



High Court Amendment Rules 2022

Cindy Kiro, Governor-General

Order in Council

At Wellington this 7th day of March 2022

Present:

Her Excellency the Governor-General in Council

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

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

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal rules	2
4 Rule 1.3 amended (Interpretation)	2
5 New subpart 1A heading in Part 3 inserted	2
Subpart 1A—Emergencies	
6 New rule 3.3B inserted (Emergencies)	2
3.3B Emergencies	2
7 Rule 3.4 amended (Emergencies)	3
8 Rule 5.1A amended (Filing generally)	3
9 New rule 7.42A inserted (Judge’s powers to make orders and give directions on interlocutory applications)	3

	7.42A Judge's powers to make orders and give directions on interlocutory applications	4
10	Rule 8.5 amended (Discovery orders to be made at case management conferences)	4
11	Rule 8.11 amended (Preparation for first case management conference)	4
12	Rule 8.12 amended (Orders that may be made)	4
13	Rule 20.9 amended (Contents of notice of appeal)	4
14	New rule 20.9A inserted (When to name decision-maker as respondent to appeal)	4
	20.9A When to name decision-maker as respondent to appeal	5
15	Rule 20.17 revoked (Decision-maker entitled to be heard on appeal)	5

Rules

1 Title

These rules are the High Court Amendment Rules 2022.

2 Commencement

These rules come into force on 7 April 2022.

3 Principal rules

These rules amend the High Court Rules 2016.

4 Rule 1.3 amended (Interpretation)

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

emergency has the meaning set out in rule 3.3B

5 New subpart 1A heading in Part 3 inserted

In Part 3, after rule 3.3A, insert:

Subpart 1A—Emergencies

6 New rule 3.3B inserted (Emergencies)

Below the subpart 1A heading (as inserted by rule 5 of these rules), insert:

3.3B Emergencies

- (1) For the purposes of these rules, an **emergency** exists in relation to a place if,—
- (a) in relation to that place,—
 - (i) a state of emergency is declared, or a transition period is notified, under the Civil Defence Emergency Management Act 2002; or

- (ii) an emergency is declared under other legislation; or
- (iii) an epidemic notice is in force under section 5 of the Epidemic Preparedness Act 2006; or
- (b) the Chief High Court Judge, being satisfied of the following, gives notice that an emergency exists in relation to that place for the purposes of these rules:
 - (i) that a situation exists that is the result of any happening, whether natural or otherwise, including, without limitation, any explosion, earthquake, eruption, tsunami, land movement, flood, storm, tornado, cyclone, serious fire, leakage or spillage of any dangerous gas or substance, technological failure, infestation, plague, epidemic, failure of or disruption to an emergency service or a life-line utility, or actual or imminent attack or warlike act; and
 - (ii) that the situation affects, or may affect, the operation of the court or any registry of the court.
- (2) A notice is given for the purposes of subclause (1)(b) when it is published in the manner the Chief High Court Judge directs.
- (3) The Chief High Court Judge must—
 - (a) keep a notice given for the purposes of subclause (1)(b) under review; and
 - (b) revoke the notice when satisfied that the emergency has ended.
- (4) Subclause (3)(b) does not limit the Chief High Court Judge’s powers to revoke a notice sooner.
- (5) For the purposes of subclause (1), **place** includes the whole of New Zealand.
- (6) If an emergency exists, *see* rules 3.4, 3.4A, 5.1A(6), 5.1B(2)(d), 6.1A, and 9.73(4) to (6).
- (7) *See also* sections 24 and 24A of the Epidemic Preparedness Act 2006 if an epidemic notice is in force.

7 Rule 3.4 amended (Emergencies)

- (1) Replace the heading to rule 3.4 with “**Closure of court or registries in emergencies**”.
- (2) Revoke rule 3.4(3).

8 Rule 5.1A amended (Filing generally)

Revoke rule 5.1A(5).

9 New rule 7.42A inserted (Judge’s powers to make orders and give directions on interlocutory applications)

After rule 7.42, insert:

7.42A Judge's powers to make orders and give directions on interlocutory applications

- (1) This rule applies if a Judge considering an interlocutory application is satisfied that the application is plainly an abuse of the process of the court.
- (2) The Judge may, on the Judge's own initiative, make an order or give directions to ensure that the interlocutory application is disposed of or, as the case may be, proceeds in a way that complies with these rules, including (without limitation) an order under rule 15.1 that the application be struck out, stayed, or stayed on conditions.
- (3) Rule 7.43(3) does not apply.
- (4) A copy of a Judge's decision to strike out an interlocutory application must, if practicable, also be served on the person named as a party or, if more than 1 person is named, those persons named as parties to the proceeding.

10 Rule 8.5 amended (Discovery orders to be made at case management conferences)

- (1) In the heading to rule 8.5, delete "**to be made at case management conferences**".
- (2) In rule 8.5(2), replace "conference that is held for the proceeding" with "review that is held for the proceeding under rule 7.3".

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

- (1) In the heading to rule 8.11, replace "**conference**" with "**review**".
- (2) Replace rule 8.11(1) with:
 - (1) Subclause (1A) applies before the parties file the joint memorandum or separate memoranda under rule 7.3.
 - (1A) The parties must discuss and endeavour to agree on an appropriate discovery order, and the manner in which inspection will subsequently take place, having addressed the matters in the discovery checklist in accordance with Part 1 of Schedule 9.

12 Rule 8.12 amended (Orders that may be made)

In rule 8.12(1), replace "At the case management conference the" with "The".

13 Rule 20.9 amended (Contents of notice of appeal)

Revoke rule 20.9(2) and (3).

14 New rule 20.9A inserted (When to name decision-maker as respondent to appeal)

After rule 20.9, insert:

20.9A When to name decision-maker as respondent to appeal

- (1) The appellant must name the decision-maker as a respondent to the appeal unless the decision-maker exercised a purely adjudicative function (for example, the decision-maker is the District Court or the Environment Court).
- (2) If the decision-maker exercised a purely adjudicative function, the appellant—
 - (a) must name the decision-maker as a respondent if directed to do so by the court or if the decision-maker is required by law to be a respondent; and
 - (b) otherwise, must not name the decision-maker as a respondent.
- (3) The court may direct the extent to which a decision-maker is to participate in the appeal.

15 Rule 20.17 revoked (Decision-maker entitled to be heard on appeal)

Revoke rule 20.17.

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 7 April 2022, amend the High Court Rules 2016 as follows:

- *new rule 3.3B* and a subpart heading are added, relating to emergencies. *New rule 3.3B* defines emergency and sets out when, for the purposes of the rules, an emergency exists in a place. Rule 3.4(3) is consequentially revoked. Other minor or consequential amendments are made to rule 1.3 and the heading to rule 3.4:
- rule 5.1A(5), which refers to a High Court Practice Note and is expressed as being for the avoidance of doubt, is revoked:
- *new rule 7.42A* is inserted to address the jurisdiction and powers of a Judge who is satisfied that an interlocutory application that the Judge is considering is plainly an abuse of the process of the court:
- in rule 8.11, the time period within which the parties must do certain things in preparation for the first case management conference is replaced with a requirement to do those things before the parties file the joint memorandum or separate memoranda under rule 7.3. Amendments are made to rule 8.5, the heading of rule 8.11, and rule 8.12 on the basis that, given rule 7.3(6), there may not be a first case management conference:

- *new rule 20.9A* provides for the circumstances in which the appellant must name the decision-maker as a respondent to the appeal, and provides that the court may direct the extent to which a decision-maker is to participate in the appeal. Rules 20.9(2) and (3) and 20.17 are consequentially revoked.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 10 March 2022.

These rules are administered by the Ministry of Justice.