



Harmful Digital Communications Rules 2016

Patsy Reddy, Governor-General

Order in Council

At Wellington this 17th day of October 2016

Present:

Her Excellency the Governor-General in Council

These rules are made under section 122(1) of the District Courts Act 1947 and section 27 of the Harmful Digital Communications Act 2015—

- (a) on the advice and with the consent of the Executive Council; and
- (b) 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 is a District Court Judge).

Contents

	Page
1 Title	3
2 Commencement	3

Part 1

Preliminary matters

3 Objective	4
4 Outline	4
5 Interpretation	5
6 Transitional, savings, and related provisions	6
7 Application of rules	6
8 Questions about application of rules	6
9 Powers to extend or shorten time given in rules and orders for doing acts, etc	7

Part 2
Applying for orders and procedure after application filed

Starting proceedings

10	How proceedings are started	7
11	Making an application	7
12	Information to be included in supporting affidavits	8
13	Affidavit in support of application by representative	9

Requests for confidentiality and anonymity

14	Request that applicant's residential address be kept confidential	10
15	Request that applicant's identity not be released	10

Procedure after application on notice is filed

16	Applications on notice must be referred to Judge	10
17	Procedure after application on notice filed	10
18	Notice of opposition to application on notice	11
19	Time for filing notice of opposition	11
20	Service of notice of opposition	11

Procedure after application without notice is filed; interim orders

21	Procedure after application without notice filed	11
22	Issue of interim order	12
23	Notice that defendant wants to be heard on application	12
24	Changing without notice application to an application on notice following Judge's consideration	13

Issue of harmful digital communication order

25	Issue of harmful digital communication order	13
----	--	----

Variation or discharge of order

26	Applying for variation or discharge of order	13
----	--	----

Applications by online content hosts

27	Applying for order concerning disclosure of personal information	14
----	--	----

Part 3

**Requirements and powers concerning documents, filing,
service, transfer of proceedings, etc**

Requirements for documents

28	Requirements applying to all documents in a proceeding	14
29	Authentication	15

Filing documents

30	Filing documents in court	15
31	Number of copies to be filed	16

	<i>Amending documents</i>	
32	Amending application or notice of opposition before service	16
33	Amending documents in proceedings	16
	<i>Service of documents</i>	
34	Service of applications, orders, and directions	16
35	Personal service	17
36	Service on lawyer accepting personal service on behalf of person	17
37	Who can serve documents	17
38	Service at address for service	18
39	Methods of service if address for service is lawyer's office	18
40	Treatment of documents served on lawyer	18
41	Lawyer must acknowledge document transmitted electronically	19
42	Substituted service	19
43	Proof of service of document	20
	<i>Transfer of proceeding or hearing</i>	
44	Transfer of proceeding	20
45	Transfer of hearing	21
46	Transfer with or without application	21
47	Procedure on transfer of hearing	21
	<i>Cases not provided for in Act or rules</i>	
48	Cases not provided for	22
49	Application of District Courts Rules 2014	22
	Schedule 1	23
	Transitional, savings, and related provisions	

Rules

1 Title

These rules are the Harmful Digital Communications Rules 2016.

2 Commencement

These rules come into force on 21 November 2016.

Part 1

Preliminary matters

3 Objective

The objective of these rules is to enable proceedings to be brought and dealt with under the Harmful Digital Communications Act 2015 justly, speedily, and inexpensively.

Compare: SR 1996/148 r 4(b); LI 2014/179 r 1.3

4 Outline

(1) In these rules,—

- (a) Part 1 deals with preliminary matters, including—
 - (i) the objective of the rules; and
 - (ii) the meaning of certain terms that are used in the rules; and
 - (iii) the court's power to give directions about the procedure to be followed in a proceeding if there is uncertainty about the application of the rules in the particular circumstances of the proceeding; and
 - (iv) the court's power to give a person more time (or less time) for taking a certain action than the time given in these rules or in an order of the court; and
- (b) Part 2 deals with—
 - (i) how a person applies for a harmful digital communication order or an interim order under the Act, including the documents that must be filed in the court and the information that the applicant must include in those documents; and
 - (ii) how a person who is applying for an order can ask the court to keep his or her address confidential or ask the court to deal with the proceeding in a way that does not disclose his or her identity to any other party in the course of the proceeding; and
 - (iii) the procedure to be followed after the application is filed, if the application is made on notice; and
 - (iv) the procedure to be followed after the application is filed, if the application is made on a without notice basis; and
- (c) Part 3 contains detailed provisions concerning a number of the procedural steps dealt with in Part 2, including—
 - (i) requirements that all documents in a proceeding have to comply with; and
 - (ii) how documents may be filed in the court, the numbers of copies that must be provided with the documents, and when documents are treated as having been filed; and

- (iii) when and how documents filed in a proceeding may be amended; and
 - (iv) the process for serving documents, including how they may be served, where they may be served, who they may be served on, and who they may be served by; and
 - (v) when and how a proceeding or a hearing of a proceeding may be transferred to the court in another place; and
- (d) Part 3 also provides for the practice and procedure that must be followed if these rules do not deal with the circumstances of a proceeding.
- (2) Subclause (1) is intended as a guide only to the general scheme and effect of these rules.

5 Interpretation

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

Act means the Harmful Digital Communications Act 2015

address for service means a postal address, an electronic address, or the address of a place in New Zealand where a document may be left for, or sent to, a person under these rules

affected individual means an individual who claims that he or she has suffered or will suffer harm as a result of a digital communication

applicant means a person who is filing, or has filed, an application

application includes—

- (a) an application for a harmful digital communication order under section 19 of the Act; and
- (b) an application for an interim order under section 18 of the Act; and
- (c) an application for an order under section 20 of the Act for a variation or discharge of an interim order or a harmful digital communication order

chief executive means the chief executive of the Ministry of Justice

court means the District Court and includes a Judge of that court

defendant,—

- (a) in relation to an application, means a person against whom the applicant is wanting the court to make an order; and
- (b) in relation to an order of the court, means a person against whom the order is made; and
- (c) includes—
 - (i) a person who is an online content host; and
 - (ii) a person who is an IPAP

electronic system used by the registry means an electronic system that is approved by the chief executive for any particular or general purpose

harmful digital communication order means an order under section 19 of the Act against a defendant

interim order means an order under section 18 of the Act

interlocutory application means an application for an order or a direction of the court that is made in a proceeding, or for the purposes of an intended proceeding, and—

- (a) concerns a matter of procedure; or
- (b) is additional to, but concerns or arises from, the harmful digital communication order or interim order that the applicant is applying for or that the court has made in the proceeding

IPAP has the same meaning as in the section 122A(1) of the Copyright Act 1994

on notice, in relation to an application, means—

- (a) the application is given on notice to each defendant; and
- (b) notice is given by documents relating to the application (for example, copies of the application, an affidavit in support of the application, and a notice of proceeding) being served on (that is, in general terms, delivered to) those persons

Registrar means a Registrar of the court and includes a Deputy Registrar of the court

without notice, in relation to an application, means an application made without notice to the defendant or defendants against whom the application is made.

- (2) Any term that is defined in the Act and used, but not defined, in these rules has the same meaning as in the Act.

6 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

7 Application of rules

These rules apply to proceedings (including intended proceedings) under the Act, except applications to the District Court and the High Court under section 24(5) of the Act (*see* rule 27).

8 Questions about application of rules

- (1) If it is unclear whether, or how, 1 or more of these rules applies in a proceeding, the court may—
 - (a) decide that question; and

- (b) give any directions about the procedure to be followed that the court thinks appropriate in the circumstances of the proceeding.
- (2) A party to a proceeding may file an interlocutory application for directions under this rule.
- (3) However, the court may give directions under this rule regardless of whether a party applies for those directions.
- (4) *See* rules 48 (cases not provided for) and 49 (application of District Courts Rules 2014), which apply if these rules do not deal with the procedure to be followed in the circumstances of a proceeding.

Compare: LI 2014/344 r 6

9 Powers to extend or shorten time given in rules and orders for doing acts, etc

- (1) The court has a discretion to make an order, on any terms it thinks just, giving a person more time, or less time, than the time given by these rules or by an order of the court for doing an act, taking a proceeding, or taking a step in a proceeding.
- (2) The court may make an order giving a person more time even though the person does not apply for that order until after the time given by these rules or the court's order for doing the act, taking the proceeding, or taking the step in the proceeding has passed.
- (3) A person may apply for an order under this rule by written notice, instead of by interlocutory application, if the parties to the proceeding consent to the application being made in that way.
- (4) A Registrar may exercise the powers under this rule.

Compare: LI 2014/179 r 1.23; LI 2014/344 r 7

Part 2

Applying for orders and procedure after application filed

Starting proceedings

10 How proceedings are started

A person starts a proceeding by applying to the court for a harmful digital communication order and, if applicable, an interim order under the Act.

11 Making an application

- (1) A person applies for an order by filing, in any registry of the court,—
 - (a) an application containing the information described in subclause (2); and
 - (b) an affidavit in support of the application containing the information described in subclause (3) and rule 12.

- (2) The application must set out—
 - (a) which of the orders listed in section 19(1) to (3) of the Act the applicant wants the court to make against the defendant (and if there is more than 1 defendant, against each defendant); and
 - (b) the grounds on which the applicant is applying for the order; and
 - (c) whether the application is made on notice or on a without notice basis; and
 - (d) the residential address of the defendant or, if the applicant does not know the defendant's residential address, any information that may be helpful in finding out that address; and
 - (e) if the applicant wants the court to consider also taking one of the actions provided for in section 19(4) of the Act, the details of that action.
- (3) The supporting affidavit must contain enough information, including the information described in rule 12, to—
 - (a) show the grounds on which the person is applying for the order, including—
 - (i) which of the communication principles listed in section 6 of the Act the applicant says the defendant has threatened to breach, seriously breached, or repeatedly breached; and
 - (ii) the harm that the person says he or she has suffered or is likely to suffer as a result; and
 - (b) show, if the application is made on a without notice basis, the applicant's reasons for not applying on notice; and
 - (c) inform the court of the facts that the person is relying on in support of the application.

12 Information to be included in supporting affidavits

- (1) The applicant's affidavit in support of an application for a harmful digital communication order or an interim order must, in particular, set out—
 - (a) a description of the digital communication that the applicant claims the defendant has posted or, in the case of an online content host, has hosted online, and the context of that communication, including details of—
 - (i) the form of the digital communication (for example, whether it was a text message, or was writing, a photograph, a recording, etc, posted online, or was some other form of electronic communication); and
 - (ii) when the digital communication was posted (for example, when the text message was sent, or when the writing, photograph, recording, etc, was posted online); and

- (iii) if the digital communication was posted online, the site where it was posted; and
 - (iv) the subject matter and content of the digital communication; and
 - (v) the background to the defendant posting the digital communication; and
 - (vi) the circulation (if any) or threatened circulation of the digital communication that the applicant knows about; and
 - (vii) the action (if any) that the defendant has taken in relation to the digital communication since it was posted or, in the case of an online content host, hosted online (for example, any action that may reduce the effect of the communication or any action that may make it worse); and
- (b) details of the harm that the applicant claims the digital communication has caused or is likely to cause the applicant; and
 - (c) if the applicant is one of the persons listed in subclause (2), details of the complaint made to the Approved Agency about the digital communication including—
 - (i) the date on which the applicant first made a complaint to the Approved Agency; and
 - (ii) any action that the applicant believes the Approved Agency has taken or has decided to take.
- (2) The persons referred to subclause (1)(c) are—
- (a) the affected individual;
 - (b) a parent or guardian on behalf of the affected individual;
 - (c) a professional leader (or his or her delegate) of a registered school at which the affected individual is a student.

13 Affidavit in support of application by representative

If one of the following persons applies for an order, any person who has knowledge of the relevant facts may make an affidavit containing the information described in rules 11(3) and 12:

- (a) a parent or guardian on behalf of the affected individual;
- (b) a professional leader (or his or her delegate) of a registered school at which the affected individual is a student;
- (c) the Police.

Compare: SR 2014/179 r 20.33(4)

Requests for confidentiality and anonymity

14 Request that applicant’s residential address be kept confidential

- (1) An applicant who wants his or her residential address to be kept confidential from a person who is required to be served with the application may file a notice with his or her application—
 - (a) stating the applicant’s residential address; and
 - (b) requesting that the address be kept confidential.
- (2) After filing a notice under subclause (1), the applicant is not required to disclose his or her residential address in any document that is available to another party (despite any other rule).
- (3) If an applicant’s residential address is required to be kept confidential under this rule and a document discloses the address, then, to the extent of that disclosure, no person may search, inspect, or copy the document under Part 3 of the District Courts Rules 2014 (access to court documents) unless the court gives a direction permitting the person to do so.
- (4) An applicant who changes his or her address after filing a notice under subclause (1) may notify that change of address to the Registrar.

Compare: SR 2009/257 r 7.14; LI 2014/179 r 20.35

15 Request that applicant’s identity not be released

An applicant who does not want his or her identity to be released to any other party during the proceeding may file a notice with his or her application requesting the court to deal with the application in a way that allows the applicant to remain anonymous.

Procedure after application on notice is filed

16 Applications on notice must be referred to Judge

As soon as practicable after a person files an application on notice, the Registrar must refer the application to a Judge for consideration of any matters arising in relation to the application under sections 13 to 20 of the Act.

17 Procedure after application on notice filed

- (1) After a Judge has considered an application made on notice, the Registrar must take the following steps, unless the Judge has given some different direction:
 - (a) fix a date and time when the court will hear the application, which must be as soon as practicable; and
 - (b) prepare a notice of proceeding notifying the defendant of—
 - (i) the application; and
 - (ii) the order that the applicant is asking for; and

- (iii) the date and time when, and the place where, the court will hear the application; and
 - (iv) the steps that the defendant may take to oppose the application; and
 - (v) the consequences for the defendant if he or she does not take any steps in the proceeding; and
- (c) issue the following documents for service on the defendant:
 - (i) the notice of proceeding; and
 - (ii) the application; and
 - (iii) the supporting affidavit.
- (2) The Registrar must—
 - (a) inform the applicant of the date and time fixed for the court to hear the application; and
 - (b) arrange for the documents referred to in subclause (1)(c) to be served on the defendant.
- (3) The documents issued for service must be served in accordance with rules 34 to 42.

18 Notice of opposition to application on notice

- (1) A defendant who intends to oppose an application made on notice may file a notice of opposition in the court.
- (2) The notice of opposition must—
 - (a) state that the defendant intends to oppose the application; and
 - (b) set out enough information to indicate the grounds on which the defendant opposes the application; and
 - (c) set out enough information to inform the court of the facts that the defendant relies on in support of his or her opposition to the application.

19 Time for filing notice of opposition

A notice of opposition must be filed no later than 3 working days before the date fixed for the hearing.

20 Service of notice of opposition

The Registrar must, immediately after receiving a notice of opposition that meets the requirements in rules 18 and 19, arrange for a copy of the notice to be served on the applicant.

Procedure after application without notice is filed; interim orders

21 Procedure after application without notice filed

- (1) This rule applies when a person files an application on a without notice basis.

- (2) As soon as practicable after the application is filed, the Registrar must refer the application to a Judge for consideration of any matters arising in relation to the application under sections 13 to 20 of the Act.
- (3) After considering the application, the Judge may do 1 or more of the following:
 - (a) give any directions he or she thinks necessary, which may include a direction that the application must be dealt with as if it had been made on notice (*see* rule 24):
 - (b) make an interim order under section 18 of the Act (which applies until the court hears and decides the person's application for orders under section 19 of the Act):
 - (c) make an order under section 19 of the Act:
 - (d) dismiss the application.

22 Issue of interim order

- (1) If a Judge makes an interim order under section 18 of the Act, the Registrar must—
 - (a) issue the order; and
 - (b) give a copy of the order to the applicant, together with a record of the Judge's directions (if any) concerning the proceeding; and
 - (c) arrange for the documents listed in subclause (2) to be served on the defendant.
- (2) The documents to be served on the defendant are as follows:
 - (a) the interim order:
 - (b) the application:
 - (c) the supporting affidavit:
 - (d) a record of the Judge's directions (if any) concerning the proceeding:
 - (e) a notice to the defendant informing him or her of the following:
 - (i) that if the defendant wants say anything to the court about whether it should make a final order under section 19 of the Act, the defendant may file a notice in the court stating that he or she wants to be heard by the court; and
 - (ii) the date by which the defendant must file that notice.

23 Notice that defendant wants to be heard on application

- (1) A notice that a defendant wants to be heard on an application (referred to in rule 22(2)(e)) must contain enough information to—
 - (a) show the defendant's reasons for giving the notice; and
 - (b) inform the court of the facts that the defendant relies on.

- (2) When a defendant files a notice containing the information described in subclause (1), the Registrar must—
- (a) arrange for a copy of the notice to be served on the applicant; and
 - (b) set a date for hearing the application; and
 - (c) notify the parties of the hearing date.

24 Changing without notice application to an application on notice following Judge’s consideration

- (1) This rule applies if a person makes an application (application A) on a without notice basis and a Judge directs that the application must be dealt with as if it had been made on notice.
- (2) If this rule applies, rules 17 to 22 apply with the following changes:
- (a) rule 17(1) must be read as if the words “After a Judge has considered an application made on notice” were replaced with the words “After application A is made”:
 - (b) in each place where the words “the application” are used, they must be read as if they were replaced with the words “application A”:
 - (c) the Registrar must serve the Judge’s direction (that the application be dealt with as if it had been made on notice) with the other documents listed in rule 17(1)(c).

Issue of harmful digital communication order

25 Issue of harmful digital communication order

- (1) If the court makes an order under section 19 of the Act, the Registrar must—
- (a) issue the order; and
 - (b) make a copy of the order available to the applicant; and
 - (c) arrange for a copy of the order to be served on the defendant.
- (2) The order issued must—
- (a) set out the order and any terms and conditions of the order under section 19; and
 - (b) if the order was preceded by an interim order under section 18, record that the interim order has expired.

Variation or discharge of order

26 Applying for variation or discharge of order

- (1) A party to a harmful digital communication order or an interim order who wants to apply to the court for an order under section 20 of the Act varying or discharging the order may file an interlocutory application containing the infor-

mation described in subclause (2) and an affidavit in support containing the information described in subclause (3).

- (2) The application must set out—
 - (a) which of the orders referred to in section 20(2) of the Act the applicant wants the court to make;
 - (b) the grounds on which the applicant is applying for the order;
 - (c) whether the application is made on notice or on a without notice basis.
- (3) The affidavit in support of the application must contain enough information to—
 - (a) show the grounds on which the applicant is applying for the order; and
 - (b) show, if the application is made on a without notice basis, the applicant's reasons for not applying on notice; and
 - (c) inform the court of the facts that the person is relying on in support of the application.

Applications by online content hosts

27 Applying for order concerning disclosure of personal information

- (1) An online content host who wants to apply for an order under section 24(5) of the Act must file an originating application—
 - (a) under subpart 2 of Part 20 of the District Courts Rules 2014 if the application is for an order of a District Court; or
 - (b) under subpart 2 of Part 19 of the High Court Rules if the application is for an order of the High Court.
- (2) That Part of the District Courts Rules 2014 or the High Court Rules referred to in subclause (1) (depending on which court the application is filed in) then applies to the application with all necessary modifications.

Part 3

Requirements and powers concerning documents, filing, service, transfer of proceedings, etc

Requirements for documents

28 Requirements applying to all documents in a proceeding

- (1) This rule applies to every document that the Act or these rules require to be filed, served, or issued.
- (2) The document must, in addition to the information that the Act or these rules require, include the following information (if known):
 - (a) the name and place of the court dealing with the proceeding; and

- (b) the case number of the proceeding given by the court; and
- (c) the full name and address of each party to the proceeding (including, if the proceeding is brought on behalf of a person, the name and address of that person's representative); and
- (d) the name and address of the lawyer (if any) acting for each party to the proceeding; and
- (e) the section of the Act or the provision of these rules (or, if rule 48 applies, the District Courts Rules 2014) that the document relates to.

29 Authentication

- (1) A document that is required by the Act or these rules to be filed, served, or issued must be authenticated by the person responsible for its content.
 - (2) The person responsible for the content of a document authenticates it by—
 - (a) signing and dating the document; or
 - (b) in the case of a document in electronic form, using any electronic means that adequately identifies the person responsible for the document and the date of the authentication.
 - (3) Despite subclause (2)(b), an affidavit and every other document that is required to be sworn must be signed and dated.
 - (4) Every document referred to in subclause (1) must be treated as having been authenticated as required by this rule, unless there is evidence that it has not been.
- Compare: SR 2012/415 r 2.2; LI 2014/344 r 9

Filing documents

30 Filing documents in court

- (1) A document is filed in court when—
 - (a) the applicant (or a person acting on behalf of the applicant) delivers or sends the document to the court for filing in one of the ways listed in subclause (2); and
 - (b) the Registrar accepts the document for filing.
- (2) A person may deliver or send a document for filing in a court by—
 - (a) delivering the document to the court by hand; or
 - (b) sending the document to the court by pre-paid post; or
 - (c) sending the document, electronically, to an electronic system used by the registry of the court.
- (3) When a registry of the court receives a document sent electronically for filing, the registry must send an electronic reply confirming that the registry has received that document.

- (4) If a person sends or delivers to a registry of the court, for filing, a copy of an affidavit or a copy of any other document that is required to be sworn in a proceeding, the Registrar may require the person to file the original of that document.

Compare: LI 2014/344 rr 12, 13

31 Number of copies to be filed

- (1) When an application made on notice is delivered by hand or sent by prepaid post to the court for filing, the correct number of copies of those documents must also be filed.
- (2) In subclause (1), **correct number of copies** means same number of copies as there are persons who must be served with those documents.

Compare: LI 2014/179 r 20.34; LI 2014/344 r 14

Amending documents

32 Amending application or notice of opposition before service

- (1) A Registrar may amend an application before it is served if the Registrar receives a request from the applicant, in writing, to amend it.
- (2) A Registrar may amend a notice of opposition before it is served if the Registrar receives a request from the defendant, in writing, to amend it.

Compare: SR 2002/261 r 77; LI 2014/179 r 20.53

33 Amending documents in proceedings

- (1) The court may, at any stage of the proceeding, on its own initiative or on an interlocutory application by a party to the proceeding,—
- (a) amend a defect or an error in a document in the proceeding, whether or not the defect or error is that of the party applying to amend;
- (b) make any other amendment to a document in the proceeding that may be necessary for the purpose of ensuring that the real matter in dispute between the parties is determined.
- (2) After the court amends a document under this rule, the proceeding continues as if it had been started with the documents in the form in which they appear after the amendment is made.

Compare: SR 2002/261 r 78; LI 2014/179 r 1.12; LI 2014/344 r 17

Service of documents

34 Service of applications, orders, and directions

- (1) This rule applies if the Act, these rules, or an order or a direction of the court requires one of the documents listed in subclause (2) to be served on a person.
- (2) The documents are—

- (a) an application for an interim order:
 - (b) an application for a harmful digital communication order under section 19(1), (2), or (3) of the Act:
 - (c) an application for a direction, declaration, or order under section 19(4) of the Act:
 - (d) an order made on an application referred to in paragraph (a) or (b):
 - (e) a direction, declaration, or order made or given on an application referred to in paragraph (c).
- (3) The document must be served on the person in one of the following ways:
- (a) by personal service (*see* rule 35):
 - (b) by service on a lawyer who accepts service of the document on behalf of the person (*see* rule 36):
 - (c) electronically, if the person on whom the document is being served has an electronic address where the documents may be sent and where documents have been sent and received on earlier occasions.
- (4) This rule does not apply if, and so far as, the court dealing with an application gives directions about service that are different from the requirements in this rule.

Compare: LI 2014/344 r 32

35 Personal service

Personal service is carried out by leaving the document with the person who is to be served or, if that person does not accept it, by putting the document down in the person's presence and pointing out that the document is being left for that person's attention.

Compare: LI 2014/344 r 35

36 Service on lawyer accepting personal service on behalf of person

- (1) A lawyer accepts service of a document on behalf of a person by—
- (a) noting on a copy of the document that he or she accepts service of it on behalf of the person; and
 - (b) signing and dating the note.
- (2) If a lawyer accepts service of a document on behalf of a person, the document must be treated as having been served on the date the lawyer signed the note, unless it is proved that the document was not served on that date.

Compare: LI 2014/344 r 36

37 Who can serve documents

- (1) A document must be served by—
- (a) an officer of the court; or

- (b) an individual who is authorised by the chief executive to serve documents under the Act; or
 - (c) an officer or employee of a corporation that is authorised by the chief executive to serve documents under the Act; or
 - (d) a constable; or
 - (e) a Police employee authorised by the Commissioner of Police to serve documents under the Act.
- (2) A party may not—
- (a) serve a document;
 - (b) be present when a document is being served.
- Compare: LI 2014/344 r 34

38 Service at address for service

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

Compare: LI 2014/344 r 38

39 Methods of service if address for service is lawyer's office

- (1) This rule applies if—
- (a) a party's address for service is the office of the party's lawyer; and
 - (b) the party's lawyer has given a document exchange box number or an electronic address as the method by which the lawyer will accept service on behalf of the party.
- (2) If this rule applies, a document may be served on the party by—
- (a) leaving the document at a document exchange for direction to the document exchange box number; or
 - (b) transmitting the document to the electronic address.

Compare: LI 2014/344 r 39

40 Treatment of documents served on lawyer

- (1) A document left at a document exchange under rule 39(2)(a) must be treated as having been served on the earlier of the following days, unless it is proved that it was not served on that day:
- (a) the day on which it was received;
 - (b) the second working day after the day on which it was left.
- (2) A document transmitted under rule 39(2)(b)—
- (a) before 5 pm on a working day must be treated as having been served on that day unless it is proved that it was not served on that day:

- (b) at or after 5 pm on a working day must be treated as having been served on the first working day after the day on which it was received unless it is proved that it was not served on that day.
- (3) A document transmitted under rule 39(2)(b) must be treated as having been received in a complete and legible form unless—
 - (a) it is proved that the document was not received in that form; or
 - (b) the lawyer receiving the document gave a notice in relation to the document as required by rule 41(1)(b).

Compare: LI 2014/344 r 40

41 Lawyer must acknowledge document transmitted electronically

- (1) A lawyer to whom a document is transmitted under rule 39(2)(b) must, promptly after receiving the document, give the person who served the document—
 - (a) a notice acknowledging receipt of the document and confirming the date of service of the document; or
 - (b) if the document is incomplete, illegible, or both incomplete and illegible when it is received, a notice stating that the document was incomplete, illegible, or both when it was received.
- (2) A notice under subclause (1) may be—
 - (a) given in writing; or
 - (b) transmitted electronically.

Compare: LI 2014/344 r 41

42 Substituted service

- (1) The court may take any of the actions described in subclauses (2) to (4) if reasonable efforts have been made to serve a document under these rules and—
 - (a) the document has not come to the knowledge of the person to be served; or
 - (b) it cannot be served promptly.
- (2) The court may direct—
 - (a) 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
 - (b) that the document must be treated as served on the happening of a specified event or on the ending of a specified time.
- (3) 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, the court may direct that a document be treated as served on that person on a specified date.
- (4) The court may, on any conditions that it thinks just to impose,—
 - (a) dispense with service of a document on a person; and

- (b) give the party required to serve the document leave to proceed as if the document had been served.

Compare: LI 2014/344 r 42

43 Proof of service of document

- (1) Service of a document may be proved—
 - (a) by a note on a copy of the document, or, where applicable, on a printout that records an electronic document, that—
 - (i) shows the fact, date, time, and method of service; and
 - (ii) is signed by the person who served the document; or
 - (b) by affidavit; or
 - (c) on oath at the hearing.
- (2) If the service of a document is proved by affidavit, 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 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: LI 2014/344 r 43

Transfer of proceeding or hearing

44 Transfer of proceeding

- (1) The court or a Registrar may order that a proceeding filed in a registry of the court (the **original registry**) be transferred to another registry of the court (the **second registry**) if the court or the Registrar is satisfied that the proceeding can be more conveniently or fairly dealt with in the second registry.
- (2) If an order is made under this rule,—
 - (a) the Registrar of the original registry must send all the documents in his or her custody relating to the proceeding to the Registrar of the second registry; and
 - (b) the Registrar of the second registry must enter the proceeding in the records of that registry.
- (3) After the proceeding is transferred, it continues as if it had been originally filed in the second registry.

Compare: LI 2014/179 rr 20.54, 20.55

45 Transfer of hearing

The court or a Registrar may order that the hearing of an application 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 application can be more conveniently or fairly heard in that other court.

Compare: SR 2009/257 r 7.34; LI 2014/179 r 20.55

46 Transfer with or without application

- (1) The court or a Registrar may order a transfer under rule 44 or 45—
 - (a) after a party to the proceeding files an interlocutory application for that order and each other party to the proceeding has been given not less than 3 working days' notice of that application; or
 - (b) without a party filing an interlocutory application, if the court or the Registrar decides, in the circumstances of the proceeding, that it should make that order.
- (2) The applicant may ask the court to review a decision of the Registrar declining 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 a proceeding or hearing to be transferred,—
 - (a) the order must be written on the application; and
 - (b) the Registrar must arrange for notice of the transfer to be given to all parties.

Compare: SR 2009/257 r 7.35; LI 2014/179 r 20.56

47 Procedure on transfer of hearing

- (1) If an order is made under rule 45 for the transfer of a hearing,—
 - (a) the Registrar of the court registry where the application is pending (the **original registry**) must—
 - (i) send all the documents in his or her custody relating to the proceeding to the Registrar of the court where the proceeding is to be heard (the **second registry**); and
 - (ii) note the records of the court accordingly; and
 - (b) the Registrar of the second registry must make an appropriate entry in the records of the court when the documents are received.
- (2) For the purposes of the hearing, the application must be dealt with as if it had been filed in the second registry.
- (3) When the hearing is concluded,—
 - (a) the Registrar of the second registry must return all the documents relating to the proceeding, including every order that has been made in that proceeding, to the Registrar of the original registry; and

- (b) the Registrar of the original registry must record every order made in the proceeding in the records of the court.

Compare: SR 2009/257 r 7.37; LI 2014/179 r 20.58

Cases not provided for in Act or rules

48 Cases not provided for

- (1) If the Act or these rules do not provide for the procedure to be followed in the circumstances of a proceeding,—
 - (a) the provisions of the District Courts Rules 2014 apply so far as they are applicable and with any necessary modifications; and
 - (b) the general practice of the District Courts applies.
- (2) Subclause (1) is subject to rule 49.
- (3) However, if the court is satisfied that none of the District Courts Rules 2014 are applicable in the circumstances of the proceeding, the court may give any directions about the procedure to be followed that the court thinks are necessary.

Compare: LI 2014/179 r 1.11; LI 2014/344 rr 6(2), 45

49 Application of District Courts Rules 2014

- (1) If, in the course of proceedings under the Act, a situation arises that is not provided for by these rules, any relevant provisions of the District Courts Rules 2014 apply, except the following provisions:
 - (a) rule 1.10:
 - (b) rule 2.6:
 - (c) rules 4.1 to 4.28 and rules 4.49 to 4.64:
 - (d) rules 5.1 to 5.4, 5.6 to 5.37, and 5.47 to 5.70:
 - (e) rules 7.1 to 7.11, 7.12(4), 7.14, 7.15, 7.16(1), 7.17(3), 7.29, 7.32, 7.40, and 7.45 to 7.70:
 - (f) rules 8.1 to 8.48:
 - (g) rules 9.1 to 9.41:
 - (h) rules 10.1 to 10.8.
- (2) The application of rule 7.17(1) of the District Courts Rules 2014 is subject to rule 37 of these rules.

Compare: LI 2014/344 r 45

Schedule 1
Transitional, savings, and related provisions

r 6

Part 1
Provisions relating to these rules as made

There are no transitional provisions relating to these rules as made.

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 21 November 2016, apply to proceedings under the Harmful Digital Communications Act 2015 (the **Act**).

Proceedings under the Act are started in the District Court and the practice and procedure set out in these rules applies in place of the District Courts Rules 2014. However, if these rules do not provide for a particular situation, the general practice and procedure set out in the District Courts Rules 2014 applies, except as stated in *rule 49* of these rules.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 20 October 2016.
These rules are administered by the Ministry of Justice.