of persons—

- (a) that exercises a power of decision from which there is, or may be, a right of appeal to the court; and
- (b) against the decision of which an appeal is brought or sought to be brought

registry means the registry of the court—

- (a) at which an appeal is required to be filed under rule 18.8(1); or
- (b) to which documents relating to an appeal are transferred under rule 18.8(3).

Compare: HCR 20.2

18.3 Judge may call conference and give directions

- (1) For the purpose of ensuring that any appeal is determined in a convenient and expeditious manner, and that all matters in dispute are effectively and completely determined, a Judge may hold a conference of parties or counsel presided over by the Judge—
 - (a) at any time, and on any terms the Judge thinks fit;
 - (b) on the application of any party or without application.
- (2) A Judge presiding at a conference may—
 - (a) settle the issues to be determined;
 - (b) direct which persons are to be named as the respondents, or direct that the name of any party be added or struck out;
 - (c) fix a time for the filing of affidavits or other documents;
 - (d) fix a time and place for the hearing of the appeal;
 - (e) make an order in accordance with rule 18.15:

- (f) give directions as to the manner in which evidence is to be brought before the court at the hearing of the appeal;
 - (g) give any other directions necessary for the proper determination of the appeal.
- (3) At any time before the hearing of an appeal has started, a Judge may, for the purposes of subclause (1), exercise any of the powers specified in subclause (2) without holding a conference.

Compare: SR 2009/257 r 14.4

Subpart 2—Commencement of appeal

18.4 Time for appeal if there is right of appeal

- (1) This rule applies if a party has a right of appeal to the court.
- (2) An appeal must be brought—
 - (a) within the specified period if the enactment that confers the right of appeal specifies a period within which the appeal must be brought; or
 - (b) in every other case, within 20 working days after the decision appealed against is given.
- (3) By special leave, the court may extend the time prescribed for appealing if the enactment that confers the right of appeal—
 - (a) permits the extension; or
 - (b) does not limit the time prescribed for bringing the appeal.
- (4) An application for an extension—
 - (a) must be made by an interlocutory application on notice to every other party affected by the appeal; and
 - (b) may be made before or after the expiry of the time for appealing.

Compare: HCR 20.4

18.5 Commencement of periods in rule 18.4

For the purposes of rule 18.4, a period begins when the decision to which it relates is given, whether or not—

- (a) reasons for the decision are given then or later; or
- (b) formal steps, such as entering or sealing the decision, are necessary or are taken after the decision is given.

Compare: HCR 20.5

18.6 When appeal brought

- (1) An appeal is brought when the appellant—
 - (a) files a notice of appeal in the court; and
 - (b) files a copy of the notice of appeal in the administrative office; and
 - (c) serves a copy of the notice of appeal on every other party directly affected by the appeal.
 - (2) Service at the address for service stated in the proceedings to which the appeal relates is sufficient service for the purposes of subclause (1).
- Compare: HCR 20.6

18.7 Power to dispense with service

Despite rule 18.6(1)(c), the court may dispense with service on a party of a notice of appeal on any terms the court thinks just.

Compare: HCR 20.7

18.8 Filing notice of appeal

- (1) Subject to any contrary enactment, a notice of appeal must be filed in—
 - (a) the registry of the court nearest to the place where the hearing took place of the matter under appeal; or
 - (b) if no hearing took place, in the registry of the court nearest to the place where the decision appealed against was given; or
 - (c) any other registry of the court in which the parties agree that the notice of appeal may be filed.
- (2) If subclause (1)(c) applies, the parties must endorse on, or file with, the notice of appeal a memorandum recording their agreement to the filing of the notice of appeal in the registry of the court in which it is filed.
- (3) The court may on application or on its own initiative in the circumstances set out in subclause (4) direct as follows:
 - (a) the notice of appeal must be filed in another registry of the court; or
 - (b) the documents relating to the appeal must be transferred to another registry of the court.

- (4) The circumstances are that it appears to the court that—
 - (a) a notice of appeal has been filed in the wrong registry of the court; or
 - (b) another registry of the court would be more appropriate.
 - (5) Filing a notice of appeal in the wrong registry of the court does not invalidate an appeal.
- Compare: HCR 20.8

18.9 Contents of notice of appeal

- (1) The notice of appeal must, unless the court directs otherwise,—
 - (a) bear a heading in form 2 that—
 - (i) refers to the enactment under which the appeal is brought; and
 - (ii) refers to the matter as being in the matter of an appeal from a decision of a tribunal or person; and
 - (b) specify the decision or the part of the decision appealed from; and
 - (c) specify any error of law alleged by the appellant; and
 - (d) specify any question of law to be resolved; and
 - (e) specify the grounds of the appeal in sufficient detail to give full advice of the issues involved to the court, the other parties, and the decision-maker; and
 - (f) specify the relief sought.
- (2) The grounds of the appeal may be amended by leave of the court.
- (3) The notice of appeal must not name the decision-maker as a respondent.

18.10 Stay of decision subject to appeal

- (1) An appeal against a decision by a decision-maker does not operate as a stay—
 - (a) of the decision appealed against; or
 - (b) of enforcement of any order appealed against.
- (2) Despite subclause (1), the court may, on application, do any 1 or more of the following pending determination of an appeal against a decision by a decision-maker:

- (a) order a stay of proceedings in relation to the decision appealed against;
 - (b) order a stay of enforcement of any order appealed against;
 - (c) grant any interim relief.
- (3) An order made or relief granted under subclause (2) may—
 - (a) relate to enforcement of the whole of an order or other decision or to a particular form of enforcement;
 - (b) be subject to any conditions for the giving of security the decision-maker or the court thinks just.

Compare: HCR 20.10

18.11 Cross-appeal

- (1) A respondent wishing to contend at the hearing of an appeal that the decision appealed against should be varied must—
 - (a) file a notice of cross-appeal in the registry of the court; and
 - (b) file a copy of the notice in the administrative office; and
 - (c) serve a copy of the notice on every other party directly affected by the cross-appeal.
- (2) A notice of cross-appeal must be filed no later than 2 working days before the case management conference relating to the appeal, except with the leave of the court.
- (3) A notice of cross-appeal must specify—
 - (a) the decision or part of the decision to which the cross-appeal relates; and
 - (b) the grounds of the cross-appeal in sufficient detail to fully inform the court, the other parties to the appeal, and the decision-maker of the issues in the cross-appeal; and
 - (c) the relief sought.
- (4) The court may, despite a respondent's failure to file and serve a notice of cross-appeal,—
 - (a) allow the respondent to contend at the hearing that the decision appealed against should be varied; or
 - (b) adjourn the hearing to allow the respondent time to file and serve a notice; or
 - (c) make any other order the court thinks just, including an order for the payment of costs.

- (5) A respondent may amend a notice of cross-appeal at any time with the leave of the court.

Compare: HCR 20.11

18.12 Dismissal or stay or abandonment of appeal or cross-appeal

- (1) The court may, on application, dismiss or stay an appeal or a cross-appeal if the court is satisfied that the appellant or the respondent has failed to proceed with it, or has failed to comply with a direction relating to the conduct of the appeal.
- (2) The appeal is taken to have been dismissed, subject to the respondent's right to apply for an order as to costs, if the appellant signs, files, and serves on every other party a statement to the effect that the appellant abandons the appeal.
- (3) The cross-appeal is taken to have been dismissed, subject to the appellant's right to apply for an order as to costs, if the respondent signs, files, and serves on every other party a statement to the effect that the respondent abandons the cross-appeal.

Compare: HCR 20.12

18.13 Security for appeal

- (1) This rule applies to an appeal other than an appeal for which the appellant has been granted legal aid under the Legal Services Act 2011.
- (2) The Judge must fix security for costs at the case management conference relating to the appeal, unless the Judge considers that in the interests of justice no security is required.
- (3) The amount of security must be fixed in accordance with the following formula, unless the Judge otherwise directs:

$$\frac{a}{2} \times b$$

where—

- a is the daily recovery rate for the proceeding as classified by the Judge under rule 14.4; and
- b is the number of half days estimated by the Judge as the time required for the hearing.

- (4) Security must be paid to the Registrar at the registry of the court no later than 10 working days after the case management conference, unless the Judge otherwise directs.
- (5) If the security is not paid within the time specified under subclause (4), the respondent may apply for an order dismissing the appeal.
- (6) The Judge must defer the fixing of security until the application for legal aid has been determined if—
 - (a) an appellant has applied for legal aid under the Legal Services Act 2011; and
 - (b) at the time of the case management conference, the application has not been determined.

Compare: HCR 20.13

18.14 Documents to be lodged with Registrar

- (1) The administrative officer of the decision-maker must, as soon as possible after being served with the notice of appeal, send to the Registrar at the court at the appropriate place—
 - (a) 2 copies of any papers that are lodged with the decision-maker and that relate to the decision appealed from; and
 - (b) any exhibits in the custody of the decision-maker; and
 - (c) 2 copies of the whole of the decision appealed from.
- (2) Subclause (1) applies unless the court otherwise directs.
- (3) The administrative officer must also send to the Registrar 2 copies of any transcribed notes of any evidence given at any hearing before the decision-maker that were made for the purposes of, or under the direction of, the decision-maker.
- (4) No further verification is required of the contents of any transcript provided under subclause (3) if the administrative officer has certified it as correct.
- (5) If an enactment provides for the appointment of a person other than a Judge to sit with the court or as a member of the court to hear any specified appeal, the number of copies of documents required by subclauses (1)(a) and (c) and (3) must be increased to a number sufficient to provide a copy each for the court records, the Judge, and every other person required to hear the appeal.

- (6) Subclause (3) does not apply to any notes made personally by the decision-maker or (if the decision-maker is a tribunal) a member of the tribunal.

Compare: SR 2009/257 r 14.13

Subpart 3—Matters leading up to hearing

18.15 Order for transcript of evidence

- (1) The court may order, on application, that—
 - (a) a transcript be made of all or part of the evidence given at the hearing before the decision-maker; and
 - (b) the transcript be sent to the Registrar at the registry of the court.
- (2) An application under subclause (1) must be filed no later than the first of the following dates:
 - (a) the date that is 20 working days after the date on which notice of appeal is filed in the court;
 - (b) the working day before the date of the case management conference.
- (3) The court must give notice to the decision-maker before making an order for a transcript.
- (4) A decision-maker who wishes to appear and be heard before an order for a transcript is made must file, within 14 days after the date of being served notice under subclause (3), a notice of intention to appear and be heard.
- (5) A notice filed under subclause (4) entitles the decision-maker and every party to the appeal to be heard before an order for a transcript is made.
- (6) The court may, if it thinks fit, require a report to be made and lodged under rule 18.16 instead of requiring a transcript.
- (7) The decision-maker may apply at any time to the court for an order that the parties to the appeal pay for the cost of making the transcript.
- (8) The court may make an order for a transcript—
 - (a) on any conditions that it thinks fit;
 - (b) even if the appeal is abandoned, or dismissed for want of prosecution.
- (9) The following provisions apply once the order is made:

- (a) a sealed copy of the order must be served immediately on the decision-maker:
 - (b) the decision-maker must certify the correctness of the transcript and send a copy of the transcript to the Registrar at the appropriate court:
 - (c) no further verification is required of the contents of the certified transcript.
- (10) In subclause (9), **decision-maker** includes an administrative officer of the decision-maker.
Compare: HCR 20.14; SR 2009/257 r 14.14

18.16 Report by decision-maker

- (1) The decision-maker must, if the court directs, provide to the Registrar at the registry of the court a report setting out—
 - (a) any considerations, other than findings of fact, not set out in the decision but to which the decision-maker had regard in making the decision appealed against:
 - (b) any information about the effect that the decision might have on the general administration of the enactment under which the decision was made:
 - (c) any other matters relevant to the decision or to the general administration of the enactment under which the decision was made that should be drawn to the attention of the court.
- (2) The Registrar must provide a copy of the report to every party to the appeal.
- (3) Every party to the appeal is entitled to be heard, and tender evidence, on any matter referred to in the report.
Compare: HCR 20.15

18.17 Further evidence

- (1) Without leave, a party to an appeal may adduce further evidence on a question of fact if the evidence is necessary to determine an interlocutory application that relates to the appeal.
- (2) In all other cases, a party to an appeal may adduce further evidence only with the leave of the court.
- (3) The court may grant leave only if there are special reasons for hearing the evidence. An example of a special reason is that

the evidence relates to matters that have arisen after the date of the decision appealed against and that are or may be relevant to the determination of the appeal.

- (4) Further evidence under this rule must be given by affidavit, unless the court otherwise directs.

Compare: HCR 20.16

Subpart 4—Conduct of appeal

18.18 Decision-maker entitled to be heard on appeal

The decision-maker is entitled, after obtaining the leave of the court, to be represented and heard at the hearing of an appeal on all matters arising in it, unless the decision-maker is the Disputes Tribunal or a Tenancy Tribunal or a Registrar.

Compare: HCR 20.17

18.19 Appeal is rehearing

Appeals are by way of rehearing.

Compare: HCR 20.18

18.20 Powers of court in relation to evidence heard on appeal

- (1) The court has full discretionary power to rehear all or any part of evidence taken before the decision-maker.
- (2) The court must rehear the evidence of any witness if the court has reason to believe that any note of the evidence of that witness made by direction of the decision-maker is or may be incomplete in any material particular.
- (3) The court has full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.
- (4) The court must also have regard to any report lodged by the decision-maker under rule 18.16, including any matters referred to in the report and any evidence tendered on the report, whether or not those matters would otherwise be admissible in evidence.
- (5) The court may, in exercising its powers under this rule and rules 18.21 to 18.24, receive as evidence any statement, docu-

ment, information, or matter that the decision-maker would have been entitled to receive at the hearing at first instance.

Compare: SR 2009/257 r 14.18

18.21 Court has powers of decision-maker

In any appeal, the court has all the powers and discretions of the decision-maker—

- (a) to hold the hearing or any part of it in private; and
- (b) to make orders prohibiting the publication of any report or description of the proceedings or any part of them.

Compare: SR 2009/257 r 14.19

18.22 Counsel assisting court

In any appeal, the Solicitor-General must, at the request of the court, appoint counsel to appear and be heard as counsel assisting the court.

Compare: SR 2009/257 r 14.20

18.23 Appeals from decision arising from contested application

- (1) At the hearing of any appeal from a decision made arising from a contested application, the decision-maker is entitled, after obtaining the leave of the court, to be represented and heard on—
 - (a) any issue relating to the procedure followed in the course of reaching the decision appealed from; or
 - (b) any issue relating to the decision-maker or, if the decision-maker is a tribunal, members of the tribunal; or
 - (c) any matter that the decision-maker has referred to in a report made under rule 18.16.
- (2) The decision-maker is not entitled to be represented and heard on any other issue or matter arising in the appeal.

Compare: SR 2009/257 r 14.21

18.24 Powers of court on appeal

- (1) After hearing an appeal, the court may do any 1 or more of the following:
 - (a) make any decision it thinks should have been made;
 - (b) direct the decision-maker—
 - (i) to rehear the proceedings concerned; or

- (ii) to consider or determine (whether for the first time or again) any matters the court directs; or
 - (iii) to enter judgment for any party to the proceedings the court directs:
- (c) make any order the court thinks just, including any order as to costs.
- (2) The court must state its reasons for giving a direction under subclause (1)(b).
- (3) The court may give the decision-maker any direction it thinks fit relating to—
 - (a) rehearing any proceedings directed to be reheard; or
 - (b) considering or determining any matter directed to be considered or determined.
- (4) The court may act under subclause (1) in respect of a whole decision, even if the appeal is against only part of it.
- (5) Even if an interlocutory or similar decision in the proceedings has not been appealed against, the court—
 - (a) may act under subclause (1); and
 - (b) may set the interlocutory or similar decision aside; and
 - (c) if it sets the interlocutory or similar decision aside, may make in its place any interlocutory or similar decision the decision-maker could have made.
- (6) The powers given by this rule may be exercised in favour of a respondent or party to the proceedings concerned, even if the respondent or party did not appeal against the decision concerned.

Compare: HCR 20.19

18.25 Dismissal of appeal

The court may dismiss the appeal—

- (a) if the appellant does not appear at the time appointed for hearing the appeal; or
- (b) on the application of any other party or the decision-maker, if the appellant does not prosecute the appeal with due diligence.

Compare: SR 2009/257 r 14.24

18.26 Repayment of judgment sum and interest

- (1) Subclause (2) applies when—
- (a) a party to proceedings before a decision-maker (**party A**) has, in accordance with a judgment or order of the decision-maker, paid an amount to another party to the proceedings (**party B**); and
 - (b) on appeal to the court, the effect of the court's determination is that some or all of the amount did not need to be paid.
- (2) When this subclause applies, the court—
- (a) may order party B to repay to party A some or all of the amount paid by party A; and
 - (b) may also order party B to pay to party A interest at a rate no greater than the rate prescribed by or under section 62B of the District Courts Act 1947 on the sum ordered to be repaid.

Compare: HCR 20.20

18.27 Registrar to notify decision of court

On the determination of any appeal, the Registrar must send to the appropriate officer of the decision-maker or (if the decision-maker is an individual) to the decision-maker—

- (a) a memorandum of the court's decision; and
- (b) any application, papers, and exhibits forwarded to the Registrar under rule 18.14 or 18.15.

Compare: SR 2009/257 r 14.25

Part 19

Enforcement

Enforcement generally

19.1 Payment in reduction of amount

A person liable to pay money under a judgment or order may at any time pay money into court to reduce the amount payable by that person.

Compare: SR 1992/109 r 564; SR 2009/257 r 15.1

19.2 Sale of personal property

- (1) Personal property that is to be sold under a direction in a judgment or order may be sold by public auction or private contract as the Judge directs.
- (2) The Registrar must, if the Judge directs, supervise any sale, detention, or preservation of personal property that has been directed to be sold by public auction or to be detained or preserved.
- (3) The Registrar must, unless the Judge directs otherwise, ensure that personal property that has been directed to be sold by private contract is sold in accordance with the Judge's directions.
- (4) This rule does not apply to enforcement issued under section 79(1)(a) of the Act.

Compare: SR 1992/109 r 565; SR 2009/257 r 15.2

19.3 Examination of any party

If any difficulty arises in relation to the enforcement of a judgment or order for relief other than the payment of money, the Judge or Registrar may, on the application of an interested party, make an order for the attendance and examination of any party or otherwise as the Judge or Registrar thinks fit in the interests of justice.

Compare: SR 1992/109 r 566; SR 2009/257 r 15.3

19.4 Application by judgment creditor of partner

- (1) An application by a separate judgment creditor of a partner for any order under section 26 of the Partnership Act 1908 must be made to the court on notice.
- (2) The notice and any order made on the application must be served on—
 - (a) the judgment debtor; and
 - (b) the partners of the judgment debtor who are in New Zealand.

Compare: SR 1992/109 r 567(1); SR 2009/257 r 15.4

19.5 Application by partner of judgment debtor

- (1) An application by a partner of a judgment debtor under section 26 of the Partnership Act 1908 must be made to the court on notice.
- (2) The notice must be served on—
 - (a) the judgment creditor; and
 - (b) the judgment debtor; and
 - (c) the partners of the judgment debtor who do not agree with the application and are in New Zealand.

Compare: SR 1992/109 r 567(2); SR 2009/257 r 15.5

19.6 Change of parties after judgment

- (1) This rule applies if any change has taken place after judgment by death, assignment, or otherwise—
 - (a) in the parties entitled to a judgment or order; or
 - (b) in the parties liable under a judgment or order.
- (2) When this rule applies, the party claiming to be entitled to enforce the judgment or order may apply without notice to the court or a Registrar for leave to issue the necessary process.
- (3) The court or a Registrar may,—
 - (a) if satisfied that the party applying is entitled to issue the process, make an order to that effect;
 - (b) if not so satisfied, order that any issue or question necessary to determine the rights of the parties be tried and determined in a manner that the court or Registrar thinks fit.
- (4) Despite anything in rule 5.1, the hearing of any issue or question referred to in subclause (3)(b) must be started in the court in which the order was made, unless the court or a Registrar otherwise orders.
- (5) Any order made under subclause (3) must be in form 39 and be served on the persons affected.
- (6) No process may issue from an order made under subclause (3) until 5 working days have expired after the date of service, unless the court or a Registrar gives leave.
- (7) A party claiming to be entitled, by reason of the same change, to enforce more than 1 judgment or order may—

- (a) make 1 application in which all the judgments or orders are specified in a schedule; and
- (b) set out, in the notice of any order made on the application, only that part of the order affecting the person to be served notice.

Compare: SR 1992/109 r 568; SR 2009/257 r 15.6

19.7 Change of name, etc, of party after judgment

If the name, address, or occupation of any party to a judgment or order differs from that specified in any application for any process for the enforcement of a judgment or order,—

- (a) the applicant must satisfy the Registrar that the amended name, address, or occupation applies to that party; and
- (b) both names, addresses, or occupations, as the case may require, must be specified in the process applied for.

Compare: SR 1992/109 r 569; SR 2009/257 r 15.7

19.8 Application to Registrar for suspension of judgment, etc

- (1) A person who wishes to apply to the court to suspend or stay any judgment, order, enforcement, or order of committal may apply to a Registrar in the absence of the Judge.
- (2) The Registrar may suspend or stay the judgment, order, enforcement, or order of committal until an application can be made to the Judge.

Compare: SR 1992/109 r 570; SR 2009/257 r 15.8

19.9 Stay of judgment, etc

- (1) An order to suspend or stay any judgment, order, enforcement, order of committal, or order for the discharge of a person under the Act must be in form 40.
- (2) A warrant must be recalled if—
 - (a) an order suspending or staying a judgment, order, or enforcement has been made; and
 - (b) enforcement has been issued.
- (3) Even if a warrant is recalled, a Judge may—

- (a) order the person named in the warrant to pay the costs of the warrant and any fees or expenses incurred by the bailiff before the recall of the warrant; and
- (b) authorise the bailiff to sell part of the goods seized sufficient to pay for the costs, fees, and expenses referred to in paragraph (a), and the expenses of the sale; and
- (c) give leave to reissue the warrant.

Compare: SR 1992/109 r 571(1), (2); SR 2009/257 r 15.9

19.10 Discharge of person under section 98 of Act

- (1) This rule applies if an order has been made under section 98 of the Act for the discharge of any person arrested or confined in prison under section 79(2) or (4) of the Act.
- (2) The Registrar of the court must send a copy of the order to the prison manager or bailiff who has custody of the person.
- (3) The prison manager or bailiff must, on receipt of the copy of the order, promptly discharge the person in custody.
- (4) If the terms of a discharge referred to in subclause (1) include liability to rearrest if the terms are not complied with,—
 - (a) the party entitled to the benefit of the judgment or order may, if the terms are not complied with, apply to the court on notice; and
 - (b) the court may order the person to be rearrested and imprisoned for that part of the term of imprisonment that remains unserved at the time of that person's discharge.
- (5) If an order is made under subclause (4)(b), an order must be issued and delivered to the bailiff authorising—
 - (a) the bailiff to rearrest the person; and
 - (b) the prison manager to receive and detain that person for the remainder of the term of imprisonment or until that person is sooner discharged in due course of law.

Compare: SR 1992/109 r 571(3); SR 2009/257 r 15.10

19.11 Receipt to be attached to warrant

- (1) When money is paid on a warrant under an enforcement process, the bailiff or constable must promptly complete and sign a receipt and hand it to the defendant or the person paying the money.

- (2) The bailiff or constable must pay to a Registrar the money that he or she collected under the warrant.
- (3) If money is not received, the constable or bailiff must endorse that fact on the warrant.

Compare: SR 1992/109 r 573; SR 2009/257 r 15.11

19.12 Bailiff to enforce warrants, etc

The bailiff must—

- (a) keep and maintain, in an appropriate form, a record of all warrants, writs, and other processes that the bailiff has received for enforcement or service; and
- (b) include in the record the date when each process was received; and
- (c) include in the record—
 - (i) the date of enforcement or service of each warrant, writ, or other process; and
 - (ii) either—
 - (A) a brief description of the outcome of the enforcement or service; or
 - (B) if the warrant, writ, or other process was not enforced or served during the time it was in force, the reason for its non-enforcement or non-service.

Compare: SR 1992/109 r 574; SR 2009/257 r 15.12

19.13 New order for payment of unsatisfied judgment

- (1) If there is an unsatisfied judgment or order,—
 - (a) a party entitled to enforce it may apply to the court for an order that the amount due and unpaid be paid—
 - (i) by instalments; or
 - (ii) if already payable by instalments, by the same or smaller instalments; and
 - (b) the court may make an order on the application accordingly.
- (2) If it appears to the court that a person liable under a judgment or order for the payment of a sum of money is unable to pay it in 1 sum, the court may, on application by the person liable,—
 - (a) order that the unpaid amount be paid by instalments;
 - (b) vary any order made under paragraph (a).

- (3) If it appears to the court that a person liable under any order for payment by instalments is able to pay the sum ordered to be paid in 1 sum or by larger or earlier instalments than those ordered, the court may, on application by the person entitled to enforce the order,—
 - (a) order that the unpaid amount be paid in 1 sum or by larger or earlier instalments; and
 - (b) vary any order made under paragraph (a).
- (4) All applications under this rule must be made on notice in form 41.

Compare: SR 1992/109 r 576; SR 2009/257 r 15.13

19.14 Application for civil enforcement process

- (1) This rule applies to any application for a civil enforcement process to which this Part or Part 6 of the Act applies.
- (2) The application must be in a form approved in accordance with the Act (if any) or prescribed by these rules.
- (3) If 2 or more judgment debtors are liable under the same judgment or order,—
 - (a) a separate application may be filed in respect of each debtor concerned; and
 - (b) a separate application must be filed in respect of each debtor whom the judgment creditor wishes to be subject to the civil enforcement process; and
 - (c) fees must be paid and costs allowed in respect of each application.
- (4) A judgment creditor is not required to state in an application relating to a judgment debtor that is a body corporate the name of a particular officer who is to appear at any hearing relating to the application.

Compare: SR 2009/257 rr 15.17.2, 15.17.3

Assessment of judgment debtors

19.15 Hearing in different place

- (1) This rule applies if—
 - (a) a financial assessment hearing or a hearing under section 84D of the Act is to be held; and

- (b) the judgment debtor resides or carries on business 35 km or more from the registry of the court—
 - (i) from which the request to the judgment debtor under section 84C of the Act is made by the court or a Registrar; or
 - (ii) in which an application relating to the judgment debtor is filed under section 84E of the Act.
 - (2) The court or a Registrar may order that the hearing be held before the court at the place nearest, or at any place (whether or not a court) near, to where the judgment debtor resides or carries on business.
 - (3) A Registrar must appoint a date and time for the hearing and arrange for service of the notice of hearing in accordance with section 108A of the Act.
- Compare: SR 2009/257 r 15.15

19.16 Non-appearance of judgment creditor or witness at assessment

- (1) Whether or not a judgment creditor appears at the financial assessment hearing under section 84EB of the Act, the court or a Registrar may, unless subclause (2) applies, make any order or give any direction under section 84EC of the Act.
- (2) The court or a Registrar may adjourn the assessment if it appears to the court or Registrar that the assessment cannot fairly proceed owing to the absence of either the judgment creditor or a witness.
- (3) An adjournment under subclause (2)—
 - (a) is subject to the payment of costs and travel expenses as the court or Registrar thinks fit in the interests of justice; and
 - (b) must always be to a fixed date.

Compare: SR 1992/109 r 580; SR 2009/257 r 15.16

19.17 Record of assessment hearing

- (1) The court or a Registrar must keep a record of—
 - (a) the date and time of each hearing held under section 84D or 84EB of the Act; and

- (b) the terms of anything done by the court or a Registrar under section 84EC of the Act.
- (2) A copy of the record kept under subclause (1) must be provided to every party to the proceeding.
Compare: SR 1992/109 r 581; SR 2009/257 r 15.17

19.18 Warrant of arrest

A warrant to arrest a judgment debtor (or relevant officer) issued under section 84EA of the Act must be in form 42.

Compare: SR 1992/109 r 582; SR 2009/257 r 15.18

19.19 Review of Registrar's decision

A person applying under section 84N of the Act for a review of an order or direction made by a Registrar must—

- (a) make the notice of application in form 43; and
- (b) specify in the application the grounds on which it is made in sufficient detail to fully advise the court and other parties of the issues involved.

Compare: SR 1992/109 r 583; SR 2009/257 r 15.19

Contempt of enforcement proceedings

19.20 Contempt of enforcement proceedings

- (1) An application under section 84O(3) of the Act for an order that the judgment debtor do community work must—
 - (a) be in form 44; and
 - (b) specify the grounds on which it is made in sufficient detail to fully advise the court and other parties of the issues involved; and
 - (c) be authenticated by the judgment creditor or the judgment creditor's solicitor or an agent authorised in writing by the judgment creditor to authenticate the application.
- (2) An application that is authenticated by an agent must be filed with an authority in form 45.
- (3) The following documents must be served personally on the judgment debtor not less than 3 working days before the date of the hearing:
 - (a) a copy of the application; and

- (b) a summons in form 46 requiring the attendance of the judgment debtor at the hearing of the application.
 - (4) An order for community work issued under section 84O(3) of the Act must be in form 47.
 - (5) A warrant to arrest a judgment debtor issued under section 84OB(1) of the Act must be in form 48.
- Compare: SR 1992/109 r 584; SR 2009/257 r 15.20

19.21 Hearing of contempt of enforcement proceedings if judgment debtor at distance

If the judgment debtor resides or carries on business 35 km or more from the registry of the court in which the application for an order that the judgment debtor do community work is made, the court or a Registrar may direct that the hearing take place before the court at a place nearest to where the judgment debtor resides or carries on business.

Compare: SR 1992/109 r 585; SR 2009/257 r 15.21

Fees, costs, and expenses

19.22 Certain fees, costs, and expenses incurred by judgment creditor may be recovered

A judgment creditor may, unless the court or a Registrar otherwise directs, recover from a judgment debtor—

- (a) the fees relating to the civil enforcement process against the judgment debtor paid by the judgment creditor in accordance with the regulations that prescribe the fees; and
- (b) costs relating to that process in accordance with Schedule 4; and
- (c) an amount for expenses incurred for service of documents, if 1 or more documents relating to that process have been served by or on behalf of the judgment creditor, which amount must not exceed the amount prescribed by regulations made under the Act for service by a bailiff.

Compare: SR 2009/257 r 15.22

*Charging orders***19.23 Interpretation**

In rules 19.24 to 19.46, unless the context otherwise requires,—

charging order means an order under section 96A of the Act
judgment creditor means a person who has obtained a judgment or order for the payment of money.

Compare: SR 2009/257 r 15.23

19.24 Application for charging order

- (1) A judgment creditor may apply without notice to the court or a Registrar for a charging order.
- (2) The application must—
 - (a) be in form 49; and
 - (b) be accompanied by an affidavit in form 50; and
 - (c) describe the property for which the charging order is sought in sufficient detail so as to identify it.
- (3) Section 96A(1A) of the Act specifies which kinds of property may be subject to a charging order.

Compare: SR 1992/109 r 586; SR 2009/257 r 15.24

19.25 Filing of application for charging order

- (1) An application for a charging order must not be filed until 48 hours have expired from the time the judgment was entered, or the order was made, unless a Judge gives leave for immediate enforcement.
- (2) The Registrar must note on the application and on the charging order the precise time that the application for the charging order was made.
- (3) The judgment creditor must prepare and file with the application a draft order and a copy for every person the draft order is intended to affect.
- (4) The Registrar must notify the judgment creditor, as soon as practicable after the application has been heard, of the outcome of the hearing.

Compare: SR 1992/109 r 587; SR 2009/257 r 15.25

19.26 Value of property exceeding \$200,000

An application for a charging order may be filed, and a charging order may be made, even if the property to which the application or charging order relates has a value exceeding \$200,000.

Compare: SR 1992/109 r 588; SR 2009/257 r 15.26

19.27 Charging order where amount involved small

If the amount involved is so small that the making of a charging order is vexatious or worthless, the court or a Registrar may—

- (a) refuse the application for a charging order; or
- (b) if the charging order has been made (whether as of right or on application), discharge the charging order.

Compare: SR 1992/109 r 589; SR 2009/257 r 15.27

19.28 Form of charging order

A charging order must be in form 51, 52, or 53, as appropriate.

Compare: SR 1992/109 r 590; SR 2009/257 r 15.28

19.29 Application for relief by persons prejudicially affected

- (1) A person alleging that he or she is prejudicially affected by a charging order may, at any time, apply to the court for relief.
- (2) The court may—
 - (a) vary or discharge the order; or
 - (b) cancel the registration or modify the effect of registration of any order affecting land.
- (3) The powers of the court under this rule are in addition to its powers under rules 2.12 and 11.24.

Compare: SR 1992/109 r 591; SR 2009/257 r 15.29

19.30 Claim of third person on property charged

- (1) If it is alleged that land or other property affected by a charging order belongs to a third person, or that a third person has a claim on it by way of lien, charge, or otherwise,—
 - (a) the Registrar must issue a summons in form 54 together with a copy of it; and
 - (b) the summons must be served on the third person a reasonable time before the day fixed for the hearing.

- (2) If the third person does not appear at the hearing of the matter, the court, on proof of service, may make any order that it thinks fit in the interests of justice.
- (3) The third person may, on giving 24 hours' notice of his or her intention to do so, also attend—
 - (a) the hearing of an application to make a final charging order; or
 - (b) the hearing of any application to set aside or vary the charging order.
- (4) Despite subclause (3), the Judge may give the third person leave to attend without giving 24 hours' notice.

Compare: SR 1992/109 r 592; SR 2009/257 r 15.30

19.31 Apportionment when more than 1 charging order

- (1) A person against whom more than 1 charging order is made, or who claims to be affected by more than 1 charging order, may apply to the court for an order under subclause (2).
- (2) The court may determine how much or what part of the property affected by the charging order is for the separate use of each party who has obtained a charging order.

Compare: SR 1992/109 r 593; SR 2009/257 r 15.31

19.32 Charging order final in first instance

If the property sought to be charged is an estate, right, title, or interest in possession, remainder, reversion, or expectancy, and whether vested or contingent, in any land held by the judgment debtor in that judgment debtor's own name, the charging order is final in the first instance.

Compare: SR 1992/109 r 594; SR 2009/257 r 15.32

19.33 Registration of charging order under Land Transfer Act 1952

- (1) A charging order made under rule 19.32 in respect of land under the Land Transfer Act 1952 must be registered against the certificate of title to the land under that Act.
- (2) The charging order—
 - (a) must—

- (i) contain a description of the land affected sufficient to identify that land; or
 - (ii) refer to a certificate of title or other instrument containing such a description; and
- (b) must have drawn on it, or annexed to it, a plan of the land showing its extent, boundaries, and relative position, unless the land is—
 - (i) the whole of the land comprised in a certificate or certificates of title; or
 - (ii) shown separately on a plan deposited under the provisions of the Land Transfer Act 1952.
- (3) The judgment creditor must deposit a duplicate of the charging order with the Registrar-General of Land unless the Registrar-General has dispensed with the production of duplicate instruments in accordance with the Land Transfer Act 1952.
Compare: SR 1992/109 r 595; SR 2009/257 r 15.33

19.34 Registration of charging order under Deeds Registration Act 1908

- (1) A charging order made under rule 19.32 in respect of land that is not under the Land Transfer Act 1952 must be registered with the Registrar-General of Land.
- (2) The charging order—
 - (a) must contain a description of the land affected, or refer to the Crown grant or other instrument, sufficient to identify that land; and
 - (b) must have drawn on it, or annexed to it, a plan of the land showing its extent, boundaries, and relative position.

Compare: SR 1992/109 r 596; SR 2009/257 r 15.34

19.35 Lodging of charging order under Crown Minerals Act 1991

- (1) A charging order made under rule 19.32 in respect of a mining privilege within the meaning of the Crown Minerals Act 1991 must be registered by lodging it with the Registrar-General of Land.
- (2) The charging order—
 - (a) must either—

- (i) contain a description of the land affected sufficient to identify that land; or
 - (ii) refer to a document granting or issuing the mining privilege, or any other instrument by which the mining privilege was acquired, containing such a description; and
 - (b) must have drawn on it, or annexed to it, a plan of the land showing its extent, boundaries, and relative position, unless the land affected—
 - (i) comprises the whole of the land to which the mining privilege relates; or
 - (ii) is shown separately on a plan deposited under the Crown Minerals Act 1991.
 - (3) When the charging order is lodged, a copy of it must be deposited with the chief executive of the department responsible for the administration of the Crown Minerals Act 1991.
 - (4) The Registrar-General of Land is not required to inquire whether subclause (3) has been complied with.
- Compare: SR 1992/109 r 597; SR 2009/257 r 15.35

19.36 Sale before registration of charging order

- (1) An unregistered charging order has no effect against a purchaser for valuable consideration.
- (2) Subclause (1) applies even if—
 - (a) the sale order may have been actually delivered for enforcement at the time of purchase; and
 - (b) the purchaser may have had actual or constructive notice of the delivery of the sale order for enforcement.

Compare: SR 1992/109 r 598; SR 2009/257 r 15.36

19.37 Discharge of land or mining privilege from charging order

The land or mining privilege subject to a charging order is discharged from the charging order on registration with the Registrar-General of Land of—

- (a) a memorandum of satisfaction of the judgment in the proceeding in which the charging order has been issued, or other sufficient evidence of satisfaction; or

- (b) an order of the court to the effect that the land or mining privilege is discharged from the charging order; or
- (c) the consent of the person who registered the charging order to the discharge of the land or mining privilege from the charging order.

Compare: SR 1992/109 r 599; SR 2009/257 r 15.37

19.38 Charging order expires after 2 years

- (1) A charging order expires 2 years after the date of the charging order unless, before the expiry of that period,—
 - (a) the charging order is extended under subclause (2); or
 - (b) the charging order has led to a sale order and a person registers any of the following in relation to the land or mining privilege under that sale order:
 - (i) an instrument of transfer;
 - (ii) a deed of conveyance;
 - (iii) an assignment.
- (2) The court or a Registrar may, if the court or Registrar thinks fit in the interests of justice, extend the 2-year period in any case by any period the court or Registrar considers necessary.
- (3) A charging order that has expired ceases to bind the land or mining privilege affected and is treated as having been discharged.

Compare: SR 1992/109 r 600; SR 2009/257 r 15.38

19.39 Property other than land that may be charged

Section 96A(1A) of the Act specifies which kinds of property other than land may be subject to a charging order.

Compare: SR 1992/109 r 601; SR 2009/257 r 15.39

19.40 Interim charging order

- (1) A charging order under rule 19.39—
 - (a) is a limited charging order until sufficient cause is shown to the contrary; and
 - (b) is called an **interim charging order** in this rule and rules 19.41 to 19.44.
- (2) An interim charging order must be served on the person it is intended to affect.

- (3) If an interim charging order is intended to affect an estate, right, or interest in land held under or because of any trust,—
 - (a) that interim charging order may also be registered against the land; or
 - (b) a caveat may be entered in respect of the interim charging order.

Compare: SR 1992/109 r 602; SR 2009/257 r 15.40

19.41 Effect of interim charging order

- (1) A person served with an interim charging order must refrain from—
 - (a) making, agreeing to, or allowing any conveyance, transfer, assignment, or disposition of any estate, right, or interest, or of any share in a partnership or company, of the judgment debtor; or
 - (b) paying over any income, interest, dividends, bonus, profits, or other money due or accruing due to the judgment debtor.
- (2) However, subclause (1) does not prevent a person from doing any of those things in accordance with these rules or with the leave of the court or a Registrar.

Compare: SR 1992/109 r 603; SR 2009/257 r 15.41

19.42 Liability for breach of interim charging order

- (1) The court may order a person who breaches rule 19.41 to pay the judgment creditor—
 - (a) the amount of money paid, or the value of the property disposed of, in breach of that rule; or
 - (b) a sufficient part of the money paid to satisfy the judgment or order that the judgment creditor has obtained in the proceeding.
- (2) An order made under subclause (1) may be in addition to, or in place of, any penalty that may be imposed under any other rule.

Compare: SR 1992/109 r 604; SR 2009/257 r 15.42

19.43 Money may be paid into court

A person served with an interim charging order may pay into court any money to abide the order of the court.

Compare: SR 1992/109 r 605; SR 2009/257 r 15.43

19.44 Application to make interim charging order final

- (1) The judgment creditor may, at any time after obtaining the interim charging order, apply to the court to have the interim charging order made final.
- (2) The application must be made on notice and must be in form 55.
- (3) The court or a Registrar may make orders and give directions for the disposal of money paid into court under rule 19.43 as the court or Registrar thinks fit in the interests of justice.

Compare: SR 1992/606 r 606; SR 2009/257 r 15.44

Miscellaneous provisions relating to charging orders

19.45 Costs of charging orders

The judgment creditor may, unless the court or a Registrar otherwise directs, recover from the judgment debtor against whom a charging order has been made the fees, costs, and expenses incurred in respect of, and incidental to, the making of the charging order.

Compare: SR 1992/109 r 607; SR 2009/257 r 15.45

19.46 Removal of final charging order to High Court

- (1) A judgment creditor who has obtained a final charging order may apply to a Registrar of the District Court for the removal of that charging order to the High Court in order that the charging order may be enforced in the same way as if it had been issued by the High Court.
- (2) On removal of the charging order, the High Court must determine any matter raised relating to the charging order in the same way as if the charging order had been issued by the High Court.

Compare: SR 1992/109 r 608; SR 2009/257 r 15.46

*Warrants to seize property***19.47 Application for warrant to seize property**

- (1) A judgment creditor who wants a warrant to seize property issued must file an application in form 56.
- (2) The application must not be filed until 48 hours after judgment has been given, or the order made, unless the Judge gives leave for immediate enforcement.
- (3) The Registrar must record the precise time when the application is made to issue the warrant.

Compare: SR 1992/109 r 609; SR 2009/257 r 15.47

19.48 Order of priority

If more than 1 warrant to seize property is issued against the same person, the warrants must be executed in the order of the times recorded under rule 19.47(3).

Compare: SR 1992/109 r 610; SR 2009/257 r 15.48

19.49 Issue, duration, and renewal

- (1) A warrant to seize property—
 - (a) must be issued by a Registrar in an approved form;
 - (b) may be addressed to any bailiff or constable.
- (2) An unenforced warrant to seize property—
 - (a) expires 1 year after the date of issue unless it is renewed; and
 - (b) may be renewed for 1 year, by leave of the court or a Registrar, before the warrant expires; and
 - (c) may be renewed more than once.
- (3) The Registrar must keep a note of every renewal.
- (4) A warrant that has been renewed has effect and takes priority according to the time of its original issue.

Compare: SR 1992/109 r 611; SR 2009/257 r 15.49

19.50 Enforcement against firm

- (1) Enforcement, in the case of a judgment or order against a firm, may issue—
 - (a) against any property of the partnership:

- (b) against any person who has admitted in the proceeding that he or she was a partner when the cause of action arose, or who has been found liable as a partner:
 - (c) against any person who was individually served with the summons as a partner or a person sought to be made liable if—
 - (i) judgment was entered against the person on a summary judgment application where the person failed to serve a response or to file and serve a statement of defence; or
 - (ii) the person failed to appear at the hearing (if any).
- (2) A party who has obtained a judgment or order, and claims to be entitled to issue enforcement against any other person as a partner, may apply to the court for leave to do so, and the following provisions apply:
 - (a) the party must give the alleged partner at least 3 working days' notice of the application:
 - (b) the notice must be served on the alleged partner personally:
 - (c) on the hearing of the application, the court may, if liability is not disputed, give leave to issue enforcement:
 - (d) if liability is disputed, the court may order the issue of liability to be heard in any manner it thinks fit and may give all necessary directions for that purpose.
- (3) A judgment against a firm must not render liable, release, or otherwise affect any partner who was out of New Zealand when the summons was issued, unless that partner has been individually served with the summons.
- (4) Subclause (3) does not apply to a judgment against the property of the partnership.

Compare: SR 1992/109 r 612; SR 2009/257 r 15.50

19.51 Concurrent warrants to seize property

- (1) Warrants to seize property may be issued concurrently for enforcement in 1 or more registries of the court.
- (2) The costs of more than 1 warrant to seize property must not be allowed except by order of the court or a Registrar.

Compare: SR 1992/109 r 613; SR 2009/257 r 15.51

19.52 Costs of warrants to seize property

The costs of warrants to seize property, whether enforced, un-enforced, or unproductive, must be allowed against the enforcement debtor unless—

- (a) the court or a Registrar otherwise orders; or
- (b) these rules provide otherwise.

Compare: SR 1992/109 r 614; SR 2009/257 r 15.52

19.53 Holding over enforcement and withdrawing from possession

- (1) At any time before enforcement, the enforcement creditor may require the bailiff to return the warrant to seize property to the court.
- (2) If the enforcement creditor requests the bailiff to withdraw from possession,—
 - (a) the enforcement creditor is, unless subclause (4) applies, treated as having abandoned the enforcement; and
 - (b) the bailiff must record that the warrant was withdrawn by request of the enforcement creditor.
- (3) If the request to withdraw is made in consequence of a claim under rule 19.89 to the seized goods, the enforcement is treated as having been abandoned only in respect of the goods claimed.
- (4) The bailiff must record that the warrant was suspended by request of the enforcement creditor, if the enforcement creditor—
 - (a) requests the bailiff to withdraw from possession; and
 - (b) at the same time, authorises the bailiff to re-enter by filing an authority in form 57 authenticated by the enforcement debtor.

Compare: SR 1992/109 r 615; SR 2009/257 r 15.53

19.54 Reissue of warrant to seize property

- (1) A warrant to seize property that has been returned or suspended under rule 19.53 may not be reissued until after the enforcement creditor applies to a Registrar to reissue the warrant.
- (2) If application is made to reissue a warrant,—

- (a) the Registrar must record the date and the precise time of the application; and
 - (b) for the purposes of rules 19.47(3) and 19.48, the reissued warrant is treated as having been applied for at the time so recorded.
- (3) Nothing in this rule—
 - (a) prejudices any right of the enforcement creditor to apply for a fresh warrant; or
 - (b) authorises the reissue of a warrant that has been withdrawn, has expired, or has been superseded by the issue of a fresh warrant.

Compare: SR 1992/109 r 615; SR 2009/257 r 15.54

19.55 Possession fees

A possession fee is not payable if an enforcement is paid out at the time of seizure; but a possession fee is payable if the bailiff, out of necessity, has to place a person in possession of the goods even though enforcement is paid out on the same day.

Compare: SR 1992/109 r 616; SR 2009/257 r 15.55

19.56 Bailiff to make inventory

- (1) If goods are seized in enforcement, the bailiff or a Registrar must provide to the enforcement debtor—
 - (a) a sufficient inventory of the goods seized; and
 - (b) notice, in form 58, of the time at which, and place where, the goods will be sold.
- (2) The inventory and notice must—
 - (a) be given or sent in any of the ways specified in section 108A(1)(a) to (c) of the Act; or
 - (b) be left at the place where the goods were seized or sent by post addressed to the enforcement debtor at that place.
- (3) The inventory must be given or sent at the time, or immediately after, the goods are seized.
- (4) The notice must be given or sent at least 24 hours before the time fixed for the sale.

Compare: SR 1992/109 r 617; SR 2009/257 r 15.56

19.57 Accounts of sale

If goods are sold under an enforcement, the bailiff must, at the request of the enforcement debtor, provide the enforcement debtor with a detailed account of the sale and the application of the proceeds.

Compare: SR 1992/109 r 618; SR 2009/257 r 15.57

19.58 Bailiff to furnish statements to Registrar

- (1) The bailiff must deliver to a Registrar immediately after seizure an inventory of all cheques, bills of exchange, promissory notes, bonds, and other securities for money seized or taken by the bailiff under a warrant to seize property.
- (2) When returning a warrant after enforcement, the bailiff must also provide—
 - (a) a copy of the inventory of the goods signed by the bailiff; and
 - (b) if the goods have been sold,—
 - (i) a statement setting out opposite each article the price realised at the sale; and
 - (ii) a balance sheet in respect of the proceeds of the warrant and expenses in form 59.
- (3) If, after a diligent search, the bailiff cannot find any goods to seize, the bailiff must when returning the warrant, also report in form 60 the outcome of the search.
- (4) The Registrar must—
 - (a) require that the bailiff provide to the Registrar the various statements, reports, and balance sheets required by these rules, accompanied by vouchers for all disbursements; and
 - (b) examine those documents.
- (5) A warrant returned in accordance with subclause (2) or (3) may not be enforced except under rule 19.59.

Compare: SR 1992/109 r 619(1)–(5); SR 2009/257 r 15.58

19.59 Court may order enforcement on returned warrant to seize property

- (1) After a warrant is returned in accordance with rule 19.58, the court may order that the warrant be enforced against any goods referred to or specified in the order, if satisfied that—
 - (a) there are reasonable grounds to believe that the enforcement debtor or any person on behalf of the enforcement debtor has control or possession of goods that could have been seized under the warrant; and
 - (b) no bankruptcy petition based on the enforcement or on the return has been filed.
- (2) If an order is made under subclause (1), the warrant—
 - (a) continues in force for the purposes of the order; and
 - (b) has the same duration and the same priority in respect of enforcement as it had under these rules when it was originally issued.
- (3) Subclause (1) does not apply to any warrant that would have expired under rule 19.49.

Compare: SR 1992/109 r 619(6); SR 2009/257 r 15.59

19.60 Application for private sale

- (1) At least 48 hours' notice must be given on any application under section 89 of the Act for an order that a sale under a warrant to seize property may be made other than by public auction.
- (2) Notice must be served on the bailiff and on all other parties having an interest in the enforcement.
- (3) The court or a Registrar may direct that the costs of any party attending be paid by any other party, or otherwise as the court or Registrar thinks fit in the interests of justice.

Compare: SR 1992/109 r 620; SR 2009/257 r 15.60

*Delivery of chattels***19.61 Warrant for recovery of chattels**

- (1) A plaintiff who has obtained a judgment or order for the delivery of specific chattels may apply to a Registrar in form 61.
- (2) On receiving the application, the Registrar may issue a warrant in form 62 to the bailiff requiring that the bailiff demand and

seize the specific chattels (if they can be found) and deliver them to the plaintiff.

Compare: SR 1992/109 r 622; SR 2009/257 r 15.61

19.62 Warrant of committal

Any application for a warrant of committal to enforce a judgment or order for the delivery of specific chattels must be made and dealt with in accordance with rules 19.66 and 19.67.

Compare: SR 1992/109 r 623; SR 2009/257 r 15.62

19.63 Warrant to seize property for value of chattels and for damages, etc

- (1) A plaintiff may apply to the court on notice to fix the value of the chattels if the court has not fixed the value at the hearing.
- (2) If possession of chattels has not been obtained under a warrant issued under rule 19.61, a Registrar may, once the value of the chattels has been fixed, issue a warrant to seize property in an approved form, to recover—
 - (a) the value fixed for the chattels; and
 - (b) any costs and damages awarded at the hearing for detention (unless separate enforcement has been issued).
- (3) Subclause (2) does not prejudice the right of the plaintiff to obtain enforcement, concurrently or at any earlier or later time, for the plaintiff's costs of suit and any damages awarded to the plaintiff for the detention of the chattels.

Compare: SR 1992/109 r 624; SR 2009/257 r 15.63

19.64 Where possession ordered to be taken until security given

- (1) The bailiff must make an inventory and appraisal of goods that the bailiff has taken possession of under any warrant that—
 - (a) directs the bailiff to take possession of the goods until security is given by some party for the safe keeping of the goods, or for the payment of their value in default of safe keeping; but
 - (b) does not specify the amount of security.
- (2) The amount that the bailiff may receive as a deposit under subclause (3) is—

- (a) the amount of the appraisalment; or
- (b) the amount approved by a Registrar as sufficient security for—
 - (i) the safe keeping of the goods; and
 - (ii) delivering possession of the goods on request.
- (3) On receiving the deposit, the bailiff must relinquish possession of the goods on the condition that the goods must be redelivered to the bailiff on request or held to abide the order of the court.

Compare: SR 1992/109 r 625; SR 2009/257 r 15.64

Recovery of land

19.65 Warrant to recover land

- (1) A plaintiff or judgment creditor who has obtained a judgment or order for the recovery of land may apply to a Registrar in form 63 for a warrant to recover the land.
- (2) The Registrar may issue a warrant in form 64 for the recovery of land after the expiry of the day on which the defendant is required, by the judgment, to give possession of the land.
- (3) An amount due under a judgment given in the proceeding for rent, mesne profits, damages, or costs may be recovered under a warrant in form 64 or by a warrant to seize property.

Compare: SR 2009/257 r 15.65

Warrant of committal

19.66 Judgment or order enforceable by committal

- (1) This rule applies to a judgment or order that is—
 - (a) enforceable by committal; and
 - (b) made for the benefit of one party (the **applicant**) against another party (the **respondent**); and
 - (c) in the nature of an injunction.
- (2) The Registrar must issue a copy of the judgment or order endorsed with a notice in form 65—
 - (a) at the time the judgment or order is drawn up; or
 - (b) in any other case, at the request of the applicant.

- (3) The endorsed copy of the judgment or order must be served on the respondent in the manner required under rule 6.11 (Personal service).

Compare: SR 1992/109 r 628(1); SR 2009/257 r 15.66

19.67 Application for warrant of committal

- (1) If the respondent fails to obey the judgment or order referred to in rule 19.66,—
 - (a) a Registrar, at the request of the applicant, must issue a notice in form 66 not less than 2 working days after the date of service of the endorsed copy of the judgment or order, unless the Judge gives leave for the notice to be issued sooner; and
 - (b) the notice must be served on the respondent in the manner required under rule 6.11 (Personal service).
- (2) On the day named in the notice, the Judge may order a warrant of committal to be issued if satisfied that—
 - (a) the respondent has failed to obey the judgment or order; and
 - (b) if the respondent does not appear, the endorsed copy of the judgment or order and the notice have been served on the respondent.
- (3) The order for the issue of the warrant must be in form 67, and the warrant, which must be signed by the Registrar, must be in form 68.
- (4) A copy of the order must be served on the respondent either before or at the time the warrant is executed, unless the Judge otherwise orders.

Compare: SR 1992/109 r 628(2)–(4); SR 2009/257 r 15.67

19.68 Discharge of person in custody

- (1) A person in custody under a warrant who wishes to apply for discharge must—
 - (a) file an affidavit specifying the grounds on which he or she applies for discharge; and
 - (b) not less than 24 hours before the application is made, serve on the party (if any) at whose instance the warrant of committal was issued a copy of the affidavit and a notice of his or her intention to make the application.

- (2) If the order of committal directs that the application for discharge must be made to the Judge, it may be made at any place appointed by the Judge.
- (3) If the order of committal does not direct that the application must be made to the Judge, it may be made to a Registrar.
- (4) The order for discharge must be in form 69.

Compare: SR 1992/109 r 629; SR 2009/257 r 15.68

19.69 Release on bail pending hearing of application for discharge from custody

- (1) A person intending to apply for discharge from custody under rule 19.68(1) may, at the time the affidavit under rule 19.68(1)(a) is filed, apply to the Judge to be released on bail pending the hearing of the application for discharge from custody.
- (2) An application under rule 19.68(1) must be served on the party (if any) at whose instance the warrant of committal was issued at the same time as the affidavit under rule 19.68(1)(a) is served.
- (3) The order for release on bail under this rule may be made subject to any conditions that the Judge may impose.

Compare: SR 1992/109 r 630; SR 2009/257 r 15.69

Garnishee proceedings

19.70 Interpretation

In this rule and rules 19.71 to 19.88, unless the context otherwise requires,—

judgment creditor means a person who has obtained a judgment or order for the payment of money

judgment debtor means the person against whom a judgment or order for the payment of money has been made

sub-debtor means a person against whom a garnishee order is made or sought in respect of any debt owing from the sub-debtor to the judgment debtor.

Compare: SR 1992/109 r 631; SR 2009/257 r 15.70

19.71 Garnishee proceeding

A judgment creditor may take a garnishee proceeding in accordance with rules 19.72 to 19.88.

Compare: SR 1992/109 r 631; SR 2009/257 r 15.71

19.72 Where debt exceeds \$200,000

A garnishee proceeding may be taken even if the amount of debt owing or accruing from the sub-debtor to the judgment debtor exceeds \$200,000.

Compare: SR 1992/109 r 632; SR 2009/257 r 15.72

19.73 Starting proceeding

- (1) A garnishee proceeding is started by the judgment creditor filing an affidavit in form 70.
- (2) On the filing of the affidavit, the Registrar must issue a garnishee summons to the sub-debtor in form 71 and a notice to the judgment debtor in form 72.

Compare: SR 1992/109 r 633; SR 2009/257 r 15.73

19.74 Service and effect of service

- (1) At least 15 working days before the day of the hearing,—
 - (a) the summons must be served on the sub-debtor personally; and
 - (b) the notice must be served on the judgment debtor personally.
- (2) When it is served on the sub-debtor, the summons binds in the hands of the sub-debtor as much of the debt owing or accruing from the sub-debtor to the judgment creditor as will satisfy—
 - (a) the debt due under the judgment or order; and
 - (b) the costs entered on the summons.

Compare: SR 1992/109 r 634; SR 2009/257 r 15.74

19.75 Statement to be filed by sub-debtor in respect of deposit or other accounts

- (1) This rule applies if—
 - (a) the debt alleged to be due from the sub-debtor comprises a sum that—

- (i) stands to the credit of the judgment debtor with the sub-debtor; and
 - (ii) is on deposit with the sub-debtor or is held by the sub-debtor in a current or other account (for example, a deposit account); and
- (b) it is a condition of the deposit or account that a deposit book, receipt for money paid, or other like document must be produced before any money is withdrawn.
- (2) When this rule applies, the sub-debtor must, as soon as practicable after being served with the summons, and at least 3 working days before the date of hearing,—
 - (a) file a statement in form 73 in the court office; and
 - (b) serve that statement on the judgment creditor and the judgment debtor.

Compare: SR 1992/109 r 635; SR 2009/257 r 15.75

19.76 Payment into court by sub-debtor

- (1) The sub-debtor may, at any time before the day of the hearing, pay into court—
 - (a) the amount admitted to be due from the sub-debtor to the judgment debtor; or
 - (b) if the amount admitted is more than sufficient to satisfy the amount due under the judgment or order and the costs entered on the summons, a sum sufficient to satisfy that amount and those costs.
- (2) The sub-debtor is treated as having been discharged from the proceeding if—
 - (a) the amount admitted to be due from the sub-debtor to the judgment debtor is less than the amount claimed owing under the summons; and
 - (b) the judgment creditor files in the court and serves on the judgment debtor and sub-debtor a notice that the judgment creditor accepts the amount.

Compare: SR 1992/109 r 636; SR 2009/257 r 15.76

19.77 Payment out of court of money paid by sub-debtor

- (1) Money paid into court by the sub-debtor may be paid out to the judgment creditor before the day of hearing by a Registrar on production of the written consent of the judgment debtor.

- (2) In the absence of the judgment debtor's written consent, the court may, on the day of the hearing, after hearing the judgment creditor and the judgment debtor, if they appear, make any order in the proceedings, including an order for costs, that it thinks fit in the interests of justice.

Compare: SR 1992/109 r 637; SR 2009/257 r 15.77

19.78 Garnishee order where sub-debtor does not pay into court or appear

- (1) The court may make an order under subclause (2) if—
- (a) the sub-debtor does not, before the day of the hearing, pay into court—
 - (i) the amount admitted to be due from the sub-debtor to the judgment debtor or an amount sufficient to satisfy that part of the judgment or order that is unsatisfied; and
 - (ii) the costs entered on the garnishee summons; and
 - (b) the sub-debtor does not, on the day of the hearing, appear and dispute the debt alleged to be due from the sub-debtor to the judgment debtor; and
 - (c) the judgment debtor does not appear on the day of the hearing and show cause to the contrary.
- (2) If subclause (1) applies, the court may order the sub-debtor to pay the judgment creditor—
- (a) the amount due from the sub-debtor to the judgment debtor or an amount sufficient to satisfy the judgment or order against the judgment debtor; and
 - (b) costs.
- (3) A garnishee order made under this rule—
- (a) must be entered in the court records;
 - (b) may be enforced as a judgment of the court.

Compare: SR 1992/109 r 638; SR 2009/257 r 15.78

19.79 Order in other cases

- (1) A sub-debtor who wishes to dispute liability must, within 5 working days after the service of the summons on the sub-debtor inclusive of the day of service,—
- (a) file, without fee, in the court office a notice in form 74; and

- (b) serve a copy of the notice on the judgment creditor and the judgment debtor.
- (2) If notice has been given to the judgment creditor under subclause (1) or the amount paid into court under rule 19.76 is not accepted, the court may, after hearing the judgment creditor, the sub-debtor, and the judgment debtor, or any of them that appear, make an order referred to in subclause (3).
- (3) The court may—
 - (a) determine the liability of the sub-debtor, and make any order as to the payment to the judgment creditor of any sum found to be due from the sub-debtor to the judgment debtor, and costs, that it thinks fit in the interests of justice; or
 - (b) order that any issue necessary for determining the question of the liability of the sub-debtor be tried in a manner that the court thinks fit, and direct which of the persons interested, including any third party referred to in rule 19.80, is to be the plaintiff and which is to be the defendant; or
 - (c) order that the judgment creditor be at liberty to sue the sub-debtor for—
 - (i) the amount alleged to be due by the sub-debtor to the judgment debtor, if the amount alleged is less than the judgment debt; or
 - (ii) the amount of the judgment debt with costs of suit, if the amount alleged to be due by the sub-debtor or to the judgment creditor is greater than the judgment debt.
- (4) An order for payment made under this rule may be enforced as a judgment of the court.
- (5) No order may be made under this rule if the sub-debtor disputes the debt and the debt claimed exceeds \$200,000.
- (6) At any time before the hearing, the sub-debtor may apply to the court for an order that—
 - (a) the garnishee proceeding be transferred, under subpart 1 of Part 5, to a registry of the court in which it could have been started if it were a proceeding brought against the sub-debtor by the judgment debtor to recover the debt; or

- (b) the garnishee proceeding be referred to a Registrar for inquiry and report under Part 16.
- (7) The court may make any order in respect of an application under subclause (6) that it thinks fit in the interests of justice.
Compare: SR 1992/109 r 639; SR 2009/257 r 15.79

19.80 Where debt stated to belong to third party

- (1) If it is suggested in a garnishee proceeding that the debt belongs to or is claimed by a third party, or that a party has or claims to have a lien or charge on it, the court may order the third party to appear and state the nature and particulars of his or her claim to the debt.
- (2) After hearing the third party, if that third party appears, the court may—
 - (a) bar the claim of the third party; or
 - (b) order an issue to be heard between the third party and the judgment creditor; or
 - (c) make any other order, including an order for costs, that it thinks fit in the interests of justice.

Compare: SR 1992/109 r 640; SR 2009/257 r 15.80

19.81 Garnishee orders in respect of deposit and other accounts

- (1) This rule applies if—
 - (a) a garnishee order is sought in respect of a sum that—
 - (i) stands to the credit of the judgment debtor with the sub-debtor (for example, a bank or savings bank); and
 - (ii) is on deposit with the sub-debtor or held by the sub-debtor in a current or other account (for example, a deposit account); and
 - (b) it is a condition of the deposit or account that a document must be produced before any money is withdrawn.
- (2) If it appears to the court that any document must be produced, the court may, by order in form 75, require any person (including the judgment debtor) who has possession or knows the whereabouts of the document to—
 - (a) deliver it to the court within 5 working days after the date of service of the order on that person or within any other time that the court specifies in the order; or

- (b) disclose its whereabouts to the court within that time.
- (3) The judgment creditor may apply without notice for an order under subclause (2).
- (4) A person against whom an order is made under subclause (2) must, within 5 working days after the date of service of the order,—
 - (a) file in court an affidavit in form 76; and
 - (b) serve a copy of the affidavit on the judgment creditor.
- (5) The Registrar, subject to any directions of the court, must—
 - (a) produce to the sub-debtor any document delivered to the court under subclause (2); and
 - (b) retain the document until the garnishee proceeding is disposed of, unless the sub-debtor pays into court the full amount in respect of which an order is sought.

Compare: SR 1992/109 r 641; SR 2009/257 r 15.81

19.82 Discharge of sub-debtor as against judgment debtor

- (1) Payment made by or enforcement levied on the sub-debtor under a garnishee proceeding is a valid discharge to the sub-debtor (to the amount paid or levied), as against the judgment debtor, even if the proceeding is later set aside or the judgment or order is reversed.
- (2) However, subclause (1) does not apply to the payment or enforcement of costs ordered to be paid by the sub-debtor personally.

Compare: SR 1992/109 r 642; SR 2009/257 r 15.82

19.83 Court may refuse order

- (1) The court may hear evidence about the circumstances of the judgment debtor.
- (2) If it appears to the court that the judgment debtor reasonably requires all or part of the money sought to be attached for the maintenance and support of the judgment debtor and his or her family, the court may—
 - (a) refuse to make a garnishee order; and
 - (b) make an order as to the disposal of any money paid.

- (3) The court may refuse to make a garnishee order if, in its opinion, the amount to be recovered or the debt sought to be attached is too small.

Compare: SR 1992/109 r 643; SR 2009/257 r 15.83

19.84 Where money due by sub-debtor under judgment or order

- (1) This rule applies to any amount due from the sub-debtor to the judgment debtor under a judgment or order obtained by the judgment debtor against the sub-debtor.
- (2) The sub-debtor, unless the court otherwise orders, is not liable to pay the judgment creditor the amount due from the sub-debtor to the judgment debtor by any larger instalments than those that the sub-debtor is liable to pay to the judgment debtor under the judgment or order.
- (3) The Registrar must enter in the court records relating to the judgment or order a note of—
 - (a) the amounts paid or ordered to be paid by the sub-debtor in the garnishee proceeding, other than costs ordered to be paid by the sub-debtor personally;
 - (b) any costs that the sub-debtor may, by order of the court, deduct from the amount due from the sub-debtor to the judgment debtor.

Compare: SR 1992/109 r 644; SR 2009/257 r 15.84

19.85 Money in court

- (1) If money is standing to the credit of the judgment debtor in the court, the judgment creditor—
 - (a) cannot take a garnishee proceeding in respect of that money; but
 - (b) may apply to the court on notice for an order that the money, or the amount of it necessary to satisfy the judgment debt and costs, be paid to the judgment creditor.
- (2) On receipt of notice of the application, the Registrar must retain the money in court until the application has been heard.
- (3) On the hearing of the application, the court—
 - (a) may make any order as to the money in court that it thinks fit in the interests of justice; and

- (b) must have regard to the matters mentioned in rule 19.83.
- (4) A note of the order must be made in the court records relating to the money standing to the credit of the judgment debtor.
Compare: SR 1992/109 r 645; SR 2009/257 r 15.85

19.86 Debts owing by firm

Rules 19.72 to 19.88 apply to debts owing by or accruing from a firm carrying on business in New Zealand, although 1 or more members of the firm may be resident outside New Zealand.

Compare: SR 1992/109 r 646; SR 2009/257 r 15.86

19.87 Costs

- (1) The court may award costs to any sub-debtor attending under rules 19.72 to 19.88, or attending to give evidence under rules 9.17 to 9.24.
- (2) If, within a reasonable time, the judgment creditor fails to give notice under rule 19.76(2)(b), the court may award the sub-debtor the costs incurred by the sub-debtor at the hearing.
- (3) The court may also award costs to a judgment debtor attending to give evidence in a garnishee proceeding—
 - (a) if the proceeding is abandoned by the judgment creditor; or
 - (b) for any other reason that the court thinks sufficient.
- (4) No fee is payable in respect of any order of the court for the payment out of court of any money paid into court in any garnishee proceeding.
- (5) Any costs allowed to the judgment creditor that are not ordered to be paid by the sub-debtor personally, unless it is otherwise ordered, are to be retained by the judgment creditor out of money recovered by the judgment creditor in the garnishee proceeding, in priority to the amount due under the judgment or order.

Compare: SR 1992/109 r 647; SR 2009/257 r 15.87

19.88 Garnishee proceeding against the Crown

In the case of a garnishee proceeding against the Crown as a sub-debtor, rules 19.72 to 19.87 apply with the following modifications:

- (a) rules 19.72 to 19.87 do not apply to any debt that is excepted by the proviso to section 26 of the Crown Proceedings Act 1950;
- (b) the affidavit required under rule 19.73 must be filed, and must give, in addition to the particulars prescribed by form 70, particulars of—
 - (i) the circumstances in which it is alleged that the liability of the Crown has arisen; and
 - (ii) the government department or officer of the Crown concerned;
- (c) the garnishee summons to be served on the sub-debtor under rule 19.74 must be served on the Crown, together with a copy of the affidavit filed in support of the summons, not less than 35 working days before the day of the hearing;
- (d) the time within which the sub-debtor must, under rule 19.79(1), file a notice to dispute the debt claimed is 30 working days;
- (e) rules 19.78(3)(b) and 19.79(4) have effect subject to section 24 of the Crown Proceedings Act 1950.

Compare: SR 1992/109 r 648; SR 2009/257 r 15.88

*Third party claim process relating to
enforcement*

19.89 Notice of claim

- (1) Any claim under section 93 of the Act to or in respect of the goods seized in enforcement must—
 - (a) be in form 77; and
 - (b) be provided to the bailiff holding the seized property.
- (2) The bailiff must lodge the claim in a registry of the court.

Compare: SR 1992/109 r 649; SR 2009/257 r 15.89

19.90 Notice to enforcement creditor

On receipt of the claim, the Registrar must notify the enforcement creditor in form 78.

Compare: SR 1992/109 r 650; SR 2009/257 r 15.90

19.91 Appraisement

- (1) If the value of any goods claimed is disputed, the Registrar may—
 - (a) at the request of the claimant, appoint a person to fix by appraisement the value of the goods; and
 - (b) fix the remuneration to be paid for the appraisement.
- (2) The claimant must pay into court the remuneration fixed by the Registrar, which must be paid to the appraiser.
- (3) The Registrar may revoke the appointment of any appraiser and appoint another person in his or her place.
- (4) The remuneration fixed for the appraiser may, if the court so orders, be costs in the third party claim process.

Compare: SR 1992/109 r 651; SR 2009/257 r 15.91

19.92 Admission of claim

- (1) If, in form 79, the enforcement creditor notifies the Registrar that the enforcement creditor admits the title of the claimant, or requests that the bailiff withdraw from possession,—
 - (a) the Registrar must notify the bailiff immediately; and
 - (b) the proceeding is stayed; and
 - (c) the enforcement creditor is not liable to the bailiff for any possession fees or expenses incurred after the bailiff was notified by the Registrar.
- (2) The Judge may, on application by the bailiff on not less than 1 working day's notification to the enforcement creditor, order the enforcement creditor to pay any fees or expenses for which the enforcement creditor is liable.

Compare: SR 1992/109 r 652; SR 2009/257 r 15.92

19.93 Order protecting bailiff

- (1) If the enforcement creditor notifies the Registrar in accordance with rule 19.92(1), the bailiff—
 - (a) must withdraw from possession; and

- (b) may apply to the Judge, on not less than 1 working day's notification to the claimant, for an order protecting the bailiff from any action in respect of the seizure and possession of the goods.
 - (2) On the hearing of the application under subclause (1)(b), the Judge may make any order he or she thinks fit in the interests of justice.
- Compare: SR 1992/109 r 653; SR 2009/257 r 15.93

19.94 Starting proceeding

- (1) If the enforcement creditor does not give notification in accordance with rule 19.92(1), the Registrar must, at the request of the bailiff,—
 - (a) fix a day for the hearing; and
 - (b) serve summonses in any of forms 80 to 83 (that apply to the case) on the enforcement creditor and the claimant.
 - (2) Subclause (1) does not apply if the claimant has withdrawn his or her claim.
- Compare: SR 1992/109 r 654; SR 2009/257 r 15.94

19.95 Service

A summons under rule 19.94 must be served not less than 7 working days before the day of the hearing.

Compare: SR 1992/109 r 656; SR 2009/257 r 15.95

19.96 Security for costs where claimant does not reside in New Zealand

- (1) If it appears that the claimant does not reside in New Zealand, the enforcement creditor may apply to the Judge on not less than 1 working day's notification for an order directing the claimant to give security for costs.
 - (2) A claimant who fails to comply with an order under subclause (1) is not entitled to be heard in support of his or her claim, unless the Judge otherwise orders.
- Compare: SR 1992/109 r 657; SR 2009/257 r 15.96

19.97 Particulars and grounds of claim to be lodged

- (1) The claimant must serve on the enforcement creditor, and file in the registry of the court dealing with the third party claim, particulars of any goods alleged to be the claimant's property and of the grounds for his or her claim to the goods.
- (2) The claimant must serve and file the particulars—
 - (a) within 3 working days after the service of the summons on the claimant inclusive of the day of service; or
 - (b) if the time for service has been shortened, within such reasonable time before the day of the hearing as the time of service allows.
- (3) The claimant must include in the particulars a statement of his or her full name, address, and occupation.

Compare: SR 1992/109 r 658; SR 2009/257 r 15.97

19.98 Withdrawal or admission

- (1) This rule applies if, before the day of the hearing,—
 - (a) the claimant serves on the enforcement creditor and files in the registry of the court dealing with the third party claim a notice that the claimant withdraws his or her claim; or
 - (b) the enforcement creditor serves on the claimant and files in the office of that court an admission of the title of the claimant.
- (2) When this rule applies,—
 - (a) the goods seized, or the proceeds of the sale, or the money paid into court, as the case may be, must be dealt with as if the claim had not been made or the enforcement had been withdrawn; and
 - (b) the Judge may make any order for costs, fees, charges, and expenses that he or she thinks fit in the interests of justice.

Compare: SR 1992/109 r 659; SR 2009/257 r 15.98

19.99 Claim for damages by claimant

If, in the third party claim process, a claimant claims damages from the enforcement creditor or from the bailiff in respect of the seizure of the goods, the claimant must state, in the particulars of his or her claim to the goods,—

- (a) the amount claimed for damages; and
- (b) the grounds on which those damages are claimed.

Compare: SR 1992/109 r 660; SR 2009/257 r 15.99

19.100 Claim for damages by enforcement creditor

If, in the third party claim process, the enforcement creditor claims damages against the bailiff arising out of the enforcement, the enforcement creditor must, within the time limited by rule 19.97(2),—

- (a) give the bailiff notice of his or her claim, stating the grounds and amount of the claim; and
- (b) file the notice in the registry of the court dealing with the third party claim.

Compare: SR 1992/109 r 661; SR 2009/257 r 15.100

19.101 Payment into court where damages claimed

If, in the third party claim process, the claimant claims damages from the bailiff or from the enforcement creditor, or the enforcement creditor claims damages from the bailiff,—

- (a) the person from whom damages are claimed may pay money into court to satisfy that claim; and
- (b) the payment must be made in the same manner and has the same effect as if the person claiming damages were the plaintiff in a proceeding and the person from whom damages are claimed were the defendant.

Compare: SR 1992/109 r 662; SR 2009/257 r 15.101

Writs of arrest

19.102 Application for writ

- (1) An application for a writ of arrest and an affidavit in support of it must be in form 84.
- (2) The applicant must deposit a sum that the Judge or a Registrar thinks reasonable to cover the costs and expenses of arrest.
- (3) The costs and expenses of arrest are costs in the proceeding.

Compare: SR 1992/109 r 663; SR 2009/257 r 15.102

19.103 Form of writ, and procedure

- (1) A writ of arrest must be in form 85, and may be addressed to any bailiff or constable.
- (2) The bailiff or constable must, on executing the writ, deliver to the defendant a notice, signed by the Judge or a Registrar, in form 86.
- (3) If the defendant gives bail for his or her attendance at the hearing, it may be by bond in form 87.
- (4) In default of bail being given, the warrant of remand may be in form 88.
- (5) If the defendant consents to a summary hearing, the consent may be in form 89.

Compare: SR 1992/109 r 664; SR 2009/257 r 15.103

Proceedings by and against executors and administrators

19.104 Costs where executor sues and fails

If the plaintiff in a proceeding is an executor or administrator and the plaintiff fails, any costs awarded to the defendant must, unless the court otherwise orders, be levied on the goods of the plaintiff.

Compare: SR 1992/109 r 665; SR 2009/257 r 15.104

19.105 Judgment and enforcement against executor or administrator

- (1) If the court gives judgment against an executor or administrator sued in his or her capacity as an executor or administrator, the judgment must record that it is given against the defendant in that capacity.
- (2) Enforcement on the judgment is, subject to this rule, limited to assets of the estate of the deceased in the hands of the executor or administrator.
- (3) If the executor or administrator satisfies the court that he or she has no assets, or insufficient assets, in his or her hands to satisfy the claim, the court may give judgment that the amount, or as the case may require, the balance of the amount, be levied on the assets of the estate that, from then on, come into the hands of the executor or administrator.

- (4) If the executor or administrator unnecessarily denies the claim or unsuccessfully alleges that he or she has no assets, then, in addition to the other remedies available, the court may order that the amount awarded for costs be levied against the executor or administrator personally.

Compare: SR 1992/109 r 666; SR 2009/257 r 15.105

19.106 Assets after judgment

- (1) If judgment has been given under rule 19.105(3),—
- (a) the plaintiff may apply to the court on notice for an order in respect of the assets in question; and
 - (b) the court may make an order in form 90 if it appears that, since judgment, any assets of the estate have come into the hands of the executor or administrator.
- (2) A copy of the order must be served on the executor or administrator.

Compare: SR 1992/109 r 667; SR 2009/257 r 15.106

Miscellaneous provisions relating to transmission and authentication of documents, etc

19.107 How documents may be sent

- (1) The following provisions apply for the purposes of this Part and Part 6 of the Act:
- (a) a requirement to send or provide a document or notification is met if the document is delivered, left, or sent in any of the ways specified in section 108A(1)(a) to (c) of the Act;
 - (b) a record of anything that is required to be kept or made may be kept or made by electronic means;
 - (c) a document or notification may be sent, given, provided, or made by electronic means if the recipient has provided a compatible address for service for the purposes of receiving the document or notification by electronic means.
- (2) The following provisions of Part 6 (service) apply for the purposes of this Part:
- (a) rule 6.2 (service of copies);
 - (b) rule 6.7 (service under agreement):

- (c) rule 6.8 (substituted service):
 - (d) rule 6.9 (notices to be given by Registrar):
 - (e) rule 6.16 (personal service on unincorporated societies):
 - (f) rule 6.17 (personal service on partnership or apparent partnership):
 - (g) rule 6.26 (service of other documents outside New Zealand):
 - (h) rule 6.29 (service through official channels):
 - (i) rule 6.30 (service in convention countries).
- (3) The following provisions of Part 6 do not apply for the purposes of this Part:
- (a) rule 6.1 (methods of service):
 - (b) rule 6.4 (personal service on spouses or partners):
 - (c) rule 6.5 (service at address for service):
 - (d) rule 6.6 (service by means of post office box, document exchange, fax, or email):
 - (e) rule 6.10 (proof of service):
 - (f) rule 6.11 (personal service):
 - (g) rule 6.12 (personal service on New Zealand corporations):
 - (h) rule 6.13 (personal service in New Zealand on foreign corporations):
 - (i) rule 6.14 (personal service on Australian corporations, partnerships, and attorneys):
 - (j) rule 6.15 (personal service in Australia on foreign corporations):
 - (k) rule 6.18 (personal service on attorney or agent of absentee):
 - (l) rule 6.19 (service on representatives):
 - (m) rule 6.20 (service on solicitor):
 - (n) rule 6.21 (service of statement of claim on certain days void):
 - (o) rule 6.22 (failure to give address for service):
 - (p) rules 6.23 to 6.25 (service outside New Zealand):
 - (q) rule 6.27 (notice to defendant served outside New Zealand):
 - (r) rule 6.28 (service outside New Zealand):
 - (s) rule 6.31 (time for filing defence).

- (4) This rule overrides Part 6.

Compare: SR 2009/257 r 15.107

19.108 Authentication of documents

- (1) A document filed in the court must be authenticated by the person responsible for its content.
- (2) A document issued or sent by the court that is not sealed must be authenticated by a judicial officer or by an officer of the court who is authorised to do so.
- (3) A person responsible for the content of a document authenticates the document by—
 - (a) signing and dating the document; or
 - (b) any means that adequately identifies that person and the date of authentication.
- (4) A warrant may be authenticated in the manner provided in subclause (3) or by a Registrar entering the particulars of the warrant into a computer system accessible to a constable or a bailiff.

Compare: SR 2009/257 r 15.108

Part 20

Applications in equity and under statutes

Subpart 1—Special cases

20.1 Types of proceedings

This Part applies to—

- (a) proceedings in which the relief claimed is wholly within the equitable jurisdiction of the court;
- (b) any proceeding by a person affected by a mortgage or charge (whether legal or equitable) of an interest in land for the purpose of determining—
 - (i) the person's rights or obligations under the mortgage or charge; or
 - (ii) the exercise or purported or threatened exercise of any right or power alleged to arise out of the mortgage or charge;
- (c) any other proceeding to which the court directs that this Part applies.

Compare: SR 2009/257 r 5.1

20.2 Application of this Part to proceedings under Industrial and Provident Societies Act 1908

- (1) This Part also applies to proceedings in which the relief is claimed solely under the Industrial and Provident Societies Act 1908 but subject to any rules of the relevant society made under that Act.
- (2) Nothing in this rule prevents a person who is otherwise able to claim relief by filing an originating application under Part 6 from doing so, but in that case nothing in this Part applies to that proceeding.

Compare: SR 2009/257 r 5.2

20.3 This Part subject to rules under other Acts

The application of this Part to a proceeding brought under an Act is subject to any rules in force under that Act.

Compare: HCR 18.3

20.4 Commencement of proceedings

- (1) A proceeding under this Part must be—
 - (a) commenced by statement of claim; and
 - (b) accompanied by an application for directions as to service under rule 20.7.
- (2) The application of this Part to a proceeding does not prevent the commencement of that proceeding by originating application if it is eligible to be so commenced under subpart 2 of this Part, in which event this Part does not apply.
- (3) Rule 1.9, with all necessary modifications, applies to a proceeding under this Part.

Compare: HCR 18.4

*Special provisions concerning pleadings,
directions, and affidavits*

20.5 Naming of defendants in cases involving deceased estates or trusts

- (1) This rule applies to a proceeding that—
 - (a) involves a deceased estate or a trust; and
 - (b) is not commenced by the personal representative of the deceased person or the trustee of the trust.

- (2) The only defendant that may be named in the statement of claim is the personal representative or the trustee.
Compare: HCR 18.5(1), (2)

20.6 Persons served by direction of court need not be named as defendant

A person who becomes a defendant to a proceeding by being served under a direction of the court made under rule 20.8 need not be named as defendant.

Compare: HCR 18.6

20.7 Applications for directions as to service

- (1) This rule applies when—
- (a) the law requires the making of an application for directions as to service; or
 - (b) the plaintiff is in doubt regarding the persons on whom the statement of claim should be served; or
 - (c) an order is sought that any person represent any other person or class of persons who should be served; or
 - (d) the court directs that the plaintiff should apply to the court under this rule.
- (2) The plaintiff must apply to the court without notice for directions as to service and for any orders for representation that may be required.
- (3) In support of the application, the plaintiff must provide (by affidavit or otherwise) the information that may be necessary to enable the court to decide what persons or classes of persons are interested in, or may be adversely affected by, the relief sought by the plaintiff and by what means the interests of each such person or class of persons may be adequately represented.
- (4) The application must specify the directions sought and be accompanied by a memorandum by the plaintiff's solicitor or counsel stating why the directions are sought.

Compare: HCR 18.7

20.8 Orders giving directions as to service

- (1) On an application under rule 20.7, the Judge may make any orders for service or representation that the Judge thinks just.

- (2) If, in a proceeding involving an incapacitated person or a minor, the Judge considers it is not necessary to appoint a litigation guardian, the Judge may make orders with regard to the representation of that person, without the appointment of a litigation guardian under rule 4.35.
- (3) Every order for directions as to service or for representation made under this rule must be set out in the notice of proceeding in accordance with rule 5.26.

Compare: HCR 18.8

20.9 Proceeding without service

- (1) This rule applies to a statement of claim that need not be served because of an enactment or a direction of a Judge.
- (2) The facts alleged in the statement of claim must be verified by or on behalf of the plaintiff by an affidavit (which may be appended to the statement of claim or filed separately) stating that, so far as they relate to matters within the personal knowledge of the person making the affidavit, they are true, and, so far as they relate to matters not within that person's personal knowledge, the person believes them to be true.
- (3) Despite subclause (2), the Judge may require any fact not within the personal knowledge of the person to be proved by the affidavit of a person who has such personal knowledge.

Compare: HCR 18.9

20.10 Time for serving affidavit in support of appearance

- (1) If a defendant in any proceeding to which this Part applies files an appearance in lieu of a statement of defence, the defendant may, at the time of serving the defendant's appearance, without leave, and at any time afterwards with leave of the court, serve the defendant's affidavits in support of any matters referred to in the appearance.
- (2) These rules apply to affidavits filed under subclause (1) as though they were affidavits filed by a plaintiff in support of a statement of claim.

Compare: HCR 18.11

20.11 Statement of defence to be filed

- (1) No affidavit may be filed by a defendant in opposition to the claim of the plaintiff unless the defendant has filed and served a statement of defence to the claim or an appearance.
- (2) Affidavits filed by any party after a statement of defence or appearance has been filed must be confined to matters put in issue by pleadings or by the appearance.
- (3) Subclause (1) is subject to rule 20.10.
Compare: HCR 18.12

*Evidentiary requirements***20.12 Evidence generally by agreed statement of facts or affidavit**

- (1) Unless a Judge otherwise directs, evidence in a proceeding to which this Part applies must be given—
 - (a) by means of an agreed statement of facts in accordance with rule 9.48; or
 - (b) by affidavit in accordance with rules 9.58 to 9.79.
- (2) Unless a Judge otherwise directs, evidence must be given orally in a proceeding in which relief by way of specific performance is sought.
- (3) Subclause (1) applies to a proceeding in respect of which a direction has been given under subclause (2).
Compare: HCR 18.15

Subpart 2—Originating applications**20.13 Application of this subpart**

- (1) An application to the court under any of the following enactments must be filed as an originating application under this subpart:
 - (a) sections 3, 8, 12, 13, and 20 of the Adoption Act 1955;
 - (b) sections 8, 9, 19, and 20, of the Alcoholism and Drug Addiction Act 1966;
 - (c) Arbitration Act 1996 (other than a proceeding to enforce an award by way of action—*see* rule 20.101);
 - (d) section 72A of the Arms Act 1983;
 - (e) Auctioneers Act 1928;

- (f) sections 126, 130, 156, 158, 227, 330, and 381 of the Building Act 2004:
 - (g) section 62 of the Civil Aviation Act 1990:
 - (h) Criminal Proceeds (Recovery) Act 2009:
 - (i) sections 9 and 10 of the Criminal Records (Clean Slate) Act 2004:
 - (j) sections 52, 58(1), and 78(1) of the Crown Minerals Act 1991:
 - (k) section 23(3) of the Defamation Act 1992:
 - (l) sections 95D, 96, and 180 of the Electoral Act 1993:
 - (m) Fencing Act 1978:
 - (n) section 32 of the Gas Act 1992:
 - (o) section 126 of the Health Act 1956:
 - (p) section 105 of the Land Transport Act 1998:
 - (q) section 12 of the Layby Sales Act 1971:
 - (r) section 18(2)(c) of the Marriage Act 1955:
 - (s) section 14(4) of the Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - (t) sections 9, 12, and 16 of the Minors' Contracts Act 1969:
 - (u) sections 313 to 318, 332 to 343, and 357 of the Property Law Act 2007:
 - (v) Secondhand Dealers and Pawnbrokers Act 2004:
 - (w) sections 153(1), 154(1), 157(1)(b), 158(1), 159(1), 160(2)(c), and 163(1) of the Search and Surveillance Act 2012:
 - (x) section 16 of the Tuberculosis Act 1948.
- (2) An application to the court under an enactment that expressly provides for the application to be made by originating application must be filed as an originating application under this subpart.
 - (3) A party may apply without notice for permission to start a proceeding by originating application under this subpart, and the court may, if the court thinks just, permit the proceeding to start in that way. The proposed originating application must be filed with the application for permission.
 - (4) This subpart applies to any originating application subject to the Act under which the application is made and any regulations or rules made under that Act.

- (5) Despite subclause (1)(c), a second or subsequent application to the court under the Arbitration Act 1996 concerning the same arbitration, whether brought by the plaintiff or the defendant, must be made by interlocutory application in the same proceeding as the first application.

Compare: SR 2009/257 r 6.1

20.14 Commencing proceedings

A proceeding that may be commenced by originating application is commenced when the originating application is filed in the proper registry, as determined under rule 5.1, or when the court gives permission under rule 20.13(3).

Compare: SR 2009/257 r 6.2

20.15 Memorandum relating to filing and address for service

- (1) At the end of the originating application there must be a memorandum stating the matters set out in rule 5.47.
- (2) The memorandum may be in the form of one of the paragraphs of the statements in HCF G 10.

Compare: HCR 19.8

20.16 Heading of documents

- (1) The heading of a document presented for filing in a proceeding commenced by originating application must be in HCF G 1.
- (2) However, if there is neither a defendant nor a respondent to the proceeding, the heading must be in the following form:

In the matter of [*title of Act*]

and

In the matter of [*full name, place of residence, occupation*]

Compare: HCR 19.9

20.17 Application of rules relating to interlocutory applications

- (1) The following rules concerning interlocutory applications apply with all necessary modifications to proceedings commenced by originating application:
- (a) rule 7.12 (contents, form, and filing of interlocutory application);
- (b) rule 7.13 (affidavit to be filed with application):

- (c) rule 7.14 (filing by post):
 - (d) rule 7.15 (service of application and supporting affidavit):
 - (e) rule 7.16 (application without notice):
 - (f) rule 7.17 (notice of opposition to application):
 - (g) rule 7.18 (affidavit to be filed with notice of opposition):
 - (h) rule 7.19 (affidavit in reply):
 - (i) rule 7.22 (rules governing affidavits):
 - (j) rule 7.23 (statements of belief in affidavits):
 - (k) rule 7.33 (failure to attend):
 - (l) rule 7.35 (adjournment):
 - (m) rule 7.38 (interlocutory orders may be made subject to conditions):
 - (n) rule 7.39 (determination of application without notice):
 - (o) rule 7.40 (drawing up and sealing interlocutory order).
- (2) Subclause (1) is subject to the rules in this Part.
- (3) Despite subclause (1), rule 7.38, in its application to a proceeding commenced by originating application, is subject to the Act under which the originating application is made.
- Compare: HCR 19.10

20.18 Directions as to parties and conduct of applications

Rule 1.9 applies, with all necessary modifications, to an originating application.

Compare: HCR 19.11

20.19 Evidence

Despite rules 7.13 and 7.18, in a proceeding commenced by originating application, evidence may be taken orally on oath if the court, on application before or at the hearing, so directs.

Compare: HCR 19.13

20.20 Cross-examination of person making affidavit

Rule 9.64 applies to a proceeding commenced by originating application.

Compare: HCR 19.14

20.21 Applications for directions as to service

Rules 20.6 and 20.7 apply to originating applications.

Compare: SR 2009/257 r 6.4

**Subpart 3—Proceedings under Harassment
Act 1997**

20.22 Application of subpart

This subpart applies to proceedings under the Harassment Act 1997.

Compare: SR 2009/257 r 7.1

20.23 Interpretation

In this subpart, unless the context otherwise requires,—

Act means the Harassment Act 1997

associated respondent means—

- (a) a person against whom a restraining order applies as a result of a direction under section 18 of the Act; or
- (b) a person against whom a direction under section 18 of the Act is sought

interlocutory application does not include a main application, but includes an application that is ancillary to a main application

main application means—

- (a) an application, under section 9 of the Act, for a restraining order;
- (b) an application, under section 22 of the Act, for a variation of a restraining order;
- (c) an application, under section 23 of the Act, for a discharge of a restraining order

protected person means a person for whose protection a restraining order is made.

Compare: SR 2009/257 r 7.2

20.24 Construction

This subpart must be construed so as to—

- (a) ensure that the object of the Act (as set out in section 6) is attained; and

- (b) secure the just, speedy, simple, and inexpensive determination of proceedings under the Act.

Compare: SR 2009/257 r 7.3

20.25 Procedure and practice

- (1) This subpart prevails over any inconsistent practice in any proceeding under the Act.
- (2) When a Judge hears or determines a proceeding under the Act, the Judge may from time to time give directions that are not inconsistent with the Act or this subpart and that the Judge thinks proper for regulating the business of the court over which he or she presides.

Compare: SR 2009/257 r 7.4

20.26 Application of rules in other Parts

- (1) The following rules do not apply to proceedings under the Act:
 - (a) rule 1.11 (which relates to cases not provided for):
 - (b) rule 4.37 (which relates to notifications of certain appointments):
 - (c) rule 4.38 (which sets out the powers of a litigation guardian):
 - (d) rule 4.56 (which relates to striking out and adding parties):
 - (e) rule 5.1 (which is about how to determine the proper registry):
 - (f) rule 5.2 (which provides for transfers from the District Court to the High Court):
 - (g) rules 5.14 to 5.16 (which are about headings of court documents):
 - (h) rules 5.24 to 5.27 (which provide for various notices):
 - (i) rule 5.69 (which relates to extension of time for service):
 - (j) rule 5.70 (which relates to notice of service to the Registrar):
 - (k) rules 6.1 to 6.9 (which are about service):
 - (l) rule 6.11 (which relates to personal service):
 - (m) rules 7.1 to 7.4 (which are about case management and judicial settlement conferences):

- (n) rule 7.5 (which is about additional case management conferences):
 - (o) rule 7.7 (which relates to cancellation of a case management conference):
 - (p) rule 7.45 (which relates to applications for an injunction):
 - (q) rules 8.1 to 8.46 (which are about discovery, inspection, and interrogatories):
 - (r) rules 10.1 to 10.8 (which are about the mode of trial):
 - (s) Part 12 (which relates to summary judgment).
- (2) Unless excluded by subclause (1), the provisions of a rule in another Part apply to proceedings under the Act so far as they are applicable and with the necessary modifications.
- (3) The court must apply subclause (2) and the provisions of a rule to which subclause (2) applies in the manner the court thinks best calculated to—
- (a) ensure that the object of the Act (as set out in section 6) is attained; and
 - (b) promote the ends of justice.
- Compare: SR 2009/257 r 7.5

20.27 Cases not provided for

- (1) The court may give directions with respect to the procedure and practice to be followed in a particular case if the court is satisfied, in the circumstances of the particular case,—
- (a) that the provisions of the Act, or of these rules, or the practice of the court, do not make adequate provision for procedure or practice; or
 - (b) that difficulties have arisen or doubt exists as to the appropriate procedure or practice.
- (2) The directions must in the opinion of the court be necessary to—
- (a) ensure that the object of the Act (as set out in section 6) is attained; and
 - (b) promote the ends of justice.
- Compare: SR 2009/257 r 7.6

*Forms***20.28 Forms**

- (1) Any form authorised or directed to be used by this Part may be varied if the circumstances of a particular case require.
- (2) Without limiting the generality of subclause (1),—
 - (a) if a form authorised or directed to be used by this Part contains or specifies material that is inapplicable in the circumstances of a particular case, that material may be deleted or omitted from the completed form;
 - (b) if a form authorised or directed to be used by this Part contains explanatory material intended only for the information of a particular person, that material need not be included in a copy of the form that is required to be served on or given to another person to whom that material is not relevant.
- (3) If these rules do not authorise or direct the use of a particular form, the parties or the court may devise an appropriate form, using forms that are authorised or directed to be used by these rules as guides.

Compare: SR 2009/257 r 7.7

20.29 Headings

- (1) An application, notice, or order must have, on the first page, a general heading (which may be in form 91) that shows—
 - (a) the registry of the court in which the application or other matter is proceeding; and
 - (b) the distinguishing number of the application or other matter; and
 - (c) the name of the Act; and
 - (d) subject to subclause (2) and rule 20.35, the full name, address, and occupation of each party, so far as they are known to the party presenting the document for filing.
- (2) Unless any form authorised or directed to be used under these rules otherwise requires, and subject to rule 20.35, all other documents that are filed, issued, or served in a proceeding under the Act must have on the first page a general heading that complies with subclause (1), except that, in a case in which it is not necessary to distinguish between 2 or more persons,—

- (a) given names may be indicated by initials only;
- (b) addresses and occupations may be omitted.

Compare: SR 2009/257 r 7.8

Main applications

20.30 How to start proceedings

- (1) A proceeding under the Act must be started by filing a main application in the proper registry, as determined by rule 20.37.
- (2) A main application must be made on notice to every person intended to be affected by the order sought by the application.

Compare: SR 2009/257 r 7.9

20.31 Form of main application

- (1) An application for a restraining order must be in form 92.
- (2) An application, under section 22 of the Act, for a variation of a restraining order must be in form 93.
- (3) An application, under section 23 of the Act, for a discharge of a restraining order must be in form 93.

Compare: SR 2009/257 r 7.10

20.32 Documents accompanying main applications

- (1) A main application must be accompanied by—
 - (a) a notice of proceeding in form 94, which must be signed by the applicant or the applicant's solicitor or counsel; and
 - (b) an affidavit by or on behalf of the applicant, and containing (where applicable) the matters specified in rule 20.33.
- (2) A copy of a restraining order that is to be used in support of a main application filed in another court, or a copy of a copy of the restraining order, must be filed with the main application unless the Registrar otherwise directs.

Compare: SR 2009/257 r 7.11

20.33 Supporting affidavits

- (1) An affidavit accompanying a main application must set out the matters on which the application is based.

- (2) An affidavit accompanying an application for a restraining order must contain sufficient particulars to—
 - (a) show the grounds on which the applicant claims to be entitled to the order; and
 - (b) inform the court of the facts relied on in support of the application.
- (3) An affidavit to which subclause (2) relates must, in particular,—
 - (a) indicate the nature and history of the harassment that the applicant alleges the respondent has engaged in, including—
 - (i) an outline of the current situation or most recent incident; and
 - (ii) an outline of the behaviour that forms part of a pattern of behaviour from which protection is needed; and
 - (iii) details of any contact with Police about the behaviour from which protection is needed; and
 - (b) show why special conditions are regarded as necessary to protect the applicant from further harassment (if applicable); and
 - (c) show why a direction that the restraining order apply against an associated respondent is sought (if applicable), including—
 - (i) details of the way in which the respondent is encouraging or has encouraged the associated respondent's behaviour; and
 - (ii) an outline, similar to that required by paragraph (a), of the nature and history of the harassment that the applicant alleges the associated respondent has engaged in.
- (4) If an application is made under section 13 of the Act by a representative, an affidavit containing the matters specified in subclauses (2) and (3) may be made by any person who has knowledge of the relevant facts.

Compare: SR 2009/257 r 7.12

20.34 Number of copies to be filed

There must be filed with every main application the number of copies of the application and the accompanying documents that the Registrar directs is required for service.

Compare: SR 2009/257 r 7.13

20.35 Request that residential address be kept confidential

- (1) In this rule and in rule 20.36, **applicant** means—
 - (a) a person who applies for a restraining order; and
 - (b) a protected person who is a party to a proceeding under the Act.
- (2) An applicant who wishes that his or her residential address be kept confidential from the other party or parties must file a notice in form 95—
 - (a) stating the applicant's residential address; and
 - (b) requesting that the address be kept confidential.
- (3) On filing the notice in accordance with subclause (2), the applicant is not required to disclose the applicant's residential address in a document that is available to another party (despite any other rule).
- (4) To the extent that a document discloses any matter that is to be kept confidential in accordance with this rule or rule 20.36, the document may not be searched, inspected, or copied under Part 3 unless the court otherwise directs.
- (5) An applicant who changes his or her address from that shown in a notice filed in accordance with subclause (2) may, by notice in form 95, notify that change of address to the Registrar.
- (6) Neither this rule nor rule 20.36 affects the obligation to state an address for service in accordance with rule 5.47.

Compare: SR 2009/257 r 7.14

20.36 Request that address of applicant's solicitor be kept confidential

- (1) If an applicant's solicitor has instructed another solicitor (the **agent**) to act as the agent of the applicant's solicitor in the proceeding, the applicant may also request in the notice filed under rule 20.35(2) that the name and address of the applicant's solicitor be kept confidential.

- (2) When subclause (1) applies,—
 - (a) the name of the applicant’s solicitor is not required to be disclosed in a document that is available to another party if the name of the agent is disclosed in that document; and
 - (b) any rule requiring disclosure of the name of the applicant’s solicitor in a document that is available to another party may be complied with by disclosing the name of the agent.

Compare: SR 2009/257 r 7.15

20.37 Proper registry for filing main application

- (1) The **proper registry**, for the purposes of rule 20.30, is—
 - (a) the court nearest to the place where the applicant or one of the applicants resides; or
 - (b) the court nearest to the place specified by the applicant or one of the applicants as his or her address for service; or
 - (c) the court nearest to the place where the respondent or an associated respondent resides; or
 - (d) with the written consent of every respondent and every associated respondent, any other court.
- (2) Written consent given under subclause (1)(d) must be filed with the application.

Compare: SR 2009/257 r 7.16

20.38 Proceedings started in wrong court

- (1) The Registrar may refuse to file a proceeding that, in the Registrar’s opinion, is tendered for filing in the wrong court.
- (2) If the Registrar refuses to file a proceeding, the applicant may apply to a Judge for a direction that the applicant is entitled to file the proceeding in that court.
- (3) If a proceeding is started in the wrong court, a Judge may, on any terms and conditions that the Judge considers appropriate,—
 - (a) transfer the proceeding to the court in which it ought to have been started; or
 - (b) order that the proceeding continue in the court in which it was started.

- (4) No objection may be taken at the hearing or at a subsequent proceeding on the ground that the proceeding was filed in the wrong court.
- (5) Subclause (4) does not limit subclause (3).
Compare: SR 2009/257 r 7.17

20.39 Procedure on filing main applications

The Registrar must do the following if a main application is filed:

- (a) enter the application in the records of the court; and
- (b) fix a date and time for the hearing of the application, which must be as soon as practicable; and
- (c) inform all parties to the proceeding of the date and time fixed for the hearing; and
- (d) ensure that the respondent and any associated respondent is served with copies of—
 - (i) the application; and
 - (ii) the notice of proceeding; and
 - (iii) the affidavit accompanying the application.

Compare: SR 2009/257 r 7.18

Notice of defence

20.40 Requirement to file and serve notice of defence or address for service

- (1) A respondent or an associated respondent who intends to defend a main application must, not less than 5 working days before the date set for the hearing, file in court—
 - (a) a notice of defence in form 96; and
 - (b) an affidavit setting out sufficient particulars to indicate the grounds on which the defence is based, and sufficient information to inform the court of the facts relied on in support of the defence.
- (2) The notice of defence and affidavit required to be filed in court under subclause (1) must be served on the applicant not less than 5 working days before the date set for the hearing.
- (3) Subclauses (1) and (2) are subject to any directions given by a Judge in relation to any particular case.

- (4) A respondent who does not intend to defend a main application may give an address for service by filing in court a notice of that address and serving a copy on every other party to the proceeding.

Compare: SR 2009/257 r 7.19

20.41 Consequences of failure to file and serve notice of defence

- (1) If a respondent or an associated respondent fails to comply with rule 20.40(1) or (2), the court may—
- (a) strike out the defence; or
 - (b) allow the respondent or associated respondent to defend the application, or appear at the hearing, only on such terms as the court considers appropriate.
- (2) Subclause (1) does not limit any other power the court may exercise if a party fails to comply with these rules.

Compare: SR 2009/257 r 7.20

Representatives

20.42 Appointment of representative of certain minors

- (1) This rule applies to a minor who—
- (a) is under 16 years of age; or
 - (b) is 16 years of age and elects under section 11(2A) of the Act to make an application for a restraining order by a representative.
- (2) For the purposes of section 11 of the Act, a representative of a minor to whom this rule applies must be appointed as a litigation guardian of the minor under rule 4.35.
- (3) Rules 4.35, 4.36, and 4.41 to 4.45 apply to the minor, and every reference in those rules to an incapacitated person must be read as if it were also a reference to a minor.

Compare: SR 2009/257 r 7.21

20.43 Applications against minors

A minor who is aged 17 or over, or who has been married or in a civil union or de facto relationship, who wishes to defend an application against him or her for a restraining order must

defend the application on his or her own behalf, without a litigation guardian.

Compare: SR 2009/257 r 7.22

20.44 Appointment of representative of person unable or unwilling to take proceeding

Rules 4.41 to 4.46 apply to a representative appointed under section 13 of the Act and to the person on whose behalf the representative was appointed as if each reference in those rules—

- (a) to a litigation guardian were a reference to the representative; and
- (b) to an incapacitated person were a reference to the person on whose behalf the representative was appointed.

Compare: SR 2009/257 r 7.23

20.45 Effect of minor turning 17, marrying, or entering into civil union

- (1) If a minor in relation to whom a representative has been appointed turns 17 years or marries or enters into a civil union before turning 17, all subsequent steps must be taken in the minor's name.
- (2) If the minor continues to prosecute or defend the proceeding, he or she is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she had started it or had become a party to it at a time when he or she was not a minor.

Compare: SR 2009/257 r 7.24

20.46 Effect of ceasing to be unable or unwilling to take proceedings

- (1) A party on whose behalf a representative was appointed under section 13 of the Act and who ceases to be a person to whom that section applies must take all subsequent steps in the proceeding in the party's own name.
- (2) A party who continues to take steps in the proceeding after he or she ceases to be a person to whom section 13 of the Act applies is liable for all the costs of the proceeding (including solicitor and client costs) in the same manner as if he or she

had started it or had become a party to it when he or she was not a person to whom that section applied.

Compare: SR 2009/257 r 7.25

Service

20.47 Personal service of applications

- (1) A main application and the documents required under the Act or under this Part to accompany the application must be served personally on every person who is required to be served with the application and those documents.
- (2) Subclause (1) is subject to rule 20.50.
- (3) Service of the application must be made—
 - (a) not less than 15 working days before the day of the hearing of the application, if service is effected in New Zealand; or
 - (b) not less than 21 working days before the day of the hearing of the application, if service is effected out of New Zealand.

Compare: SR 2009/257 r 7.26

20.48 Main applications served by Registrar

- (1) The Registrar must serve or cause to be served, without delay, every main application under the Act unless this Part otherwise provides.
- (2) Any other document required to be served for the purpose of any proceeding under the Act—
 - (a) must be served by the Registrar if a Judge so directs:
 - (b) in the absence of a direction under paragraph (a), may be served by the Registrar.
- (3) The Registrar may authorise service of a document that he or she is required to serve under this rule to be effected by—
 - (a) a bailiff; or
 - (b) a constable, if—
 - (i) no bailiff is available to serve the document; or
 - (ii) the court or the Registrar considers it appropriate in the circumstances; or
 - (c) a solicitor for a party; or
 - (d) a solicitor acting as agent for that solicitor; or

- (e) a person employed or engaged by a party or by either solicitor.

Compare: SR 2009/257 r 7.27

20.49 Parties may not effect service

Personal service of a document may not be effected by a party to the proceeding, but the party may be present when service is effected.

Compare: SR 2009/257 r 7.28

20.50 Substituted service

If for any sufficient reason service of a document cannot be effected in the manner specified by this Part, the court or a Registrar may give any direction provided for by rule 6.8 (Substituted service) or make any order provided for by that rule.

Compare: SR 2009/257 r 7.29

Conferences

20.51 Power of Judge to call conference

- (1) For the purpose of ensuring that every application under the Act may be determined in a just, expeditious, and economical manner, a Judge may at any time, either on application by either party or their solicitors or counsel or without an application by any of them, on any terms the Judge thinks fit, direct the holding of a conference of—
 - (a) the parties; or
 - (b) the solicitors or counsel representing the parties.
- (2) The Judge must preside over the conference and may adjourn the conference from time to time and from place to place.
- (3) The solicitor or counsel representing any party may attend either in the place of the party or with the party, if the conference is held under subclause (1)(a).
- (4) Any party who is not represented by a solicitor or counsel may attend the conference, if the conference is held under subclause (1)(b).

Compare: SR 2009/257 r 7.30

20.52 Orders and directions

- (1) At any conference held under rule 20.51, the Judge presiding may make any orders and give any directions as appear best adapted—
 - (a) to ensure that the object of the Act (as set out in section 6) is attained; and
 - (b) to secure the just, expeditious, and economical disposal of the application under the Act.
- (2) Subclause (1) includes (without limitation) the power to—
 - (a) settle the issues to be determined;
 - (b) direct by whom and within what time any affidavit or other document must be filed;
 - (c) require any party to make admissions in respect of questions of fact, and, if that party refuses or fails to make an admission in respect of any question of fact, require that party (subject to the direction of the Judge hearing the application) to bear the costs of proving that question at the hearing;
 - (d) shorten, extend, or fix a time for the filing of any document or the doing of any other thing;
 - (e) require further or better particulars of any facts or other circumstances connected with the application;
 - (f) fix a time and place for the hearing of the proceeding;
 - (g) give any consequential directions that may be necessary.
- (3) The court may do the following if a party fails to comply with an order or a direction given or made under this rule:
 - (a) if the party failing to comply with the order or direction is the applicant, order the proceeding to be dismissed or stayed until the order is complied with;
 - (b) if the party failing to comply with the order or direction is not the applicant, order that the party be allowed to defend or to appear at the hearing only on any terms the court considers appropriate;
 - (c) take the failure into account in exercising the court's power to make an order as to costs.
- (4) Subclause (3) does not limit any other power the court may exercise where a party fails to comply with an order or direction.
Compare: SR 2009/257 r 7.31

*Amendments***20.53 Amendment before service**

- (1) The Registrar may, on the written request of the applicant at any time before the service of an application, amend the application filed in the court.
- (2) The Registrar may, on the written request of the respondent, or any associated respondent, at any time before service of a notice of defence or a notice of opposition, amend the notice filed in court.

Compare: SR 2009/257 r 7.32

*Transfer of proceeding or hearing***20.54 Transfer of proceeding**

The court or a Registrar may order that a proceeding filed in a registry of the court be transferred to another registry of the court if the court or, as the case requires, the Registrar is satisfied that the proceeding can be more conveniently or fairly dealt with in that other registry.

Compare: SR 2009/257 r 7.33

20.55 Transfer of hearing

The court or a Registrar may order that the hearing of an application filed in a registry of that court be transferred to another registry of the court if the court or, as the case requires, the Registrar is satisfied that the application can be more conveniently or fairly heard in that other court.

Compare: SR 2009/257 r 7.34

20.56 Transfer with or without application

- (1) The court or a Registrar may order a transfer under rule 20.54 or 20.55—
 - (a) on the court's or, as the case requires, the Registrar's own initiative; or
 - (b) on the application of a party on not less than 3 working days' notice.
- (2) The applicant may ask the court to review a decision of the Registrar to decline an application to transfer a proceeding or

hearing, and in that case the court may make any decision on the application that it thinks fit.

- (3) If an order is made for transfer of a proceeding or hearing,—
 - (a) the order must be endorsed on the application; and
 - (b) the Registrar must cause notice of the transfer to be given to all parties.

Compare: SR 2009/257 r 7.35

20.57 Procedure on transfer of proceeding

- (1) If an order is made under rule 20.54 for the transfer of a proceeding,—
 - (a) the Registrar of the registry of the court in which the order is made must send to the Registrar of the other registry all the documents in his or her custody relating to the proceeding; and
 - (b) the Registrar of the registry of the court to which the proceeding is transferred must enter the proceeding in the records of that registry.
- (2) On transfer, the proceeding continues as if it had been originally filed in the court to which it has been transferred.
- (3) This rule applies with any necessary modifications to the transfer of a proceeding to the High Court under section 43 of the District Courts Act 1947.

Compare: SR 2009/257 r 7.36

20.58 Procedure on transfer of hearing

- (1) If an order is made under rule 20.55 for the transfer of a hearing,—
 - (a) the Registrar of the registry of the court in which the application is pending must—
 - (i) send to the Registrar of the other registry all the documents in his or her custody relating to the proceeding; and
 - (ii) note the records of the court accordingly; and
 - (b) the Registrar of the registry in which the proceeding is to be heard must make an appropriate entry in the records of the court.

- (2) For the purposes of the hearing, the application must be dealt with as if it had been filed in the registry of hearing.
- (3) When the hearing is concluded,—
 - (a) the Registrar of the registry of hearing must return all the documents relating to the proceeding, including every order that has been made in that proceeding, to the Registrar of the registry from which the documents were sent; and
 - (b) the Registrar to whom the documents are returned must record every order made in the proceeding in the records of the court.

Compare: SR 2009/257 r 7.37

Form of restraining order

20.59 Form of restraining order

A restraining order must be in form 97.

Compare: SR 2009/257 r 7.38

Availability of records for criminal proceedings

20.60 Transfer of information to criminal court

- (1) In this rule, **harassment offence** means an offence against—
 - (a) section 8 of the Act; or
 - (b) any other enactment in any case if the offence—
 - (i) is committed by a person against whom a restraining order is in force, or in respect of whom a proceeding on an application for a restraining order is pending, at the time the offence is committed; and
 - (ii) is committed against a person for whose protection the restraining order was made or has been applied for, as the case may be; and
 - (iii) consists of or includes a specified act within the meaning of section 4 of the Act.
- (2) This rule applies if, in the course of a criminal proceeding in respect of a harassment offence, there is reason to believe that—
 - (a) the defendant in that criminal proceeding is or has been a respondent or an associated respondent to a proceed-

- ing (the **civil proceeding**) under the Act for a restraining order; and
- (b) information relating to the civil proceeding may be relevant to the criminal proceeding, including (without limitation) for the purposes of assisting with the preparation of a probation officer's report under section 26 of the Sentencing Act 2002.
- (3) When this rule applies, the court dealing with the criminal proceeding, or a Registrar of that court, may request the Registrar of the registry of the court in which the civil proceeding was brought to supply either or both of the following:
- (a) information about the current status of the civil proceeding;
 - (b) a copy of any order made in the civil proceeding.
- (4) A Registrar to whom a request is made under subclause (3) must, without delay, provide to the requesting court or Registrar as much of the information requested as the requested Registrar has available to him or her.
- Compare: SR 2009/257 r 7.39

Interlocutory applications

20.61 Interlocutory applications

Subpart 2 of Part 7 applies with the necessary modifications to interlocutory applications made in proceedings under the Act.

Compare: SR 2009/257 r 7.40

20.62 Applications for extending time used as delaying tactic

No order extending time may be made under rule 1.23 if it appears to the court or the Registrar, as the case may be, that the application for the order is made with the principal object of delaying the proceeding to the detriment of the other party.

Compare: SR 2009/257 r 7.41

Subpart 4—Proceedings under subpart 6 of
Part 8 of Local Government Act 2002

20.63 Application of this subpart

This subpart applies to proceedings under subpart 6 of Part 8 of the Local Government Act 2002.

Compare: SR 2009/257 r 8.1

20.64 Interpretation

In this subpart, unless the context otherwise requires, **Act** means the Local Government Act 2002.

Compare: SR 2009/257 r 8.2

20.65 Application of rules in other Parts

- (1) The following rules do not apply to proceedings under the Act:
 - (a) rule 5.1 (which is about how to determine the proper registry):
 - (b) rule 5.24 (which is about a notice requiring further particulars or a more explicit pleading):
 - (c) rule 7.45 (which is about an application for an injunction):
 - (d) rule 8.34 to 8.46 (which is about interrogatories):
 - (e) rules 10.1 to 10.8 (which are about the mode of trial):
 - (f) Part 12 (which is about summary judgment).
- (2) Unless excluded by subclause (1), the provisions of a rule in another Part apply to proceedings under subpart 6 of Part 8 of the Act so far as they are applicable and with the necessary modifications.
- (3) For the purpose of applying a rule in accordance with subclause (2), **pleading** includes an application for a removal order and a notice of objection.

Compare: SR 2009/257 r 8.3

Removal orders

20.66 Starting proceeding

- (1) A proceeding is started by filing an application for a removal order under section 215 of the Act in the court that is nearest to the property to which the application relates.

- (2) The proper heading of an application is form 2.

Compare: SR 2009/257 r 8.4

20.67 Application for removal order

- (1) An application for a removal order must be in form 98.
- (2) The application must state whether the applicant seeks—
 - (a) removal or alteration of all or part of the fence, vegetation, or structure;
 - (b) a consequential order, including an order that entry be made onto any portion of land adjoining the property to which the application relates;
 - (c) directions as to service under clause 2 of Schedule 14 of the Act.
- (3) An application for the alteration of all or part of the fence, structure, or vegetation—
 - (a) must state the nature of that alteration; and
 - (b) may have a drawing or plan of the alteration attached to it.
- (4) An affidavit made by or on behalf of the applicant, setting out the matters on which the application is based, must be filed with every application for a removal order.
- (5) The affidavit must contain sufficient information to inform the court of—
 - (a) the grounds on which the application is based; and
 - (b) the facts relied on in support of the application; and
 - (c) the reasons for seeking the removal of all or part of a fence, a structure, or vegetation (if applicable); and
 - (d) the reasons for seeking the alteration of all or part of a fence, a structure, or vegetation (if applicable); and
 - (e) the reasons why entry onto a portion of land adjoining the property is necessary to enforce a removal or alteration (if applicable).

Compare: SR 2009/257 r 8.5

20.68 Procedure on applications for removal order

- (1) The Registrar must fix a date and time for a hearing if an appearance is necessary or required for an application for a removal order, and must inform the applicant accordingly.

- (2) The Registrar must immediately inform the applicant of the terms of any order made on an application for which no appearance is necessary or required.

Compare: SR 2009/257 r 8.6

20.69 Removal orders

A removal order must be in form 99.

Compare: SR 2009/257 r 8.7

20.70 Service of removal order on respondent

- (1) After a removal order is made, the respondent must, without delay, be served with a copy of—
- (a) the removal order; and
 - (b) the application for the order; and
 - (c) each affidavit filed in support of the application.
- (2) Despite subclause (1), a Judge or Registrar may direct that the removal order is to be served on the respondent without 1 or more of the copies required by subclause (1)(b) and (c), but in that case must direct that the respondent be given the opportunity to collect the documents not served on the respondent from a specified place.
- (3) Subclause (1) is subject to any direction given by the court under clause 2 of Schedule 14 of the Act.

Compare: SR 2009/257 r 8.8

20.71 Service of removal order on other parties

- (1) After a removal order is made, all persons (other than the respondent) entitled to object under section 217(1) of the Act must, without delay, be served with a copy of—
- (a) the removal order; and
 - (b) a notice in form 100.
- (2) A copy of the application for the order and the affidavit or affidavits filed in support of the application need not be served on a person to whom subclause (1) applies, but the Registrar must, on request, make copies of those documents available to that person.

- (3) Subclause (1) is subject to any direction given by the court under clause 2 of Schedule 14 of the Act.

Compare: SR 2009/257 r 8.9

20.72 Mode of service of removal order

- (1) A removal order must be served personally unless subclause (2) or (3) applies.
- (2) A removal order may be served on a respondent who is the occupier of the property to which the order relates by leaving a copy of the order in a prominent position at the property.
- (3) If for any sufficient reason a removal order cannot be served in the manner specified by this rule, the court or a Registrar may give any direction provided for by rule 6.8 (Substituted service) or make any order provided for by that rule.
- (4) This rule is subject to any direction given by the court under clause 2 of Schedule 14 of the Act as to the manner in which service is to be effected on a specified party.
- (5) This rule does not apply to service of an order that confirms, varies, or discharges the removal order following the making of an objection.

Compare: SR 2009/257 r 8.10

Notices of objection

20.73 Notice of objection

- (1) A notice of objection must be in form 101.
- (2) A notice of objection must state whether the objector seeks a discharge of the removal order or whether a specified variation of the order would meet the objector's concerns.
- (3) An affidavit must accompany every notice of objection and must contain sufficient information to inform the court of—
- (a) the facts relied on in support of the objection; and
 - (b) the facts relied on in support of the proposed variation of the order (if applicable).
- (4) If a party who wishes to object to a removal order fails to file a notice of objection in form 101 accompanied by an affidavit described in subclause (3), the court may—
- (a) strike out the objection; or

- (b) if an oral hearing is to be held to decide the objection, allow the party wishing to object to appear at the hearing only on any terms that the court considers appropriate.
- (5) Subclause (4) does not limit any other power the court may exercise where a party fails to comply with these rules.

Compare: SR 2009/257 r 8.11

20.74 Manner in which notice of objection to be dealt with

- (1) The Registrar must, if an oral hearing is to be held under clause 7 of Schedule 14 of the Act, notify every person who has been served with a copy of the removal order that he or she is entitled to—
 - (a) appear at the hearing, either in person or by his or her solicitor or counsel; or
 - (b) make submissions in writing in relation to the objection.
- (2) The Registrar must, if the court has determined to decide an objection made by a person described in clause 3(a)(iii) to (v) of Schedule 14 of the Act without an oral hearing, notify the applicant and every other person entitled to object under section 217(1) of the Act that he or she may make written submissions in relation to the objection.
- (3) A written submission made in response to a notice given under subclause (1)(b) or (2) must be lodged with the court within 5 working days after the date on which the Registrar notifies the objector under either of those provisions, or within any longer period that the court may specify in the notice.
- (4) The Registrar must ensure that a copy of the objection accompanies a notice given under subclause (1) or (2) if a copy of the objection has not previously been served on the person to whom the notice is given.
- (5) A Registrar may exercise the powers of the court under—
 - (a) clause 7(3) of Schedule 14 of the Act (to determine whether objections by persons other than the respondent or the owner are to be decided with or without an oral hearing); and
 - (b) clause 7(4) of Schedule 14 of the Act (to decide whether hearings are to be heard together).

Compare: SR 2009/257 r 8.12

*Interlocutory applications***20.75 Interlocutory applications**

Subpart 2 of Part 7 applies with the necessary modifications to interlocutory applications made in proceedings under subpart 6 of Part 8 of the Act.

Compare: SR 2009/257 r 8.13

20.76 Applications for extending time used as delaying tactic

No order extending time may be made under rule 1.23 if it appears to the court or the Registrar, as the case may be, that there is no genuine reason or excuse for the application.

Compare: SR 2009/257 r 8.14

*Entry of land to enforce removal orders***20.77 Notice where land entered to enforce removal order**

- (1) The notice of entry required to be given under section 221(1)(d) of the Act by an applicant to the relevant owner and occupier,—
 - (a) following entry of the property to which the order relates, must be in form 102;
 - (b) following entry of a property adjoining the property to which the order relates, must be in form 103.
- (2) A notice referred to in subclause (1) may be served—
 - (a) on the occupier by leaving the notice in a prominent position on the property that was entered;
 - (b) by posting the notice to the owner's address, if the owner is not the occupier.

Compare: SR 2009/257 r 8.15

**Subpart 5—Proceedings under Construction
Contracts Act 2002**

20.78 Application of this subpart

This subpart applies to—

- (a) an application for review; and
- (b) an application for an adjudicator's determination to be enforced.

Compare: SR 2009/257 r 9.1

20.79 Interpretation

In this subpart, unless the context otherwise requires,—

Act means the Construction Contracts Act 2002

application for an adjudicator's determination to be enforced—

- (a) means an application for an adjudicator's determination to be enforced by entry as a judgment in accordance with subpart 2 of Part 4 of the Act; and
- (b) if the adjudicator has recorded in the adjudicator's determination his or her approval for the issue of a charging order in respect of a construction site, includes an application, under section 76(2)(a) of the Act, for the issue of that charging order

application for review means an application made by an owner who is not a respondent under section 52 of the Act for a review of—

- (a) an adjudicator's determination that the owner is jointly and severally liable with the respondent to make a payment to the claimant; and
- (b) an adjudicator's approval for the issue of a charging order in respect of the construction site

party to the relevant adjudication proceedings—

- (a) means the claimant or the respondent in those proceedings; and
- (b) if the context requires, includes the owner of the construction site who was not a respondent in, but was a party to, those proceedings

Regulations means the Construction Contracts Regulations 2003

relevant adjudication proceedings means the adjudication proceedings that relate to—

- (a) an application for review; or
- (b) an application for an adjudicator's determination to be enforced.

Compare: SR 2009/257 r 9.2

20.80 Application of other rules and practice of court

The other Parts of these rules, the District Courts Act 1947, and the general practice of the court (including the procedure and practice in chambers) apply if this Part applies except in so far as they are modified by, or inconsistent with, the Act or this Part.

Compare: SR 2009/257 r 9.3

*Review of adjudicator's determination in respect
of owner who is not respondent*

20.81 Form of application for review

An application for review must be made by filing a notice in form 4 of Schedule 1 of the Regulations within the time set out in section 53(2) of the Act.

Compare: SR 2009/257 r 9.4

20.82 Where to file application for review

An application for review must be filed in the registry of the court nearest to the place at which the relevant adjudication proceedings were held.

Compare: SR 2009/257 r 9.5

20.83 Procedure after filing of application for review

- (1) After an application for review is filed,—
 - (a) the Registrar must—
 - (i) enter the application in the records of the court; and
 - (ii) refer the application to a Judge without delay; and
 - (iii) endorse on the copy of the application to be served by the applicant under paragraph (b) the date and time that has been fixed for the hearing; and
 - (b) the applicant must serve a copy of the application that is endorsed with the date and time fixed for the hearing, and of any accompanying documents, on—
 - (i) the respondent; and
 - (ii) any other party to the relevant adjudication proceedings.

- (2) It is not necessary to serve a copy of the application for review on the adjudicator whose determination is the subject of the application, unless the court otherwise directs.

Compare: SR 2009/257 r 9.6

20.84 Notice of opposition to application for review

- (1) If a party to the relevant adjudication proceedings intends to oppose the application for review, that party must, within 15 working days after being served with the application,—
- (a) file in the court a notice of opposition; and
 - (b) serve a copy of the notice and of any accompanying documents on—
 - (i) the applicant; and
 - (ii) any other party to the relevant adjudication proceedings.
- (2) The notice must state—
- (a) the party's intention to oppose the application; and
 - (b) the grounds of opposition.
- (3) It is not necessary to serve a copy of the notice on the adjudicator whose determination is the subject of the application, unless the court otherwise directs.

Compare: SR 2009/257 r 9.7

20.85 Adjudicator to forward documents relating to adjudication proceedings on request

An adjudicator whose determination is the subject of an application for review must, on the request of the Registrar, forward to the court all documents in his or her custody relating to the determination within 5 working days after receiving the request.

Compare: SR 2009/257 r 9.8

Enforcement of adjudicator's determination

20.86 Application for adjudicator's determination to be enforced

- (1) An application for an adjudicator's determination to be enforced must—
- (a) be in form 104; and

- (b) be accompanied by a copy of the adjudicator's determination that is sought to be enforced.
- (2) The application must be filed in the registry of the court nearest to the place at which the relevant adjudication proceedings were held.

Compare: SR 2009/257 r 9.9

20.87 Service

Either before or immediately after the filing of an application for an adjudicator's determination to be enforced, the plaintiff must serve a copy of the application and of any accompanying documents on—

- (a) the defendant; and
- (b) any other party to the relevant adjudication proceedings.

Compare: SR 2009/257 r 9.10

20.88 Opposition to application for adjudicator's determination to be enforced

- (1) A defendant who wishes to oppose the application for an adjudicator's determination to be enforced must, within 15 working days after the date on which a copy of the application is served on the defendant,—
 - (a) file an application in the court seeking an order that enforcement of the adjudicator's determination be refused; and
 - (b) serve a copy of the application and of any accompanying documents on—
 - (i) the plaintiff; and
 - (ii) any other party to the relevant adjudication proceedings.
- (2) The application must be in form 105.

Compare: SR 2009/257 r 9.11

Subpart 6—Proceedings in admiralty

20.89 Application of this subpart

This subpart applies to proceedings in the District Court in its admiralty jurisdiction.

Compare: SR 2009/257 r 10.1

20.90 Interpretation

In this Part, unless the context otherwise requires,—

Act means the Admiralty Act 1973

Registrar means a Registrar of the District Court, and includes a Deputy Registrar.

Compare: SR 2009/257 r 10.2

20.91 Application of other rules and practice of court

The other Parts of these rules, the District Courts Act 1947, and the general practice of the court (including the procedure and practice in chambers) apply if this Part applies except in so far as they are modified by, or inconsistent with, the Act or this Part.

Compare: SR 2009/257 r 10.3

20.92 Preliminary acts to be filed in collision cases

In an action arising out of a collision between ships, unless the court otherwise orders on the application of any intended party to the proceedings,—

- (a) the plaintiff must file a preliminary act when filing the statement of claim and the notice of proceeding;
- (b) the defendant must file a preliminary act when filing the statement of defence.

Compare: SR 2009/257 r 10.4

20.93 Meaning of preliminary act

A **preliminary act** is a document containing a statement of the following particulars:

- (a) the names of the ships that came into collision and their ports of registry;
- (b) particulars (referring to the period immediately before the collision) of the person in command, the persons on the bridge, and the persons keeping a lookout on the plaintiff's ship (if the plaintiff is filing a preliminary act) and on the defendant's ship (if the defendant is filing a preliminary act);
- (c) the date and time of the collision;
- (d) the place of the collision;
- (e) the direction and force of the wind:

- (f) the state of the weather, including visibility:
- (g) the state, direction, and force of the tidal or other current:
- (h) the ship's course and speed through the water when the other ship was first seen or immediately before any measures were taken in connection with its presence, whichever was the earlier:
- (i) the lights (if any) carried by the ship:
- (j) the distance and bearing of the other ship if and when its echo was first observed by radar:
- (k) the distance, bearing, and approximate heading of the other ship when first seen:
- (l) the other ship's light or combination of lights (if any) when first seen:
- (m) the other light or combination of lights (if any) of the other ship that were subsequently seen before the collision, and the time of the sighting:
- (n) the alterations (if any) made to the ship's course and speed after the earlier of the 2 times referred to in paragraph (h) up to the time of the collision, and the times of those alterations, and the measures (if any), other than alterations of course or speed, taken to avoid the collision, and the times of those measures:
- (o) the parts of each ship that first came into contact and the approximate angle between the 2 ships at the moment of contact:
- (p) the sound signals or other signals (if any) given, and the times of those sound signals or other signals:
- (q) the sound signals or other signals (if any) heard or seen from the other ship, and the times of hearing or seeing those sound signals or other signals.

Compare: SR 2009/257 r 10.5

20.94 Notice of filing of preliminary act to be served on other parties

A party filing a preliminary act must, within 3 working days of filing, serve notice of the filing on every other party.

Compare: SR 2009/257 r 10.6

20.95 Registrar to seal and file preliminary acts

- (1) The Registrar must seal every preliminary act and file it in a closed envelope (which must be sealed with the official stamp of the court and show the date of filing), and, unless the court otherwise orders, the envelope must not be opened until a date has been fixed for a hearing and a consent to the opening of the preliminary acts is filed.
- (2) The consent must be signed by each of the parties who has filed a preliminary act.

Compare: SR 2009/257 r 10.7

20.96 Failure to lodge preliminary act

- (1) This rule applies if, in any proceeding referred to in rule 20.92, a defendant fails within the prescribed period to lodge a preliminary act and the plaintiff has lodged a preliminary act.
- (2) When this rule applies, subpart 2 of Part 15 (judgment by default) applies as if the defendant's failure to lodge a preliminary act within that period were a failure to file and serve a statement of defence within the period fixed by or under these rules for doing those things.

Compare: SR 2009/257 r 10.8

20.97 Actions for limitation of liability

- (1) If, in any proceeding in the admiralty jurisdiction of the court, a party seeks relief under Part 7 of the Maritime Transport Act 1994, that relief must be sought in the High Court under subpart 4 of Part 25 of the High Court Rules (HCR 25.25 to 25.28).
- (2) The court may—
 - (a) proceed to a hearing on liability; or
 - (b) stay the proceeding pending the outcome of the proceeding in the High Court; or
 - (c) order that the proceeding be transferred to the High Court.
- (3) Any order for the transfer of a proceeding to the High Court may be made subject to any conditions that the court thinks fit requiring that the defendant give security for the costs of the proceeding in the High Court.

Compare: SR 2009/257 r 10.9

20.98 Inspection of ship or other property

- (1) The court may, on the application of any party, make an order for the inspection by a court expert, or by any party or witness, of any ship or other property, whether real or personal, if the inspection is necessary or desirable for the purpose of obtaining full information or evidence in connection with any issue in the proceeding.
- (2) Nothing in subclause (1) limits the court's powers under the District Courts Act 1947 or these rules.

Compare: SR 2009/257 r 10.10

Subpart 7—Entry of award as judgment
under article 35 of Schedule 1 of Arbitration
Act 1996

20.99 Interpretation

In this subpart, unless the context otherwise requires,—

Act means the Arbitration Act 1996

arbitral tribunal has the same meaning as in section 2(1) of the Act

Schedule 1 means Schedule 1 of the Act.

Compare: HCR 26.1; SR 2009/257 r 11.1;

20.100 Entry of judgment where all parties agree

- (1) All parties to an award who agree that it may be entered as a judgment may apply to a Registrar by letter signed by all parties or their solicitor or counsel requesting the entry of the award as a judgment.
- (2) The Registrar must enter the award as a judgment as soon as practicable—
 - (a) if he or she is satisfied that all parties have agreed; and
 - (b) if he or she is satisfied with respect to the matters set out in article 35(2) of Schedule 1.

Compare: HCR 26.20; SR 2009/257 r 11.2

20.101 Entry of judgment in other cases

- (1) If rule 20.100 does not apply, a party to an award who wishes to enforce it may—
 - (a) enforce it by action; or

- (b) apply to the court for entry of the award as a judgment.
- (2) A party electing the method set out in subclause (1)(a) commences a proceeding by filing a statement of claim under rule 5.28.
- (3) A party electing the method set out in subclause (1)(b) must follow the procedure set out in rules 20.102 to 20.107.
Compare: HCR 26.21; SR 2009/257 r 11.3

20.102 Application for entry of award as judgment

- (1) The party to the award must file an originating application in the proper registry of the court, as determined in accordance with rule 5.1.
- (2) The originating application—
 - (a) must be in form 106; and
 - (b) must not name the arbitral tribunal as a defendant.
- (3) Rule 5.47 applies to the originating application.
Compare: HCR 26.22; SR 2009/257 r 11.4

20.103 Affidavit to be filed in support

At the same time as the originating application is filed, the plaintiff must file an affidavit proving the matters set out in article 35(2) of Schedule 1 of the Arbitration Act 1996.

Compare: HCR 26.23; SR 2009/257 r 11.5

20.104 Service

- (1) The plaintiff must serve copies of both the originating application and the affidavit on the defendant either before or immediately after filing the originating application.
- (2) Subclause (1) does not apply if the plaintiff obtains an order under rule 20.105.
Compare: HCR 26.24; SR 2009/257 r 11.6

20.105 Entry as judgment without notice in exceptional circumstances

- (1) In exceptional circumstances, the plaintiff may, on or after the filing of the originating application, file an application without notice for an order that the award be entered as a judgment.

- (2) The application must be supported by an affidavit that sets out the exceptional circumstances that justify the order sought.
- (3) The court may determine the application without notice and make the order sought if satisfied that the order is required in the interests of justice.
- (4) If the court makes the order sought, the court may also direct that the award not be enforced before the order has been served on the defendant and a period specified by the court has expired after that service.

Compare: HCR 26.25; SR 2009/257 r 11.7

20.106 Entry as judgment if defendant takes no steps

- (1) The Registrar must enter the award as a judgment as soon as practicable if—
 - (a) the defendant has failed to file and serve an application in accordance with rule 20.107 within the time specified in subclause (2); and
 - (b) the plaintiff makes an application for the entry.
- (2) The time is whichever of the following applies:
 - (a) 10 working days after the plaintiff's application is served on the defendant; or
 - (b) a period fixed by the court of less than 10 working days after the order fixing that period is served on the defendant.
- (3) An application to the Registrar under subclause (1)(b)—
 - (a) is made by letter signed by the plaintiff or his or her solicitor or counsel requesting the entry of the award as a judgment; and
 - (b) need not be served on the defendant.
- (4) An application for an order under subclause (2)(b) may be made without notice.
- (5) An order under subclause (2)(b) does not take effect unless it is served on the defendant together with the documents referred to in rule 20.104(1).
- (6) Subclause (5) applies even if the originating application to which the order relates has already been served on the defen-

dant, and in that case the previous service of the application ceases to have effect when the order is made.

Compare: HCR 26.26; SR 2009/257 r 11.8

20.107 Opposition to entry as judgment

- (1) This rule applies if a defendant wishes to oppose the originating application.
- (2) The plaintiff's application is stayed pending the determination of an application under this rule.
- (3) The defendant must file and serve an application seeking an order for refusal of recognition and enforcement in terms of article 36 of Schedule 1.
- (4) The application referred to in subclause (3) must be—
 - (a) filed and served within the time specified in rule 20.106(2); and
 - (b) treated as if it were an originating application under subpart 2; and
 - (c) disposed of in accordance with subpart 2; and
 - (d) determined at the same time as the plaintiff's application to enforce the award by entry as a judgment.
- (5) To avoid doubt, an application under this rule is concerned with the recognition or enforcement of an award and not with any question of law arising out of the award that may be determined by the High Court or Court of Appeal under clause 5 of Schedule 2 of the Act.

Compare: HCR 26.27; SR 2009/257 r 11.9

Part 21

Penal and disciplinary provisions

21.1 Proceedings on complaint of assault or rescue

- (1) This rule applies if—
 - (a) it is alleged that any person has—
 - (i) assaulted an officer of the court while that officer was carrying out his or her duties; or
 - (ii) rescued or attempted to rescue any goods seized under the process of the court; and
 - (b) the alleged offender has not been taken into custody and brought before a Judge.

- (2) The Registrar must issue a summons to the alleged offender in form 107.
- (3) The summons must be served on the alleged offender personally at least 2 working days before the day of hearing appointed in the summons.
- (4) An order made under section 18 or 87 of the Act must be in form 108.

Compare: SR 2009/257 r 16.1

21.2 Misconduct or neglect of officers

- (1) If a complaint is made against an officer of the court under section 19 or 105 of the Act,—
 - (a) the Registrar must issue a summons in form 109 or 110; and
 - (b) the summons must be served on the officer personally at least 15 working days before the day of hearing appointed in the summons.
- (2) An order made under section 19 of the Act must be in form 111.
- (3) An order made under section 105 of the Act must be in form 112.

Compare: SR 2009/257 r 16.2

21.3 Witnesses and costs

On the hearing of a summons or a summary hearing under section 18, 19, 87, or 105 of the Act,—

- (a) witnesses may be summoned and their attendance enforced in the same manner as on the hearing of a proceeding; and
- (b) the Judge may make an order as to costs as the Judge thinks fit.

Compare: SR 2009/257 r 16.3

21.4 Non-attendance, etc, of witness

An order made under section 54 of the Act imposing a fine on a person summoned as a witness, or on a person in court who refuses to be sworn or to give evidence, must be in form 113.

Compare: SR 2009/257 r 16.4

21.5 Notice before imposing or enforcing fine

- (1) In any case to which section 54 of the Act applies, the court may without delay impose the penalty provided in that section.
- (2) Before or after imposing a fine on any person under section 54 of the Act, the Judge may direct the Registrar to give notice to that person stating that if the person has any cause to show why the fine should not be or should not have been imposed, he or she may show cause in person, by affidavit, or otherwise, on a day to be named in the notice.
- (3) The court, after considering the cause shown, may make any order it thinks fit in the interests of justice.

Compare: SR 2009/257 r 16.5

21.6 Contempt of court

- (1) A warrant committing an offender to prison under section 112 of the Act must be in form 114.
- (2) An order imposing a fine on that offender must be in form 115.

Compare: SR 2009/257 r 16.6

21.7 Enforcement of fine

- (1) If a fine is not paid in accordance with the order of a Judge, the Registrar must immediately report the matter to the Judge.
- (2) An order of a Judge under section 114 of the Act for the enforcement of a fine under the Summary Proceedings Act 1957 must be in form 116.

Compare: SR 2009/257 r 16.7

Part 22 Revocation

22.1 Revocation

The District Courts Rules 2009 (SR 2009/257) are revoked.

Schedule 1
Transitional and savings provisions

r 1.6

Part 1
Provisions

1 Proceeding not allocated short trial or judicial settlement conference under 2009 rules

- (1) Subclause (2) applies if, immediately before the commencement of these rules,—
- (a) a proceeding has been started by filing a notice of claim under subpart 2 of Part 2 of the District Courts Rules 2009 (**the 2009 rules**); and
 - (b) no statement of claim or originating application relating to the proceeding has been filed under rule 2.7 of the 2009 rules; but
 - (c) the proceeding has not been the subject of a decision under rule 2.40 of the 2009 rules as to whether to allocate a short trial.
- (2) If this subclause applies, the proceeding continues to be subject to the 2009 rules—
- (a) unless a decision under rule 2.40 of the 2009 rules is required; or
 - (b) if a decision under rule 2.40 of the 2009 rules is required, until the point when that decision is required.
- (3) If, under rule 2.40 of the 2009 rules, a decision would, but for this clause, be required in respect of the proceeding,—
- (a) a first case management conference under rule 7.2 of these rules must instead be held; and
 - (b) the proceedings must thereafter be dealt with under these rules.

2 Proceeding not started by notice of claim or where statement of claim or originating application filed under rule 2.7 of 2009 rules

For every proceeding pending immediately before the commencement of these rules (other than a proceeding to which clause 1(1) or 3 or clauses 5 to 10 of this schedule applies or a proceeding transferred from the High Court under section 46 of the Act),—

Part 1—*continued*

- (a) a first case management conference under rule 7.2 of these rules must be held unless the proceeding has already been allocated a mode of trial or is or has been subject to a judicial settlement conference; and
- (b) the first case management conference under rule 7.2 of these rules must be held on a date that is the later of—
 - (i) a date as soon as practicable after the commencement of these rules; and
 - (ii) 50 working days after the filing of the proceeding under the 2009 rules; and
- (c) the proceeding must thereafter be dealt with under these rules.

3 Proceeding in which application for summary judgment made under 2009 rules

- (1) A proceeding in which an application for summary judgment under rule 2.43 of the 2009 rules was made before the commencement of these rules continues to be subject to the 2009 rules (other than rules 2.43.7 and 2.43.8 of the 2009 rules) until the summary judgment application is finally decided.
- (2) If the court dismisses an application for summary judgment to which subclause (1) applies,—
 - (a) a first case management conference under rule 7.2 of these rules must be held as soon as is practicable; and
 - (b) the proceeding must thereafter be dealt with under these rules.

4 Modification to first case management conference procedure

- (1) Rule 7.2(1) and (2) of these rules does not apply to the first case management conference for a proceeding to which clause 2 or 3 of this schedule applies.
- (2) Rule 7.2(3) of these rules applies to such a proceeding as if “; and” were added to and the following paragraph were inserted after paragraph (e):

Part 1—*continued*

- “(f) whether and to what extent the parties be ordered to file and serve pleadings and other documents conforming to the requirements of these rules.”

5 Proceeding with judicial settlement conference pending

- (1) Subclause (2) applies to a proceeding in which, before the commencement of these rules,—
- (a) the court or Registrar has—
- (i) decided under rule 2.40 of the 2009 rules not to allocate a short trial; or
- (ii) ordered a judicial settlement conference under the 2009 rules; but
- (b) the judicial settlement conference has not taken place.
- (2) If this subclause applies, rule 7.3 of these rules applies to the judicial settlement conference and, subject to subclauses (3) and (4), the proceeding must thereafter be dealt with under these rules.
- (3) If a judicial settlement conference convened for the proceeding under rule 7.3 of these rules, in accordance with subclause (2) of these rules, does not result in the parties settling the claim or issue, then, unless the party has already done so or unless a Judge directs otherwise,—
- (a) within 10 working days of a judicial settlement conference, the plaintiff must file and serve on each defendant a statement of claim complying with Part 5 of these rules:
- (b) within 5 working days of service of the statement of claim, each defendant must file and serve a statement of defence and any counterclaim or statement of claim against a third party, or statement of cross-claim against another defendant (each document complying with Part 5 of these rules):
- (c) within 5 working days of service of any document referred to in paragraph (b), the party served must file and serve any defence to a counterclaim, reply, defence to third party claim, or defence to cross-claim provided for by Part 5 of these rules.

Part 1—*continued*

- (4) Pleadings must be served on and by each fourth or subsequent party and filed in accordance with the directions of the Judge who convenes the judicial settlement conference.

6 Proceeding with judicial settlement conference completed but no mode of trial allocated

If a judicial settlement conference convened for the proceeding under the 2009 rules does not result in the parties settling the claim or issue but no simplified trial or full trial has been allocated before the commencement of these rules,—

- (a) a second case management conference under rule 7.4 of these rules must be held; and
- (b) the second case management conference must be held on a date that is the later of—
 - (i) a date as soon as practicable after the commencement of these rules; and
 - (ii) 30 working days after the filing of the proceeding; and
- (c) the proceeding must thereafter be dealt with under these rules.

7 Proceeding transferred from High Court

Until a final judgment is given in the proceeding, the 2009 rules continue to apply to a proceeding transferred under section 46 of the Act in respect of which a judicial directions conference under rule 2.48 of the 2009 rules was held before the commencement of these rules.

8 Interlocutory application

An interlocutory application made under the 2009 rules (whether before, on, or after the commencement of these rules) continues to be subject to the 2009 rules until a final decision on the application is made.

Part 1—*continued***9 Proceeding with trial pending**

A proceeding in respect of which the court has allocated a short trial, simplified trial, or full trial before the commencement of these rules continues to be subject to the 2009 rules until a final judgment has been given in the proceeding.

10 Appeals

An appeal to the District Court brought under Part 14 of the 2009 rules before the commencement of these rules continues to be subject to the 2009 rules until a final judgment has been given in the proceeding.

11 Proceeding in which final judgment has been given

Any proceeding in which a final judgment has been given (whether before, on, or after the commencement of these rules) is subject on and after that commencement, in all respects (for example, for the purposes of enforcement) to these rules.

12 Other cases

Except as provided in this schedule, a proceeding started under the 2009 rules that is not completed before the commencement of these rules is, on and after the commencement of these rules, subject in all respects to these rules.

13 Application for directions

- (1) A party to a proceeding may apply to the court for directions—
 - (a) if the party is in doubt as to the applicable rules; or
 - (b) for a variation of the transitional provisions of this schedule in the particular proceeding.
- (2) On an application under subclause (1), the court may make such order or give such direction as it thinks just.

14 References to District Court

- (1) Every reference in these rules to the court or the District Court or a registry of the court is, until the establishment of a unified District Court, to be read as a reference to a District Court or the appropriate District Court, as the case may require.

Part 1—*continued*

- (2) Subclause (1) does not apply in any reference to the court, if, in the context in which it is used, the expression refers to the High Court, the Court of Appeal, or the Supreme Court.

15 References to Family Court

Every reference in these rules to the Family Court is, until the establishment of a unified Family Court, to be read as a reference to a Family Court or the appropriate Family Court, as the case may require.

16 References to Youth Court

Every reference in these rules to the Youth Court is, until the establishment of a unified Youth Court to be read as a reference to a Youth Court or the appropriate Youth Court, as the case may require.

17 Time allocations

- (1) Costs in a proceeding commenced after the coming into force of these rules must be determined in accordance with these rules.
- (2) Costs in a proceeding commenced before the coming into force of these rules must be determined,—
- (a) in the case of a step in the proceeding taken before the coming into force of these rules, in accordance with the 2009 rules;
 - (b) in the case of a step in the proceeding taken after the coming into force of these rules, in accordance with these rules.
- (3) For the purposes of subclause (2), a step in a proceeding described in the first column of the table in Part 2 of this schedule is taken on the date appearing opposite that step in the second column of that table.

Part 2

Table

The dates on which steps taken for purposes of clause 17 are—

Step in proceeding	Date on which step taken
1 A step that requires the filing of a document or a number of documents	The date on which the document or the first of the documents is filed
2 Appearance in court or in chambers for each day or part of a day	The date of the actual appearance
3 Production of documents for inspection	The date on which the affidavit listing those documents is filed
4 Inspection of documents	The date on which the affidavit listing those documents is filed
5 Preparation for hearing	The first day of the hearing or, if the hearing does not eventuate, the hearing date allocated

Schedule 2 Forms

r 1.29

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Form 1 rr 5.26(2), 5.59(4), 12.4(5)
Notice of proceeding

In the District Court

[*Name of registry*]

No: [*number of proceeding*]

Under the [*name of Act under which 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)

Form 1—*continued*

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

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

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

*Select one.

This document notifies you that unless, within 25* working days after the date on which you are served with this notice, you file in the registry of this court a statement of your defence to the plaintiff's claim (a copy of which is served with this notice), the plaintiff may proceed to a hearing and judgment on the plaintiff's claim in your absence.

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.

*Substitute "30", in accordance with rules 4.14(2) and 6.24, if this notice is served outside New Zealand.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Include the following paragraph (and signature block) 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*)

Form 1—*continued*

*Select one.

Information for defendant(s)

Advice

- 1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—
 - (a) it can only carry on a proceeding in the court by a solicitor; and
 - (b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

- 2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.
- 3 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

- 4 If the last day for filing your statement of defence falls on a day on which the registry of the court is closed, you may file your statement of defence on the next day on which that registry is open.

Form 1—*continued*

- 5 *Omit this paragraph if it conflicts with a direction by the court.*
In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.
- 6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Counterclaim

- 7 If you have a counterclaim against the plaintiff, you must file a statement of that counterclaim in the registry of the court, and serve it on the plaintiff and on any other person against whom the same claim is made. This must be done within the same period of time you have for filing a statement of defence.

Witnesses

- 8 Summonses for the attendance of witnesses will be issued on application at the registry of the court.

Registry hours

- 9 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Add the following notice if the defendant is to be served overseas (other than in Australia under section 13 of the Trans-Tasman Proceedings Act 2010). If the defendant is to be served in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010, do not use the following notice, but use instead the information that section 15 of that Act requires to be served on the defendant (see form 1 of the Schedule of the Trans-Tasman Regulations and Rules 2013).

Form 1—*continued*

Information for defendant served overseas

Since you are resident outside New Zealand you are further notified that—

- 1 The plaintiff has commenced a proceeding against you in the District Court of New Zealand, claiming the relief specified in the attached statement of claim.
- 2 Although you are resident outside New Zealand, the plaintiff claims that the plaintiff can bring this proceeding against you in the District Court of New Zealand.
- 3 By New Zealand law, the District Court may exercise jurisdiction in certain classes of case even though the defendant is resident outside New Zealand.
- 4 [*Specify the particular provision(s) of rule 6.23 on which the plaintiff relies to serve the proceeding overseas.*]
- 5 In this case, the plaintiff claims: [*specify the acts alleged by the plaintiff to confer jurisdiction*].
- 6 Even though the court has jurisdiction to hear and decide this proceeding, it may decline to do so if it is satisfied that,—
 - (a) in all the circumstances, a country other than New Zealand is the most appropriate country in which the matters in dispute in the proceeding should be decided; and
 - (b) the plaintiff will have a fair opportunity to prove the plaintiff's claim and receive justice in that other country.
- 7 If you want to dispute the jurisdiction of the District Court or to defend the plaintiff's claim, you should either directly, or through a qualified legal adviser in the place where you are, send authority to a solicitor in New Zealand by airmail instructing that solicitor to act for you.

Form 2 rr 5.14(2), 18.9(1), 20.66(2)
General heading for documents filed in
proceeding

In the District Court

[*Name of registry*]

No: [*number of proceeding*]

Under the [*name of Act under which 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)

Form 3
Memorandum (general form)

r 5.26(4)

Advice

- 1 Although you do not have to employ a solicitor for the purpose of this proceeding, it is recommended that you consult a solicitor about this matter immediately. However, a company or other corporation that wants to defend this proceeding or appear at any hearing must consult a solicitor immediately because—
- (a) it can only carry on a proceeding in the court by a solicitor; and
 - (b) it cannot appear to conduct a proceeding except by counsel (unless there are exceptional circumstances).

Legal aid

- 2 If you cannot afford to meet the cost of the proceeding, you may be entitled to assistance under the Legal Services Act 2011 and regulations made under that Act.
- 3 *For this paragraph select the statement that applies.*

Statement A

The plaintiff is in receipt of legal aid for the purpose of this proceeding.

Statement B

The plaintiff is not in receipt of legal aid for the purpose of this proceeding.

Statement C

The plaintiff has applied for legal aid for the purpose of this proceeding.

Statement of defence

- 4 If the last day for filing your statement of defence falls on a day on which the registry of the District Court is closed, you may file your statement of defence on the next day on which that registry is open.
- 5 *Omit this paragraph if it conflicts with a direction by the court.*

Form 3—*continued*

In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January.

- 6 If you file a statement of defence, you must serve a copy of it on the plaintiff and on any other defendant who has given an address for service. This must be done within the same period of time you have for filing the statement of defence.

Counterclaim

- 7 If you have a counterclaim against the plaintiff, you must file a statement of that counterclaim in the registry of the court, and serve it on the plaintiff and on any other person against whom the same claim is made. This first must be done within the same period of time you have for filing a statement of defence.

Witnesses

- 8 Summonses for the attendance of witnesses will be issued on application at the registry of the District Court.

Registry hours

- 9 The registry hours of the court are from 9 am to 5 pm, except on court holidays.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 4

r 1.15(4)

Notice of intention to speak Māori

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

and

To *[names of parties to be served]***This document notifies you that** *[full name and address of party, counsel, or witness]* intends to speak Māori at—*Select the statement that applies.**Statement A*

All case management conferences and hearings relating to the above proceeding.

*Statement B*All case management conferences and hearings relating to the above proceeding held after *[specify particular case management conference or hearing after which the person wishes to speak Māori]*.*Statement C*The case management conference/the hearing relating to the above proceeding* to be held at *[specify details of particular case management conference or hearing at which the person wishes to speak Māori]*.

*Select one.

Date:

Signature:

(signature of party/solicitor/person intending to speak Māori*)

*Select one.

Notes

- 1 The Maori Language Act 1987 entitles the following persons to speak Māori in legal proceedings: the parties to the pro-

Form 4—*continued*

ceedings, witnesses, counsel, and, with the leave of the court, other persons.

- 2 If a person intends to speak Māori at all case management conferences and hearings relating to a proceeding or application, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the first case management conference or hearing, file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application.
- 3 If a person intends to speak Māori at all case management conferences and hearings after a particular case management conference or hearing, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the first case management conference or hearing at which the person intends to speak Māori, file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application.
- 4 If a person intends to speak Māori at a particular case management conference or hearing, the person (or, if the person is a witness, the party intending to call the person as a witness) must, at least 10 working days before the case management conference or hearing, file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application.
- 5 Failure to give notice of intention to speak Māori does not prevent a person speaking Māori at a case management conference or hearing, but the court may—
 - (a) adjourn the conference or hearing to enable the Registrar to arrange for an interpreter to be available at the adjourned case management conference or hearing; and
 - (b) treat the failure to give notice as a relevant consideration in an award of costs.

Form 5
Third party notice

rr 4.4, 4.10(2)

To [full name, place of residence, occupation]

This document notifies you that—

Claim by plaintiff against defendant

- 1 This proceeding has been brought by the plaintiff against the defendant, in which the plaintiff claims the relief set out in the plaintiff's notice of claim (copy attached), and service of this notice makes you a party to the proceeding. The defendant has/has not* filed a response to the claim.

*Select one.

Omit the following sentence if it does not apply.

A copy of that response is served with this document.

Claim by defendant against you

- 2 The defendant claims relief or a remedy against you in respect of, or arising out of, the plaintiff's claim. That relief or remedy and the grounds on which it is claimed are set out in the defendant's notice of claim (copy attached).

Can I dispute the claims made against the defendant and me?

- 3 Yes. If you want to dispute the plaintiff's claim against the defendant or the defendant's claim against you, you must, within 25* working days after the date on which you are served with this notice,—
- (a) file in the District Court at [place] your response to the plaintiff's claim or the defendant's claim, or both, as the case may be; and
 - (b) serve a copy of that response on the plaintiff and the defendant and on the other parties to the proceeding.

*Substitute "30", in accordance with rules 4.14(2) and 6.24, if this notice is served outside New Zealand.

What if I fail to dispute the claims?

- 4 If you do not file a response within the prescribed time,—
- (a) you will be treated as having admitted—

Form 5—*continued*

- (i) the plaintiff's claim against the defendant; and
- (ii) the defendant's right to the relief or remedy that the defendant claims against you; and
- (iii) the validity of any judgment that may be given in the proceeding, whether by consent, default, or otherwise; and
- (b) you will be bound by any judgment given, which may be enforced against you under the rules of court.

Hearing of proceeding

- 5 The hearing of the proceeding, if a hearing is necessary, will take place at [*place*] at a time to be fixed by the court.

Include the following sentence only if there is a court order.

This notice is issued under an order of the court made on [*date*].

Date:

Signature:

(defendant/solicitor for defendant or another person* authorised by rule 5.42 of the District Courts Rules 2014)

*Select one.

Form 6

rr 4.14(3), 4.19(2), 5.28(4),
5.49(4), 5.66(3), 8.4(1)

List of documents relied on

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

and

To *[name of other party or parties to proceeding]*This document lists and describes the documents relied on by the
[plaintiff/defendant/counterclaimant/other party]*

*Select one.

Item number	Title of document (if applicable)	Description of document
1		
2		
3		
4		
5		
6		

Signature of *[plaintiff/defendant/counterclaimant/other party*]*:

*Select one.

Full name and address:

*Position or office held:

Date:

*This only applies if you are signing on behalf of a registered company, a trust, a society, an incorporation, or an estate.

Form 7

r 4.21(1)

Notice to other defendant

To the [*specify which defendant, eg, second, third, etc*] defendant,
[*full name*]

This document notifies you that—

Claim against you

- 1 The [*specify which defendant*] defendant, [*full name*], claims the relief or remedy against you set out in the attached notice of claim. The grounds for claiming the relief or remedy are also set out in the notice of claim.

Your right to dispute claim

- 2 If you dispute the claim, you must, within 15 working days after the date on which you are served with this notice,—
- (a) file in the District Court at [*place*] your response to the claim; and
 - (b) serve a copy of that response on—
 - (i) the claiming defendant, [*full name*]; and
 - (ii) the plaintiff; and
 - (iii) any other party who has filed an address for service.

Date:

Signature:

(defendant/solicitor for defendant/[*another person authorised by rule 5.42 of the District Courts Rules 2014**])

*Select one.

Form 8

r 5.2.(1)

Notice requiring proceeding to be transferred
to High Court*Complete and insert the heading as set out in form 2.*

To the Registrar of the District Court at [*place*]
and

To [*name*], (plaintiff)

This document notifies you that the defendant, [*name*], objects to this proceeding being heard in the District Court, and applies for an order that the proceeding be transferred to the High Court.

Date:

Signature:

(defendant/solicitor for defendant*)

*Select one.

Form 9

r 5.2(2)

Notice of application for proceeding to be
transferred to High Court*Complete and insert the heading as set out in form 2.*

To the Registrar of the District Court at *[place]*
and

To *[full name]*, (plaintiff)

This document notifies you that the defendant, *[full name]*, objects to this proceeding being heard in a District Court and will apply to the District Court at *[place]* on *[date(s)]* for an order that the proceeding be transferred to the High Court on the grounds that an important question of law or fact/question of title to *[description of hereditament]** is likely to arise otherwise than incidentally.

*Select one.

Date:

Signature:

(defendant/solicitor for defendant*)

*Select one.

Form 10

r 5.2(3)

Order transferring proceeding to High Court

Complete and insert the heading as set out in form 2.

The court orders that on payment by the defendant of the sum of \$[*amount*] into court/on the defendant entering into a bond in the sum of \$[*amount*] in a form to be settled by the Registrar* as security for the costs of the proceeding in the High Court this proceeding be transferred, under section [*reference*] of the District Courts Act 1947, to the High Court of New Zealand at [*place*].

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 11

r 5.43(8)

Memorandum as to change of representation
and/or address for serviceTo the Registrar of the District Court at *[place]*

and

To *[name of other party or parties to proceeding]***This document notifies you that—***Statement A*The solicitor for the plaintiff/defendant/third party* is now
[name and address of solicitor and solicitor's firm, if any].

*Select one.

*Statement B*The plaintiff/defendant/third party* now acts in person in
place of *[name and address of previous solicitor and solicitor's firm, if any]*.

*Select one.

- 2 The address for service of the plaintiff/defendant/third party* is now *[address complying with definition of address for service in rule 1.4]*.

*Select one.

Date:

Signature*:

(plaintiff/defendant/third party†)

*If this document notifies a change of solicitor, it must be signed by the party personally or by the party's solicitor.

†Select one.

Form 12

r 5.47(2)

Memorandum to be attached to first document
filed by party

Select the statement that applies.

Statement A

This document is filed by the plaintiff/defendant/third party* in person. The address for service of the plaintiff/defendant/third party* is [address].

*Select one.

Statement B

This document is filed by [full name], solicitor for the plaintiff/defendant/third party*, of the firm [full name]. The address for service of the plaintiff/defendant/third party* is [address].

*Select one.

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

- (a) posted to the solicitor at [post office box address]; or
- (b) left for the solicitor at a document exchange for direction to [document exchange box number]; or
- (c) transmitted to the solicitor by fax to [fax number]; or
- (d) *Omit this paragraph if email service will not be accepted.*
emailed to the solicitor at [email address].

Statement C

This document is filed by [full name], solicitor for the plaintiff/defendant/third party*, of the firm [full name], whose postal address is [address]. The address for service of the plaintiff/defendant/third party* is [address].

*Select one.

The solicitor's agent in the proceeding is [full name].

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

- (a) posted to the solicitor at [post office box address]; or
- (b) left for the solicitor at a document exchange for direction to [document exchange box number]; or

Form 12—*continued*

- (c) transmitted to the solicitor by fax to [*fax number*]; or
- (d) *Omit this paragraph if email service will not be accepted.*
emailed to the solicitor at [*email address*].

Form 13

r 5.54

Appearance under protest to jurisdiction

Complete and attach the memorandum as set out in form 12

- 1 The defendant, [*name*], appears under protest to object to the jurisdiction of the court to hear and determine this proceeding.
- 2 The defendant's objection is based on the following grounds:
[*specify grounds*].

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

Form 14

r 5.54

Appearance for ancillary purpose

Complete and attach the memorandum as set out in form 12.

The defendant, *[name]*, does not oppose the plaintiff's claim but appears in order to be heard on the following matters: *[specify matters]*.

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

Form 15

r 5.54

Appearance reserving rights

Complete and attach the memorandum as set out in form 12.

The defendant, [name], does not oppose the plaintiff's claim but appears in order to reserve the defendant's rights in the event that another person becomes a party to this proceeding, or that a party takes a step in the proceeding that is against the defendant's interests.

Date:

Signature:

(solicitor/counsel* for defendant)

*Select one.

Form 16
Affidavit of service

r 6.10

I [full name, place of residence, occupation], swear—

- 1 On [day, date], I served the [party as described in the heading], [full name], with the following documents:
[List each document served, eg, statement of claim and notice of proceeding. If, under rule 6.10, a copy of a served document is not attached to the affidavit, the description of the document—
 - (a) must be sufficient to enable the document to be identified; and
 - (b) must include the date of the document (if the document bears a date)].
- 2 I served the documents on the [party as described in the heading] at [place] in New Zealand by [specify how documents were delivered, eg, personally].
- 3 I believe it was the [defendant or other party as described in the heading] that I served because—
Select the statement(s) that apply.

Statement A

the defendant/[party]* acknowledged that he/she* is the defendant.

*Select one.

Statement B

I know the defendant/[party]*.

*Select one.

Statement C

[Specify any other reason.]

- 4 Omit this paragraph if it does not apply.
True copies of the documents served are attached to this affidavit and marked “A” and “B”.

Signature of deponent:

Sworn at: [place, date]

Form 16—*continued*

(a solicitor of the High Court of New Zealand/Registrar/Deputy Registrar*)

*Select one.

Form 17

rr 7.12(4), 12.4(5)

Interlocutory application on notice

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

and

To *[name of party/parties to be served with this application]***This document notifies you that—**

- 1 The applicant, *[name]*, will on *[date]* apply to the court 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].
- 3 The application is made on reliance on *[specify any particular provision of an enactment, principle of law, or judicial decision relied on]*.

Date:

Signature:

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

*Select one.

Form 18

rr 7.12(4), 7.16(1)

Interlocutory application without notice

To the Registrar of the District 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]*.
- 2 The grounds on which each order is sought are as follows: *[specify concisely the grounds on which each order is sought]*.
- 3 The application is made in reliance on *[specify any particular provision of an enactment, principle of law, or judicial decision relied on]*.

I certify that this application complies with the rules. *

*This certificate may be dispensed with if a Judge so orders under rule 7.23(5). If dispensation is sought, the reasons for the absence of a lawyer's certificate must be stated.

Date:

Signature:

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

*Select one.

[Telephone number]

Form 19
Notice of opposition

rr 7.17(3), 12.9(1)

To the Registrar of the District Court at *[place]*
and

To *[name of applicant and any other party to be served with this notice]*

This document notifies you that—

- 1 The respondent, *[name]*, intends to oppose the interlocutory application by the plaintiff/defendant* dated *[date]*.
*Select one.
- 2 The respondent is opposed to the making of the order/the orders numbered *[specify numbers]* in the application*.
*Select one.
- 3 The grounds on which the respondent opposes the making of the order(s) are as follows: *[specify grounds concisely]*.
- 4 The respondent relies on *[specify any particular provision of an enactment, principle of law, or judicial decision relied on]*.

Date:

Signature:

(solicitor for respondent/counsel for respondent/respondent*)

*Select one.

Form 20
Interlocutory order

r 7.40(3)

To *[every party who has given an address for service and any other person affected by the order].*

- 1 The interlocutory application made by *[name]* on *[date]* was determined by Judge *[name]* on *[date]*.
- 2 *For this paragraph select the statements that apply.*

Statement A

The determination was made following a hearing held on *[date(s)]*. *[List names of counsel or solicitors who represented the respective parties at the hearing and state whether any party appeared in person at the hearing.]*

Statement B

The determination was made without a hearing.

Statement C

The determination was made with the consent of the parties.

- 3 The following order was/orders were* made: *[specify any orders made, numbering them if more than 1]*.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 21
Freezing order

r 7.45(3)

To the respondent [name]

- 1 The court has considered the applicant's application for a freezing order, and has heard [name of applicant or applicant's counsel] in support.
- 2 The court is satisfied, having regard to all the circumstances disclosed by affidavit evidence filed in support of the application, that there is a danger that judgment in favour of the applicant will be wholly or partly unsatisfied because the assets listed in paragraph 3 will be removed from New Zealand or otherwise dealt with.
- 3 This freezing order is made in respect of the following assets: [set out a comprehensive list, with a description adequate to identify each asset].
- 4 Subject to paragraph 5, this order restrains you from removing any of the assets listed in paragraph 3 from New Zealand, or from disposing of, dealing with, or diminishing the value of, those assets.
- 5 This freezing order does not prohibit you from dealing with the assets covered by the order for the purpose of—
 - (a) paying ordinary living expenses; or
 - (b) paying legal expenses related to the freezing order; or
 - (c) disposing of assets, or making payments, in the ordinary course of your business, including business expenses incurred in good faith.
- 6 *Include this paragraph only if the freezing order was made without notice to the respondent*

As the freezing order has been made without notice to you, it will have no effect after [state the particular date inserted by the court], unless on that date it is continued or renewed. On that date, you or your counsel are entitled to be heard by the court in opposition to the continuation or renewal of the order.
- 7 You may apply to the court by interlocutory application to discharge or vary the order. If you apply, you must give the applicant notice of not less than [specify period fixed by the court].

Form 21—*continued*

8 *Omit this paragraph if no undertaking has been required by the court.*

An undertaking as to damages given by the applicant is attached.

9 *[State any other special terms that the court has ordered.]*

10 This order does not affect anyone outside New Zealand until it is declared enforceable by a court in the relevant country (in which case it affects a person only to the extent that it has been declared enforceable) unless the person is—

- (a) a person to whom this order is addressed, or an officer of that person, or an agent appointed by power of attorney of that person; or
- (b) a person who—
 - (i) has been given written notice of this order at that person's residence or place of business within New Zealand; and
 - (ii) is able to prevent acts or omissions outside the jurisdiction of this court that constitute, or assist, a breach of this order.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 22
Affidavit of documents

r 8.15(3)

I, *[full name, place of residence, occupation]*, swear—

- 1 I am *[state which party you are (or the capacity in which you make the affidavit) and your authority to make the affidavit]*.
- 2 I make this affidavit under an order for standard discovery under rule 8.5/under an order for tailored discovery under rule 8.5* on *[date]* (the discovery order).

*Select one.

- 3 *[Specify the content of the discovery order in terms of paragraph (a), (b), or (c) of rule 8.12(2) and, if paragraph (c) applies, state the obligations imposed by the order.]*
- 4 I understand the obligations imposed by the discovery order.
- 5 In order to fulfil those obligations, I have diligently searched for all documents required to be discovered under the discovery order, and I have also taken the following particular steps: *[specify steps taken, for example, inquiries made of named persons]*.
- 6 In the Schedule of this affidavit, I list the documents that I am required to discover.
- 7 In Part 1 of the Schedule, I list the documents that are in my control and for which I claim neither privilege nor confidentiality.
- 8 *Include this paragraph if it applies, otherwise omit.*
In Part 2 of the Schedule, I list the documents that are in my control and for which I claim privilege and state in relation to each document the nature of the privilege that applies.
- 9 *Include this paragraph if it applies, otherwise omit.*
In Part 3 of the Schedule, I list the documents that are in my control and for which I claim confidentiality. I propose that inspection of these documents be restricted to *[name persons]* and that the following restrictions apply: *[specify proposed restrictions on inspection]*.
- 10 *Include this paragraph if it applies, otherwise omit*
In Part 4 of the Schedule, I list documents that are no longer in my control and state when, to the best of my knowledge and belief, each document ceased to be in my control and the persons who, to the best of my knowledge and belief, now have control of each document.

Form 22—*continued*

- 11 *Include this paragraph if it applies, otherwise omit*
In Part 5 of the Schedule, I list other documents known to me that have never been in my control but that I know would be discoverable if I had control of them.
- 12 To the best of my knowledge and belief, this affidavit is correct in all respects and carries out my obligations under the discovery order.

Sworn at: [*place, date*]

Before me: [*name, signature*]

(a solicitor of the High Court of New Zealand)

Form 23

r 8.34(3)

Notice to answer interrogatories

To *[name of party required to answer interrogatories]***This document notifies you that—**

- 1 The party giving notice, *[name of party giving notice]*, requires you to answer the interrogatories set out in paragraph 5 of this notice.
- 2 The requirement to answer interrogatories is made under rule 8.34 of the District Court Rules 2014. The interrogatories relate to matters in question in this proceeding between you and the party giving notice.
- 3 You must answer the interrogatories within a period of *[specify number]* working days. (The period starts on the first working day after you are served with the notice.)
- 4 *Include this paragraph if verification is required, otherwise omit.*
You are also required to verify your answers by affidavit.
- 5 The interrogatories that you are required to answer are as follows: *[specify interrogatories required to be answered, numbering them if more than 1]*.

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

Form 24

r 8.47(2)

Notice to admit facts

To [*name of party required to admit facts*]**This document notifies you that—**

- 1 The party giving notice [*name of party giving notice*], requires you to admit the facts set out in paragraph 4 of this notice. The admissions are for the purpose of this proceeding only.
- 2 The requirement is made under rule 8.47 of the District Courts Rules 2014.
- 3 If you refuse or neglect to admit the facts within 5 working days after the day on which you are served with this notice, you will have to pay the costs of proving the facts, unless a Judge orders otherwise.
- 4 The facts that you are required to admit are as follows: [*specify facts party is required to admit, numbering them if more than 1.*]

Date:

Signature:

(solicitor/counsel* for party giving notice)

*Select one.

Form 25

r 9.20(1)

Notice of time and place for examination

Complete and insert the heading as set out in form 2.

To [*name of party*]

This document notifies you that—

- 1 The defendant/plaintiff* has given notice that the defendant/plaintiff* wants to have the examination of [*names of persons to be examined*] taken at [*place, date, time*].

*Select one.

- 2 The defendant/plaintiff* will examine [*names of persons to be examined*] and you at [*place, date, time*].

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 26

r 9.23

Report of examiner

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

- 1 Under the order of this court made on *[date]* and rule 9.20 of the District Court Rules, I, *[full name and address of examiner]*, the examiner appointed by that order,—
- (a) duly appointed *[time, date]* as the time and *[address of place where examination to be held]* as the place where the persons named in the order were to be examined; and
- (b) notified the parties.
- 2 At the appointed time and place, the parties appeared by counsel, namely, *[name]* for the plaintiff and *[name]* for the defendant. The proceeding was adjourned until *[particulars of any adjournments]**.
- *Omit this sentence if proceeding not adjourned.
- 3 The examination of the witnesses named in the order was conducted before me in accordance with rule 9.20 of the District Court Rules on *[dates on which witnesses were examined]*.
- 4 With the written consent of each party and in accordance with rule 9.21 of the District Court Rules, the following witnesses were also examined before me on *[dates on which additional witnesses were examined]*.
- 5 Before each witness was examined, the witness took an oath or affirmation to tell the truth, the whole truth, and nothing but the truth in the evidence that the witness was about to give.
- 6 The evidence of each witness was recorded. Under rule 9.22 of the District Court Rules, I also recorded—
- (a) a note of each objection; and
- (b) the ground of each objection; and
- (c) my opinion on each objection; and
- (d) the answer (if any) of the witness to the question.
- 7 The entire record is attached.
- 8 I certify that I incurred the following out-of-pocket expenses in relation to this examination: *[specify items, eg, rent, transport, stenographer, and attach vouchers]*.

Form 26—*continued*

Date:

Signature:

(examiner)

If the evidence of any witness is not taken for any of the reasons set out in rule 9.20(7), complete and insert the following certificate either:

- in place of paragraphs 2 to 7; or
- after paragraph 7.

In all other circumstances, omit.

I certify that at the time and place appointed set out in paragraph 1/at [time, date, place], the time and place to which I had adjourned the examination*,—

*Select one.

Select the statement that applies.

Statement A

there was no appearance by or on behalf of the plaintiff/defendant*.

*Select one.

Statement B

the witness [name] did not attend.

*Select one.

Statement C

the plaintiff/defendant* stated that there was no intention to proceed with the taking of evidence.

*Select one.

Form 27

r 9.43(1)

Witness summons

Complete and insert the heading as set out in form 2.

To *[name, place of residence, occupation]*

- 1 You are summoned to attend the District Court at *[place, date, time]* and on each subsequent day until you are discharged from attendance to give evidence on behalf of the *[party]* in this proceeding.
- 2 *Omit this paragraph if it does not apply.*
You are ordered to bring with you and produce at the same time and place *[details of documents and things to be produced]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

Allowances and travelling expenses

- 1 You are entitled to have paid to you, at the time you are served with this order, or at some other reasonable time before the hearing, a sum in respect of your allowances and travelling expenses.
- 2 The scale of allowances and travelling expenses that applies is prescribed by the Witnesses and Interpreters Fees Regulations 1974.

Failure to attend

- 3 The penalty for failing to attend without just excuse is a fine not exceeding \$300.

Form 28
Subpoena to give evidence for service in
Australia

r 9.50(1)

To *[name, place of residence, occupation]*

- 1 You are ordered to attend *[place of court or, if witness is required to attend at a place other than the District Court, that other place]* on *[date, time]* and on each subsequent day until you are discharged from attendance to give evidence on behalf of the *[party]* in this proceeding.
- 2 *Omit this paragraph if it does not apply.*
You are ordered to bring with you and produce at the same time and place *[details of documents and things to be produced]*.
- 3 This order of subpoena is issued by *[full name]*, the party/solicitor for the party*.

*Select one.

Note: section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form of the rights and obligations of the person served.

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

Form 29
Subpoena for production only for service in
Australia

r 9.50(2)

To [*name, place of residence, occupation*]

- 1 You are ordered to produce this subpoena and the documents or things set out in the list below at the District Court of New Zealand at [*place, date, time*].
- 2 You will comply with this subpoena if you produce the documents or things at a registry of an Australian court that is authorised by the law of the Commonwealth of Australia to receive those documents or things, no later than 7 working days before that date.
- 3 This order of subpoena is issued by [*full name*], the party/solicitor for the party*.

*Select one.

Note: section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form of the rights and obligations of the person served.

List of documents or things

[*List documents or things.*]

Date:

Signature:

Full name of Registrar/Deputy Registrar*:

Postal address of registry:

Telephone:

Fax:

*Select one.

Form 30

r 10.2

Application for review of decision to allocate
short trial*Complete and insert the heading as set out in form 2.*

To the Registrar of the District Court at *[place]*
and

To *[name of party to be served]*

This document notifies you that the applicant, *[full name]*, applies for a review of the decision of *[specify whether it is the court or a Registrar]* made on *[date(s)]* at *[place]* to allocate a short trial for this proceeding.

Date:

Signature:

(applicant/solicitor for applicant/*[another person authorised by rule 5.42 of the District Courts Rules 2014]**)

*Select one.

Form 31

r 10.6(1)

Notice to cross-examine witness at simplified
trial*Complete and insert the heading as set out in form 2.*

To the Registrar of the District Court at *[place]*
and

To *[name of party to be served]*

This document notifies you that the applicant, *[full name]*, intends to cross-examine *[name of witness]* at the simplified trial to be held on *[date(s)]* at *[place]*.

Date:

Signature:

(applicant/solicitor for applicant/*[another person authorised by rule 5.42 of the District Courts Rules 2014]**)

*Select one.

Form 32

r 11.6(2)

Judgment by default in case of liquidated
demand*Complete and insert the heading as set out in form 2.*

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover \$[*amount*], and \$[*amount*] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 33

r 11.6(2)

Judgment by default in proceeding for recovery
of land*Complete and insert the heading as set out in form 2.*

Because the defendant has not filed a statement of defence in the court, judgment is given that the plaintiff recover possession of the land described in the plaintiff's statement of claim, and \$[amount] for costs.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 34

r 11.6(2)

Judgment on trial by Judge

Complete and insert the heading as set out in form 2.

The proceeding was heard on [date(s)] at [place] before Judge [name], who, having heard from [name], counsel for the plaintiff, and [name], counsel for the defendant, and having heard the evidence adduced, gives judgment that [terms of judgment].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 35

r 11.6(2)

Certificate of judgment/order

Complete and insert the heading as set out in form 2.

I, [full name], Registrar/Deputy Registrar* of the District Court at [place] certify that the document attached to this certificate (issued for the purposes of section 66 of the District Courts Act 1947)† is a true copy of the judgment/order* in the above case, and that the amount of \$[amount] as set out below is now due on the judgment/order*.

*Select one.

†Omit the words in parentheses if the certificate is issued for evidential purposes only.

Amount (\$)

Amount of judgment/order*, including costs

Subsequent costs

Costs of this certificate

Amount paid into court

Omit the following paragraph if the certificate is issued for the purposes of section 66 of the District Courts Act 1947.

This certificate is issued under rule 11.6 of the District Courts Rules 2014 for evidential purposes only.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Sealed: [date]

Form 36
Notice of discontinuance

r 15.16(2)

To the Registrar of the District Court at *[place]*
and

To *[name of other party or parties to proceeding]*

This document notifies you that—

- 1 *[Name of plaintiff discontinuing proceeding]* discontinues this proceeding against *[name of defendant or, if more than 1 defendant, names of defendants or names of defendants against whom the plaintiff discontinues the proceeding]*.
- 2 *For this paragraph select the statement that applies.*

Statement A

A copy of the written consent of a plaintiff who is required under rule 15.17 of the District Court Rules 2014 to consent to this discontinuance is attached.

Statement B

A copy of the written consent of a defendant who is required under rule 15.17 of the District Court Rules 2014 to consent to this discontinuance is attached.

Statement C

The High Court has granted leave to the plaintiff to discontinue this proceeding.

Date:

Signature:

(plaintiff/solicitor for plaintiff*)

*Select one.

Form 37

r 17.1

Agreement not to appeal

Complete and insert the heading as set out in form 2.

We, the undersigned, the plaintiff and defendant in this action, agree that the judgment of the court in this case will be final and that no appeal will be taken against that judgment.

Date:

Signatures:

(solicitor for plaintiff)

(solicitor for defendant)

Form 38

r 17.2

Notice of application for leave to appeal

*Complete and insert the heading as set out in form 2.***To** the Registrar of the District Court at *[place]*

and

To *[names of party/parties to be served with this notice]***This document notifies you that** the applicant, *[full name]*, will on *[date]* apply to the court for leave to appeal against *[specify, giving date of nonsuit, final determination, or direction of the court against which leave to appeal is sought]*.

Date:

Signature:

(plaintiff/solicitor for plaintiff/defendant/solicitor for defendant*)

*Select one.

Form 39

r 19.6(5)

Order to proceed where change of parties after
judgment*Complete and insert the heading as set out in form 2.***To** *[names of parties]***This court orders that—**

- 1 *[Name of party being substituted]* be substituted as plaintiff/defendant* for the original plaintiff/defendant* and that *[name of party being substituted]* be at liberty to issue enforcement against *[name of liable party]* or to take such proceeding as *[name of party being substituted]* would have been entitled to take against *[name of liable party]* for the amount of the unsatisfied judgment and costs in this proceeding.

*Select one.

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

Statement A

This court also orders that the question as to whether *[name]*, the original plaintiff in this proceeding, is entitled to recover the amount of the judgment obtained against *[name]*, the defendant in this action, and costs, will be heard in a proceeding in which *[name]* will be plaintiff and *[name]* will be defendant.

Statement B

This court also orders that the question as to whether *[name]*, the plaintiff in this proceeding, is entitled to recover the amount of the judgment obtained against *[name]*, the original defendant in this proceeding, and costs, from *[name]* will be heard in a proceeding in which *[name]* will be plaintiff and *[name]* will be defendant.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 40

r 19.9(1)

Order suspending judgment, order, enforcement,
or order of committal, or for discharge of debtor

Complete and insert the heading as set out in form 2.

This court orders that—

Select the statement that applies.

Statement A

On the application of *[full name]*, and the court being satisfied that the defendant is unable to pay and discharge the sum recovered against the defendant/the instalments due under the judgment/the instalments due under the order* in this proceeding, the judgment/order/enforcement issued/order of committal made* in this proceeding be suspended for *[period]* on the following terms: *[specify terms]*.

*Select one.

Statement B

The defendant be discharged from custody under the order of committal issued in this proceeding on the following terms: *[state terms, including, if so ordered, liability to rearrest if the terms are not complied with]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 41

r 19.13(4)

Application for new order for payment

*Complete and insert the heading as set out in form 2.***To** the Registrar of the District Court at [*place*]

and

To [*name of party to be served*]

This document notifies you that [*name of applicant*] will apply to the District Court at [*place, date, time*] for an order that the amount due and unpaid upon the judgment/order* in this proceeding be paid by instalments of \$[*amount*] for every \$[*amount*]/that the amount due and unpaid under the judgment/order* in this action be paid in 1 sum immediately [*specify time*]*.

*Select one.

Complete the following table.

Date of judgment (or order)	How payment ordered	Amount of debt and costs (\$)	Amount remaining due (\$)

Date:

Signature:

(solicitor for party giving notice/party giving notice*)

*Select one.

Form 42

r 19.18

Warrant to arrest judgment debtor: assessment
hearing

Court reference number:

Court enforcement number:

Agent reference number:

This warrant to arrest relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To a bailiff or constable**

This warrant authorises you to arrest the judgment debtor (or relevant officer where the judgment debtor is a body corporate) unless the amount of \$[*Enforcement total*] is paid in full.

On [*Date*], a summons was issued for [*Name of judgment debtor*] to attend a hearing to be questioned about the judgment debtor's financial means to pay the judgment debt.

Subsequent to the issue of the summons:

Select one of the following.

- The summons could not be served on the judgment debtor.
or
- The summons was served within the prescribed service period but the judgment debtor or an officer of the judgment debtor did not attend.
or
- The court hearing was adjourned to a new date but the judgment debtor or an officer of the judgment debtor did not attend.

You must bring the judgment debtor (or relevant officer) before a Judge or Registrar as soon as possible for a hearing to occur or be continued.

If this is not practical, a bailiff or Police employee can issue a notice of bail.

Issued by: [*name*], Registrar/Deputy Registrar*

*Select one.

Form 42—*continued*

Date:

Execute this warrant on: [*Name of judgment debtor or relevant officer*], [*Debtor's date of birth if known*]

Address of debtor:

Phone number of debtor:

Note

The **prescribed service period** refers to where a summons must be served on a judgment debtor (or relevant officer) at least 3 working days before the date of the hearing to which the summons relates. A shorter service period can be agreed by the parties.

Form 43

r 19.19

Notice of application for review of Registrar's
decision

Court reference number:

Court enforcement number:

Agent reference number:

This notice relates to the court case—

between *[Full name(s)]* (judgment creditor(s))and *[Full name(s)]* (judgment debtor(s))**To** a Registrar of the District Court; and**To** *[Name of party(parties) to be served]*

This document notifies you that:

The applicant, *[Name of applicant]*, will apply to the District Court on *[Date to be filled in by a Registrar]* for a review of an order/a direction* of the Registrar in this proceeding.

The order/direction* to be reviewed is: *[Provide details of the Registrar's decision that you want to review, for example, attachment order]*.

*Select one.

The grounds on which the application is made are as follows: *[Provide details of the grounds for reviewing the Registrar's decision. Sufficient detail should be provided here to fully inform the court of the issues involved. For example, what issues – legal or otherwise – are involved, and state your reasons for dissatisfaction with the Registrar's decision]*.

Your name:

Signature:

Date:

This application is filed by *[Name]*The applicant's address for service is: *[Address, phone number, email]*

Form 43—*continued*

Indicate the applicant's role in the Registrar's decision that is being reviewed.

- The applicant is the judgment creditor. (The judgment creditor is the person money is owed to.)
- The applicant is the judgment debtor. (The judgment debtor is the person who owes the money.)
- Other [*Specify*]

Form 44

r 19.20(1)

Application for contempt of enforcement
proceedingsSection A: information required to process your
application

You must complete all the steps in this section.

**Step 1: Provide the court reference number this application
relates to.**

Court reference number:

You must attach a copy of the court order or judgment if you have
not already given the court a copy.

Select one of the following.

- I have attached a copy.
- I have already given the court a copy.

**Step 2: Provide the details of the judgment creditor making
this application. (The judgment creditor is the person money is
owed to.)**

Full name:

Organisation name (if applicable):

Office held by authorised officer making application:

Postal address:

Street address (if different):

Email:

Phone: [*Home, mobile, business*]

Indicate your preferred contact address.

- my email address (above)
- my postal address (above)
- my lawyer's address (see step 8)
- my debt recovery company's address (see step 9)

**Step 3: Provide the details of the judgment debtor. (The
judgment debtor is the person who owes the money).**

Full name of person or organisation:

Person's date of birth (if known):

Form 44—*continued*

Do you have a current address and contact details for the judgment debtor?

- **Yes.** I have written them in the table below.
- **No.** But I have made a confidential address request and the Ministry of Justice has advised that it is holding current address information.

If you do not have a current address for the judgment debtor, you can make a confidential address request to the Ministry of Justice or another government agency before filing your application. Refer to the Ministry of Justice website [insert website address]. Only complete this form when the Ministry of Justice has advised you that it is holding current address information

Street address:

Email:

Phone: [Home, mobile, business]

Step 4: Provide details about how the summons will be served on the judgment debtor.

Select one of the following.

- I will arrange service of the summons.

or

- I want the court bailiff to serve the summons.

If you have indicated that you want the court bailiff to serve the summons, you must pay the service fee of \$[Insert amount] with your application.

Step 5: Provide details about why you think the judgment debtor has the means to pay the debt but is refusing to do so.

Use a separate sheet if required.

Form 44—*continued***Step 6: Provide details about the enforcement action that has been considered or tried.**

List the enforcement action considered or taken in this matter	Explain why the enforcement action was either inappropriate or unsuccessful

Step 7: Provide the details of the judgment debt and any enforcement costs you want to claim.

You can claim some of your costs from trying to enforce the judgment or court order. Enter the costs you want to claim in the table below.

Debt	(\$)

Amount of judgment debt	

Less amount already paid	

Sub-total	

Interest you want to claim (for debts over \$3000)

Interest on the remaining debt	

Sub-total	

Enforcement costs you want to claim

Fee for filing application	

Requesting service by a bailiff \$[Insert amount]	

Lawyer costs for this application	

Costs of previous enforcement action	

Sub-total	

Total amount owed	

Section B: extra information to assist the
application process

Only complete the steps in section B that are relevant to your application. If you do not need to complete either of the steps in section B, go to section C.

Form 44—*continued***Step 8: Provide the details of the lawyer representing you.**

Only complete this step if a lawyer is representing you.

Name of law firm:

Name of lawyer:

Postal address:

Email:

Phone:

Step 9: Provide the details of the debt recovery company.

Only complete this step if a debt recovery company is collecting the debt for you.

Company name:

Postal address:

Email:

Phone:

Debt recovery company reference number:

Section C: date and signature

This section must be completed by the judgment creditor from step 2 or the judgment creditor's lawyer from step 8.

Your name:

Signature:

Date:

Select one of the following.

- I am the judgment creditor.
- I am the judgment creditor's lawyer.

Form 45

r 19.20(2)

Agent's authority to sign application

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

Court reference number:

Court enforcement number:

Agent reference number:

This notice relates to the court case—

between [*Full name(s)*] (judgment creditor(s))

and [*Full name(s)*] (judgment debtor(s))

I, [*name*], the judgment creditor, authorise [*name, address, occupation*] to sign on my behalf an application under section 84O of the District Courts Act 1947 for an order that the judgment debtor/one of the judgment debtors* do community work for contempt of court.

*Select one.

Date:

Signature:

(judgment creditor)

Form 46

r 19.20(3)

Summons to hearing: contempt of enforcement
proceedings

Court reference number:

Court enforcement number:

Agent reference number:

This summons relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To** [*Name of judgment debtor*], judgment debtorThis summons orders you to attend a contempt of enforcement proceedings hearing about a judgment debt for \$[*Amount*].

The judgment creditor has filed an application saying that you have the means to pay the judgment debt but are refusing to do so and that all other enforcement methods have been considered or tried and were either inappropriate or unsuccessful.

A copy of the application setting out the judgment creditor's reasons for the application is attached to this summons.

When and where the hearing will be held

Date and time:

Place:

If you do not attend the hearing, a warrant may be issued for your arrest.

Issued by: [*Name*], Registrar/Deputy Registrar*

*Select one.

Date:

Serve this summons on: [*Name of judgment debtor*], [*Debtor's date of birth if known*]

Address of debtor:

Phone number of debtor:

Form 46—*continued*

Information for the judgment debtor

Why have I been served with a summons to attend a contempt of enforcement proceedings hearing?

You are the judgment debtor in a civil court proceeding. A court or tribunal ordered you to pay the judgment creditor but you have not paid this debt.

The judgment creditor has filed an application saying that you have the means to pay the debt but are refusing to do so and that all other methods of enforcement have been considered or tried and were inappropriate or unsuccessful.

How much do I owe the judgment creditor?

You owe the money ordered by the court or tribunal, plus the enforcement costs that the judgment creditor is entitled to claim. The attached application sets out the total amount being claimed by the judgment creditor.

What will happen at the contempt of enforcement proceedings hearing?

The hearing will be held before a District Court Judge. The Judge can order that you do community work (or make any other enforcement order or direction) if he or she is satisfied beyond reasonable doubt that—

- you have sufficient means to pay the judgment debt but are refusing to do so; and
- all other methods of enforcement have been considered or tried and were inappropriate or unsuccessful.

You may be asked questions about your income and expenditure, your assets and liabilities, and generally about your means for paying the debt.

You should bring to the hearing any information that may help the Judge decide if you are able to pay.

Form 46—*continued***Can the hearing be cancelled?**

The hearing will be cancelled if you pay the debt in full before the hearing date. Payment of the debt can be made to the judgment creditor directly, or to the court. District Court registries are open from 9 am to 5 pm on Mondays to Fridays.

If payment is made in full to the judgment creditor, please ensure the Collections Unit at the District Court is notified so the hearing can be cancelled.

Is legal advice available before the hearing?

You may want to seek legal advice before the hearing. If you decide to seek legal advice, you should do it as soon as possible. You may be eligible for free legal advice through your local Community Law Centre. A list of Community Law Centres is available online at <http://www.communitylaw.org.nz>.

Can I have legal representation at the hearing?

You can ask a lawyer to represent you at the hearing. If you want a lawyer to represent you, you need to organise one before the hearing. You are entitled to apply for Criminal legal aid if you cannot afford to pay for a lawyer. As the judgment debtor, you are still required to attend the hearing yourself.

Form 47

r 19.20(4)

Order for community work: contempt of
enforcement proceedings

Court reference number:

Court enforcement number:

Agent reference number:

This order relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To** [*Name of judgment debtor*], judgment debtorYou are ordered to do [*Number*] hours' community work for contempt of enforcement, for the following reasons:

- (1) The court has ordered you to pay \$[*Amount*] to the judgment creditor and this debt remains unpaid. The total amount outstanding is now \$[*Amount*], including costs.
- (2) The court is satisfied that—
 - you are able to pay the debt but refuse to do so; and
 - all available steps to enforce the debt have been considered or tried but were either inappropriate or unsuccessful.

The date on which the sentence is imposed is [*Date*].You must report in person to a probation officer in the probation area closest to you as soon as possible, and **not later than 72 hours after the date on which the sentence is imposed.**

This order for community work does not cancel, or affect your liability to pay, the debt and associated costs.

Issued by: [*Name*], Registrar/Deputy Registrar*

*Select one.

Date:

Serve this order on: [*Name of judgment debtor*], [*Debtor's date of birth if known*]

Date judgment debtor served with order:

Signature of judgment debtor acknowledging receipt of order:

Form 47—*continued*

Date copy of order sent to Department of Corrections:

Information for the judgment debtor about an
order for community work

What time frames apply to completing a sentence of community work?

In accordance with section 58(1) and (2) of the Sentencing Act 2002,—

- if the court imposes an order of community work of **100 hours or less**, those hours must be served within 6 months of the date that it commences.
- if the court imposes an order of community work of **more than 100 hours**, you must serve at **least 100 hours** in every 6-month period from the date on which the sentence commences until the number of hours imposed under the sentence have been served.

In accordance with section 64(3) of the Sentencing Act 2002, no period of community work may be longer than 10 hours, nor will you be required to do more than 40 hours of community work per week.

Who do I report to about doing community work?

In accordance with section 59 of the Sentencing Act 2002, you must report in person to a probation officer in the probation area closest to you—

- as soon as practicable, and **not later than 72 hours after the sentence is imposed**; and
- as directed by a probation officer at any other time during the sentence for the purpose of monitoring the sentence.

In accordance with sections 61 and 64(1) of the Sentencing Act 2002, you must do the community work under the sentence at the place(s) and the time(s) notified to you by the probation officer.

Form 47—*continued***Who do I notify if I change my address?**

In accordance with section 60 of the Sentencing Act 2002, if you move to a new residential address you must, within 72 hours, notify a probation officer of your new residential address.

What happens if I do not complete the community work hours?

Failure to comply with the terms of this sentence, without reasonable excuse, may result in you being charged under section 71 of the Sentencing Act 2002 with an offence punishable by a maximum of 3 months' imprisonment or a fine up to \$1000.

Am I still required to do community work if I pay the debt?

If the debt is paid in full **before** you start your sentence of community work, you will not be required to start the community work hours.

If the debt is paid in full once you have **commenced** your community work hours, you will not be required to complete the community work hours.

Who do I pay the debt to?

Payment of the debt can be made to the judgment creditor directly, or to the court. District Court registries are open from 9 am to 5 pm on Mondays to Fridays.

If payment is made in full to the judgment creditor, please ensure the Collections Unit at the District Court is notified so the order for community work can be discharged and the Department of Corrections informed.

Form 48

r 19.20(5)

Warrant to arrest judgment debtor: contempt of
enforcement proceedings

Court reference number:

Court enforcement number:

Agent reference number:

This warrant to arrest relates to the court case—
between [*Full name(s)*] (judgment creditor(s))
and [*Full name(s)*] (judgment debtor(s))

To a bailiff or constable

This warrant authorises you to arrest the judgment debtor unless the amount of \$[*Enforcement total*] is paid in full.

On [*Date*], a summons was issued for [*Name of judgment debtor*] to attend a hearing for contempt of enforcement proceedings. A copy of the application for contempt of enforcement proceedings was attached to the summons.

Subsequent to the issue of the summons:

Select one of the following.

- The summons could not be served on the judgment debtor.
- or**
- The summons was served within the prescribed service period but the judgment debtor did not attend.

You must bring the judgment debtor before a Judge or Registrar as soon as possible for a hearing to occur.

If this is not practical, a bailiff or Police employee can issue a notice of bail.

Issued by: [*Name*], Registrar/Deputy Registrar*

*Select one.

Date:

Execute this warrant on: [*Name of judgment debtor*], [*Debtor's date of birth if known*]

Address of debtor:

Form 48—*continued*

Phone number of debtor:

Note:

The **prescribed service period** refers to where a summons must be served on a judgment debtor at least 3 working days before the date of the hearing to which the summons relates. A shorter service period can be agreed by the parties.

Form 49

r 19.24(2)

Application for charging order without notice

In the District Court at *[place]*No: *[number of proceeding]*Between *[name]* (judgment creditor)And *[name]* (judgment debtor)

To the Registrar

- 1 The judgment creditor/duly authorised agent of the judgment creditor* applies to the District Court at *[place]* for the making of a charging order under section 96A of the District Courts Act 1947.

*Select one.

- 2 The charging order sought is an interim charging order/final charging order* affecting the property of the judgment debtor known as *[specify nature and location of the property]*.

*Select one.

- 3 The order is sought on the grounds set out in the attached affidavit.

Date:

Signature:

This application is filed by *[name]*, whose address for service is at *[address]*.

Application filed: *[date, time, initials]*Order made: *[date, time, initials]*

Form 50

r 19.24(2)

Affidavit in support of application for charging
order*Complete and insert the heading as set out in form 49.*

I, [name, address, occupation], swear/solemnly and sincerely affirm*—

*Select one.

- 1 On [date], in the District Court at [place], the judgment creditor obtained a judgment/order* in this proceeding against the judgment debtor for the payment of the sum of \$[amount], including costs.

*Select one.

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

Statement A

The judgment/order* is still unsatisfied.

*Select one.

Statement B

The sum of \$[amount], part of the sum adjudged/ordered* to be paid, is still unsatisfied.

*Select one.

- 3 I believe that the judgment debtor is beneficially entitled to the following property:

[specify type of property, including,—

- (a) *in the case of land,—*

(i) *the alleged estate, right, title, or interest of the judgment debtor; and*

(ii) *the nature, location, and description of the property:*

- (b) *in the case of any right or interest in a partnership, the name and business address of the partnership and the extent of the alleged interest:*

- (c) *in the case of shares, the name of the company, the address of its registered office, and the alleged number and denomination of the shares:*

- (d) *in the case of any estate, right, or interest in any land, or in any money, shares, or other chattels, held under or*

Form 50—*continued*

*by virtue of any trust for the judgment debtor, the name
and address of the trustee or trustees of the trust].*

Signature of deponent:

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

Registrar/Deputy Registrar/Solicitor/Justice of the Peace*)

*Select one.

Form 51
Charging order on land

r 19.28

Complete and insert the heading as set out in form 49.

On the application of the judgment creditor, this court orders that the estate, right, title, or interest of the [*specify party*] in [*describe land intended to be affected*] stand charged with payment of the amount of \$[*amount*], being the amount, or part of the amount, for which the judgment creditor has obtained a judgment/order* in this proceeding.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Application was made to the Registrar of the District Court at [*place*] for the making of this order at [*time, date*] by [*name*], agent for the judgment creditor.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 52

r 19.28

Interim charging order

Complete and insert the heading as set out in form 49.

On the application of the judgment creditor, this court orders that, until sufficient cause is shown to the contrary, the interest of the [specify party] in [describe property intended to be affected] stand charged with payment of the amount of \$[amount], being the amount, or part of the amount, for which the judgment creditor has obtained a judgment/order* in this proceeding.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Application was made to the Registrar of the District Court at [place] for the making of this order at [time, date] by [name], agent for the judgment creditor.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 53
Final charging order

r 19.28

Complete and insert the heading as set out in form 49.

On reading the interim charging order made in this proceeding on [date], and the affidavits of [name] filed in this proceeding, and on hearing [name], counsel for the judgment creditor, and [name], counsel for the judgment debtor, this court orders that [*specify property intended to be charged*] stand charged with \$[amount], being the amount, or part of the amount, for which the judgment creditor has obtained a judgment/order* in this proceeding.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 54

r 19.30(1)

Summons to persons claiming land or other
property subject to charging order*Complete and insert the heading as set out in form 49.***To** *[name, address, occupation]*

- 1 A charging order, a copy of which is attached, was made by this court on *[date]*, in respect of *[describe land or other property affected]*.

*Select one.

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

Statement A

It has been alleged that the land/other property* that is the subject of that charging order belongs to you.

*Select one.

Statement B

It has been alleged that you have a claim by way of lien, charge, or otherwise on the land/other property* that is the subject of that charging order.

*Select one.

- 3 You are summoned to attend at the District Court at *[place, date, time]*, when you will be ordered to state the nature and particulars of your claim.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

Advice

If you need help, consult a solicitor or the staff of the District Court immediately.

Form 54—*continued***Registry hours**

The registry of the court is open to the public from 9 am to 5 pm Mondays to Fridays inclusive.

Form 55

r 19.44(2)

Notice of application for final charging order

*Complete and insert the heading as set out in form 49.***To** the Registrar of the District Court at *[place]*

and

To *[name of other party to be served]***This document notifies you that—**

- 1 The judgment creditor/duly authorised agent of the judgment creditor* will apply to the District Court at *[place]*, *[date, time to be filled in by Registrar]* for the making of a final charging order under section 96A of the District Courts Act 1947.

*Select one.

- 2 The charging order sought is a final charging order affecting the property of the judgment debtor known as *[specify nature and location of the property to be the subject of the charging order]*.

Date:

Signature:

(judgment creditor/solicitor for judgment creditor*)

*Select one.

This notice of application is filed by *[name]* whose address for service is *[address]*.

Notes

Advice

If you need help, consult a solicitor or the staff of the District Court immediately.

Registry hours

The registry of the court is open to the public from 9 am to 5 pm Mondays to Fridays inclusive.

Form 56

r 19.47(1)

Application for warrant to seize property

Section A: information required to process your application

You must complete all the steps in this section.

Step 1: Provide the court reference number this application relates to.

Court reference number:

You must attach a copy of the court order or judgment if you have not already given the court a copy.

Select one of the following.

- I have attached a copy.
- I have already given the court a copy.

Step 2: Provide the details of the judgment creditor making this application. (The judgment creditor is the person money is owed to.)

Full name:

Organisation name (if applicable):

Office held by authorised officer making application:

Postal address:

Street address (if different):

Email:

Phone: [*Home, mobile, business*]

Indicate your preferred contact address.

- my email address (above)
- my postal address (above)
- my lawyer's address (see step 5)
- my debt recovery company's address (see step 6)

Step 3: Provide the details of the judgment debtor. (The judgment debtor is the person who owes the money.)

Full name of person or organisation:

Person's date of birth (if known):

Form 56—*continued*

Do you have a current address and contact details for the judgment debtor?

Yes. I have written them in the table below.

No. But I have made a confidential address request and the Ministry of Justice has advised that it is holding current address information.

If you do not have a current address for the judgment debtor, you can make a confidential address request to the Ministry of Justice or another government agency before filing your application. Refer to the Ministry of Justice website [insert website address]. Only complete this form when the Ministry of Justice has advised you that it is holding current address information.

Street address:

Email:

Phone: [*Home, mobile, business*]

Step 4: Provide the details of the judgment debt and any enforcement costs you want to claim.

You can claim some of your costs from trying to enforce the judgment or court order. Enter the costs you want to claim in the table below.

Debt **(\$)**

Amount of judgment debt

Less amount already paid

Sub-total

Interest you want to claim (for debts over \$3000)

Interest on the remaining debt

Sub-total

Enforcement costs you want to claim

Fee for filing application

Lawyer costs for this application

Costs of previous enforcement action

Sub-total

Total amount owed

Form 56—*continued*Section B: extra information to assist the
application process

Only complete the steps in section B that are relevant to your application. If you do not need to complete any of the steps in section B, go straight to section C.

Step 5: Provide the details of the lawyer representing you.

Only complete this step if a lawyer is representing you.

Name of law firm:

Name of lawyer:

Postal address:

Email:

Phone:

Step 6: Provide the details of the debt recovery company.

Only complete this step if a debt recovery company is collecting the debt for you.

Company name:

Postal address:

Email:

Phone:

Debt recovery company reference number:

Section C: date and signature

This section must be completed by the judgment creditor from step 2 or the judgment creditor's lawyer from step 5.

Your name:

Signature:

Date:

Select one of the following.

- I am the judgment creditor.
- I am the judgment creditor's lawyer.

Form 56—*continued*

Office use only

Application filed: [*Date, time*]

Form 57

r 19.53(4)

Notice to bailiff: suspend enforcement and
authority to re-enter

Court reference number:

Court enforcement number:

Agent reference number:

This notice to bailiff relates to the court case—
between [*Full name(s)*] (judgment creditor(s))
and [*Full name(s)*] (judgment debtor(s))

To the bailiff

This document notifies you that—

Section A*(To be completed by the judgment creditor)*

I want to suspend enforcement. Please withdraw from possession of
property seized in the enforcement of this proceeding.

The judgment debtor and I have agreed that you can re-enter at any
time while the enforcement remains unsatisfied.

Your name:

Signature:

Date:

Section B*(To be completed by the judgment debtor)*

The judgment creditor has asked that you withdraw from possession
of my property seized in the enforcement of this proceeding.

I authorise you to re-enter and take possession of the same, or any
other, property at any time while the enforcement remains unsatis-
fied.

Your name:

Signature:

Date:

Form 58

r 19.56(1)

Notice of sale of seized property

Court reference number:

Court enforcement number:

Agent reference number:

This notice relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To** [*Name of judgment debtor*], judgment debtor

This document notifies you of when and where property seized in the enforcement of this proceeding will be sold.

The sale can only be stopped if the debt of \$[*Enforcement total*], including enforcement costs and the further costs of seizure for the warrant to seize property, is paid in full to the District Court before the sale date.**When and where the sale will be held**

Date and time:

Place:

Property that will be sold[*List the property to be sold.*]Issued by: [*Name*], *bailiff/Registrar/Deputy Registrar

*Select one.

Date:

Notice *sent/given to judgment debtor at: [*Address*]

*Select one.

Form 59

r 19.58(2)

Balance sheet: warrant to seize property

Court reference number:

Court enforcement number:

Agent reference number:

This balance sheet relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To a Registrar of the District Court**

The following proceeds and expenses have been recorded from the sale of property seized under a warrant to seize property.

Particulars	Reference	Amount (\$)
Gross proceeds of sale of seized property		
Less costs of seizure paid by bailiff		
Amount payable to judgment creditor		
Balance payable to judgment debtor		

Issued by: [*Name*], bailiff

Date:

Form 60

r 19.58(3)

Report on warrant to seize property: insufficient
property

Court reference number:

Court enforcement number:

Agent reference number:

This report relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To** a Registrar of the District Court

I certify that I have made a diligent search for property of the judgment debtor and I cannot find sufficient property to collect the debt mentioned in the warrant to seize property.

[*Provide the details on which this report is made.*]

Issued by: [*Name*], bailiff

Date:

Form 61

r 19.61(1)

Application for warrant to recover chattels

Section A: information required to process your application

You must complete all the steps in this section.

Step 1: Provide the court reference number this application relates to.

Court reference number:

You must attach a copy of the court order or judgment if you have not already given the court a copy.

Select one of the following.

- I have attached a copy.
- I have already given the court a copy.

Step 2: Provide the details of the plaintiff making this application.

Full name:

Organisation name (if applicable):

Office held by authorised officer making application:

Postal address:

Street address (if different):

Email:

Phone: [*Home, mobile, business*]

Indicate your preferred contact address.

- my email address (above)
- my postal address (above)
- my lawyer's address (see step 5)
- my debt recovery company's address (see step 6)

Step 3: Provide the details of the defendant.

Full name of person or organisation:

Person's date of birth (if known):

Do you have a current address and contact details for the defendant?

Yes. I have written them in the table below.

Form 61—continued

No. But I have made a confidential address request and the Ministry of Justice has advised that it is holding current address information. *If you do not have a current address for the defendant, you can make a confidential address request to the Ministry of Justice or another government agency before filing your application. Refer to the Ministry of Justice website [insert website address]. Only complete this form when the Ministry of Justice has advised you that it is holding current address information.*

Street address:

Email address:

Phone: [Home, mobile, business]

Step 4: Provide the details of the chattels to be recovered.

The chattels recovered by the bailiff can only be returned to the plaintiff who obtained the judgment or court order.

Description of chattels to be recovered

Location of chattels (if different from address given in step 3)

Section B: extra information to assist the application process

Only complete the steps in section B that are relevant to your application. If you do not need to complete any of the steps in section B, go straight to section C.

Step 5: Provide the details of the lawyer representing you.

Only complete this step if a lawyer is representing you.

Name of law firm:

Name of lawyer:

Postal address:

Email:

Phone:

Form 61—*continued***Step 6: Provide the details of the debt recovery company.**

Only complete this step if a debt recovery company is managing the enforcement process for you.

Company name:

Postal address:

Email:

Phone:

Debt recovery company reference number:

Section C: date and signature

This section must be completed by the plaintiff from step 2 or the plaintiff's lawyer from step 5.

Your name:

Signature:

Date:

Select one of the following.

- I am the plaintiff.
- I am the plaintiff's lawyer.

Office use only

Application filed [*Date, time*]

Form 62

r 19.61(2)

Warrant for recovery of chattels

Court reference number:

Court enforcement number:

Agent reference number:

This warrant for recovery of chattels relates to the court case—
between [*Full name(s)*] (plaintiff)
and [*Full name(s)*] (defendant)

To a bailiff or constable

This warrant authorises you to demand the return of chattels wrongfully detained by the defendant, and to seize the chattels if you are able to locate them.

On [*Judgment date*], the District Court at [*place*] ordered [*Name of defendant*] to deliver specific chattels to [*Name of plaintiff*] of [*Plaintiff's address*].

[*Name of defendant*] has not complied with the judgment or court order.

The details of the chattels to be recovered are:

**Description of chattels to be
recovered**

Location of chattels

A return must be completed for this warrant.

Issued by: [*Name*], Registrar/Deputy Registrar*

*Select one.

Date:

Notes

Address of defendant:

Phone number of defendant:

Defendant's date of birth (if known):

Form 63

r 19.65(1)

Application for warrant to recover land

Section A: information required to process your application

You must complete all the steps in this section.

Step 1: Provide the court reference number this application relates to.

Court reference number:

You must attach a copy of the court order or judgment if you have not already given the court a copy.

Select one of the following.

- I have attached a copy.
- I have already given the court a copy.

Step 2: Provide the details of the plaintiff making this application.

Full name:

Organisation name (if applicable):

Office held by authorised officer making application:

Postal address:

Street address (if different):

Email:

Phone: [*Home, mobile, business*]

Indicate your preferred contact address.

- my email address (above)
- my postal address (above)
- my lawyer's address (see step 8)
- my debt recovery company's address (see step 9)

Step 3: Provide the details of the defendant.

Full name of person or organisation:

Person's date of birth (if known):

Address:

Email:

Form 63—*continued*

Phone: [*Home, mobile, business*].

Step 4: Provide the legal description of the land to be recovered.

The land described here must match the description in the judgment or court order.

Legal description of the land (from the certificate of title)	Street address of the land to be recovered

Step 5: Provide the date from the judgment or court order that you were given possession of the land.

Date:

Step 6: Provide information about whether money is owed under the judgment or court order and/or whether you are claiming costs or not.

Select one of the following.

- This application is only made to recover land. I am not claiming costs. *Go to section B.*
- or***
- This application is made to enforce a judgment or court order for the recovery of land that includes money owed **and** a claim for costs. I want the bailiff to seize and sell property of the defendant to satisfy the debt. *Complete step 7.*

Step 7: Provide the details of the judgment debt and any enforcement costs you want to claim.

You can claim some of your costs from trying to enforce the judgment or court order. Enter the costs you want to claim in the table below.

Debt	(\$)

Amount of judgment debt

Less amount already paid

Sub-total

Interest you want to claim (for debts over \$3000)

Form 63—*continued*

Interest on the remaining debt

Sub-total**Enforcement costs you want to claim**

Fee for filing application

Lawyer costs for this application

Costs of previous enforcement action

Sub-total**Total amount owed**

Section B: extra information to assist the
application process

Only complete the steps in section B that are relevant to your application. If you do not need to complete any of the steps in section B, go straight to section C.

Step 8: Provide the details of the lawyer representing you.

Only complete this step if a lawyer is representing you.

Name of law firm:

Name of lawyer:

Postal address:

Email:

Phone:

Step 9: Provide the details of the debt recovery company.

Only complete this step if a debt recovery company is managing the enforcement process for you.

Company name:

Postal address:

Email:

Phone:

Debt recovery company reference number:

Form 63—*continued*

Section C: Date and signature

This section must be completed by the plaintiff from step 2 or the plaintiff's lawyer from step 8.

Your name:

Signature:

Date:

Select one of the following.

- I am the plaintiff.
- I am the plaintiff's lawyer.

Office use only

Application filed: [*Date, time*]

Form 64
Warrant for recovery of land

r 19.65(2), (3)

Court reference number:

Court enforcement number:

Agent reference number:

Defendant's/judgment debtor's date of birth:

This warrant for recovery of land relates to the court case—
between [Full name(s)] (plaintiff/judgment creditor)
and [Full name(s)] (defendant/judgment debtor)

To a Bailiff or Constable

- 1 This warrant authorises you to immediately enter the land located at [Address], by force if necessary, between the hours of 9 am and 4 pm and to give possession of the land to the plaintiff/judgment creditor.
- 2 On [Judgment date], the District Court at [place] ordered [Name of defendant/judgment debtor] to give the plaintiff/judgment creditor possession of the land on or before [Possession date].
- 3 *Omit this paragraph if no order for rent, mesne profits, damages, or costs is made.* The District Court at [place] also ordered [Name of defendant/judgment debtor] to pay the plaintiff/judgment creditor the amount of \$[Judgment amount] for rent, mesne profits, damages, costs*.
*Select as appropriate.
- 4 [Name of defendant/judgment debtor] has not complied with the judgment or court order.
- 5 *Omit this paragraph if only possession of the land is being sought.* This warrant authorises you to collect from [Name of defendant/judgment debtor] the sum of \$[Enforcement total] and the further costs of seizure for this warrant by taking any of the following actions:
 - You can seize and sell property of the defendant/judgment debtor (excluding their necessary tools of trade to a value not exceeding \$500, and excluding their household furniture and clothing up to \$2000).

Form 64—*continued*

- You can seize and remove any money, bank notes, securities for money, bills of exchange, promissory notes, or bonds of the defendant/judgment debtor.
- 6 Any money received is to be paid immediately to the Registrar of a District Court, and a return completed for this warrant.

Issued by: [*Name*], Registrar/Deputy Registrar*

*Select one.

Date:

Application was made to the Registrar of the court for the issue of this warrant at [*Application time*] on [*Application date*] by [*Applicant*].

Notes

Omit these notes if only possession of the land is being sought. The breakdown of the total amount owed by the defendant/judgment debtor is:

(**\$**)

Amount of judgment debt

Less amount already paid

Interest on the remaining debt

Fee for filing application

Lawyer costs for this application

Costs of previous enforcement action

Total amount owed

Form 65

r 19.66(2)

Notice as to consequences of disobedience of
order of court**To** *[full name]*

This document notifies you that unless you obey the directions contained in this order you will be guilty of contempt of court and will be liable to be committed to prison.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 66

r 19.67(1)

Notice to show cause why order of committal
should not be made*Complete and insert the heading as set out in form 2.***To** [name] (respondent)**This document notifies you that—**1 *For this paragraph select the statement that applies.**Statement A*

The plaintiff/defendant* will on [date, time] apply to this court for an order for your committal to prison for having disobeyed the order of this court made on [date] enjoining and restraining you from [specify terms of injunction].

*Select one.

Statement B

The plaintiff/defendant* will on [date, time] apply to this court for an order for your committal to prison for not obeying the order made on [date] requiring you to [specify mandatory part of order].

*Select one.

2 You are required to attend this court on the specified day to show cause why an order for your committal should not be made.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 67

r 19.67(3)

Order of committal for breach of or neglect to
obey order

Complete and insert the heading as set out in form 2.

- 1 On [date], this court ordered that [specify order].
- 2 On the application of [name of applicant], and on hearing [specify]/on reading the affidavit of [name] showing that a copy of the order endorsed with a notice in form 65 and notice of this application have been severally served on the [persons served]*, and on [specify any evidence given], the court, on consideration of the facts disclosed by the evidence, being of the opinion that [name] has been guilty of a contempt of this court by a breach of/by neglecting to obey* the order by [specify particular matter of contempt]—
 - (a) orders that [name] be committed to the prison at [place] for [period] for that contempt; and
 - (b) orders that a warrant of committal for the arrest of the [name] be issued immediately.

*Select one.

- 3 The court also orders that [name] pays the costs of the [specify] of this application and of the committal, amounting to \$[amount].
- 4 *Include this paragraph if it applies.*

It is further ordered that any application for the release of the [name] from custody be made to the District Court Judge at [place].

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 68
Warrant of committal

r 19.67(3)

Complete and insert the heading as set out in form 2.

To a bailiff at the District Court at *[place]*/a constable at *[place]**
and

To the manager of the prison at *[place]*

*Select one.

- 1 On *[date]*, this court ordered that *[name]* be committed to prison for contempt of this court.
- 2 You, the bailiff/constable*, are therefore ordered to arrest *[name]* and safely convey and deliver him/her* to the manager of the prison at *[place]*, and you, the manager, to receive *[name]* and keep him/her* safely in the prison for the term of *[specify]* or until the further order of this court.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 69
Order for discharge

r 19.68(4)

Complete and insert the heading as set out in form 2.

To the Manager of the prison at [*place*]

You are ordered to release [*name*] now in your custody under warrant issued out of this court dated [*date*], if he/she* is in your custody under that warrant and no other. This order is your authority for doing so.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 70

rr 19.73(1), 19.88

Affidavit in support of garnishee summons

In the District Court at *[place]*Between *[full name]* (judgment creditor)And *[full name]* (judgment debtor)And *[full name]* (sub-debtor)I, *[name, address, occupation]*, swear/solemnly and sincerely affirm* that—

*Select one.

1 On *[date]*, in the District Court at *[place]*, I, *[name]*, the judgment creditor, obtained a judgment in this action against the judgment debtor for the sum of \$*[amount]*, including costs.

2 The judgment/sum of \$*[amount]*, part of the judgment,* is still unsatisfied.

*Select one.

3 I believe that the sub-debtor is/sub-debtors are* indebted to the judgment debtor in the sum of \$*[amount]* or thereabouts.

*Select one.

4 The debt mentioned in paragraph 3 is/is not* in respect of wages.

*Select one.

Omit the following paragraphs if they do not apply.

5 For this paragraph select the statement that applies.

Statement A

The debt mentioned in paragraph 3 comprises a sum that stands to the credit of the judgment debtor with the sub-debtor and that is on deposit with the sub-debtor, and it is a condition of the deposit that a *[specify whether deposit book, receipt, etc]* must be produced before any money is withdrawn.

Statement B

The debt mentioned in paragraph 3 comprises a sum that stands to the credit of the judgment debtor with the sub-debtor and that is held by the sub-debtor on a current account/deposit account/*[specify other account]**, and it is a condition of the

Form 70—*continued*

deposit/account* that a [*specify whether deposit book, receipt, etc*] must be produced before any money is withdrawn.

*Select one.

- 6 To the best of my knowledge and belief the [*specify whether deposit book, receipt, etc*] is in the possession of [*specify full name and address in any case where the person is not a party to the proceeding*].
- 7 I do not know the present whereabouts of the [*specify whether deposit book, receipt, etc*].

Signature of deponent:

Sworn/Affirmed* at [*place, date*]

Before me: [*name, signature*]

(Registrar/Deputy Registrar/solicitor/Justice of the Peace*)

*Select one.

Form 71

r 19.73(2)

Garnishee summons to sub-debtor

*Complete and insert the heading as set out in form 70.***To the sub-debtor**

- 1 On [*date*], the judgment creditor obtained judgment/an order* in the District Court at [*place*] against the judgment debtor for payment of the sum of \$[*amount*], including costs, and that judgment/order* remains unsatisfied as to the sum of \$[*amount*].

*Select one.

- 2 The judgment creditor has filed an affidavit stating that you are indebted to the judgment debtor in the sum of \$[*amount*].
- 3 You are summoned to attend at the District Court at [*place, date, time*] to show cause why an order should not be made against you for the payment to the judgment creditor of the amount of the debts owing or accruing from you to the judgment debtor or so much of those debts as will satisfy the debt due under the judgment/order*, and the costs entered on this summons.

*Select one.

- 4 From and after the service of this summons on you, so much of the debts owing or accruing from you to the judgment debtor as will satisfy the debt due under the judgment/order* and the costs entered on this summons is attached to answer the judgment/order*.

*Select one.

- 5 If at any time before the date of hearing of this summons you pay to the Registrar of this court the amount of those debts, or the amount of those debts that will satisfy the debt due under the judgment/order* and the costs entered on this summons, you will incur no further costs.

*Select one.

- 6 If the debt alleged to be due from you to the judgment debtor comprises a sum that stands to the credit of the judgment debtor with you and that is on deposit with you or is held by

Form 71—*continued*

you in a current or other account (including a deposit account) and it is a condition of the deposit or account that a deposit book, receipt, or other like document must be produced before any money is withdrawn, you should, as soon as practicable and at least 3 working days before the date of hearing, file in the court registry and serve on the judgment creditor and the judgment debtor a statement—

- (a) showing the sum held to the credit of the judgment debtor:
- (b) giving particulars of the deposit book or other document required to be produced before that sum or any part of it is withdrawn:
- (c) showing (where possible) who is in possession of that deposit book or other document.

Note: Forms will be provided at any registry of the court.

- 7 If you dispute the debt alleged to be due from you to the judgment debtor, you should, within 5 working days after you are served with this summons including the day of service, file in the court registry and serve on the judgment creditor and the judgment debtor a notice that you dispute the debt claimed.

Note: Forms will be provided at any registry of the court. The filing of a notice that you dispute the debt claimed does not relieve you from attendance at the court on the day named in the summons.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Debts due under judgment or order

Complete the following table.

Form 71—*continued*

Particulars	Amount (\$)
Amount remaining due under judgment/order*	
Subsequent costs	
Costs of summons	
Solicitor's costs	
Total amount for which summons issued	

*Select one.

Notes

- 1 Failure to act in accordance with the directions contained in this summons may add to the costs.
- 2 If this summons was issued for hearing in a registry of the court other than the registry in which the judgment debtor might have commenced a proceeding against you to recover the debt due by you to him or her, you are entitled to apply to the registry of the court where this summons was issued either for the proceeding to be transferred to the registry in which the judgment debtor might have taken a proceeding against you or for the proceeding to be referred to the Registrar of that registry for inquiry and report.

This summons is issued at the instance of the judgment creditor, whose address for service is [address].

Advice

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

Registry hours

The registry of the court is open to the public from 9 am to 5 pm Mondays to Fridays inclusive.

A printed form of statement of service or affidavit of service, as set out in form 9, is to be endorsed on this form.

Form 72

r 19.73(2)

Notice to judgment debtor of issue of garnishee
summons*Complete and insert the heading as set out in form 70.***To** [name] (judgment debtor)

This document notifies you that a garnishee summons, a copy of which is attached to this notice, has been issued out of this court, and that if you have any cause to show why the court should not order the sub-debtor to pay the judgment creditor the debt alleged to be due from the sub-debtor to you, or so much of the debt as may be sufficient to satisfy the sum due to the judgment creditor from you, with the costs entered on the garnishee summons, you must attend at this court at the time and place fixed for the hearing of the garnishee summons and show such cause accordingly.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

You are entitled to appear at the hearing of the garnishee summons to give evidence as to your circumstances. If it appears to the court that the whole or part of the money sought to be attached is reasonably required by you for the maintenance and support of you and your family, the court may refuse to make an order attaching the debt and may make such order as to the disposal of any money paid into the court as it thinks fit.

This summons is issued at the instance of the judgment creditor, whose address for service is [address].

Advice

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

Form 72—*continued***Registry hours**

The registry of the court is open to the public from 9 am to 5 pm Mondays to Fridays inclusive.

A printed form of statement of service or affidavit of service, as set out in form 9 is to be endorsed on this form.

Form 73

r 19.75(2)

Statement by sub-debtor where money held on deposit

Complete and insert the heading as set out in form 70.

To the Registrar of the District Court at [place]
and

To [name] (judgment creditor) and [name] (judgment debtor)

The sub-debtor states as follows:

- 1 *For this paragraph select the statement that applies.*

Statement A

The debt alleged to be due by me to the judgment debtor comprises a sum of \$[amount], which stands to the credit of the judgment debtor with me, and which is on deposit with me.

Statement B

The debt alleged to be due by me to the judgment debtor comprises a sum of \$[amount], which stands to the credit of the judgment debtor with me, and which is held by me on a deposit account/current account/[specify other account]*.

*Select one.

- 2 It is a condition of the deposit/account* that a [specify whether deposit book, receipt, etc, and full particulars such as its number, etc] must be produced before that sum or any part of it is withdrawn.

*Select one.

- 3 The [specify whether deposit book, receipt, etc] is/is not* in my possession.

*Select one.

- 4 *Include this paragraph if the deposit book, receipt, or other document is not in the possession of the sub-debtor.*

To the best of my knowledge and belief the [specify whether deposit book, receipt, etc] is in the possession of [specify full particulars, including full name and address of the person the sub-debtor believes to be in possession of the document].

Form 73—*continued*

Date:

Signature:

(sub-debtor/solicitor for sub-debtor*)

*Select one.

Form 74

r 19.79(1)

Notice by sub-debtor that sub-debtor disputes
debt claimed*Complete and insert the heading as set out in form 70.***To** the Registrar of the District Court at [*place*]

and

To [*name*] (judgment creditor) and [*name*] (judgment debtor)**This document notifies you that** I, [*name*], the sub-debtor, dispute
the debt claimed to be due from me to the judgment debtor.

Date:

Signature:

(sub-debtor/solicitor for sub-debtor*)

*Select one.

Form 75

r 19.81(2)

Order for delivery or disclosure of whereabouts
of deposit book*Complete and insert the heading as set out in form 70.***To** *[name, address]*, the judgment debtor/*[other description]**

*Select one.

You are ordered to, within 5 working days from the service of this order,—

- (a) deliver to the Registrar of this court at *[place]* the deposit book/receipt/other document* in respect of the sum of \$*[amount]* that stands to the credit of the judgment debtor and that is on deposit with the sub-debtor/held by the sub-debtor in *[specify account]** if that deposit book/receipt/other document* is in the possession of the judgment debtor/*[name and address of other person]**; or

*Select one.

- (b) file in the court at *[place]* an affidavit as to where that deposit book/receipt/other document* is if it is not in the possession of the judgment debtor/*[name and address of other person]**.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

- 1 Failure to comply with the order within the prescribed time could lead to your imprisonment.
- 2 If a person other than the judgment debtor is in possession of the deposit book/receipt/other document* and has a claim to its possession adverse to that of the judgment creditor, that person

Form 75—*continued*

must give notice of the claim in writing to the Registrar within 5 working days of the summons being served on him or her.

*Select one.

Advice

If you are in doubt, consult a solicitor or the staff of the District Court immediately.

Registry hours

The registry of the court is open to the public from 9 am to 5 pm Mondays to Fridays inclusive.

Form 76

r 19.81(4)

Affidavit as to whereabouts of deposit book

Complete and insert the heading as set out in form 70.

I, *[name, address, occupation]*, swear/solemnly and sincerely affirm* that—

*Select one.

- 1 The deposit book/receipt/*[other document]** in respect of the sum of \$*[amount]* that stands to the credit of the judgment debtor and that is on deposit with/held by* the sub-debtor in a *[specify account]* is not in my possession.

*Select one.

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

Statement A

I believe that the deposit book/receipt/*[other document]** is in the possession of *[full name, address]*.

Statement B

I do not know the present whereabouts of the deposit book/receipt/*[other document]**.

*Select one.

Signature:

Sworn/Affirmed* at: *[place, date]*

*Select one.

Before me: *[name, signature]*

(Registrar/Deputy Registrar/solicitor/Justice of the Peace*)

*Select one.

Form 77
Third party claim

r 19.89(1)

Section A: information required to process your
application

You must complete all the steps in this section.

**Step 1: Provide the details of the court case this application
relates to.**

Court reference number (if known):

Judgment debtor's name:

Judgment creditor's name (if known):

Step 2: Provide the details of the person making this application.

Full name:

Organisation name (if applicable):

Office held by authorised officer making application:

Postal address:

Street address (if different):

Email:

Phone: [*Home, mobile, business*]

Indicate your preferred contact address.

- my email address (above):
- my postal address (above):
- my lawyer's address (see step 6):

Step 3: Provide details about the type of third party claim.

The claim is made in respect of:

Select one of the following.

- Property seized under an enforcement in this court case.
- Proceeds from the sale of property seized under an enforcement in this court case.
- The value of the property seized under an enforcement in this court case.

Form 77—*continued***Step 4: Provide details about your claim.**

List the property that you are claiming

Grounds for your claim

Step 5: Provide details about whether you want to suspend the sale of seized property (where the property has not been sold).*Select one of the following.*

- No, I do not want to suspend the sale of seized property. *Go to section B.*
- Yes, I have already deposited money with a bailiff or court or provided security to suspend the sale of seized property. *Please provide details.*

Date the money was**deposited with a bailiff
or court****Amount paid or security
provided****Name of bailiff/court
staff or name of court****Section B: extra information to assist the
application process**

If you do not need to complete the step in section B, go straight to section C.

Step 6: Provide the details of the lawyer representing you.

Only complete this step if a lawyer is representing you.

Name of law firm:

Name of lawyer:

Postal address:

Email:

Phone:

Section C: date and signature

This section must be completed by the applicant from step 2 or the applicant's lawyer from step 6.

Your name:

Form 77—*continued*

Signature:

Date:

Select one of the following.

- I am the applicant.
- I am the applicant's lawyer.

Form 78

r 19.90

Notice of third party claim

Court reference number:

Court enforcement number:

Agent reference number:

This notice relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To** [*Name of judgment creditor*], judgment creditor

This document notifies you that [*Name of third party*], a third party, has filed a claim to property seized in the enforcement of this proceeding.

A copy of the third party claim is attached to this notice.

You can give notice to a Registrar that you admit the title of [*Name of third party*] to the property, or ask a Registrar to direct a bailiff/constable* to withdraw from possession. You will not be liable for any possession fees or expenses incurred after the bailiff/constable* is notified.

*Select one.

If you do not accept the third party claim, a hearing will be scheduled before a District Court Judge, who will make a decision about the third party claim.

The third party claim is being managed by the District Court at [*place*]

All enquiries and correspondence should be made to the Collections Unit, [*Generic Email Address*], [*Phone*], [*Postal address*].

Issued by: [*Name*], Registrar/DeputyRegistrar*

*Select one.

Date:

Form 79

r 19.92(1)

Notice to Registrar: response to third party
claim

Court reference number:

Court enforcement number:

Agent reference number:

This notice relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))**To a Registrar of the District Court**

This document notifies you that:

Select one of the following.

- I accept [*Name of third party*]'s claim to ownership of the following seized property:
- I want the bailiff to withdraw from possession of the following seized property:

List here the seized property being referred to:

I understand that the enforcement will be treated as having been abandoned.

I understand that I will not be liable for any possession fees or expenses incurred in the enforcement of this proceeding, after the bailiff is notified.

Your name:

Signature:

Date:

Select one of the following.

- I am the judgment creditor.
- I am the judgment creditor's lawyer.

Registry use onlyApplication received by [*Name of Registrar*]

Date bailiff notified:

Form 80

r 19.94

Summons to judgment creditor: third party
claim hearing

Court reference number:

Court enforcement number:

Agent reference number:

This summons relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))and [*Full name(s)*] (third party)**To** [*Name of judgment creditor*], judgment creditor

This summons orders you to attend a third party claim hearing about
*property seized in the enforcement of this proceeding/*the proceeds
from the sale of property seized in the enforcement of this proceed-
ing/*the value of the property seized in the enforcement of this pro-
ceeding.

*Select one.

The hearing will be held before a District Court Judge, who will make
a decision about the third party claim.

When and where the hearing will be held

Date and time:

Place:

Issued by: [*Name*] Registrar/Deputy Registrar*

*Select one.

Date:

Give or send this summons to: [*Name of judgment creditor*]

Address of creditor:

Phone number of creditor:

Form 80—*continued*

Information for the judgment creditor

Why have I been served with a summons to attend a third party claim hearing?

You are the judgment creditor in a civil court proceeding. A court or tribunal ordered the judgment debtor to pay you but they have not paid this debt.

You filed in court an application for a warrant to seize property to enforce this debt. A bailiff has seized property from the judgment debtor.

A third party has now filed a claim saying that they own or have an interest in the property that was seized by the bailiff.

You have not advised the court that you admit the third party's claim to the property.

A hearing is now required before a Judge to make a decision about the third party claim.

How will I find out more about the third party claim?

The third party is required to serve you with details of the property that they are claiming, and any further grounds for their claim, prior to the hearing.

Is legal advice available before the hearing?

You may want to seek legal advice before the hearing. If you decide to seek legal advice, you should do it as soon as possible. You may be eligible for free legal advice through your local Community Law Centre. A list of Community Law Centres is available online at <http://www.communitylaw.org.nz>.

Can I have legal representation at the hearing?

You can ask a lawyer to represent you at the hearing. If you want a lawyer to represent you, you need to organise one before the hearing.

Form 81
Summons to third party: third party claim
hearing

r 19.94

Court reference number:

Court enforcement number:

Agent reference number:

This summons relates to the court case—

between [*Full name(s)*] (judgment creditor(s))

and [*Full name(s)*] (judgment debtor(s))

and [*Full name(s)*] (third party)

To [*Name of third party*], third party

This summons orders you to attend a third party claim hearing about
*property seized in the enforcement of this proceeding/*the proceeds
from the sale of property seized in the enforcement of this proceed-
ing/*the value of the property seized in the enforcement of this pro-
ceeding.

*Select one.

The hearing will be held before a District Court Judge, who will make
a decision about your claim.

When and where the hearing will be held

Date and time:

Place:

What you must do

You must complete the following actions within 3 working days± of
being served with this summons:

- 1 File in the District Court at [*place*] the particulars of your
claim. This document must contain:
 - Details of the property that you are claiming, and any
further grounds for your claim.
 - Your full name, address, and occupation.
- 2 Provide a copy of the particulars of your claim to [*Name of
judgment creditor*], the judgment creditor, at [*Address*].

±Or if the time for service has been shortened, then within such reasonable time before the
day of the hearing as the time for service allows.

Form 81—*continued*

If you do not provide the particulars of your claim to the court and the judgment creditor, your claim may not be heard by the Judge.

Issued by: [*Name*] Registrar/Deputy Registrar*

*Select one.

Date:

Give or send this summons to: [*Name of third party*]

[*Address of third party*]

[*Phone number of third party*]

Information for the third party

Why have I been served with a summons to attend a third party claim hearing?

A court or tribunal ordered the judgment debtor to pay the judgment creditor but the debt has not been paid.

The judgment creditor has filed in court an application for a warrant to seize property to enforce this debt. A bailiff has seized property from the judgment debtor.

You are the third party. You have filed a claim in court saying that you own or have an interest in the property that was seized by a bailiff from the judgment debtor.

The judgment creditor does not admit your claim to the property.

A hearing is now required before a Judge to make a decision about your claim.

What form should I use to file and serve the particulars of my claim?

There is no prescribed form that you must use. It is up to you to decide on the format and content of the particulars of your claim as long as it includes the following:

- Details of the property that you are claiming, and your grounds for making the claim to this property.

Form 81—*continued*

- Your full name, address, and occupation.

Please file your particulars of claim with the [*Location*] District Court and provide a copy to the judgment creditor within 3 working days± of being served with this summons.

Please remember to include the court reference number, [*Reference number*], on the particulars of your claim so that the court can match it to the correct court file.

What happens if I fail to establish my claim?

The property will be sold and the proceeds of sale paid out*/the proceeds of sale will be paid out*/the value will be paid out* according to the requirements of the process.

*Select one.

Is legal advice available before the hearing?

You may want to seek legal advice before the hearing. If you decide to seek legal advice, you should do it as soon as possible. You may be eligible for free legal advice through your local Community Law Centre. A list of Community Law Centres is available online at <http://www.communitylaw.org.nz>.

Can I have legal representation at the hearing?

You can ask a lawyer to represent you at the hearing. If you want a lawyer to represent you, you need to organise one before the hearing.

Form 82

r 19.94

Summons to judgment creditor and bailiff: third party claim hearing involving damages

Court reference number:

Court enforcement number:

Agent reference number:

This summons relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))

and

between [*Full name(s)*] (third party)and [*Full name of judgment creditor*] and [*Full name*] (a bailiff of a District Court)/[*specify other*]* (Respondent(s))

*Select one.

To [*Name of judgment creditor*], judgment creditor; and**To** [*Name of bailiff/other*], bailiff/other*

*Select one.

This summons orders you to attend a third party claim hearing about
*property seized in the enforcement of this proceeding/*the proceeds
from the sale of property seized in the enforcement of this proceeding/*the value of the property seized in the enforcement of this proceeding.

*Select one.

The third party has also made a claim for damages against you (and from the bailiff of the court) for \$[*Damages*], arising out of the enforcement of this proceeding.

The hearing will be held before a District Court Judge, who will make a decision about the third party claim.

When and where the hearing will be held

Date and time:

Place:

Form 82—*continued*

Issued by: [*Name*], Registrar/Deputy Registrar*

*Select one.

Date:

Give or send this summons to: [*Name of judgment creditor*]

[*Address of creditor*]

[*Phone number of creditor*]

Information for the judgment creditor

Why have I been served with a summons to attend a third party claim hearing?

You are the judgment creditor in a civil court proceeding. A court or tribunal ordered the judgment debtor to pay you but they have not paid this debt.

You filed in court an application for a warrant to seize property to enforce this debt. A bailiff has seized property from the judgment debtor.

A third party has now filed a claim saying that they own or have an interest in the property that was seized by the bailiff.

You have not advised the court that you admit the third party's claim to the property.

The third party has also made a claim for damages against you (and from the bailiff of a court) arising out of the enforcement of this proceeding.

A hearing is now required before a District Court Judge to make a decision about the third party claim and the claim for damages.

Is legal advice available before the hearing?

You may want to seek legal advice before the hearing. If you decide to seek legal advice, you should do it as soon as possible. You may be eligible for free legal advice through your local Community Law Centre. A list of Community Law Centres is available online at <http://www.communitylaw.org.nz>.

Form 82—*continued***Can I have legal representation at the hearing?**

You can ask a lawyer to represent you at the hearing. If you want a lawyer to represent you, you need to organise one before the hearing.

Form 83

r 19.94

Summons to third party: third party claim
hearing involving damages

Court reference number:

Court enforcement number:

Agent reference number:

This summons relates to the court case—

between [*Full name(s)*] (judgment creditor(s))and [*Full name(s)*] (judgment debtor(s))and [*Full name(s)*] (third party)**To** [*Name of third party*], third party

This summons orders you to attend a third party claim hearing about
*property seized in the enforcement of this proceeding/*the proceeds
from the sale of property seized in the enforcement of this proceed-
ing/*the value of the property seized in the enforcement of this pro-
ceeding.

*Select one.

You have also made a claim for damages against the *judgment cred-
itor/*bailiff for \$[*Damages*], arising out of the enforcement of this
proceeding.

*Select one.

The hearing will be held before a District Court Judge, who will make
a decision about your claim.

When and where the hearing will be held

Date and time:

Place:

Issued by: [*Name*] Registrar/Deputy Registrar*

*Select one.

Date:

Form 83—*continued*

Give or send this summons to: *[Name of third party]*

[Address of third party]

[Phone number of third party]

Information for the third party

Why have I been served with a summons to attend a third party claim hearing?

A court or tribunal ordered the judgment debtor to pay the judgment creditor but the debt has not been paid.

The judgment creditor has filed in court an application for a warrant to seize property to enforce this debt. A bailiff has actioned the warrant and seized property from the judgment debtor.

You are the third party. You have filed a claim in court saying that you own or have an interest in the property that was seized by a bailiff from the judgment debtor.

The judgment creditor does not admit your claim to the property.

You have also made a claim for damages against the *judgment creditor/*bailiff arising out of the enforcement of this proceeding.

*Select one.

A hearing is now required before a Judge to make a decision about your claim.

What happens if I fail to establish my claim?

The property will be sold and the proceeds of sale paid out*/the proceeds of sale will be paid out*/the value will be paid out* according to the requirements of the process.

*Select one.

Is legal advice available before the hearing?

You may want to seek legal advice before the hearing. If you decide to seek legal advice, you should do it as soon as possible. You may be eligible for free legal advice through your local Community Law Centre. A list of Community Law Centres is available online at <http://www.communitylaw.org.nz>.

Form 83—*continued***Can I have legal representation at the hearing?**

You can ask a lawyer to represent you at the hearing. If you want a lawyer to represent you, you need to organise one before the hearing.

Form 84

r 19.102(1)

Application for writ of arrest

Complete and insert the heading as set out in form 2.

I, [*name, address, occupation*], the plaintiff/duly authorised agent of the plaintiff*, apply to the District Court at [*place*] for the issue of a writ of arrest against [*name, address, occupation*], the defendant, on the grounds set out in the attached affidavit.

*Select one.

Date:

Signature:

(agent for plaintiff/plaintiff*)

*Select one.

I [*name, address, occupation*] swear/solemnly and sincerely affirm* that—

*Select one.

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

Statement A

I am the plaintiff in this proceeding.

Statement B

I am the agent of the plaintiff in this proceeding duly authorised by the plaintiff to sue for and recover from the defendant the claim mentioned below by a power of attorney/[*specify other authority*]* given by the plaintiff and dated [*date*].

*Select one.

2 The defendant is indebted to me/the plaintiff* and I have/the plaintiff has* a good cause of action against the defendant for the sum of \$[*amount*] for [*specify*], the details of which are set out in the notice of claim/statement of claim* filed in this proceeding.

*Select one.

3 The debt was contracted on [*date*].

Form 84—*continued*

- 4 *[Specify grounds for belief that the defendant is about to leave New Zealand and to evade payment.]*
- 5 For the reason stated, I believe/the plaintiff believes* that the defendant is about to leave New Zealand immediately, and that the defendant intends to evade the payment of the above sum to me/the plaintiff*.

*Select one.

Signature of deponent

Sworn/Affirmed* at: *[place, date]*

*Select one.

Before me: *[name, signature]*

(Registrar/Deputy Registrar/solicitor/Justice of the Peace*)

*Select one.

Form 85
Writ of arrest

r 19.103(1)

Complete and insert the heading as set out in form 2.

To a bailiff of the District Court at *[place]*/a constable at *[place]**

*Select one.

- 1 I am satisfied that I have jurisdiction to the amount of the plaintiff's claim and that, by the affidavit of *[name]*, the plaintiff/the duly authorised agent of the plaintiff* in this proceeding, the plaintiff has a good cause of action against the defendant for the sum of \$*[amount]*, for which a summons has been issued out of this court by the District Court at *[place]*, and that there is probable cause for believing that the defendant is about to leave New Zealand with the intention of evading payment of the sum of \$*[amount]*.

*Select one.

- 2 I therefore order, under section 109 of the District Courts Act 1947, that, unless the defendant deposits with you, or with the Registrar of the District Court before which he/she* is brought, the sum of \$*[amount]*, together with costs of \$*[amount]*, to be paid, applied, and disposed of according to the judgment of the court in this proceeding, you immediately bring the defendant before a District Court Judge to be further dealt with according to law.

*Select one.

- 3 I further order that you certify to me immediately what you do under this warrant.

Date:

Signature:

(District Court Judge)

Form 86

r 19.103(2)

Notice to defendant arrested under writ

*Complete and insert the heading as set out in form 2.***To** *[name]* (defendant)

This document notifies you that if you deposit with the officer enforcing the writ of arrest issued on *[date]* by the District Court at *[place]*/with the Registrar of the court at *[place]** the sum of \$*[amount]*, being the amount claimed, and \$*[amount]* for costs, you will be discharged from custody, and the sum will be paid, applied, and disposed of according to the final judgment of the court.

*Select one.

Date:

Signature:

(District Court Judge/Registrar/Deputy Registrar*)

*Select one.

Form 87

r 19.103(3)

Bail bond to be given by defendant arrested
under writ of arrest*Complete and insert the heading as set out in form 2.***Obligation**

- 1 We, *[names and addresses of sureties]*, bind ourselves jointly and severally to pay to the Registrar of the District Court at *[place]* the sum of \$*[amount]*.

Background

- 2 On *[date]*, *[name of applicant]* applied to the District Court at *[place]* to recover the sum of \$*[amount]* and \$*[amount]* for costs against *[name]*.
- 3 It has been made to appear to *[name]*, District Court Judge, by the affidavit of *[name]*, that there is probable cause for believing that *[name]* was about to leave New Zealand with the intention of evading payment of such sum.
- 4 A writ of arrest was issued, and *[name]* has been arrested but desires to be released on bail.

Condition

- 5 The condition of this obligation is that if *[name]* appears at the District Court at *[place, date, time]* to answer the demand of the applicant and does not depart until the judgment of the court has been given, then this obligation ceases to have effect, but otherwise remains in full force.

Date:

Signature:

(sureties)

(District Court Judge/Registrar/Deputy Registrar*)

*Select one.

Form 87—*continued*

I approve of this bond.

Date:

Signature:

(District Court Judge/Registrar/Deputy Registrar*)

*Select one.

Form 88

r 19.103(4)

Warrant of remand in default of bail being found

Complete and insert the heading as set out in form 2.

To a bailiff of the District Court at *[place]*/a constable at *[place]**
and

To the manager of the prison at *[place]*

- 1 At the District Court at *[place, date]*, the defendant was brought before me under a writ of arrest issued at the suit of the plaintiff for the sum of \$*[amount]* and costs of \$*[amount]*.
- 2 Acting under section 109 of the District Courts Act 1947, I admitted the defendant to bail in the sum of \$*[amount]*, and *[specify]* surety/sureties* *[specify]* in the sum of \$*[amount]* (each), and I ordered that in default of the bail being given or the amount of \$*[amount]*, with costs of \$*[amount]*, being deposited with the Registrar of the District Court at *[place]*, the defendant should be detained in the prison at *[place]* and be brought from there to the District Court at *[place, date, time]*.

*Select one.

- 3 Default has been made in the bail being given, and the amount of \$*[amount]* and costs of \$*[amount]* has not been deposited.
- 4 I therefore order you, the bailiff, to take the defendant and deliver him/her* to the manager of the prison at *[place]*.

*Select one.

- 5 I order you, the manager, to receive the defendant into your custody and to detain the defendant and bring the defendant to the District Court at *[place, date, time]* before me or some other District Court Judge unless the defendant sooner gives the prescribed security or makes the deposit, or until the defendant is sooner discharged by due course of the law.

Date:

Signature:

(District Court Judge)

Form 89

r 19.103(5)

Consent for summary hearing

Complete and insert the heading as set out in form 2.

I, the defendant, against whom a writ of arrest has been issued under section 109 of the District Courts Act 1947, consent that the plaintiff's claim may be summarily heard and finally adjudicated immediately/at [*time, date*]*.

*Select one.

Signature:

(defendant)

Before me: [*name, signature*]

(Registrar/Deputy Registrar/solicitor/Justice of the Peace*)

*Select one.

Form 90

r 19.106(1)

Order against executor or administrator in
respect of assets received since judgmentIn the District Court at *[place]*No: *[number of proceeding]*Between *[full name]* (plaintiff)And *[full name]*, the executor/administrator* of *[full name]* (deceased), (defendant)

*Select one.

To the defendant

- 1 At the hearing of this proceeding on *[date]*, it was adjudged that the plaintiff should recover against the defendant the sum of \$*[amount]* for *[specify]* and \$*[amount]* for costs, and it was ordered that the sums be levied on the assets of the deceased's estate that should subsequently come into the hands of the defendant as executor/administrator* to be administered.

*Select one.

- 2 On the application of the plaintiff, it appears to the court that, since the judgment, assets of the deceased's estate have come into the hands of this defendant as executor/administrator*.

*Select one.

- 3 This court orders that the sums be levied on the assets of the deceased's estate that have come into the hands of the defendant as executor/administrator* since the date of the judgment.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 91

r 20.29(1)

Heading for applications, notices, and orders
under Harassment Act 1997No: *[number of proceeding]*In the District Court at *[place]*

Under the Harassment Act 1997

*[Full name, *address, occupation]*

(applicant)

*[Full name, *address, occupation]*

(respondent)

*Omit if this does not apply.

*Include the following if it applies.**[Full name, address, occupation]*

(associated respondent)

Note

Rule 17.35 of the District Courts Rules 2014 permits the residential address of an applicant for a restraining order or of a protected person to be omitted from this heading if he or she wants the address to be kept confidential from the other parties.

Form 92
Application for restraining order
Section 9, Harassment Act 1997

r 20.31(1)

Complete and insert the heading as set out in form 91.

- 1 *For this paragraph select the statement that applies.*

Statement A

I, [full name], apply for a restraining order against [full name], the respondent.

Statement B

I, [full name], the appointed representative of [full name], the applicant, apply on behalf of the applicant for a restraining order against [full name], the respondent.

- 2 *Include this paragraph if the order is sought for a period of more or less than 1 year.*

The proposed duration of the order sought is a period of [specify period].

- 3 I seek a direction that the restraining order apply against [full name(s)], the associated respondent/associated respondents*.

*Select one.

- 4 *Include this paragraph if you wish to request special conditions.*

I request that the following special conditions be part of the restraining order: [set out in sufficient detail the nature of the special conditions sought].

Affidavit in support

I rely on the content of my/[name of deponent if deponent is not the applicant],* affidavit dated [date] filed in support of this application.

*Select one.

Date:

Signature:
(applicant)

Form 92—*continued***Date of hearing**

The Registrar is to complete the following appointment for hearing.

I appoint [date, time] at the District Court at [place] for the hearing of this application.

Date:

Signature:

(Registrar)

Notes

Affidavit in support

An affidavit must be filed with this application. The affidavit must contain sufficient particulars to show the grounds on which you claim to be entitled to the order and to inform the court of the facts relied on. In particular, it must state the matters required to be stated by rule 20.33 of the District Courts Rules 2014.

Where the application is made by a representative, the accompanying affidavit or affidavits can be made by anyone with knowledge of the relevant facts.

Other accompanying documents

A notice of proceeding in form 23 must also be filed with this application.

Advice

If you need help, consult a lawyer or contact a District Court registry immediately.

Registry hours

The registry of the District Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

r 20.31(2), (3)

Form 93
Application for variation or discharge of
restraining order

Section 22, Harassment Act 1997

Complete and insert the heading as set out in form 91.

Select the statement that applies.

Statement A

I, [full name], apply for an order that the restraining order made in the District Court at [place, date, time] be varied by [specify nature of variation sought by referring to section 22(1) of the Act] on the following grounds: [specify grounds].

Statement B

I, [full name], apply for an order discharging the restraining order made in the District Court at [place, date, time] on the following grounds: [specify grounds].

Affidavit in support

I rely on the content of the affidavit dated [date] (of [name of deponent if deponent is not the applicant])* filed in support of this application.

*Omit this phrase if it does not apply.

Date:

Signature:
(applicant)

Date of hearing

The Registrar is to complete the following appointment for hearing.

I appoint [date, time] at the District Court at [place] for the hearing of this application.

Form 93—*continued*

Date:

Signature:
(Registrar)

Notes

Advice

If you need help, consult a lawyer or contact a District Court registry immediately.

Registry hours

The registry of the District Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

Form 94

r 20.32(1)

Notice of proceeding

*Sections 9, 22, and 23, Harassment Act 1997**Complete and insert the heading as set out in form 2.***To** *[full name]* (the respondent)

and

***To** *[full name]* (the associated respondent)

*Omit if it does not apply.

*Select the statement that applies.**Statement A***Notification of application for restraining order***[Full name]* has filed an application for a restraining order against you/the respondent*.

*Select one.

*Statement B***Notification of application for variation of restraining order***[Full name]* has filed an application for variation of the restraining order made in the District Court at *[place, date]* between *[full name]*, the protected person, and *[full name]*, the respondent, *and *[full name]*, the associated respondent.

*Omit this phrase if it does not apply.

*Statement C***Notification of application for discharge of restraining order***[Full name]* has filed an application for discharge of the restraining order made in the District Court at *[place, date]* on between *[full name]*, the protected person, and *[full name]*, the respondent, *and *[full name]*, the associated respondent.

*Omit this phrase if it does not apply.

Form 94—*continued**Statement D***Notification of application for variation or discharge of restraining order by associated respondent**

[*Full name*], the associated respondent, has filed an application for variation/discharge* of the restraining order made in the District Court at [*place, date*] between [*full name*], the protected person, and [*full name*], the respondent, and [*full name*], the associated respondent, in so far as the order affects him/her*.

*Select one.

A copy of the application is attached. The nature of the order or orders sought is specified in the application, which also states the date of the hearing.

The applicant's address for service is [*address*].

Date:

Signature:

(applicant/solicitor for applicant*)

*Select one.

Notes

Notice of defence

If you wish to defend the application, you may file a notice of defence in this office of the court at least **5 working days** before the date of the hearing. An affidavit must be filed with the notice of defence. A copy of the notice of defence must be served on the other party. That copy may be delivered to the address for service given by that person.

If you do nothing, the hearing may proceed and the court can make an order in your absence.

Form 94—*continued***Address for service**

If you do not wish to defend the application but you do wish to know what is happening, you should—

- (a) file in this registry of the court a notice giving the address of a place in New Zealand at which documents can be left for you; and
- (b) serve a copy of the notice on the other party to the proceeding. That copy may be delivered to the address for service given by that person.

Advice

If you need help, consult a lawyer or contact a District Court registry immediately.

Registry hours

The registry of the District Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

Form 95 r 20.35(2), (5)
Notice of residential address and request for
confidentiality

Complete and insert the heading as set out in form 2.

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

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

Statement A

I, *[full name]*, am applying for a restraining order against *[full name]*, the respondent.

Statement B

I, *[full name]*, am a party to an application for a variation/discharge* of a restraining order made for my protection.

*Select one.

2 I request that my residential address and telephone numbers be kept confidential from the other party/parties*.

*Select one.

My residential address is *[address]*.

My contact telephone number(s) are: *[home, work]*.

3 I have provided an address for service.

4 *Include this paragraph if your solicitor is using another solicitor as an agent to file the proceedings.*

I also request that the name and address of my solicitor be kept confidential from the other party/parties*.

*Select one.

My solicitor's name and address are: *[name, address]*.

Date:

Signature:
(applicant)

Form 96
Notice of defence

r 20.40(1)

Complete and insert the heading as set out in form 19.

To the Registrar
and

To the applicant/*[applicant and either the respondent or the associate respondent, or both, as the case may be]**

*Select one.

I, *[full name, address, occupation]*, the respondent/associated respondent*, give notice that I intend to defend the application for *[specify]*.

*Select one.

Affidavit in support

I rely on the content of the affidavit dated *[date]* filed in support of this notice.

Date:

Signature:

(respondent)/(associated respondent)*

*Select one.

This notice is filed by *[full name]* whose address for service is *[address]*.

Form 97

r 20.59

Restraining order

*Section 16, Harassment Act 1997**Complete and insert the heading as set out in form 19.*

- 1 On application, the court makes a restraining order against [*full name*], the respondent.
- 2 *Omit this paragraph if it does not apply.*
The court also directs that the order applies against the following person/persons*: [*full name of each person in respect of whom the court makes a direction under section 18(1) of the Harassment Act 1997*].

*Select one.

- 3 This order expires on [*date*] unless earlier extended.

Conditions of order

This order protects [*name*], the protected person. The conditions of the order are as follows:

Standard conditions prohibiting harassment and contact

It is a condition of this order that the respondent, and any associated respondent, must not—

- (a) do, or threaten to do, any specified act (set out below) to the protected person; or
- (b) encourage any person to do any specified act to the protected person, where the act, if done by the respondent or any associated respondent, would be prohibited by this order.

A **specified act** is any 1 of the following acts:

- (a) watching, loitering near, or preventing or hindering access to or from, the protected person's place of residence, business, employment, or any other place that the protected person frequents for any purpose; or
- (b) following, stopping, or accosting the protected person; or
- (c) entering, or interfering with, property in the possession of the protected person; or
- (d) making contact with that person (whether by telephone, correspondence, or in any other way); or

Form 97—*continued*

- (e) giving offensive material to the protected person, or leaving it where it will be found by, given to, or brought to the attention of that person; or
- (f) acting in any other way that—
 - (i) causes the protected person to fear for his or her safety; and
 - (ii) that would cause a reasonable person in that person's particular circumstances to fear for his or her safety.

A **specified act** is regarded as being done to the protected person if—

- (a) it is done to a person with whom the protected person is in a family relationship; and
- (b) the doing of the act is due wholly or partly to the protected person's family relationship with that person.

Special conditions

The court also imposes the following special conditions: [*specify*].

Unless otherwise stated, these special conditions last until the order expires.

Date:

Signature:
(applicant)

Important information for respondent/associated
respondent

Effect of restraining order

This order prohibits you from having contact with the protected person in any of the ways specified above. The order may also contain special conditions relating to contact between you and the protected person. You should read the terms of the order very carefully to find out what contact you may **not** have with the protected person and persons with whom the protected person has a family relationship.

Form 97—*continued***Duration of restraining order**

Unless the order states that this restraining order lasts for a different period, it will remain in force for 1 year, starting the day after the date on which it was made.

Modification or discharge of this order

You (or any other party, including the respondent or any associated respondent) can apply to the court at any time—

- (a) for a variation or discharge of any special conditions of this order, or for the imposition of a new special condition:
- (b) for the duration of this order to be varied, if the court is satisfied that an extension is necessary to protect you from further harassment:
- (c) for this order to be discharged.

Consequences of a breach of this order

You commit an offence if, without reasonable excuse, you—

- (a) contravene this order; or
- (b) fail to comply with any condition of this order.

The maximum penalty for this offence is imprisonment for 6 months or a \$5,000 fine. However, in the case of certain repeat offences, the maximum penalty for this offence increases to imprisonment for 2 years.

Advice

If you need help, consult a lawyer or contact a District Court registry immediately.

Registry hours

The registries of the District Court are open from 9 am to 5 pm on Mondays to Fridays inclusive.

Form 97—*continued***Important information for protected person****Effect of restraining order**

The effect of this order is to prohibit the respondent or associated respondent from having contact with you in any of the ways set out in the order. This order may also contain special conditions relating to contact between you and the respondent or associated respondent. The order also prevents the respondent or associated respondent from having contact with anyone with whom you have a family relationship if that contact is due partly or wholly to that relationship.

Duration of restraining order

Unless the order states that this restraining order lasts for a different period, it will remain in force for 1 year from the date on which it was made.

Modification or discharge of this order

You (or any other party, including the respondent or any associated respondent) can apply to the court at any time—

- (a) for a variation or discharge of any special conditions of this order, or for the imposition of a new special condition:
- (b) for the duration of this order to be varied, if the court is satisfied that an extension is necessary to protect you from further harassment:
- (c) for this order to be discharged.

If the respondent or associated respondent makes any of these applications, you will be notified and have an opportunity to dispute the application.

Consequences of a breach of this order

The respondent or associated respondent commits an offence if, without reasonable excuse, they—

- (a) contravene this order; or
- (b) fail to comply with any condition of this order.

The maximum penalty for this offence is imprisonment for 6 months or a \$5,000 fine. However, in the case of certain repeat offences, the

Form 97—*continued*

maximum penalty for this offence increases to imprisonment for 2 years.

Advice

If you need help, consult a lawyer or contact a District Court office immediately.

Registry hours

The registries of the District Court are open from 9 am to 5 pm on Mondays to Fridays inclusive.

Form 98

r 20.67(1)

Application for removal order

*Section 215, Local Government Act 2002**Complete and insert the heading as set out in form 2.*

I, [full name, occupation], apply for a removal order against [full name, address, occupation (if known)], the respondent.

Property

- 1 The order is sought in respect of the property at [*specify the street address or other locality description in sufficient detail to enable it to be clearly identified*].

Nature of order sought

- 2 The removal/alteration* is sought of the fence/structure/vegetation† located on [*specify the location of the particular fence, structure, or vegetation on the property in sufficient detail to enable it to be clearly identified*].

*Select one.

†Select one or more.

- 3 *Omit this paragraph if it does not apply.*
The following alterations are sought to the fence/structure/vegetation*: [*specify the nature of the alterations sought. Where removal is sought of one part of the fence and alteration of another, specify the proposal in sufficient detail to inform the court. A drawing or diagram may be attached to explain the orders sought*].

*Select one or more.

- 4 *Omit this paragraph if it does not apply.*
The following further orders are sought: [*specify—*
(a) *any order sought that any thing attached to the fence, structure, or vegetation is to be removed as a consequence of the removal or alteration:*
(b) *any other consequential order sought*].

Form 98—*continued***Entry onto adjoining land**

- 5 *Omit this paragraph if it does not apply.*

A further order is sought authorising entry onto [*identify any adjoining land that would need to be entered to enforce the removal order sought*]

Costs and expenses of complying with order sought

- 6 *Omit this paragraph if it does not apply.*

A direction is sought that the respondent not be required to pay the costs and expenses of complying with the removal order sought.

Note: Section 220 of the Local Government Act 2002 provides that, unless a removal order directs otherwise, the respondent must pay all the costs and expenses of complying with the order.

Service

- 7 The respondent is the owner/occupier*.

*Select one.

- 8 In addition to the respondent, the following persons will be served with a copy of the order:

Select the paragraph(s) that apply.

- (a) the owner of the property, whose name and address is: [*complete where respondent is not owner*].
- (b) the mortgagees of the property, whose names and addresses are: [*complete where the property is subject to a mortgage*].
- (c) the owners of any property adjoining the property to which the application relates, whose names and addresses are: [*names, addresses*].

- 9 *For this paragraph select the statement that applies.*

Statement A

A direction as to service is sought in respect of the following person/persons* likely to be affected by the outcome of the proceeding: [*if known, give names and addresses of persons*]

Form 98—*continued*

concerned and indicate the way in which they are likely to be affected].

*Select one.

Statement B

Apart from the persons listed in paragraph [*number*], there do not appear to be any persons who are likely to be affected by the outcome of the proceeding.

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

Directions are sought on the manner in which the following persons are to be served: [*specify person concerned and the proposed nature of the direction sought*].

Affidavit in support

I rely on the content of the affidavit/affidavits* dated [*date(s)*] filed in support of this application.

I wish/do not wish* to be heard in support of this application.

*Select one.

Date:

Signature:

(applicant/person authorised to sign on behalf of applicant*)

*Select one.

Form 99
Removal order

r 20.69

To [full name, address] (respondent)

Reasons for removal order

The court makes this removal order because it is satisfied that—

- 1 The property at [*clearly identify street address or other locality*] is occupied, or regularly used, by persons who have been convicted of/have committed/are committing/are likely to commit* offences.

*Select one.

- 2 For this paragraph select the statement that applies.

Statement A

The fence/structure/vegetation* described below has facilitated or contributed to, is facilitating or contributing to, or is intended to facilitate or contribute to [*select one of the following paragraphs*]:

- (a) the concealment on the property of any unauthorised weapon or any controlled drug or any tainted property or any property that is stolen or obtained by a crime involving dishonesty [*specify reasons why this ground applies*].
- (b) the avoidance of detection or arrest of any person or persons believed or reasonably suspected to have committed any offence or offences [*specify reasons why this ground applies*].
- (c) the commission of any offence or offences by any person or persons on or from the property [*specify reasons why this ground applies*].

Statement B

The fence/structure/vegetation* described below is intended to injure any person [*specify reasons why this ground applies*].

Statement C

The fence/structure/vegetation* described below is such that the court is satisfied that it may reasonably be regarded as intimidating.

*Select one or more.

Form 99—*continued***Action required to be taken**

The court makes the following order/orders* against the respondent:

- 1 The respondent must remove/alter* the fence/structure/vegetation† as follows: *[identify, either in the order itself or by reference to documents attached to the order, the location of any fence, structure, or vegetation to be removed or altered and specify the action required to be taken]*.

*Select one.

†Select one or more.

- 2 The respondent must also remove the following attachments from the fence/structure/vegetation*: *[list attachments (such as video cameras, sensors, barbed wire) to be removed as a consequence of the removal or alteration referred to above]*.

*Select one or more.

- 3 The court also makes the following consequential orders and gives the following directions: *[set out any other consequential orders made, any directions as to service, and any direction relating to the costs of compliance]*.

- 4 *Omit this paragraph if it does not apply.*

If this removal order needs to be enforced, entry may be made onto *[identify portion of land adjoining property to which the order relates]* in accordance with section 221 of the Local Government Act 2002.

Period within which action must be taken

The respondent must comply with this order within *[specify]*. *[The period must be a reasonable period, having regard to the circumstances giving rise to the removal order.]*

Date:

Signature:

(Registrar)

Form 99—*continued*

Important information for respondent

Right to object

You may object to the making of this order. Every other person on whom this order is served may also object. A notice of objection must be in writing and contain certain information. (You can see an example of the form of the notice of objection at any registry of the District Court.) It must be lodged with the court and served on the applicant within 15 working days from the date on which the removal order is served on you (or within such further time as the court may allow).

If a notice of objection is lodged, the removal order cannot be enforced until the court has made its decision on the objection.

The court may confirm, vary, or discharge the order. If the order is confirmed or varied, the court will specify the date by which you must comply with the order.

Consequences if notice of objection not filed and order not complied with

If no objection is made to the order and you do not comply with this order within the period specified in the order for compliance, the applicant may enter the property without further notice and may use reasonable force to remove or alter the fence, structure, or vegetation in accordance with the terms of the order.

Any materials salvaged in removing or altering the fence, structure, or vegetation will be sold to recover the applicant's costs. If this does not cover all the costs, the applicant can recover the outstanding costs from you.

Advice

If you need help, consult a lawyer or contact a District Court registry immediately.

Registry hours

The registry of the District Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

Form 100

r 20.71(1)

Notice of making of removal order

*Clause 6, Schedule 14, Local Government Act 2002**Complete and insert the heading as set out in form 2.*

To *[names of persons other than respondent who are entitled to be served]*

The court has made a removal order in respect of the property at *[address or other locality description]*. A copy of the order is attached for your information.

You have been served with a copy of this order because you are one of the following:

- the owner of the property:
- the owner of an adjoining property:
- the mortgagee of the property:
- a person who is likely to be affected by the outcome of the proceeding.

Right to object

You may object to the order. A notice of objection must be in writing and contain certain information. (You can see an example of the form of the notice of objection at any registry of the District Court.) The objection must be lodged with the court and served on the applicant within 15 working days from the date on which the removal order is served on you (or such further time as the court may allow).

If an objection is lodged, the removal order cannot be enforced until the court has made its decision.

If you object, you can tell the court whether you (or your lawyer) wish to have an oral hearing.

Omit the following paragraph if you are the owner.

The court can decide to deal with your objection without an oral hearing.

Objection decided with oral hearing

If there is to be an oral hearing at which you (or your lawyer) can appear, you will be notified. You can make a written submission to the court instead of appearing at the hearing. A written submission

Form 100—*continued*

must be lodged with the court within 5 working days after you are notified of the hearing or within any longer period specified in the notice.

Objection decided without oral hearing

If there will not be an oral hearing to decide the objection, the Registrar will notify you that you can make a written submission to the court. A written submission must be lodged with the court within 5 working days after you are notified or within any longer period specified in the notice.

Other objections

Certain other people may also be able to object to the order. If so, all the objections may be dealt with together. If those other people do not wish to object, they may nevertheless be given an opportunity to comment on your objection before the court makes its decision.

After considering any objection to a removal order, the court may confirm the order, vary the order, or discharge the order.

Advice

If you need help, consult a lawyer or contact a District Court registry immediately.

Registry hours

The registry of the District Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

Date:

Signature:

(Registrar)

Form 101

r 20.73(1), (4)

Notice of objection to removal order

*Clause 7, Schedule 14, Local Government Act 2002**Complete and insert the heading as set out in form 2.***To the Registrar**

and

To the applicant/applicant and respondent *[if the objector is not the respondent]**

*Select one.

- 1 I, *[full name]*, *[specify one of the following:*
 - *the respondent*
 - *the owner of the property to which the removal order relates*
 - *a mortgagee of the property to which the removal order relates*
 - *the owner of any property adjoining the property to which the removal order relates*
 - *a person who has been served with the removal order in accordance with a direction given by the court]*,
object to the removal order made on *[date]* in favour of *[full name]*, the applicant, against me/*[full name of respondent if objection made by person other than respondent]**, the respondent, in respect of *[clearly identify street address or other locality]*.
*Select one.
- 2 The reasons for my objection are: *[specify]*.
- 3 I rely on the content of the affidavit/affidavits* dated *[date]* filed in support of this objection.
- 4 I request that—
Omit whichever of the following paragraphs does not apply.
 - (a) the order be discharged:
 - (b) the terms of the order be varied as follows: *[specify variation sought. The supporting affidavit must set out the facts relied on in support of the proposed variation]*.

Form 101—*continued*

5 I wish to appear/do not wish to appear* at a hearing before the court.

*Select one.

Date:

Signature:

(objector)

Date of hearing

The Registrar is to complete the following appointment for hearing if an appearance is required.

I appoint [*date, time*] at the District Court at [*place*] for the hearing of this objection.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Notes

Lodging notice of objection

This notice must be lodged with the court within 15 working days of the date on which the removal order was served on you (or such further time as the court may allow).

Affidavit

This notice must be accompanied by an affidavit that contains sufficient information to inform the court of the facts relied on in support of the objection and, where a variation of the order is sought, the facts relied on in support of the proposed variation.

Form 101—*continued***Service**

You must serve a copy of this notice on the person who applied for the removal order and, if you are not the respondent, on the respondent. Service may be effected at the respondent's address for service.

Omit the following paragraph if it does not apply.

Hearing of objection made by respondent or owner of property

If you lodge a notice of objection, you are entitled to appear before the court either in person or by your lawyer, but you must notify the court if you wish to do so.

Omit the following paragraph if it does not apply

Hearing of objection made by persons other than respondent or owner of property

If you lodge a notice of objection, you may advise the court that you wish to be heard orally either in person or by your lawyer. The court will then decide whether or not to hold an oral hearing and will notify you accordingly.

Notification of outcome

Whether or not there is an oral hearing on your objection, you will be notified of the outcome. After considering all objections to a removal order, the court may confirm the order, vary the order, or discharge the order.

Advice

If you need help, consult a lawyer or contact a District Court registry immediately.

Registry hours

The registry of the District Court is open from 9 am to 5 pm on Mondays to Fridays inclusive.

Form 102

r 20.77(1)

Notice of entry to owner or occupier of property
to which removal order relates*Section 221(1)(d), Local Government Act 2002**Complete and insert the heading as set out in form 2.*

To [full name], the occupier/owner* of the property at [address or other locality description]

This document notifies you that the property at [address or other locality description] that you occupy/own* was entered on [date] to remove/alter* the fence/structure/vegetation† that [full name of respondent] has failed to remove or alter in accordance with the removal order made against [name of respondent], the respondent, by the District Court at [place, date, time], a copy of which is attached.

*Select one.

†Select one or more.

Date:

Signature:
(applicant)

Notes

Costs

Any materials salvaged in removing or altering the fence/structure/vegetation* will be sold to recover the applicant's associated costs. If this does not cover all the costs, the applicant can recover the outstanding amount from the respondent and may register a charge against the property under the Statutory Land Charges Registration Act 1928.

*Select one or more.

Form 103

r 20.77(1)

Notice of entry to owner or occupier of property
adjoining property to which removal order
relates

Section 221(1)(d), Local Government Act 2002

Complete and insert the heading as set out in form 2.

To [full name], the occupier/owner* of the property at [address or other locality description].

This document notifies you that—

- 1 The property at [address or other locality description] that you occupy/own* was entered on [date] for the purpose of enforcing a removal order made in respect of the property at [address or other locality description] adjoining your property.

*Select one.

- 2 A copy of the removal order made against [name of respondent], the respondent, by the District Court at [place, date, time] is attached.
- 3 The removal order authorises entry on your property for the purpose of enforcing the order.
- 4 It was necessary to enter your property because the respondent failed to remove/alter* the fence/structure/vegetation† in accordance with the removal order.

*Select one.

†Select one or more.

Date:

Signature:
(applicant)

Form 104

r 20.86(1)

Application for adjudicator's determination to
be enforced by entry as judgment*Complete and insert the heading as set out in form 2.***To the defendant and [names of other parties]****This document notifies you that—**

- 1 The plaintiff seeks to enforce the determination made by
[name of adjudicator] on [date] by entry as a judgment.
- 2 *Omit this paragraph if it does not apply.*
The plaintiff seeks the issue of a charging order in respect of
a construction site.

This application is made under subpart 2 of Part 4 of the Construction
Contracts Act 2002 and is accompanied by a copy of the adjudicator's
determination.

Date:

Signature:
(plaintiff)

Notes to defendant

Seeking legal advice

You should immediately seek legal advice about this application.

How and when can I oppose this application

If you wish to oppose this application, you must, within 15 working
days after this application is served on you, file in the court and serve
on the plaintiff and all other parties to the relevant adjudication pro-
ceedings an application for an order that this application be refused.

Your application may be made only on the following grounds:

- (a) that the amount payable under the adjudicator's determination
has been paid to the plaintiff;
- (b) that the contract to which the adjudicator's determination re-
lates is not a construction contract to which the Construction
Contracts Act 2002 applies:

Form 104—*continued*

- (c) that a condition imposed by the adjudicator in his or her determination has not been met.

What will happen if I do not file and serve an application for an order that this application be refused

If you do not file and serve an application within that period, the Registrar, at the request of the plaintiff, will proceed to—

- (a) enter the adjudicator's determination as a judgment; and
- (b) if applicable, issue a charging order in respect of the construction site.

Form 105

r 20.88(2)

Application to oppose entry of adjudicator's
determination as judgment*Complete and insert the heading as set out in form 2.***To the plaintiff and [names of other parties to be served]****This document notifies you that—**

- 1 I, [full name, address, description of defendant], intend to oppose the application for an order that the adjudicator's determination be enforced by entry as a judgment.
- 2 I intend to oppose the application on the following ground/grounds*:
Select relevant paragraphs.
 - (a) that the amount payable under the adjudicator's determination has been paid to the plaintiff:
 - (b) that the contract to which the adjudicator's determination relates is not a construction contract to which the Construction Contracts Act 2002 applies:
 - (c) that a condition imposed by the adjudicator in his/her* determination has not been met.

*Select one.

Date:

Signature:

(defendant)

Form 106

r 20.102(2)

Application to enter award as judgment

*Complete and insert the heading as set out in form 2.***To** the Registrar of the District Court at [*place*]

and

To [*name(s) of party/parties to be served with this notice*]**This document notifies you that—**

- 1 The plaintiff seeks to enforce the award dated [*date*] made by [*arbitral tribunal name(s)*] by entry as a judgment.
- 2 This application is made in reliance on article 35 of Schedule 1 of the Arbitration Act 1996.

Date:

Signature:

(solicitor/counsel* for plaintiff)

*Select one.

Notes to defendant

Seeking legal advice

You should seek legal advice immediately about this application.

How and when can I oppose this application?

You can oppose this application by—

- (a) filing an application in the court seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1 of the Arbitration Act 1996; and
- (b) serving a copy of that application on the plaintiff and on all other parties.

You must do this within whichever of the following periods is shorter:

- (a) 15 working days after the date on which you are served with this application;
- (b) any period fixed by the court of less than 15 working days after you have been served with the order fixing that period.

Form 106—*continued***What will happen if I do not file and serve an application seeking an order that recognition and enforcement be refused?**

If you do not file and serve such an application, the Registrar will proceed to enter the award as a judgment.

Form 107

r 21.1(2)

Summons for assaulting officer of court or
rescuing goodsIn the District Court at *[place]***To** *[name, address]*

You are summoned to attend at the District Court at *[place, date, time]* to answer a complaint made against you by *[full name]*, an officer of the court, and to show cause why an order should not be made against you under the District Courts Act 1947 for payment of a sum not exceeding \$300 for—

*Select the statement that applies.**Statement A*

an assault committed by you on *[date]* on the officer while the officer was executing his/her* duty.

*Select one.

Statement B

rescuing or attempting to rescue on *[date]* certain goods seized under process of this court.

Statement C

an assault committed by you on *[date]* on the officer while the officer was executing his/her* duty and for rescuing or attempting to rescue on *[date]* certain goods seized under process of this court.

*Select one.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 108

r 21.1(4)

Order imposing a fine for assaulting an officer
of the court, or for rescuing goodsIn the District Court at *[place]*

- 1 This court has adjudged that *[full name, address]* pay the sum of \$*[amount]* and the sum of \$*[amount]* for costs, amounting in total to a sum of \$*[amount]* for—

*Select the statement that applies**Statement A*

committing an assault on *[date]* on *[name]*, an officer of this court, while the officer was executing his/her* duty.

*Select one.

Statement B

rescuing or attempting to rescue on *[date]* certain goods seized under process of this court.

Statement C

committing an assault on *[date]* on *[name]*, an officer of this court, while the officer was executing his/her* duty and for rescuing or attempting to rescue on *[date]* certain goods seized under process of this court.

*Select one.

- 2 This court therefore orders you, *[name]*, to pay the sum of \$*[amount]* to the Registrar of this court on *[date]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 109

r 21.2(1)

Summons for extortion or misconduct

To [name, address], bailiff of the District Court at [place]/[name, address, and title of officer] of the District Court at [place]/[name, address], constable at [place]*

*Select one.

You are summoned to attend at the District Court at [place, date, time] to—

- 1 For this paragraph select the statement that applies.

Statement A

Answer a complaint made against you by [name, address] that you have (while acting under colour of the process of the court) been guilty of extortion/misconduct* in that you [specify particulars of the extortion or misconduct alleged]†.

*Select one.

†Alternatively, attach the particulars of the extortion or misconduct alleged.

Statement B

Answer a complaint made against you by [name, address] that you have (while acting under colour of the process of the court) not duly paid or accounted for certain money levied by you against [name] at the suit of [name] under the authority of the District Courts Act 1947.

- 2 Show cause why an order should not be made against you under section 19 of the District Courts Act 1947 for—
- (a) the repayment of the money extorted by you (or for the due payment of the money levied by you), and for the payment of any damages and costs as the District Court Judge thinks just; and
 - (b) the payment of a fine not exceeding \$300 for each offence so committed by you.

Form 109—*continued*

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 110

r 21.2(1)

Summons for neglect to levy enforcement

To *[name, address]*, bailiff of the District Court at *[place]*/*[name, address, and title of officer]* of the District Court at *[place]*/*[name, address]*, constable at *[place]**

*Select one.

You are summoned to attend at the District Court at *[place, date, time]* to—

- (a) answer a complaint made against you by *[name, address]* that you, being employed to levy an enforcement against the goods and chattels of *[name]*, did by act or omission lose the opportunity of levying that enforcement; and
- (b) show cause why an order should not be made against you under section 105 of the District Courts Act 1947 for payment of the damages that *[name of complainant]* appears to have sustained by your act or omission.

Date:

Signature:

(Deputy Registrar/Registrar*)

*Select one.

Form 111

r 21.2(2)

Order for repayment of money extorted, or
payment of money levied, and for damages,
costs, and fine

In the District Court at [place]

- 1 This court adjudges that [name, address], a bailiff/[specify other officer]* of the court,—

*Select one.

- (a) *For this paragraph select the statement that applies.*

Statement A

pay the sum of \$[amount] extorted by him/her* from [name] under colour of the process of this court; and

*Select one.

Statement B

pay the sum of \$[amount] levied by him/her* against [name, address] at the suit of [name, address] under the authority of the District Courts Act 1947 and not duly paid over or accounted for by him/her*; and

*Select one.

- (b) pay the sum of \$[amount] for damages sustained by [name, address] by reason of the extortion by the [specify bailiff or other officer] /by the neglect of the [specify bailiff or other officer] to pay over the money levied by him or her/by reason of the misconduct of the [specify bailiff or other officer]* while acting under colour of the process of the court in that [specify particulars of misconduct proved].

*Select one.

- 2 This court also adjudges that the [specify bailiff or other officer] pay a fine of \$[amount] for the offence/for each offence* committed by him/her* [specify particulars of each offence], amounting together to the sum of \$[amount].

*Select one.

- 3 The court orders that the [specify bailiff or other officer] pay the sum of \$[amount] to the Registrar of the court on [date].

Form 111—*continued*

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 112

r 21.2(3)

Order awarding damages for neglect to levy
enforcementIn the District Court at *[place]*

- 1 This court adjudges that *[name, address]*, a *[specify bailiff or other officer]* of this court, pay the sum of \$*[amount]* for damages sustained by *[name, address]* by reason of *[name]* having by neglect or connivance or omission lost the opportunity of levying an enforcement against the goods of *[name]* and the sum of \$*[amount]* for costs, amounting together to the sum of \$*[amount]*.
- 2 The court orders that the *[specify bailiff or other officer]* pay the sum of \$*[amount]* to the Registrar of this court on *[date]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 113

r 21.4

Order fining witness for non-attendance

Complete and insert the heading as set out in form 2.

1 [Name, address]—

(a) *For this paragraph select the statement that applies.*

Statement A

was duly summoned to attend as a witness in this proceeding at the District Court at [place, date]; and

Statement B

was duly summoned to attend as a witness in this proceeding at the District Court at [place, date] and to produce [specify documents]; and

(b) at the time of being summoned was paid/tendered* travelling allowances and expenses according to the scale of allowances prescribed by the District Courts Rules 2014.

*Select one.

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

Statement A

He/she* has refused or neglected without sufficient cause shown to attend at the court/produce [specify documents]/attend at the court and produce [specify documents]*.

*Select one.

Statement B

He/she* has refused to [specify case(s) that apply: refused to be sworn, give evidence, or produce documents (specify documents)].

*Select one.

3 This court orders that [name] pay a fine of \$[amount] for such refusal or neglect to the Registrar of the court on [date].

Date:

Signature:

Form 113—*continued*

(Registrar/Deputy Registrar*)

*Select one.

Form 114

r 21.6(1)

Warrant of committal for contempt of court

In the District Court at *[place]*

To a bailiff of the District Court at *[place]*, and to each and every constable in New Zealand, and to the manager of the prison at *[place]*

- 1 On *[date]*, *[full name]*, the offender, wilfully insulted *[name]*, District Court Judge, in court/*[specify other place]** and was ordered to stand committed for *[number]* days to the prison at *[place]* for the offence.

*Select one.

- 2 This court therefore orders you, the bailiff and others, to take *[name]* and to deliver him/her* to the manager of the prison, together with this warrant, and you, the manager, to receive *[name]* and to keep him/her* safely in the prison for *[number]* days from the arrest under this warrant, or until he/she* is sooner discharged by due course of law.

*Select one.

Date:

Signature:

(District Court Judge)

Form 115

r 21.6(2)

Order for fine for contempt of court

In the District Court at *[place]*

- 1 On *[date]*, *[full name]*, the offender wilfully insulted *[name]*, District Court Judge, in court/*[specify other place]**.

*Select one.

- 2 This court orders that *[name]* pay a fine of \$*[amount]* for the offence.

- 3 This court also orders that *[name]* pay a fine of \$*[amount]* for the offence to the Registrar of this court immediately on *[date]*.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Form 116

r 21.7(2)

Order for enforcement of payment of fine

In the District Court at *[place]*

- 1 On *[date]*, *[full name, address]*, was ordered to pay a fine of \$*[amount]* for the offence of *[specify]*.
- 2 The fine has not been paid.
- 3 This court orders that the payment of the fine of \$*[amount]* be enforced in the same manner as if it had been imposed on conviction of *[name]* under the provisions of the Summary Proceedings Act 1957 or the Criminal Procedure Act 2011.

Date:

Signature:

(Registrar/Deputy Registrar*)

*Select one.

Schedule 3

Case management conferences

rr 7.2, 7.4

Part A

Matters for consideration at first case management conference

A joint memorandum or separate memoranda must be filed and served in accordance with rule 7.2 as to—

- (a) whether initial disclosure has been provided; and
- (b) whether the pleadings and the principal documents disclosed with them adequately identify the issues; and
- (c) whether further discovery is required before a judicial settlement conference or short trial; and
- (d) whether additional parties should be joined; and
- (e) the categorisation of the proceeding in relation to costs; and
- (f) any other matters.

Note: The parties should discuss and endeavour to agree on the matters listed in this Part of the Schedule.

Part B

Matters for consideration at second or subsequent case management conference

A joint memorandum or separate memoranda must be filed and served in accordance with rules 7.4 and 8.10 as to—

Previous matters

- (1) Any of the matters to which Part A of the Schedule applies; and

Mode of trial

- (2) Whether a short trial, simplified trial or a full trial is required; and

Issues

- (3) Whether the pleadings require amendment so as to identify the issues; and

Parties

- (4) Whether additional parties should be joined; and

Part B—*continued**Discovery and other interlocutory applications*

- (5) The scope, terms, and timetable for any discovery additional to discovery previously agreed or ordered; and
- (6) If any interlocutory applications have been filed or will be filed, whether they can be heard and disposed of at the case management conference; and
- (7) Whether the listing and exchange protocol in Part 2 of Schedule 9 of the High Court Rules should apply.

Readiness for trial

- (8) Whether the case is ready for a fixture date to be allocated; and
- (9) Whether a further case management conference or an issues conference should be timetabled; and

Fixture or hearing

- (10) If the proceeding is ready for trial,—
 - (a) the close of pleadings date;
 - (b) the estimated duration of the trial;
 - (c) the timetable for written briefs;
 - (d) whether expert evidence required and, if so, what are the proposals for that evidence (including prior exchange and how the witnesses are to be heard);
 - (e) any special resources or requirements needed for the hearing;
 - (f) whether there are any reason why the proceeding cannot be set down as a back-up fixture;
 - (g) the categorisation of the proceeding in relation to costs; and
- (11) If the proceeding is being or has been allocated a hearing or trial date—
 - (a) whether background facts can be agreed to avoid hearing or contested 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.

Part B—*continued**Other*

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

Note: The parties should discuss and endeavour to agree on the matters listed in this Part of the Schedule.

Schedule 4 Time allocations

rr 14.3, 14.5, 19.22

General civil proceedings

Allocated days or part days

		A	B	C
1	Preparing notice of claim or statement of claim (receiving instructions, researching facts and law, and filing and serving those documents)	0.75	1.5	3.0
2	Response or defence by defendant (receiving instructions, researching facts and law, and preparing and serving response or statement of defence)	0.75	1.0	2.0
3	Preparing and serving information capsule by plaintiff and defendant	1.0	2.0	3.0
4	Filing notice of proceeding, filing response and information capsules under rule 2.15, and preparing, filing, and serving notice of pursuit of claim under rule 2.15	0.25	0.25	0.25
5	Preparing, filing, and serving originating application	1.0	2.0	4.0
6	Preparing and serving notice of opposition	1.0	1.5	3.0
7	Other pleadings and notices:			
7.1	Counterclaim	0.5	0.5	1.0
7.2	Claims between defendants	0.5	1.0	2.0
7.3	Commencement of proceedings against third parties, including notice of claim	0.75	1.5	3.0
7.4	Pleading in response to other party's amended pleading (payable regardless of outcome except where formal or consented to)	0.3	0.4	0.75
8	Judicial settlement conference:			
8.1	Preparation for judicial settlement conference	0.25	0.25	0.25

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District Courts Rules 2014

Schedule 4

General civil proceedings

		Allocated days or part days		
		A	B	C
8.2 Appearance at judicial settlement conference		The time occupied by the judicial settlement conference measured in quarter days		
9	Interlocutory proceedings and related steps:			
9.1	Notice to answer interrogatories	0.3	1.0	2.0
9.2	Answer to interrogatories	0.3	1.0	2.0
9.3	Notice to admit facts	0.3	0.5	1.0
9.4	Admission of facts	0.3	0.5	1.0
9.5	List of documents on discovery	0.5	1.0	4.0
9.6	Production of documents for inspection	0.5	0.75	2.0
9.7	Inspection of documents	0.4	1.0	4.0
9.8	Filing and serving memorandum in anticipation of judicial conference	0.2	0.25	0.75
9.9	Appearance at judicial conference	0.3	0.3	0.3
9.10	Preparing and filing interlocutory application (excluding summary judgment application) and supporting affidavits	0.25	0.4	1.0
9.11	Preparing and filing opposition to interlocutory application (excluding summary judgment application) and supporting affidavits	0.25	0.4	1.0
9.12	Preparing written submissions	0.5	1.0	2.0
9.13	Preparation of bundle for hearing	0.25	0.4	1.0

General civil proceedings

- 9.14 Appearance at hearing of defended interlocutory application (excluding summary judgment application) for sole or principal counsel
- 9.15 Second and subsequent counsel if allowed by court
- 9.16 Sealing order or judgment
- 10 Summary judgment application (additional to costs in items 1 to 5):
- 10.1 Preparing and filing summary judgment application and supporting affidavits
- 10.2 Preparing and filing opposition and supporting affidavits
- 10.3 Preparing for hearing of defended summary judgment application
- 10.4 Arguing defended summary judgment application for sole or principal counsel
- 10.5 Second and subsequent counsel if allowed by court
- 11 Obtaining judgment without appearance (additional to costs in items 1 to 7):
- 11.1 By default/admission
- 11.2 By formal proof (including affidavit preparations)

Short trial

- 12 Preparation
- 13 Appearance at hearing

Allocated days or part days

A	B	C
Appearance in court measured in quarter days		
Fifty percent of allowance for appearance for principal counsel		
0.2	0.2	0.2
0.25	0.4	1.5
0.25	0.4	1.5
The time occupied by the hearing measured in quarter days		
Appearance in court measured in quarter days		
Fifty percent of allowance for appearance of principal counsel		
0.2	0.2	0.3
0.3	0.3	0.4
0.5	0.5	0.5
1.0	1.5	1.5

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District Courts Rules 2014

Schedule 4

General civil proceedings**Simplified trial**

14 Preparation

15 Appearance at hearing

Full trial

16 Preparation for hearing following setting down or direction for trial if trial does not eventuate:

16.1 Plaintiff's preparation of affidavits or written or oral statements of evidence to be used at hearing

16.2 Plaintiff's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation

16.3 Defendant's preparation of affidavits or written or oral statements of evidence to be used at hearing

16.4 Defendant's preparation of lists of issues and authorities, selecting documents for common bundle of documents, and all other preparation

17 Preparation:

17.1 Where case proceeds to hearing

17.2 Where case proceeds by formal proof

18 Appearance at hearing:

18.1 For sole or principal counsel

Allocated days or part days**A B C**

1.0 1.25 2.5

Twice the time occupied by the hearing
measured in half days**A B C**

1.25 2.25 3.5

1.25 2.25 3.5

1.0 2.0 3.0

1.0 2.0 3.0

Twice the time occupied by the hearing
measured in half days

1 day

Appearance in court measured in half days

General civil proceedings

18.2 Second and subsequent counsel if allowed for by court

18.3 Appearance for formal proof

Enforcement and other steps

19 Enforcement of judgment or order:

19.1 Application for charging order

19.2 Completion of financial statement under section 84A of Act

19.3 Application for assessment of financial means under section 84C of Act

19.4 Application for financial assessment hearing

19.5 Each attendance at financial assessment hearing (if the judgment debtor attends)

19.6 Application for arrest warrant if debtor fails to appear at financial assessment hearing or contempt of enforcement proceedings hearing

19.7 Application for contempt of enforcement proceedings

19.8 Each attendance at contempt of enforcement proceedings hearing (if the judgment debtor attends)

19.9 Application for attachment order under section 84G(1)(c) of Act (excluding application to vary, discharge, or suspend attachment order and filing agreed attachment order in accordance with section 79(5C) of Act)

19.10 Application to vary, discharge, or suspend attachment order

Allocated days or part days**A****B****C**

Fifty percent of allowance for principal counsel

Appearance in court measured in quarter days

A**B****C**

0.4

0.4

0.4

0.4

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District Courts Rules 2014

Schedule 4

General civil proceedings

		Allocated days or part days		
		A	B	C
19.11	Agreeing terms of attachment order and filing agreed attachment order in accordance with section 79(5C) of Act	0.05	0.05	0.05
19.12	Application for warrant of enforcement: recovery of chattels/seizure of property/recovery of land	0.2	0.2	0.2
19.13	Preparing and filing interlocutory application (excluding an application to vary, discharge, or suspend attachment order) and supporting affidavits	0.25	0.4	1.0
19.14	Application for warrant of committal	0.2	0.2	0.2
19.15	Application for writ of arrest	0.2	0.2	0.2
19.16	Garnishee proceedings	0.4	0.4	0.4
19.17	Third party claim proceedings (including service)	0.4	0.4	0.4
19.18	Other enforcement process	0.4	0.4	0.4
20	Other steps in the proceeding not specifically mentioned	As allowed by court		
21	Commencement of appeal (including assessing original decision, noting appealable points, and filing and serving notice of appeal and points of appeal)	0.2	0.5	2.0
22	Commencement of response to appeal	0.2	0.2	0.5
23	Case management (as for ordinary proceeding)	0.1	0.2	0.4
24	Preparing of case on appeal	0.5	0.5	1.0

General civil proceedings

- 25 Appearance at hearing as principal counsel
- 26 Second and subsequent counsel, if allowed by court
-

Allocated days or part days

A	B	C
	The time occupied by the hearing measured in quarter days	
	Fifty percent of allowance for appearance by principal counsel	

Schedule 5

r 14.4

Appropriate daily recovery rates

Category of proceedings referred to in rule 14.3	Appropriate daily recovery rate
Category 1 proceedings	\$1,030 per day
Category 2 proceedings	\$1,550 per day
Category 3 proceedings	\$2,300 per day

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 July 2014, replace the District Courts Rules 2009 with updated rules that significantly change the front end of the process for starting a civil proceeding under the District Courts Act 1947 (the **1947 Act**).

Changes made by District Courts Rules 2009

A number of key changes made by the District Courts Rules 2009 (the **2009 rules**) included the following:

- the rules were numbered using the decimal system used in the (then) new High Court Rules but with the decimal points indicating subclauses (so that, for example, subclause (2) of *rule 1.6* was expressed as rule 1.6.2 rather than as 1.6(2));
- civil claims under the 1947 Act (other than claims in admiralty or defamation or claims relating to arbitral awards) were started by filing a notice of claim, but a party could at the same time apply for leave to file a statement of claim or originating application;
- the notice of claim procedure involved the following additional documents: a response, a plaintiff's information cap-

sule, a defendant's information capsule, and a notice of pursuit of claim:

- High Court Rules that were common to both the High Court and District Courts were generally incorporated by reference rather than replicated in full.

Changes made by District Courts Rules 2014

The District Courts Rules 2014 (the **2014 rules**) reverse all of the changes listed above. In particular,—

- the rules are numbered using exactly the same numbering system as the High Court Rules;
- the notice of claim procedure, and the associated processes such as the plaintiff's information capsule, a defendant's information capsule, and a notice of pursuit of claim are abolished. Instead, under the 2014 rules proceedings will be commenced by statements of claim (except for appeals and proceedings commenced by originating application: *see rule 5.28*);
- procedures will largely follow those set out in the High Court Rules (although different procedures are applied in a number of respects, particularly with regard to case management);
- the extent to which High Court Rules are incorporated by reference, rather than being repeated in full, is in general much reduced in the 2014 rules. Rules are generally set out in full (with the exception of a few forms), in the interests of reducing the amount of cross-referencing to the High Court Rules needed by the reader, although at the cost of needing to make separate amendments to the District Courts Rules, whenever comparable provisions in the High Court Rules are changed in the future.

Reasons for changes leading to adoption of new District Courts Rules

A review was undertaken of the operation of the 2009 rules, in 2012. A significant amount of feedback was received on the new notice of claim procedure and the related documentation such as information capsules.

The review revealed widespread dissatisfaction with the operation of the forms under the 2009 rules. Lawyers believe that the forms do

not serve the purpose of clarifying the issues, and therefore do not in fact assist early settlement. Although there is an ability to seek leave to commence by statement of claim under the 2009 rules, lawyers are reluctant to incur the expense of delay with uncertainty of result. The forms were viewed by most as very repetitive.

Another feature of the 2009 rules that drew adverse comment is a lack of judicial input in proceedings at an appropriate stage of the proceedings. Lawyers would like access to a Judge earlier in the proceedings to perform a case management role and to direct the route proceedings should follow. A number favoured allowing judicial input following service on the defendant. Under the 2009 rules, defences are not filed so the District Court is unaware that proceedings are defended until later in the process.

There was general feedback to the effect that the new notice of claim procedure does not work properly—

- where third party claims are concerned; or
- with the raising of affirmative defences.

Also, there was general feedback indicating that information capsules are repetitive and the time involved in preparing them causes unnecessary delay. Positive feedback was received about the new forms of trial introduced in the 2009 rules (short trials, simplified trials, and full trials) and the use of judicial settlement conferences. These features of the 2009 rules are retained in the 2014 rules.

District Courts Rules 2014

These rules come into force on 1 July 2014.

The drafting of these rules anticipates the creation of a single unified District Court with registries in different locations. Under the District Courts Act 1947, there are a number of separately constituted District Courts in different locations.

Accordingly, the rules are drafted on the basis that there is 1 unified District Court. Until the District Courts Act 1947 is amended or replaced in order to establish that unified District Court, the position will be governed by a transitional provision that enables references to a single court to be read as references to multiple District Courts or the appropriate individual District Court, as the case requires.

Part 1 (subpart 1) contains rules of general application, including the objective of the rules and interpretation provisions. These provisions are based on comparable provisions in the 2009 rules.

Part 1 (subpart 2) deals with the application of the 2014 rules (including transitional and savings provisions) and rules about compliance (including the effect of non-compliance, an ability to apply for directions in cases of doubt, cases not provided for by the rules, the amendment of errors and defects, and oral applications for relief). Some of these provisions are based on comparable provisions in the 2009 rules, although the majority are based on comparable provisions in the High Court Rules.

Part 1 (subpart 3) deals with the use of Māori language, translations, and sign language. These provisions are based on existing provisions in the 2009 rules and also the High Court Rules.

Part 1 (subpart 4) deals with the calculation of time, how that is affected by the closure of a court registry, and rules about extending and shortening time. These rules are based on *rules 1.16 to 1.18* of the 2009 rules.

Part 1 (subpart 5) deals with lawyers' obligations and is based on *rule 1.20* of the High Court Rules.

Part 1 (subpart 6) relates to forms and is based on *rule 1.21* of the High Court Rules.

Part 1 (subpart 7) relates to international co-operation and is based on *rule 1.22* of the High Court Rules.

Part 2 (subpart 1) relates to registry hours and court holidays and is based on *rules 1.19 to 1.23* of the 2009 rules and *rules 3.1 to 3.3* of the High Court Rules. However, *rule 2.5*, dealing with the effect of epidemics and emergencies, is based on *rule 3.4* of the High Court Rules.

Part 2 (subpart 2) deals with the jurisdiction and powers of Registrars and makes provision for the review of Registrars' decisions. This subpart is based on *rules 2.5 and 2.7 to 2.11* of the High Court Rules.

Part 2 (subpart 3) relates to the investment of funds in court and is based on *rules 3.17 to 3.19* of the High Court Rules.

Part 3 relates to access of court documents and is based on *rules 3.11 to 3.22* of the 2009 rules, and also *rules 3.5 to 3.16* of the High Court Rules.

Part 4 deals with parties.

Part 4 (subpart 1) imposes a limit on the number of persons who may be named or joined as parties to a proceeding and is based on *rule 4.1* of the High Court Rules.

Part 4 (subpart 2) deals with the joining of plaintiffs and is based on *rule 4.2* of the High Court Rules.

Part 4 (subpart 3) similarly deals with the joining of defendants in the manner provided in *rule 4.3* of the High Court Rules.

Part 4 (subpart 4) deals with third, fourth, and subsequent parties and is based on *rules 4.4 to 4.17* of the High Court Rules.

Part 4 (subpart 5) deals with claims between defendants and is based on *rules 4.18 to 4.22* of the High Court Rules.

Part 4 (subpart 6), which sets out the impact of certain capacities, is based on *rules 4.23 to 4.28* of the High Court Rules.

Part 4 (subpart 7), which deals with the position of incapacitated persons, follows *rules 4.29 to 4.48* of the High Court Rules.

Part 4 (subpart 8) provides for change of parties by death, bankruptcy, or devolution and is based on *rules 4.49 to 4.53* of the High Court Rules.

Part 4 (subpart 9), which relates to the adjustment of parties, is based on *rules 4.54 to 4.56* of the High Court Rules.

Part 4 (subpart 10) deals with interpleader and is based on the equivalent provisions of the High Court Rules.

Part 5 deals with commencement of proceedings and filing of documents.

Part 5 (subpart 1) relates to the proper registry for commencing proceedings and filing documents and the transfer of proceedings from the District Court to the High Court, and vice versa. These provisions are based on *rules 3.1 to 3.4* of the 2009 rules.

Part 5 (subpart 2) sets out formal requirements for the filing of documents. These provisions adopt *rules 5.2 to 5.10* of the High Court Rules.

Part 5 (subpart 3) sets out requirements for headings of different kinds of documents and is based on *rules 5.11 to 5.16* of the High Court Rules.

Part 5 (subpart 4) sets out requirements for pleadings, which adopt the requirements of *rules 5.17 to 5.21* of the High Court Rules.

Part 5 (subpart 5) requires a notice of proceeding to be filed with every statement of claim, sets out requirements for the notice of proceeding, and creates exemptions from the requirement to file a notice of proceeding. *Subpart 5* is based on *rules 5.22 to 5.24* of the High Court Rules.

Part 5 (subpart 6) involves a substantial departure from the 2009 rules. It replaces the notice of claim procedure under the 2009 rules and requires the commencement of proceedings to be undertaken by filing a statement of claim (except where the proceeding is an appeal under *Part 17 or 18* or a proceeding to be commenced by interlocutory application under *subpart 2 of Part 7*). *Subpart 6* is based on *rules 5.25 to 5.29 and 5.31 to 5.35* of the High Court Rules.

Part 5 (subparts 7 and 8) deal with the authority of solicitors to act (and related matters) and are based on *rules 5.36 to rules 5.44* of the High Court Rules.

Part 5 (subpart 9) makes provision for security for costs and is based on *rule 4.20* of the 2009 rules.

Part 5 (subpart 10) relates to statements of defence and appearances by the defendant and is based on *rules 5.47 to 5.52* of the High Court Rules.

Part 5 (subpart 11) provides rules governing counterclaims based on *rules 5.53 to 5.61* of the High Court Rules.

Part 5 (subpart 12) sets out requirements for replying to statements of defence. The subpart is based on *rules 5.62 and 5.63* of the High Court Rules.

Part 5 (subpart 13) contains rules about service of a statement of claim, notices of proceedings, and the list of documents relied on, and is based on *rules 5.70 to 5.73A* of the High Court Rules.

Part 6 deals with service.

Part 6 (subpart 1) deals with methods and proof of service. It is based on *rules 6.1 to 6.11* of the High Court Rules.

Part 6 (subpart 2) deals with service on corporations, parties, attorneys, and agents. It is based on *rules 6.12 to 6.20* of the High Court Rules.

Part 6 (subpart 3) deals with service outside of New Zealand. It is based on *rules 6.27 to 6.35* of the High Court Rules.

Part 7 deals with case management.

Rule 7.1 deals with the purpose of case management and is based on *rules 7.1(1) and (3)* of the High Court Rules.

Rule 7.2 provides for a first case management conference for all proceedings (other than certain undefended proceedings). The rule sets out the agenda for the conference and deals with requirements of the parties to file joint or separate memoranda before the conference. *Rule 7.2* is based on *rule 7.3* of the High Court Rules.

Rule 7.3 provides for judicial settlement conferences. The purpose of a judicial settlement conference is to give the parties to the proceeding an opportunity to negotiate a settlement of the claim or any issue. *Rule 7.3* sets out the procedures for judicial settlement conferences and provides for discontinuance of proceedings following settlement.

Rule 7.4 provides for a mandatory second case management conference unless otherwise ordered by a Judge, the date of which must be fixed by a Registrar no later than 10 working days after a judicial settlement conference held under *rule 7.3* that does not result in settlement. The agenda for the second case management conference differs from that of the first and is set out in *Part B of Schedule 3*.

Rule 7.5 provides for additional case management conferences if ordered by a Judge or if there is a transfer of proceedings from the District Court to the High Court. The remainder of *Part 7 (subpart 1) (rules 7.6 to 7.11)* is based on *rules 7.7 to 7.13* of the High Court Rules.

Part 7 (subpart 2) deals with interlocutory applications and interlocutory orders and is based on *rules 7.19 to 7.48, 7.50(1) and (2), 7.51, and 7.52* of the High Court Rules.

Part 7 (subpart 3), which relates to interim relief by making an application for an interlocutory injunction, is based on *rules 7.53 to 7.58* of the High Court Rules.

Part 7 (subpart 4) provides rules of general application to receivers appointed by order of the court. This subpart is based on *rules 7.59 to 7.67* of the High Court Rules.

Part 7 (subpart 5) sets out rules regarding applications for and orders for interim payments. An interim payment is a payment or account of any damages, debt, or other sum (excluding costs) that the defendant in a proceeding may be held liable to pay to, or for the benefit of, the

plaintiff in that proceeding. *Subpart 5* is based on *rules 7.68 to 7.76* of the High Court Rules.

Part 7 (subpart 6) deals with the amendment of pleadings and is based on *rule 7.77* of the High Court Rules.

Part 7 (subpart 7) makes provision for the recovery of specific property subject to lien and is based on *rule 7.78* of the High Court Rules.

Part 7 (subpart 8) provides for arbitration under the Arbitration Act 1996 by consent of the parties. The subpart is based on *rule 7.80* of the High Court Rules.

Part 8 deals with Discovery, inspection, and interrogatories requirements for simplified and full trials.

Part 8 (subpart 1) deals with discovery and inspection and is based on *rules 8.1 to 8.33* of the High Court Rules.

Part 8 (subpart 2) deals with interrogatories and is based on *rules 8.34 to 8.46* of the High Court Rules.

Part 8 (subpart 3) sets out a procedure enabling parties to require other parties to admit facts for the purposes of the proceeding. This subpart is based on *rules 8.47 and 8.48* of the High Court Rules.

Part 9 deals with the admission of evidence.

Part 9 (subpart 1) deals with briefs of evidence, oral evidence directions, common bundles, and chronologies. The subpart is based on *rules 9.1 to 9.16* of the High Court Rules.

Part 9 (subpart 2) deals with evidence by depositions. This subpart is based on *rules 9.17 to 9.24* of the High Court Rules.

Part 9 (subpart 3) deals with the inspection and testing of property. This subpart is based on *rules 9.34 and 9.35* of the High Court Rules.

Part 9 (subpart 4) deals with court experts. This subpart is based on *rules 9.36 to 9.46* of the High Court Rules.

Part 9 (subpart 5) relates to the preservation of evidence. It is based on *rules 9.47 to 9.50* of the High Court Rules.

Part 9 (subpart 6) relates to the giving of evidence at trial. It is based on *rules 9.51 to 9.57* of the High Court Rules.

Part 9 (subpart 7) relates to the giving of evidence in trans-Tasman proceedings. It is based on *rules 9.58 to 9.65, and 9.67* of the High Court Rules.

Part 9 (subpart 8) sets out the procedures that apply when evidence is given by affidavit. It is based on *rules 9.68 to 9.89* of the High Court Rules.

Part 10 deals with the conduct of trials.

Part 10 (subpart 1) preserves the 3 modes of trial introduced by the 2009 rules. These are the short trial, the simplified trial, and the full trial. Subpart 1 is based on *rules 2.40 to 2.54* of the 2009 rules, although there are some changes.

Part 10 (subpart 2) deals with the place of trial and is based on rule 10.1 of the High Court Rules.

Part 10 (subpart 3) relates to adjournments and methods of trial and is based on *rules 10.2 to 10.10* of the High Court Rules.

Part 10 (subpart 4), which relates to the consolidation of proceedings, is based on *rules 10.12 and 10.13* of the High Court Rules.

Part 10 (subpart 5) deals with the separate decision of questions and is based on *rules 10.14 to 10.21* of the High Court Rules.

Part 10 (subpart 6), which deals with the appointment by the Solicitor-General of counsel to assist the court, is based on *rule 10.22* of the High Court Rules.

Part 11 relates to judgments.

Part 11 (subpart 1), which sets out general provisions, is based on *rules 11.1 to 11.10* of the High Court Rules.

Part 11 (subpart 2), which relates to sealing and notification of judgments, is based on *rules 11.11, 11.12, 11.13(1), and 11.14* of the High Court Rules.

Part 11 (subpart 3), which provides for giving effect to judgments, is based on *rules 11.20 to 11.28* of the High Court Rules.

Part 11 (subpart 4) relates to retrials.

Part 12, which provides for summary judgment, is based on *rules 12.1 to 12.16* of the High Court Rules.

Part 13, which relates to summary proceedings for the recovery of land, is based on *rules 13.1 to 13.9* of the High Court Rules.

Part 14, which relates to costs, is based on *rules 4.1 to 4.19* of the 2009 rules and *rules 14.1 to 14.17* of the High Court Rules.

Part 15 relates to the disposal of proceedings other than by trial.

Part 15 (subpart 1), which provides for the dismissal or stay of proceedings without trial, is based on *rules 15.1 and 15.2* of the High Court Rules.

Part 15 (subpart 2), which relates to judgment by default, is based on *rules 15.3 to 15.11* of the High Court Rules.

Rule 15 (subpart 3), which provides for judgment on admission, is based on *rules 15.15 to 15.17* of the High Court Rules.

Part 15 (subpart 4), which relates to the discontinuance of proceedings, is based on *rules 15.18 to 15.25* of the High Court Rules.

Part 16, which relates to orders for accounts and inquiries, is based on *rules 16.1 to 16.34* of the High Court Rules and *rules 3.77 and 3.78* of the 2009 rules (which implement the requirements of sections 62 and 62A of the District Courts Act 1947).

Parts 17 and 18, which relate to appeals to the High Court and appeals to the District Court respectively, are modelled on *rules 13.1 and 13.2* of the 2009 rules and *Part 20* of the High Court Rules.

Part 19, which relates to enforcement, replicates *Part 15* of the 2009 rules (as replaced by the District Courts (Civil Enforcement) Amendment Rules 2013).

Part 20 deals with applications in equity and under statutes.

Part 20 (subpart 1), which provides for special cases, is based on *rules 5.1 and 5.2* of the 2009 rules and *rules 18.3, 18.4, 18.5(1) and (2), and 18.6 to 18.15* of the High Court Rules.

Part 20 (subpart 2) relates to originating applications made under a list of enactments conferring specific jurisdictions on the District Court. *Subpart 2* is based on *rules 6.1, 6.2, and 6.4* of the 2009 rules, and *rules 19.8 to 19.14* of the High Court Rules.

Part 20 (subpart 3) makes specific provision for proceedings under the Harassment Act 1997 and is based on *rules 7.1 to 7.41* of the 2009 rules.

Part 20 (subpart 4) relates to proceedings under subpart 6 of Part 8 of the Local Government Act 2002. This subpart is based on *rules 8.1 to 8.15* of the 2009 rules.

Part 20 (subpart 5), which relates to proceedings under the Construction Contracts Act 2002, is based on *rules 9.1 to 9.11* of the 2009 rules.

Part 20 (subpart 6) provides special rules for proceedings in admiralty and is based on *rules 10.1 to 10.10* of the 2009 rules.

Part 20 (subpart 7) relates to the entry of an award as a judgment order under article 35 of Schedule 1 of the Arbitration Act 1996. This subpart is based on *rules 11.1 to 11.9* of the 2009 rules and *rules 26.1 and 26.20 to 26.27* of the High Court Rules.

Part 21 carries over the penal and disciplinary provisions in Part 16 of the 2009 rules.

Part 22 revokes the 2009 rules.

Schedule 1 sets out a number of transitional and savings provisions that affect the conduct of proceedings underway when these rules come into force 1 July 2014.

Clause 1 of Schedule 1 sets out the position of proceedings that, as at the commencement of these rules (1 July 2014), have been started by filing a notice of claim, where no statement of claim or originating application has been filed under the 2009 rules and no decision has been made under *rule 2.40* of those rules as to whether a short trial is to be allocated. In these circumstances, the proceeding continues under the 2009 rules unless or until a decision would be required under *rule 2.40* of those rules. If that point is reached, a first case management conference under *rule 7.2* of these rules must instead be held, and thereafter the proceeding is subject to these rules instead of the 2009 rules.

Clause 2 of Schedule 1 requires most other proceedings in progress immediately before the commencement of these rules (1 July 2014) to be allocated a first case management conference under these rules, unless the proceeding has already been allocated a mode of trial or has been subject to a judicial settlement conference.

Clause 3 of Schedule 1 provides for applications for summary judgment under the 2009 rules to continue to be subject to those rules until the summary judgment application is finally decided. If the application for summary judgment is dismissed, a first case management conference under these rules must be held, and the proceeding must subsequently be dealt with under these rules.

Clause 4 of Schedule 1 modifies the application of these rules to a first case management conference held in respect of a proceeding begun before the commencement of these rules.

Clause 5 of Schedule 1 relates to the situation where a court or Registrar has decided not to allocate a short trial under rule 2.40 of the 2009 rules but has instead decided to order a judicial settlement conference. In these circumstances, the judicial settlement conference is convened under these rules and the proceeding must subsequently be dealt with under these rules.

Clause 6 of Schedule 1 deals with the situation where a judicial settlement conference has been convened under the 2009 rules but no simplified or full trial has been allocated before the commencement of these rules. In this situation, a second case management conference must be held under these rules and the proceeding must subsequently be dealt with under these rules.

Clause 7 of Schedule 1 provides that certain proceedings transferred from the High Court to a District Court are to continue to be dealt with under the 2009 rules.

Clause 8 of Schedule 1 provides that an interlocutory application made under the 2009 rules continues to be dealt with under the 2009 rules after the commencement of these rules (1 July 2014).

Clause 9 of Schedule 1 provides that a proceeding that has been allocated a short trial, simplified trial, or full trial before the commencement of these rules (1 July 2014) continues to be dealt with under the 2009 rules.

Clause 10 of Schedule 1 provides that an appeal brought under Part 14 of the 2009 rules before the commencement of these rules (1 July 2014) continues to be subject to the 2009 rules until final judgment is given.

Clause 11 of Schedule 1 provides that any proceeding in which a final judgment has been given is subject in all respects to these rules.

Clause 12 of Schedule 1 provides that except as otherwise provided in *Schedule 1* a proceeding commenced under the 2009 rules is subject to these rules.

Clause 13 of Schedule 1 gives a power to apply for directions as to applicable rules and for a court to vary the application of the transitional provisions to a particular proceeding.

Clause 14 of Schedule 1 is a transitional provision providing that until the District Courts become a unified court like the High Court a reference to the District Court or a registry of the District Court must

be read as a reference to a District Court or the appropriate District Court, as the case requires.

Clauses 15 and 16 of Schedule 1 set out a similar rule in respect of the Family Courts and the Youth Courts.

Clause 17 is a transitional provision relating to time allocations.

Schedule 2 sets out forms to be used.

Schedule 3 sets out matters to be considered at the first and second and any subsequent case management conferences.

Schedule 4 sets out time allocations (for the purpose of calculating costs).

Schedule 5 prescribes appropriate recovery rates for category 1, 2, and 3 proceedings.

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These rules are administered by the Ministry of Justice.
