



High Court Amendment Rules 2006

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 10th day of April 2006

Present:

Her Excellency the Governor-General in Council

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 2 other members of the Rules Committee established under section 51B of the Judicature Act 1908 (of whom at least 1 was a Judge of the High Court) makes the following rules.

Contents

	Page
1 Title	2
2 Commencement	3
3 High Court Rules amended	3
4 Interpretation	3
5 New heading and rules 65A and 65B inserted	3
<i>Speaking in Maori</i>	
65A Speaking in Maori	3
65B Failure to give notice	4
6 New form 4A inserted in Schedule 1 of High Court Rules	4

7	Proper office of the Court	4
8	New rule 251A inserted	5
	251A Synopsis of argument	5
9	New rule 252 substituted	6
	252 Failure to appear	6
10	New heading and rule 299A inserted	7
	<i>Inspection of document referred to in pleading or other document</i>	
	299A Inspection of document referred to in pleading or other document	7
11	New rule 512 substituted	7
	512 Affidavit in language other than English	7
12	Service	8
13	New rule 899A inserted	8
	899A Ex parte entry as judgment in exceptional circumstances	8
14	New rule 900 substituted	8
	900 Entry as judgment by Registrar where originat- ing application served on defendant who takes no steps	8
15	Opposition to entry as judgment	9
16	Form 6 consequentially amended	9
17	Form 53 consequentially amended	9
18	Form 54 consequentially amended	10
19	Form 55 consequentially amended	10
20	Form 56 consequentially amended	11
21	Form 110 consequentially amended	12
22	New Schedule 2 substituted	12
23	Schedule 3 amended	12
24	Transitional provision relating to costs	13
	Schedule 1	14
	New form 4A inserted in Schedule 1	
	Schedule 2	16
	New Schedule 2 substituted	
	Schedule 3	17
	Dates on which steps taken for purposes of rule 24(3)	

Rules

1 Title

These rules are the High Court Amendment Rules 2006.

2 Commencement

These rules come into force on 1 June 2006.

3 High Court Rules amended

These rules amend the High Court Rules from time to time set out in Schedule 2 of the Judicature Act 1908.

4 Interpretation

Rule 3 is amended by revoking subclause (4) and substituting the following subclause:

“(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).”

5 New heading and rules 65A and 65B inserted

The following heading and rules are inserted after rule 65:

“Speaking in Maori

“65A Speaking in Maori

“(1) This rule applies to a person entitled under section 4(1) of the Maori Language Act 1987 to speak Maori in a proceeding or at the hearing of an interlocutory application.

“(2) If a person to whom this rule applies wishes to speak Maori 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 Maori.

“(3) The notice must state that the person intends to speak Maori at—

“(a) all case management conferences and hearings; or

“(b) all case management conferences and hearings held after a specified case management conference or hearing; or

“(c) a specified case management conference or hearing.

- “(4) The notice must be in form 4A.
- “(5) The notice must be filed and served—
- “(a) if the person intends to speak Maori at all case management conferences and hearings, not less than 10 working days before the first case management conference or hearing; or
 - “(b) if the person intends to speak Maori at case management conferences and hearings held after a particular case management conference or hearing, not less than 10 working days before the first case management conference or hearing at which the person intends to speak Maori; or
 - “(c) if the person intends to speak Maori at a particular case management conference or hearing, not less than 10 working days before the case management conference or hearing.

“65B Failure to give notice

A failure to comply with rule 65A does not prevent a person speaking Maori at a case management 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 Maori to be available at the adjourned case management conference or hearing;
- “(b) the Court may treat the failure to comply as a relevant consideration in an award of costs.”

6 New form 4A inserted in Schedule 1 of High Court Rules

Schedule 1 of the High Court Rules is amended by inserting, after form 4, the form set out in Schedule 1 of these rules.

7 Proper office of the Court

- (1) Rule 107(1) is amended by omitting “, subject to subclauses (2) and (3),”.
- (2) Rule 107(1) is amended by adding the following paragraph:
 - “(d) despite paragraphs (a) to (c), that office is the office of the Court at Wellington in the case of proceedings that

consist of or include 1 or more of the following kinds of action or application:

- “(i) an application for judicial review under Part 1 of the Judicature Amendment Act 1972 that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:
- “(ii) an action for or in the nature of mandamus, prohibition, certiorari, declaration, or injunction, that arises out of, or relates to, the making of a designation under the Terrorism Suppression Act 2002:
- “(iii) an application under section 35, section 47E, or section 55 of the Terrorism Suppression Act 2002.”

(3) Rule 107 is amended by adding the following subclause:

“(5) In this rule,—

- “(a) paragraphs (a) to (c) of subclause (1) are subject to subclauses (2) and (3); and
- “(b) paragraph (d) of subclause (1) overrides subclauses (2) to (4).”

8 New rule 251A inserted

The following rule is inserted after rule 251:

“251A Synopsis of argument

- “(1) This rule applies to a defended interlocutory application unless or to the extent that the Court 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 244(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 244(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), (b), and (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), (b), and (c) must not exceed 10 pages.”

9 New rule 252 substituted

Rule 252 is revoked and the following rule substituted:

“252 Failure to appear

- “(1) If a party is neither present nor represented at the hearing of an application, the Court 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, the Court may, if it 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) The Court may, in any manner that the Court thinks just, reinstate an application that has been struck out for non-appearance.
- “(4) The Court may make a determination referred to in subclause (2) or subclause (3) on its 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.”

10 New heading and rule 299A inserted

The following heading and rule are inserted after rule 299:

“Inspection of document referred to in pleading or other document

“299A Inspection of document referred to in pleading or other document

- “(1) A party (**party A**) on whom a pleading or other document is served may, by notice in writing served on the party or person by whom the pleading or other document was filed (**party B**), require party B to produce for inspection a document referred to in the pleading or other document.
- “(2) Party B must, within 5 working days after service of a notice under subclause (1), make the document available for inspection by the parties to the proceeding.
- “(3) Subclause (2) is subject to any claim by party B to privilege or confidentiality.
- “(4) If party A challenges a claim to privilege or confidentiality, party A may apply to the Court for an order setting aside or modifying the claim.”

11 New rule 512 substituted

Rule 512 is revoked and the following rule substituted:

“512 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.”

12 Service

Rule 899 is amended by adding the following subclause as subclause (2):

- “(2) Subclause (1) does not apply if the plaintiff obtains an order under rule 899A.”

13 New rule 899A inserted

The following rule is inserted after rule 899:

“899A Ex parte entry as judgment in exceptional circumstances

- “(1) In exceptional circumstances, the plaintiff may, on or after the filing of the originating application, file an *ex parte* application 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 on an *ex parte* basis 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.”

14 New rule 900 substituted

Rule 900 is revoked and the following rule substituted:

“900 Entry as judgment by Registrar where originating application served on defendant who takes no steps

- “(1) On the application of the plaintiff, the Registrar must promptly enter the award as a judgment unless within either period referred to in subclause (2) the defendant files and serves an application under rule 901 seeking an order that recognition and enforcement of the award be refused.
- “(2) The periods are—
- “(a) 10 working days after service on the defendant of the plaintiff’s application; or
- “(b) a period fixed by the Court of less than 10 working days after service on the defendant of the order fixing that period.
- “(3) An application to the Registrar under subclause (1) need not be served on the defendant, and may be made by letter signed

by the plaintiff or his or her solicitor or counsel requesting the entry of the award as a judgment.

- “(4) An application for an order fixing a shorter period under subclause (2)(b) may be made *ex parte*.
- “(5) An order fixing a shorter period under subclause (2)(b) does not take effect unless it is served on the defendant together with the documents referred to in rule 899(1).
- “(6) Subclause (5) applies even if the originating application to which the order relates has already been served on the defendant, and in that case the previous service of the application ceases to have effect when the order is made.”

15 Opposition to entry as judgment

Rule 901 is amended by revoking subclause (1) and substituting the following subclause:

- “(1) If the defendant wishes to oppose the originating application, the defendant must, within the applicable period specified by or fixed under rule 900(2), file and serve an application seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1.”

16 Form 6 consequentially amended

Form 6 of Schedule 1 of the High Court Rules is amended by revoking the headings above clauses 8, 9, and 11, and clauses 8 to 12.

17 Form 53 consequentially amended

Schedule 1 of the High Court Rules is amended by revoking paragraph 7 of Form 53 and substituting the following paragraph:

- “7 I am the surviving spouse (*or* the surviving civil union partner *or* the surviving de facto partner) of the above-named deceased. I am entitled to succeed on the intestacy. My beneficial interest in the estate is not affected—
 - “(a) (in the case only 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

- “(b) (in the case of a surviving spouse or of a surviving civil union partner) by section 26(1) of the Family Proceedings Act 1980; or
- “(c) (in every case) by the choice I have made between option A and option B, under section 61 of the Property (Relationships) Act 1976, because I have chosen option B and lodged a notice of choice of option in accordance with section 65(2)(c) of that Act, a copy of which is annexed and marked ‘...’.”

18 Form 54 consequentially amended

- (1) Schedule 1 of the High Court Rules is amended by revoking the first paragraph numbered 8 in Form 54 and substituting the following paragraph:
- “8 My father (*or* mother) was at the time of his (*or* her) death a widower (*or* widow *or* surviving civil union partner), and was not living in a de facto relationship.”
- (2) Schedule 1 of the High Court Rules is amended by revoking the second paragraph numbered 8 in Form 54 and substituting the following paragraph:
- “8 Annexed hereto and marked ‘...’ is a copy of the order (*or* decree absolute) dissolving my father’s (*or* mother’s) marriage (*or* civil union). He (*or* She) did not subsequently marry or enter into a civil union and at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.”
- (3) The third paragraph numbered 8 in Form 54 of Schedule 1 of the High Court Rules is amended by omitting “my father and his wife (*or* my mother and her husband)” and substituting “the above-named deceased and his (*or* her) spouse (*or* civil union partner)”.
- (4) The fourth paragraph numbered 8 in Form 54 of Schedule 1 of the High Court Rules is amended by inserting “, civil union partner,” after “a spouse”.

19 Form 55 consequentially amended

- (1) The first paragraph numbered 8 in Form 55 of Schedule 1 of the High Court Rules is amended by inserting “, civil union partner,” after “a spouse”.

- (2) Schedule 1 of the High Court Rules is amended by revoking the second paragraph numbered 8 in Form 55 and substituting the following paragraph:
 - “8 Annexed hereto and marked ‘...’ is a copy of the order (*or* decree absolute) dissolving the marriage or civil union of my son (*or* daughter), the above-named deceased. He (*or* She) did not subsequently marry or enter into a civil union, and, at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.”
- (3) The third paragraph numbered 8 in Form 55 of Schedule 1 of the High Court Rules is amended by omitting “my son (*or* daughter), the above-named deceased, and his wife (*or* her husband)” and substituting “the above-named deceased and his (*or* her) spouse (*or* civil union partner)”.
- (4) The fourth paragraph numbered 8 in Form 55 of Schedule 1 of the High Court Rules is amended by inserting “, civil union partner,” after “a spouse”.

20 Form 56 consequentially amended

- (1) The first paragraph numbered 8 in Form 56 of Schedule 1 of the High Court Rules is amended by inserting “, civil union partner,” after “a spouse”.
- (2) Schedule 1 of the High Court Rules is amended by revoking the second paragraph numbered 8 in Form 56 and substituting the following paragraph:
 - “8 Annexed hereto and marked ‘...’ is a copy of the order (*or* decree absolute) dissolving the marriage (*or* civil union) of my brother (*or* sister), the above-named deceased. He (*or* She) did not subsequently marry or enter into a civil union, and, at the time of his (*or* her) death, he (*or* she) was not living in a de facto relationship.”
- (3) The third paragraph numbered 8 in Form 56 of Schedule 1 of the High Court Rules is amended by omitting “my brother (*or* sister), the above-named deceased, and his wife (*or* her husband)” and substituting “the above-named deceased and his (*or* her) spouse (*or* civil union partner)”.
- (4) The fourth paragraph numbered 8 in Form 56 of Schedule 1 of the High Court Rules is amended by inserting “, civil union partner,” after “a spouse”.

21 Form 110 consequentially amended

Schedule 1 of the High Court Rules is amended by revoking clause 2 of Form 110 and substituting the following clause:

“2 If you wish to oppose this application, you must file in the Court and serve on the plaintiff and on all other parties an application seeking an order that recognition and enforcement be refused in terms of article 36 of Schedule 1 of the Arbitration Act 1996. You must do this within—

“(a) 10 working days after service of this application on you; or

“(b) any period fixed by the Court of less than 10 working days after service on you of the order fixing that period.”

22 New Schedule 2 substituted

Schedule 2 of the High Court Rules is revoked and the schedule set out in Schedule 2 of these rules substituted.

23 Schedule 3 amended

- (1) Item 4.10 of Schedule 3 of the High Court Rules is amended by omitting “Filing and serving memorandum in anticipation of judicial conference” and substituting “Filing memorandum for case management conference”.
- (2) Items 4.11, 14, and 15 of Schedule 3 are amended by omitting “judicial conference” wherever it appears and substituting, in each case, “case management conference”.
- (3) Schedule 3 of the High Court Rules is amended by omitting, after the heading **Bankruptcy proceedings**, “(additional to costs in items 1 to 12 if allowed by Court)” and substituting “Items 18 to 21 apply to bankruptcy proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9”.
- (4) Schedule 3 of the High Court Rules is amended by omitting, after the heading **Company liquidation proceedings**, “(additional to costs in items 1 to 12 if allowed by Court)” and substituting “Items 22 to 25 apply to company liquidation proceedings instead of items 1, 2, 4.10, 4.11, 8, and 9”.
- (5) Schedule 3 of the High Court Rules is amended by adding the following headings, provisions, and items:

Specified originating applications (relating to relief in respect of statutory demands and caveats)

In items 26 to 31, **specified originating application** means an originating application that is made to the Court under any of the following provisions:

- (a) sections 143, 145, or 145A of the Land Transfer Act 1952;
- (b) section 264 of the Companies Act 1955;
- (c) section 290 of the Companies Act 1993.

Items 26 to 31 apply to a specified originating application instead of items 1, 2, 4.10, 4.11, 8, and 9.

**Specified originating applications
(relating to relief in respect of statutory demands and caveats)**

		Allocated days or part days		
		A	B	C
26	Preparing and filing specified originating application and supporting affidavits	0.8	1.6	4.8
27	Preparing and filing notice of opposition and supporting affidavits	0.8	1.6	4.8
28	Filing memorandum for case management conference	0.2	0.4	1
29	Appearance at case management conference	0.3	0.3	0.7
30	Preparing for hearing of defended specified originating application	The time occupied by the hearing measured in quarter days		
31	Appearance at hearing of defended specified originating application	Appearance in Court measured in quarter days.		

24 Transitional provision relating to costs

- (1) Costs in a proceeding commenced after the coming into force of these rules must be determined in accordance with the High Court Rules as amended by 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 High Court Rules as in force immediately before the coming into force of these rules;
 - (b) in the case of a step in the proceeding taken after the coming into force of these rules, in accordance with the High Court Rules as amended by these rules.
- (3) For the purposes of subclause (2), a step in a proceeding described in column 1 of Schedule 3 of these rules is taken on

the date appearing opposite that step in column 2 of that schedule.

r 6

Schedule 1
New form 4A inserted in Schedule 1

r 65A(4)

Form 4A
Notice of intention to speak Maori
(General heading as in form 1)

Take notice that [**full name*] of [*address*] intends to speak Maori at—

†all case management conferences and hearings relating to the above proceeding

†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 Maori*]

†the case management conference/†hearing relating to the above proceeding to be held at [*specify details of the particular case management conference or hearing at which the person wishes to speak Maori*].

*Insert name of party, counsel, or witness intending to speak Maori.

†Delete if inapplicable.

Dated at this day of 20.....

.....

Signature of person intending to speak Maori or party (or solicitor)

To the Registrar of the High Court at [*place*]

and

To [*names of parties to be served*]

Notes

- 1 The Maori Language Act 1987 entitles certain persons to speak Maori in legal proceedings. They include the parties to the proceedings, witnesses, counsel, and, with the leave of the Court, other persons.

Form 4A—*continued*

- 2 If a person intends to speak Maori 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 office 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 Maori 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 Maori, file this notice in the office 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 Maori 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 office 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 Maori does not prevent a person speaking Maori 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.
-

r 22

Schedule 2
New Schedule 2 substituted

r 48A

Schedule 2
Appropriate daily recovery rates

(*Note:* The following are the appropriate daily recovery rates for the categories of proceedings referred to in rule 48.)

**Category of proceedings referred to in
rule 48**

Appropriate daily recovery rate

Category 1 proceedings

\$1,070 per day

Category 2 proceedings

\$1,600 per day

Category 3 proceedings

\$2,370 per day

Schedule 3

r 24

Dates on which steps taken for purposes of rule 24(3)

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

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 amend the High Court Rules. The rules come into force on 1 June 2006.

Rule 4 amends rule 3 of the High Court Rules to make it clear that the term **working day** when used in a judgment, order, direction, or other document means a working day as defined in rule 3 of the High Court Rules rather than as the term is defined in the Interpretation Act 1999. This change brings the High Court Rules into line with the Court of Appeal (Civil) Rules 2005. A corresponding amendment is made to the District Courts Rules 1992 by the District Courts Amendment Rules 2006.

Rule 5 inserts *new rules 65A and 65B* relating to the use of Maori in legal proceedings. Section 4(1) of the Maori Language Act 1987 entitles parties, counsel, witnesses, and, with the leave of the court, other persons to speak Maori in legal proceedings. Section 4(5) provides for the making of rules of court relating to the giving of notice of intention to speak Maori and for regulating matters of procedure generally when Maori is, or is to be, spoken.

Notice must be given of intention to speak Maori at case management conferences and hearings and must be filed and served at least 10 working days before the relevant conference or hearing (*new rule 65A*). Failure to give notice will not prevent a person speaking Maori, but the Court may adjourn the conference or hearing to enable an interpreter to be available and may take the failure to give notice into account in making an award of costs (*new rule 65B*). Corresponding rules are incorporated in the District Courts Rules 1992 by the District Courts Amendment Rules 2006.

Rule 6 inserts a *new form 4A* in Schedule 1 for giving notice of intention to speak Maori in legal proceedings.

Rule 7 amends rule 107 to require certain proceedings relating to the Terrorism Suppression Act 2002 to be filed in the Wellington Registry of the High Court. The proceedings are—

- applications for review or for one of the prerogative writs relating to designations under the Act;
- applications under section 35 of the Act to extend the period of a designation;
- applications under section 47E of the Act to extend the investigation period applying to goods seized and detained under section 47A of the Act;
- applications under section 55 of the Act to forfeit property to the Crown.

Rule 8 inserts a *new rule 251A*. The new rule applies to defended interlocutory applications and requires both the applicant and respondent to each file and serve on all parties before the hearing a synopsis of argument. A corresponding rule is incorporated in the District Courts Rules 1992 by the District Courts Amendment Rules 2006.

Rule 9 substitutes a *new rule 252*, which deals with the situation where a party fails to appear at the hearing of an interlocutory application. Under the current rule, the Court is expressly authorised to strike out an application if the applicant fails to appear. However, it is unclear whether the Court may strike out the application if the respondent fails to appear. It is also unclear whether the Court may recall a determination to strike out an application. The *new rule 252* makes it clear that the Court may strike out an application if the respondent or the applicant fails to appear and, further, that the Court may recall an order to strike out the application. The new rule also prescribes a period of 5 working days in which applications for reinstatement or recall must be made. Time runs from the making of

the order to strike out or, if the applicant was neither present nor represented when that order was made, from the day on which the applicant is notified of the decision given at the hearing.

Rule 10 inserts a *new rule 299A*. The new rule is similar to the former rule 306 and will enable a party on whom a pleading or other document is served, without necessarily going through the normal discovery process, to require production of a document referred to in the pleading or document.

Rule 11 replaces rule 512, which relates to affidavits in a foreign language, with a new rule. The new rule makes 2 changes. First, “foreign language” is replaced with “language other than English”. Second, the new rule reflects the operation of the rule in practice and the commentary in *McGechan on Procedure*. If an affidavit in a language other than English (**non-English affidavit**) is filed, the non-English affidavit must be accompanied by an affidavit by an interpreter to which is exhibited both a copy of the non-English affidavit and the interpreter’s translation of that non-English affidavit. A similar change is made to the corresponding rule in the District Courts Rules 1992 by the District Courts Amendment Rules 2006.

Rule 12 amends rule 899 as a result of *new rule 899A*.

Rule 13 inserts a *new rule 899A*. Under the new rule, the Court may, in exceptional circumstances, make an order that an award be entered as a judgment on an *ex parte* application.

Rule 14 replaces rule 900 with a new rule. Under the new rule, a Registrar may enter an award as a judgment if a defendant does not apply under rule 901 for an order refusing recognition and enforcement of the award within—

- (a) 10 working days after service on the defendant of the plaintiff’s application to enter the award as a judgment; or
- (b) a period fixed by the Court of less than 10 working days after service of the Court’s order on the defendant.

An application to fix a shorter period may be made *ex parte*. The power to fix a shorter period is new.

Rule 15 consequentially amends rule 901 to reflect the changes in *new rule 900*.

Rule 16 amends form 6 in Schedule 1. Form 6 is the form of the memorandum that must be attached to a notice of proceeding. The rule omits clauses 8 to 12 relating to payment and admission of the plaintiff’s claim. The omission of these clauses results from the

revocation by rule 15 of the High Court Amendment Rules 2004 of rules 347 to 368 relating to payments into court and admissions of relief.

Rules 17 to 20 consequentially amend forms of affidavits in Schedule 1 of the High Court Rules to be sworn by persons wishing to administer intestate estates. The amendments are consequential on the Civil Union Act 2004.

Rule 21 consequentially amends form 110 to reflect the changes in *new rule 900*.

Rule 22 replaces Schedule 2 of the High Court Rules with a new schedule. Schedule 2 sets out the daily recovery rates for the purposes of costs awards. The new Schedule 2 increases those rates for each of the 3 categories of proceeding. Under the High Court Rules, awards of costs are determined on the basis of applying the appropriate daily recovery rate for the particular category of proceeding to the time allocated for each step in the proceeding specified in Schedule 3 of the High Court Rules.

Rule 23 amends Schedule 3 in 3 respects. The first is to replace references in items 4.10, 4.11, 14, and 15 to judicial conferences with references to case management conferences. The second is to remove the statements under the headings **Bankruptcy proceedings** and **Company liquidation proceedings** that the items for which costs may be awarded in those proceedings are additional to the costs in items 1 to 12. Instead, it is made clear that under both categories of proceedings the items for which costs may be awarded are in place of items 1, 2, 4.10, 4.11, 8, and 9. The third creates a separate category for costs purposes for originating applications under—

- sections 143, 145, and 145A of the Land Transfer Act 1952 (removal and lapse of caveats):
- section 290 of the Companies Act 1993 and section 264 of the Companies Act 1955 (setting aside of statutory demands).

Rule 24 is a transitional rule relating to the recovery of costs. The rule provides that the changes to costs made by these rules apply to proceedings commenced after these rules take effect. In the case of proceedings commenced before these rules take effect—

- the previous provisions will apply to steps taken in the proceedings before these rules take effect:

- the new provisions will apply to steps taken in the proceedings after these rules take effect.
-

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

Date of notification in *Gazette*: 13 April 2006.

These rules are administered in the Ministry of Justice.
