

High Court Amendment Rules 2005

Pursuant to section 51C of the Judicature Act 1908, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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1 Title

- (1) These rules are the High Court Amendment Rules 2005.

- (2) In these rules, the High Court Rules from time to time set out in Schedule 2 of the Judicature Act 1908 are called “the High Court Rules”.

2 Commencement

These rules come into force on 1 July 2005.

3 Search of Court records generally

- (1) Rule 66(5) of the High Court Rules is amended by inserting, after paragraph (k), the following paragraph:
“(ka) the Civil Union Act 2004.”.
- (2) Rule 66(5) of the High Court Rules is amended by inserting, after paragraph (l), the following paragraph:
“(la) the Care of Children Act 2004.”.

4 Change of name

Rule 105 of the High Court Rules is amended by omitting the words “or by deed poll”, and substituting the words “, by civil union, by deed poll,”.

5 New rule 112 substituted

The High Court Rules are amended by revoking rule 112, and substituting the following rule:

“112 Joining claims by or against spouses or partners

Claims by or against spouses, civil union partners, or de facto partners may be joined with claims by or against either of those spouses, civil union partners, or de facto partners if the opposite party is the same person.”

6 New rule 205 substituted

The High Court Rules are amended by revoking rule 205, and substituting the following rule:

“205 Personal service on spouses or partners

- “(1) This rule applies when defendants to a proceeding are—
“(a) husband and wife; or
“(b) civil union partners; or
“(c) de facto partners.

“(2) When this rule applies, service on one spouse, civil union partner, or de facto partner, as the case may be, is not to be treated as service on the other unless the Court so orders.”

7 Application of this Part to proceedings within equitable jurisdiction

Rule 447(a) of the High Court Rules is amended by inserting, after the word “husband,”, the words “civil union partner, de facto partner.”

8 Application of this Part to proceedings under certain Acts

Rule 448(1) of the High Court Rules is amended by revoking paragraph (f), and substituting the following paragraph:

“(f) the Care of Children Act 2004.”

9 Order of priority for grant in case of intestacy

Rule 665(3) of the High Court Rules is amended by revoking paragraphs (a) and (aa), and substituting the following paragraphs:

“(a) the surviving spouse or the surviving civil union partner or the surviving de facto partner entitled to succeed on the intestacy, if paragraph (aa) does not apply and his or her beneficial interest in the estate is not affected,—

“(i) in the case of a surviving spouse, by section 12(2) of the Matrimonial Proceedings Act 1963 (as applied by section 191(3) of the Family Proceedings Act 1980); or

“(ii) in the case of a surviving spouse or a surviving civil union partner, by section 26(1) of the Family Proceedings Act 1980; or

“(iii) in every case, by the choice he or she has made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because he or she has chosen option B:

“(aa) in a case of the kind referred to in section 77C of the Administration Act 1969 (succession on intestacy if intestate dies leaving a spouse or a civil union partner and 1 or more de facto partners, or 2 or more de facto partners), any surviving spouse, surviving civil union partner, or surviving de facto partner entitled to succeed on the intestacy, if his or her beneficial interest

in the estate is not affected in any of the ways stated in paragraph (a)(i) to (iii):”.

10 Justification of entitlement to grant

Rule 666(4) of the High Court Rules is amended by inserting, after the words “the surviving spouse”, the words “or the surviving civil union partner”.

11 Affidavit to lead grant of administration with will annexed

- (1) The fifth paragraph numbered 7A of Form 52 in Schedule 1 of the High Court Rules is amended by adding the words “or in a civil union”.
- (2) Paragraph 9 of Form 52 in Schedule 1 of the High Court Rules is amended by omitting the words “[*If the deponent is the surviving spouse or a surviving de facto partner of the deceased or a former spouse or a former de facto partner of the deceased.*] I am the surviving spouse (*or a surviving de facto partner or a former spouse or a former de facto partner*)”, and substituting the words “[*If the deponent is the surviving spouse or the surviving civil union partner or a surviving de facto partner of the deceased or a former spouse or a former civil union partner or a former de facto partner of the deceased.*] I am the surviving spouse (*or the surviving civil union partner or a surviving de facto partner or a former spouse or a former civil union partner or a former de facto partner*)”.

12 Affidavit to lead grant of administration on intestacy to surviving spouse or de facto partner

- (1) The heading to Form 53 in Schedule 1 of the High Court Rules is amended by inserting, after the words “surviving spouse”, the words “, civil union partner”.
- (2) Paragraph 7 of Form 53 in Schedule 1 of the High Court Rules is amended by omitting the words “(*or the surviving de facto partner*)”, and substituting the words “(*or the surviving civil union partner or the surviving de facto partner*)”.
- (3) The first paragraph numbered 7A of Form 53 in Schedule 1 of the High Court Rules is amended by inserting, after the words “husband or wife,”, the words “or by a civil union partner”.

- (4) The note to the first paragraph numbered 8 of Form 53 in Schedule 1 of the High Court Rules is amended by inserting, after the words “the applicant’s wife”, the words “or female civil union partner”.
- (5) The note to paragraph 8B of Form 53 in Schedule 1 of the High Court Rules is amended by inserting, after the words “the applicant’s wife”, the words “or female civil union partner”.
- (6) The second paragraph numbered 7A of Form 53 in Schedule 1 of the High Court Rules is amended—
 - (a) by inserting, after the words “a spouse”, the words “or a civil union partner”:
 - (b) by inserting, after the words “husband or wife,”, the words “or by a civil union partner,”.

Diane Morcom,
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 2005, amend the High Court Rules by—

- incorporating references to the Care of Children Act 2004:
- aligning the High Court Rules with the Civil Union Act 2004 and associated legislation.

Issued under the authority of the Acts and Regulations Publication Act 1989.
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