



District Courts Amendment Rules 2001

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 27th day of August 2001

Present:

Her Excellency the Governor-General in Council

Pursuant to section 122 of the District Courts Act 1947, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Chief District Court Judge and at least 2 other members of the Rules Committee (of whom at least 1 was a District Court Judge), makes the following rules.

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Rules

1 Title

- (1) These rules are the District Courts Amendment Rules 2001.

- (2) In these rules, the District Courts Rules 1992¹ are called “the principal rules”.

¹ SR 1992/109

2 Commencement

These rules come into force on 1 October 2001.

3 New rule 14 substituted

The principal rules are amended by revoking rule 14, and substituting the following rule:

“14 Certain days excluded

- “(1) The period commencing on 25 December in 1 year and ending with the close of 15 January in the next year must be disregarded in calculating a period of time within which a particular act is to be done.

- “(2) A Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s Birthday, and Waitangi Day must be disregarded in calculating a period of time within which a particular act is to be done if the period of time is 6 days or less.

- “(3) Subclauses (1) and (2) are subject to an express provision in any Act or in these rules or to a direction of the Court.”

4 Filing and service of statement of defence

Rule 135 of the principal rules is amended by revoking subclause (2).

5 New rule 155 substituted

The principal rules are amended by revoking rule 155, and substituting the following rule:

“155 Service out of New Zealand

A plaintiff who makes an application under rule 152 or rule 153 must serve the documents specified in rule 154(4) on a defendant who is overseas,—

- “(a) if the defendant is served in the Commonwealth of Australia, not less than 21 days before the date for hearing the application:

- “(b) if the defendant is served elsewhere, not less than 35 days before the date for hearing the application.”

6 New rule 157 substituted

The principal rules are amended by revoking rule 157, and substituting the following rule:

“157 Time for service

“(1) The documents specified in rule 154(4) must be served on the other party to the proceeding not less than 21 days before the date for hearing the application.

“(2) This rule is subject to rule 155.”

7 Memorandum (general form)

Form 5 in the First Schedule of the principal rules is amended by omitting clause 5, and substituting the following clause:

“5. In calculating the time for filing your statement of defence you must disregard the period that commences with 25 December and ends with 15 January. [*This paragraph must be deleted if it conflicts with a direction by the Court.*]”

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

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

These rules, which come into force on 1 October 2001, amend the District Courts Rules 1992 (“the principal rules”). The rule changes are the same as a number of changes made to the High Court Rules by the High Court Amendment Rules 2001 at the same time as these rules.

Rule 3 replaces rule 14 of the principal rules with a new rule that suspends the period from 25 December to 15 January in calculating a period of time within which a particular thing is to be done. The new *rule 14* also provides that, in calculating a period of 6 days or less, Saturdays, Sundays, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s Birthday, and Waitangi Day are excluded. The new *rule 14* is subject to the provisions of any Act or

of the principal rules, or to a direction by the Court. The new rule is the same as new rule 14 of the High Court Rules. The position under both the principal rules and the High Court Rules will therefore be the same.

Rule 4 revokes rule 135(2) of the principal rules. Rule 135(2) excludes the period 25 December to 2 January (the Christmas Vacation) from the period within which a statement of defence must be filed and served. In future, new *rule 14* will apply so that the period 25 December to 15 January will be excluded. The new rule is the same as rule 129 of the High Court Rules. The position under both the principal rules and the High Court Rules will therefore be the same.

Rule 5 replaces rule 155 with a new rule. The existing rule provides that in the case of a summary judgment application that is to be served overseas, the Court must fix both the date for the hearing and the time within which the opposing party must file notice of opposition and other documents. In *Hodder Moa Beckett Publishers Ltd v Weinbaum* (High Court, Auckland (CP 346/97)), Master Faire noted that it was not clear whether under the comparable rule 138A of the High Court Rules, for the Court to fix the date of hearing and the time for filing documents in opposition, the rule required an application to be made by the party seeking summary judgment. The rule may also allow an opposing party who is overseas more time to file documents in opposition than a party in New Zealand has under rule 157.

The new *rule 155* requires a plaintiff who applies for summary judgment to serve the documents on a defendant who is overseas not less than 21 days before the hearing if the defendant is in Australia, or not less than 35 days before the hearing if the defendant is elsewhere. The new *rule 155* does not apply to summary judgment applications by defendants. Those applications will be subject to rule 157, which requires the service of documents not less than 21 days before the hearing. The new rule is the same as new rule 138A of the High Court Rules. The position under the principal rules and the High Court Rules will therefore be the same.

Rule 6 makes rule 157 expressly subject to new *rule 155*. Rule 140 of the High Court Rules is amended in the same way.

Rule 7 consequentially amends clause 5 of the form of Memorandum to be attached to a Notice of Proceeding in line with the change to rule 135. Form 6 in the First Schedule of the High Court Rules is also amended in the same way.

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

Date of notification in *Gazette*: 30 August 2001.

These rules are administered in the Department for Courts.
