



## THE HIGH COURT AMENDMENT RULES 1993

CATHERINE A. TIZARD, Governor-General

### ORDER IN COUNCIL

At Wellington this 20th day of December 1993

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

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## RULES

**1. Title and commencement**—(1) These rules may be cited as the High Court Amendment Rules 1993, and shall be read together with and deemed part of the High Court Rules from time to time set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).

(2) Except as provided in rules 3 (2), 4 (2), 5 (2), 6 (2), 7 (2), 8 (2), 9 (2), 21 (2), and 24 (3) of these rules, these rules shall come into force on the 1st day of February 1994.

**2. Power to amend defects and errors**—(1) Rule 11 of the High Court Rules is hereby amended by revoking subclause (2), and substituting the following subclause:

“(2) The Court may, at any stage of a proceeding, make, either of its own motion or on the application of any party to the proceedings, such amendments to any pleading or the procedure in the proceeding as are necessary for determining the real controversy between the parties.”

(2) Rule 11 (3) of the High Court Rules is hereby amended by inserting, after the expression “subclause (1)”, the expression “or subclause (2)”.

**3. Margin**—(1) The High Court Rules are hereby amended by revoking rule 26, and substituting the following rule:

“26. (1) Subject to subclause (2), a margin of at least one-quarter of the width of the paper shall be left on the left-hand side of each page.

“(2) Where the reverse side of a page is used, a margin of at least one-quarter of the width of the paper shall be left on the right-hand side of that page.”

(2) This rule shall come into force on the 1st day of April 1994.

**4. Revocation of requirement that one side only be used**—(1) The High Court Rules are hereby amended by revoking rule 28.

(2) This rule shall come into force on the 1st day of April 1994.

**5. Revocation of provision for separate backing sheet**—(1) The High Court Rules are hereby amended by revoking rule 29.

(2) This rule shall come into force on the 1st day of April 1994.

**6. New rules substituted**—(1) The High Court Rules are hereby amended by revoking rules 30 to 32, and substituting the following rules:

“30. **Fastening and numbering of sheets**—Where there are more sheets than one,—

“(a) They shall be securely fastened together; and

“(b) Each page shall be numbered consecutively.

“31. **Description of document**—(1) Each document shall show on its first page, immediately below the heading, a description of the document adequate to show its precise nature.

“(2) The description shall include—

- “(a) Words indicating the party by whom or on whose behalf the document is filed; and
- “(b) The words ‘*ex parte* application’ in the case of an application so made.”

(2) This rule shall come into force on the 1st day of April 1994.

**7. Format of first page**—(1) The High Court rules are hereby amended by revoking rule 33, and substituting the following rule:

“33. (1) Subject to subclause (2), the first page of any originating document and of any notice of interlocutory application—

“(a) Shall include only—

- “(i) The heading; and
- “(ii) The description of the document; and
- “(iii) The subscription; and

“(b) Shall leave ample space between the description of the document and the subscription for the inclusion of a minute.

“(2) The heading may, where necessary, be continued on the reverse side of the first page or on another sheet.”

(2) This rule shall come into force on the 1st day of April 1994.

**8. Heading on other documents**—(1) Rule 37 (1) of the High Court Rules (as amended by rule 5 (1) of the High Court Amendment Rules 1986\*) is hereby amended by omitting the words “, and the backing of all documents,”.

(2) This rule shall come into force on the 1st day of April 1994.

**9. Subscription at foot of first page**—(1) The High Court Rules are hereby amended by revoking rule 40 (as substituted by rule 3 (1) of the High Court Amendment Rules 1991†), and substituting the following rule:

“40. (1) At the foot of the first page of every document for filing, there shall be subscribed—

“(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) Where 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 postal box or document exchange used by the solicitor or firm; and

“(iii) Any facsimile number used by the solicitor or firm.

“(2) The fact that the name of a solicitor or firm of solicitors is subscribed on a document shall be prima facie evidence that the document was filed by that solicitor or firm of solicitors.”

(2) This rule shall come into force on the 1st day of April 1994.

**10. New rules inserted**—The High Court Rules are hereby amended by inserting, after rule 45, the following rules:

“45A. **Withdrawal of solicitor who has ceased to act for party**—

(1) Where the solicitor on the record for a party to a proceeding has ceased to act for that party, that solicitor may apply to the Court for an order declaring that that solicitor has ceased to be the solicitor on the record for

that party in that proceeding and the Court may make an order accordingly.

“(2) It shall not be necessary to make an application under subclause (1) if—

“(a) The party has effected a change of solicitor in accordance with rule 45; or

“(b) The party—

“(i) Has filed a notice stating that the party intends to act in person and showing the party’s new address for service; and

“(ii) Has served on the solicitor on the record and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and

“(iii) Has filed an affidavit proving compliance with subparagraph (ii) and exhibiting and verifying a copy of the notice served.

“(3) Except where paragraph (a) or paragraph (b) of subclause (2) applies, the solicitor on the record for a party to a proceeding shall, for the purposes of that proceeding, be considered to be 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 subclause (1); and

“(c) Files an affidavit proving compliance with paragraph (b).

“(4) Every application under subclause (1) shall be made by interlocutory application and shall 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, shall be served on the party for whom the solicitor acted.

“(6) The notice served under subclause (5) on the party for whom the solicitor acted shall inform the party of the effect that rule 45B will have on the party’s address for service if the solicitor obtains an order under subclause (1).

“(7) An order made under subclause (1) shall not affect the rights of the solicitor and the party for whom the solicitor acted as between themselves.

“**45B. Address for service of party whose solicitor has ceased to act**—Where the solicitor on the record for a party has obtained an order under rule 45A (1) and has complied with paragraphs (b) and (c) of rule 45A (3), then until the party either—

“(a) Appoints another solicitor and complies with rule 45; or

“(b) Being entitled 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

“(ii) Serves on the solicitor who obtained the order under rule 45A (1) and on every other party to the proceeding who has given an address for service a copy of the notice filed under subparagraph (i); and

“(iii) Files an affidavit proving compliance with subparagraph (ii) and exhibiting and verifying a copy of the notice served,—

the last known address of the party, or, where the party is a body corporate, its registered or principal office shall, for the purpose of the service on the party of any document not required to be served personally, be deemed to be the party’s address for service.”

**11. Judgment for possession**—The High Court Rules are hereby amended by revoking rule 134C (as inserted by rule 3 of the High Court Amendment Rules (No. 2) 1987), and substituting the following rule:

“134C. Rule 461 shall not apply in respect of a proceeding to which this rule applies.”

**12. Application of summary judgment procedure**—(1) The High Court Rules are hereby amended by revoking rule 135 (as amended by rule 9 of the High Court Amendment Rules 1991), and substituting the following rule:

“135. (1) Rules 136 to 144 shall apply to every proceeding other than—

“(a) A proceeding that includes a claim by the plaintiff alleging—

“(i) Defamation; or

“(ii) Malicious prosecution; or

“(iii) False imprisonment; or

“(b) A proceeding under Part IV or Part VII; or

“(c) An application for a writ of *habeas corpus*.

“(2) Notwithstanding subclause (1) (b), a proceeding is not excluded from the application of rules 136 to 144 by reason only of the proceeding being—

“(a) A proceeding to which Part IV applies by virtue of rule 447; or

“(b) A proceeding to which Part IV applies by virtue of paragraph (b) or paragraph (c) of rule 449.”

(2) Rule 9 of the High Court Amendment Rules 1991 is hereby consequentially revoked.

**13. Filing of amended pleading**—Rule 187 of the High Court Rules is hereby amended by adding the following subclause:

“(9) Nothing in this rule limits the powers conferred on the Court by rule 11.”

**14. Order for interim payment in respect of damages**—Rule 346c (c) of the High Court Rules (as inserted by rule 7 of the High Court Amendment Rules (No. 2) 1992) is hereby amended by omitting the word “judgment” in the second place where it appears.

**15. Interest**—The High Court Rules are hereby amended by revoking rule 363, and substituting the following rule:

“363. (1) A payment into Court in a proceeding in which the plaintiff has claimed interest shall be deemed to include interest, calculated to the date of the payment into Court, at the rate from time to time prescribed by or under section 87 of the Judicature Act 1908 unless the notice of payment specifically states that it does not include interest or that it includes interest at a rate other than that from time to time prescribed by or under section 87 of the Judicature Act 1908.

“(2) Where a payment into Court that does not include interest is accepted in satisfaction, the plaintiff may, within 7 days of filing the notice of acceptance, make application to have the question of interest determined by the Court.

“(3) For the purposes of determining whether, under rule 360, the plaintiff has recovered a greater sum than that paid into Court, any interest awarded shall be taken into account only where the payment into Court included interest.

“(4) Nothing in this rule affects the power of the Court to decline to award interest in any particular case.”

**16. Application of rules 426 to 436**—Rule 425 (e) of the High Court Rules is hereby revoked.

**17. Procedure for setting down**—Rule 426 of the High Court Rules is hereby amended by inserting, after the word “proceeding” in both places where it appears, the words “(other than an appeal under Part V of the District Courts Act 1947)”.

**18. New rules inserted**—The High Court Rules are hereby amended by inserting, after rule 427, the following rules:

“**427A. Right of respondent to appeal under District Courts Act 1947 to be heard**—(1) Any respondent to an appeal under Part V of the District Courts Act 1947 who wishes to appear and be heard on the hearing of the appeal shall, within 14 days after the date of the service on that respondent of a duplicate of the notice of motion lodged under section 72 (1) of the District Courts Act 1947 or the notice of the appeal served pursuant to a direction under section 72 (4) of that Act, as the case may be, file in the Court a notice of the respondent’s intention to appear and be heard (which notice is required by rule 44 (1) to bear a memorandum stating (among other things) an address for service).

“(2) The parties to an appeal shall be—

“(a) The appellant; and

“(b) Any respondent who gives a notice under section 74 of the District Courts Act 1947; and

“(c) Any respondent who gives a notice of intention to appear and be heard as a respondent.

“(3) The parties to the appeal shall be entitled—

“(a) To be served with every document thereafter filed or lodged with the Registrar relating to the appeal; and

“(b) To receive a notice of the date set down for the hearing of the appeal.

“**427B. Procedure for setting down appeal under District Courts Act 1947**—(1) Where a notice of motion has been lodged under section 72 (1) of the District Courts Act 1947, the appellant, or any party to the appeal who has filed a notice under rule 427A (1), may set the appeal down for hearing by filing a praecipe in form 33 signed by each party who has given an address for service.

“(2) Where there are 3 or more parties to the appeal whose signatures are required, separate praecipes may be used for the purposes of this rule.”

**19. Application of Part IV to proceedings under certain Acts**—

(1) Rule 448 (1) of the High Court Rules is hereby amended by inserting, after paragraph (c), the following paragraph:

“(ca) The Corporations (Investigation and Management) Act 1989:”.

(2) Rule 448 (1) of the High Court Rules is hereby further amended by inserting, after paragraph (f), the following paragraphs:

“(fa) The Incorporated Societies Act 1908:

“(fb) The Industrial and Provident Societies Act 1908:”.

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

“(k) The Mental Health (Compulsory Assessment and Treatment) Act 1992:”.

**20. Application of Part IVA**—(1) Rule 458D (1) (a) of the High Court Rules (as inserted by rule 12 of the High Court Amendment Rules (No. 2)

1987) is hereby amended by inserting, after subparagraph (vi) (as substituted by rule 16 (1) of the High Court Amendment Rules (No. 2) 1988\*), the following subparagraph:

“(via) Sections 58 and 59 of the Corporations (Investigation and Management) Act 1989:”.

(2) Rule 458D (1) (a) of the High Court Rules (as so inserted) is hereby further amended by inserting, after subparagraph (vii) (as substituted by rule 16 (1) of the High Court Amendment Rules (No. 2) 1988\*), the following subparagraphs:

“(viiia) Section 23A of the Incorporated Societies Act 1908:

“(viiib) Section 10A of the Industrial and Provident Societies Act 1908:”.

(3) Rule 458D (1) (a) of the High Court Rules (as so inserted) is hereby further amended by revoking subparagraph (xiii).

**21. Exhibits to affidavits**—(1) The High Court Rules are hereby amended by revoking rule 511, and substituting the following rule:

“511. (1) Exhibits to an affidavit—

“(a) Shall be marked, in each case, with a distinguishing letter or number; and

“(b) Shall be annexed to the affidavit—

“(i) If this is practicable; and

“(ii) If none of them exceed International size A4; and

“(c) Shall, in each case, be identified by a note made thereon and signed by the person before whom the affidavit is sworn.

(2) Exhibits that are not annexed to the affidavit shall, subject to subclause (3), be filed with the affidavit in a separate bundle, which bundle shall—

“(a) Be securely bound; and

“(b) Include a sheet bearing a proper heading, endorsement, and subscription.

“(3) Where the size, shape, or nature of an exhibit makes it impracticable to comply with subclause (1) (b) or subclause (2), that exhibit shall have firmly affixed to it a sheet bearing a proper heading, endorsement, and subscription.”

(2) This rule shall come into force on the 1st day of April 1994.

**22. Discharge of land from charging order**—(1) The High Court Rules are hereby amended by revoking rule 577 (as amended by rule 18 of the High Court Amendment Rules (No. 2) 1988\*), and substituting the following rule:

“577. Land that is subject to a charging order made under rule 573 shall be discharged from that order upon registration with the District Land Registrar or Registrar of Deeds, as the case may require, 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 shall be discharged from the charging order; or

“(c) The consent of the person who registered the charging order to the discharge of the land from the charging order.”

(2) Rule 18 of the High Court Amendment Rules (No. 2) 1988\* is hereby consequentially revoked.

**23. Affidavit of service**—The First Schedule to the High Court Rules is hereby amended by revoking form 16, and substituting the form 16 set out in the Schedule to these rules.

**24. Consequential amendments to forms**—(1) The First Schedule to the High Court Rules is hereby consequentially amended by omitting from forms 4, 5, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 34A, 34B, 34CA, 34CB, 34CC, 34CD, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 the expression “(General heading—Form 1)” wherever it appears, and substituting in each case the expression “(General heading—Form 1 and endorsement)”.

(2) The First Schedule to the High Court Rules is hereby further amended by inserting in forms 32B, 51, 52, 53, 54, 55, and 56, in each case between the intitlement and the body of the form, the expression “(Endorsement)”.

(3) This rule shall come into force on the 1st day of April 1994.



Rule 23

**SCHEDULE**

NEW FORM 16 SUBSTITUTED IN FIRST SCHEDULE TO HIGH COURT RULES

**“Form 16**

Rule 196

**AFFIDAVIT OF SERVICE**

**(General heading—Form 1)**

I, *[Full name]*, of *[Address]*, *[Occupation]*, swear—

1. I did on                    day, the                    day of                    19                    , serve the above-named defendant, *[Full name]* with *[Insert an appropriate description of the documents served, e.g., a statement of claim in the above-mentioned proceeding and a notice of proceeding relating to the above-mentioned proceeding, which notice of proceeding was dated the                    day of                    19                    ]*.
2. I effected service of that statement of claim and that notice of proceeding on the defendant at                    in New Zealand, by delivering the same personally to the defendant *[or as the case may be]*.

*Signature of Deponent: .....*

Sworn at                    this                    day of                    19                    , before  
me—

.....  
(Deputy) Registrar  
A solicitor of the High  
Court of New Zealand.”

**BOB MACFARLANE,**  
Acting for Clerk of the Executive Council.





## EXPLANATORY NOTE

*This note is not part of the rules, but is intended to indicate their general effect.*

These rules amend the High Court Rules. The amendments (other than those made by rules 3 to 9 and 21 and 24 of these rules) come into force on 1 February 1994. The amendments effected by rules 3 to 9 and 21 and 24 (all of which relate to flat-filing of Court documents) come into force on 1 April 1994.

*Rule 2* revokes subclause (2) of rule 11 of the High Court Rules, and substitutes a new subclause. The new subclause makes it clear that the Court may, at any stage of a proceeding, make, either of its own motion or on the application of any party to the proceeding, such amendments to any pleading or the procedure in the proceeding as are necessary for determining the real controversy between the parties.

*Rules 3 to 9* (which come into force on 1 April 1994) provide for the flat-filing of Court documents.

*Rule 10* inserts new rules 45A and 45B into the High Court Rules. The new rules (which are based on Order 67, rules 6 and 7 of the Rules of the Supreme Court) provide for the withdrawal of a solicitor who has ceased to act for a party.

*Rule 11* revokes rule 134G of the High Court Rules, and substitutes a new rule (which relates to the summary proceeding for recovery of land provided for in rules 134A to 134H). When those rules were made in 1987, rule 134G (a) provided that in such a proceeding a judgment for possession could be given only by a Judge. That restriction on the giving of a judgment for possession in such a proceeding is now removed.

*Rule 12* revokes rule 135 (which deals with the application of the summary judgment procedure), and substitutes a new rule.

The new rule—

- (a) No longer excludes from the summary judgment procedure any proceeding against the Crown;
- (b) Makes it clear that proceedings in which the relief claimed is wholly within the equitable jurisdiction of the Court are not excluded from the summary judgment procedure; and
- (c) Omits, as unnecessary, the paragraphs that ensured that certain other proceedings were not excluded from the summary judgment procedure.

Those other proceedings are—

- (a) A proceeding in which a claim is made for specific performance of an agreement;
- (b) A proceeding in which a mortgagee applies for the leave of the Court to enter into possession of mortgaged land;
- (c) A proceeding in which a claim is made for contribution or indemnity.

*Rule 13* adds a new subclause (9) to rule 187 of the High Court Rules. The new subclause (9) makes it clear that nothing in rule 187 (which provides for the filing by a party of an amended pleading) limits the power of the Court to amend a pleading under rule 11 of the High Court Rules.

*Rule 14* corrects an error in rule 346c (c) of the High Court Rules.

*Rule 15* revokes rule 363 (which relates to the awarding of interest where a notice of payment into Court is given), and substitutes a new rule.

Under rule 363 (1) (as made in 1985) a payment into Court is deemed not to include interest unless the notice of payment specifically states that it does.

Under the new rule 363 (1) the position is reversed. A payment into Court in a proceeding in which the plaintiff has claimed interest is to be deemed to include interest, calculated to the date of the payment into Court, at the rate from time to time prescribed by or under section 87 of the Judicature Act 1908 unless the notice of payment specifically states that it does not include interest or that it includes interest at a rate other than that from time to time prescribed by or under section 87 of the Judicature Act 1908.

*Rule 363 (2)* provides that where a payment into Court that does not include interest is accepted in satisfaction, the plaintiff may, within 7 days of filing the notice of acceptance, make application to have the question of interest determined by the Court.

*Rules 363 (3) and (4)* follow the existing provisions.

*Rule 16* effects a consequential amendment to rule 425. The amendment is consequential on the abolition of the Administrative Division of the High Court.

*Rule 17* provides that appeals under Part V of the District Courts Act 1947 are not to be set down under rule 426.

*Rule 18* inserts new rules 427A and 427B into the High Court Rules. These rules relate to appeals under Part V of the District Courts Act 1947. *Rule 427A* deals with the rights of a respondent to be heard. *Rule 427B* deals with the setting down of such appeals.

*Rule 19: Subclauses (1) and (2)* provide that Part IV (Procedure in Special Cases) shall apply to proceedings in which the relief is claimed solely under—

- (a) The Corporations (Investigation and Management) Act 1989; or

- (b) The Incorporated Societies Act 1908; or
- (c) The Industrial and Provident Societies Act 1908.

*Subclause (3)* effects an amendment that is consequential on the passing of the Mental Health (Compulsory Assessment and Treatment) Act 1992.

*Rule 20* amends rule 458D of the High Court Rules (which relates to originating applications).

*Subclause (1)* inserts a new *subparagraph (via)* into rule 458D (1) (a).

The new subparagraph provides that applications to the Court under section 58 or section 59 of the Corporations (Investigation and Management) Act 1989 may be made by originating application.

Under section 58 the statutory manager of a corporation may apply to the Court for directions.

Under section 59 of that Act the Court may confer additional powers on the statutory manager.

*Subclause (2)* inserts new *subparagraphs (vita) and (viib)* into rule 458D (1) (a).

The new subparagraphs provide that applications to the Court under section 23A of the Incorporated Societies Act 1908 or section 10A of the Industrial and Provident Societies Act 1908 may be made by originating application. Both sections relate to the power to compromise with creditors and members and the power of the Court to order a meeting of creditors of an incorporated society or industrial and provident society or of any class of them or of the members of an incorporated society or industrial and provident society or of any class of them.

*Subclause (3)* revokes subparagraph (xiii) of rule 458D (1) (which refers to provisions of the Mental Health Act 1969). The revocation is consequential on the passing of the Protection of Personal and Property Rights Act 1988.

*Rule 21* revokes rule 21 (which relates to exhibits to affidavits), and substitutes a new rule. The new rule (which comes into force on 1 April 1994) is changed to take account of the new provisions relating to the flat-filing of Court documents.

*Rule 22* revokes rule 577 of the High Court Rules, and substitutes a new rule. The main difference between the old rule and the new rule is that the new rule provides that land that is subject to a charging order made under rule 573 of the High Court Rules shall be discharged from that order upon registration of the consent of the person who registered the charging order to the discharge of the land from the charging order.

*Rule 23* revokes the form of affidavit of service (form 16), and substitutes a new form.

Form 16, as enacted in 1985, requires true copies of documents served to be annexed to the affidavit of service.

The new *form 16* does away with that requirement. It will be sufficient if the documents served are identified in the affidavit by an appropriate description.

*Rule 24*, which comes into force on 1 April 1994, amends a number of forms to take account of the new provisions relating to the flat-filing of Court documents.

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

Date of notification in *Gazette*: 22 December 1993.

These rules are administered in the Department of Justice.