



High Court Amendment Rules 2004

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 20th day of September 2004

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 at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Schedule 1

New form 26 substituted in First Schedule of High Court Rules

Schedule 2

New form 90 substituted in First Schedule of High Court Rules

Schedule 3

New form 94 substituted in First Schedule of High Court Rules

Schedule 4

Amendments to forms in First Schedule of High Court Rules

Schedule 5

Amendments to High Court Rules consequential on designation of Masters as Associate Judges

Rules

1 Title

- (1) These rules are the High Court Amendment Rules 2004.
- (2) In these rules, the High Court Rules from time to time set out in the Second Schedule of the Judicature Act 1908 are called “the High Court Rules”.

2 Commencement

These rules come into force on 1 November 2004.

3 Interpretation

Rule 3(1) of the High Court Rules is amended by inserting, after the definition of **civil proceedings**, the following definition:

“**control**, in relation to a document, means—

- “(a) possession of the document; or
- “(b) a right to possess the document; or
- “(c) a right, otherwise than under these rules, to inspect or copy the document”.

4 New rule 33 substituted

The High Court Rules are amended by revoking rule 33, and substituting the following rule:

“33 Format of first page

- “(1) The first page of an originating document and of a notice of interlocutory application must—

“(a) include only—

“(i) the heading; and

“(ii) the description of the document; and

“(iii) if applicable, the next event date; and

“(iv) if applicable, the name of the Judge or Associate Judge to whom the proceeding has been assigned; and

“(v) the subscription; and

“(b) must 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 another sheet.

“(3) In subclause (1)(a)(iii), **next event date** means, if allocated, the date and nature of a hearing or conference that is to be held next after the date on which the document is filed.”

5 Increased costs and indemnity costs

Rule 48C(3)(b) of the High Court Rules is amended—

- (a) by omitting from subparagraph (iv) the words “a notice for discovery, notice”, and substituting the words “an order for discovery, a notice”; and
- (b) by omitting from subparagraph (v) the words “, payment into Court, or an admission or offer of relief under rules 347 to 368,”.

6 Refusal of, or reduction in, costs

Rule 48D(e) of the High Court Rules is amended—

- (a) by omitting from subparagraph (iv) the words “a notice for discovery, notice”, and substituting the words “an order for discovery, a notice”; and
- (b) by omitting from subparagraph (v) the words “, payment into Court, or an admission or offer of relief under rules 347 to 368,”.

7 New rules 48G and 48GA substituted

The High Court Rules are amended by revoking rule 48G, and substituting the following rules:

“48G Written offers without prejudice except as to costs

- “(1) A party to a proceeding may at any time make to any other party to the proceeding a written offer that—
 - “(a) is expressly stated to be without prejudice except as to costs; and
 - “(b) relates to an issue in the proceeding.
- “(2) The fact that the offer has been made must not be communicated to the Court until the question of costs is to be decided.

“48GA Effect on costs

- “(1) The effect (if any) that the making of an offer under rule 48G has on the question of costs is at the discretion of the Court.
- “(2) Subclauses (4) and (5)—
 - “(a) apply subject to subclause (1); and
 - “(b) do not limit rules 48C or 48D.

- “(3) Subclauses (4) and (5) apply to an offer made under rule 48G by a party to a proceeding (**party A**) to another party to the proceeding (**party B**).
- “(4) If party A—
- “(a) offers a sum of money to party B that exceeds the amount of a judgment obtained by party B against party A; or
 - “(b) makes an offer that would have been more beneficial to party B than the judgment obtained by party B against party A,—
- the principle to be applied in determining costs is that party A is entitled to costs on the steps taken in the proceeding after the offer is made.
- “(5) If an offer made by party A does not fall within paragraph (a) or paragraph (b) of subclause (4), but is close to the value or benefit of the judgment obtained by party B, the principle to be applied in determining costs is that the offer may be taken into account.”

8 Transitional provision

Despite rule 7, rule 48G of the High Court Rules (as in force immediately before the commencement of these rules) continues to apply to an offer under that rule made before the commencement of these rules.

9 Search of Court records generally

Rule 66(5) of the High Court Rules is amended by inserting, after paragraph (h), the following paragraph:

“(ha) the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:”.

10 Additional jurisdiction of certain Registrars

The High Court Rules are amended by revoking subparagraph (iii) of rule 271(c), and substituting the following subparagraph:

“(iii) rule 295(4):”.

11 New rule 285 substituted

The High Court Rules are amended by revoking rule 285, and substituting the following rule:

“285 Defamation proceedings

If, in a proceeding for defamation, the defendant pleads that the words or matters complained of are honest opinion on a matter of public interest or were published on a privileged occasion, no interrogatories as to the defendant’s sources of information or grounds of belief shall be allowed unless the interrogatories are necessary in the interests of justice.”

12 New headings and rules 293 to 317A substituted

The High Court Rules are amended by revoking the heading above rule 293 and rules 293 to 317A, and substituting the following headings and rules:

*“Discovery orders***“293 Contents of discovery order**

- “(1) In this rule and in rules 294 to 314, **discovery order** means an order, made under rule 294, that requires each party to a proceeding to discover the existence of documents to every other party.
- “(2) To the extent that a discovery order does not modify the terms set out in rule 295, the order contains those terms.
- “(3) A discovery order may modify the terms set out in rule 295 in any 1 or more of the following ways:
- “(a) by suspending the operation of the order until a date fixed or to be fixed by the Court:
 - “(b) by excluding 1 or more of those terms:
 - “(c) by varying 1 or more of those terms:
 - “(d) by replacing 1 or more of those terms with different terms:
 - “(e) by adding any terms that are not set out in rule 295 to the order.
- “(4) A discovery order may, for example, specify 1 or more of the following matters:
- “(a) the kinds of documents that a party is to discover:
 - “(b) the manner in which the documents are to be discovered:
 - “(c) the period within which the documents are to be discovered.

“294 Discovery orders to be made at case management conferences

- “(1) If discovery of documents is appropriate for a proceeding on the standard track, the Court must make a discovery order.
- “(2) An order under subclause (1) must be made at the first case management conference that is held for the proceeding, unless there is good reason for making the order later.
- “(3) The Court may make a discovery order for a proceeding on the swift track if—
- “(a) a case management conference is held for the proceeding; and
 - “(b) a party to the proceeding sets out in a memorandum, filed under rule 429, why the order is sought.
- “(4) To the extent that a party wishes a discovery order to contain terms that are not contained in, or that differ from, the terms set out in rule 295, the party must, in a memorandum filed under rule 429, set out the terms sought and why they are sought.

“295 Default terms of discovery order

- “(1) A discovery order is in the terms set out in this rule to the extent that those terms are not modified by the order.
- “(2) Each party must make an affidavit of documents that lists the documents that—
- “(a) are or have been in that party’s control; and
 - “(b) relate to a matter in question in the proceeding.
- “(3) The affidavit of documents must—
- “(a) comply with rules 297 and 298; and
 - “(b) be filed and served on every other party who has given an address for service.
- “(4) Each party must comply with the order within 20 working days after the date on which the order is made.

“296 Solicitor’s obligations on discovery

As soon as practicable after a party becomes bound to comply with a discovery order, the solicitor who acts for the party in the proceeding must, to the best of the solicitor’s ability, ensure that the party—

- “(a) understands the party’s obligations under the order; and
- “(b) faithfully fulfils those obligations.

“297 Affidavit of documents

- “(1) This rule applies to an affidavit of documents that a party is required to make under rule 295(2), but only to the extent that the requirement is not modified by the order.
- “(2) In the affidavit of documents, the party must—
- “(a) refer to the discovery order under which the affidavit is made and, if the order contains particular terms that are not set out in rule 295, state the nature of those particular terms; and
 - “(b) state that the party understands the party’s obligations under the order; and
 - “(c) give particulars of the steps taken to fulfil those obligations, such as, for example, any inquiries made of named persons; and
 - “(d) identify or list the documents required to be discovered under the order in a schedule that complies with rule 298; and
 - “(e) if the party claims confidentiality for a document or part of a document, state the restrictions that the party proposes to apply in order to protect that confidentiality.
- “(3) The affidavit may be in form 26.

“298 Schedule appended to affidavit of documents

- “(1) The schedule referred to in rule 297(2)(d) must identify or list the documents in the following categories and provide the information specified in relation to each category:
- “(a) documents that are in the control of the party giving discovery and for which the party does not claim privilege or confidentiality. These documents may be identified by number:
 - “(b) documents that are in the control of the party giving discovery for which privilege is claimed, together with a statement as to the nature of the privilege claimed:
 - “(c) documents that are in the control of the party giving discovery for which confidentiality is claimed, together with a statement as to the nature and extent of the confidentiality:
 - “(d) documents that have been, but are no longer, in the control of the party giving discovery, together with a statement as to when the documents ceased to be in the

party's control and the person who now has control of them:

- “(e) documents that have not been in the control of the party giving discovery but that are known by that party to relate to a matter in question in the proceeding, together with a statement as to who has control of them.
- “(2) Documents in any of categories (b), (c), (d), or (e) may be described as a group or groups if all documents concerned are of the same nature.
- “(3) The schedule need not include—
 - “(a) copies of documents filed in Court; or
 - “(b) correspondence that may reasonably be assumed to be in the possession of all parties.

“299 Variation of discovery order

A party may, at any time, apply for an order varying the terms of a discovery order on the ground that—

- “(a) compliance or attempted compliance with the terms of the order has revealed a need for a variation; or
- “(b) there has been a change of circumstances justifying reconsideration.

“Orders for particular discovery

“300 Order for particular discovery against party after proceeding commenced

“(1) If at any stage of the proceeding it appears to the Court from evidence or from the nature or circumstances of the case or from any document filed in the proceeding that there are grounds for believing that a party has not discovered 1 or more documents or a group of documents that should have been discovered, the Court may order that party—

- “(a) to file an affidavit stating—
 - “(i) whether the documents are or have been in the party's control; and
 - “(ii) if they have been, but are no longer, in the party's control, the party's best knowledge and belief as to when the documents ceased to be in the party's control and the person who now has control of them; and
- “(b) to serve the affidavit on any other party.

“(2) The Court may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

“301 Order to discover particular documents before proceeding commenced

“(1) This rule applies if it appears to the Court that—

“(a) a person (the **intending plaintiff**) is or may be entitled to claim in the Court relief against another person (the **intended defendant**) but that it is impossible or impracticable for the intending plaintiff to formulate the intending plaintiff’s claim without reference to 1 or more documents or group of documents; and

“(b) there are grounds to believe that the documents may be or may have been in the control of a person (the **person**), who may or may not be the intended defendant.

“(2) The Court may, on the application of the intending plaintiff made before any proceeding is brought, order the person—

“(a) to file an affidavit stating—

“(i) whether the documents are or have been in the person’s control; and

“(ii) if they have been, but are no longer, in the person’s control, the person’s best knowledge and belief as to when they ceased to be in the person’s control and who now has control of them; and

“(b) to serve the affidavit on the intending plaintiff.

“(3) An application under subclause (2) must be by interlocutory application made on notice—

“(a) to the person; and

“(b) to the intended defendant.

“(4) The Court may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

“302 Order for particular discovery against non-party after proceeding commenced

“(1) This rule applies if it appears to the Court that a person who is not a party to a proceeding (the **person**) may be or may have been in the control of 1 or more documents or a group of documents that the person would have had to discover if the person were a party to the proceeding.

- “(2) The Court may, on application, order the person—
- “(a) to file an affidavit stating—
 - “(i) whether the documents are or have been in the person’s control; and
 - “(ii) if they have been, but are no longer, in the person’s control, the person’s best knowledge and belief as to when they ceased to be in the person’s control and who now has control of them; and
 - “(b) to serve the affidavit on a party or parties specified in the order.
- “(3) An application for an order under subclause (2) must be made on notice to the person and to every other party who has filed an address for service.
- “(4) The Court may not make an order under this rule unless satisfied that the order is necessary at the time when the order is made.

“303 **Expenses**

If an order is made under rule 301(2) or rule 302(2), the Court may, if it thinks fit, order the applicant to pay to the person from whom discovery is sought the person’s expenses (including solicitor and client costs) of and incidental to the application and in complying with any order made on the application.

“Discovery: Affidavits of documents, privilege, and public interest

“304 **Incorrect affidavit of documents to be amended**

If, by reason of any change of circumstances or because of an error or omission, an affidavit of documents filed under an order made under any of the provisions of rules 294, 299, and 300 to 302 appears to the person making discovery to be defective or erroneous, the person must promptly file and serve an affidavit that corrects or supplements the affidavit of documents.

“305 **Where process impeded by discovery of irrelevant documents**

If the Court considers that a party has impeded the process of discovery and inspection by including documents in an affidavit that are not required to be included, the Court may order

the party to pay costs to a party or parties specified in the order.

“306 Who may swear affidavit of documents

“(1) When the Court makes an order under any of the provisions of rules 294, 299, and 300 to 302, it may—

“(a) specify by name or otherwise the person to make the affidavit of documents; or

“(b) specify by description or otherwise the persons from whom the person required to make discovery may choose the person to make the affidavit.

“(2) If the Court does not specify the person, the affidavit of documents may be made as follows:

“(a) by the person required to make discovery:

“(b) if the person required to make discovery is a corporation or a body of persons empowered by law to sue or be sued (whether in the name of the body or in the name of the holder of an office), by a person who meets the requirements of rule 517:

“(c) if the person required to make discovery is the Crown, an officer of the Crown who sues or is sued in an official capacity, or as representing a Government department, by an officer of the Crown.

“307 Challenge to privilege or confidentiality claim

“(1) If a party challenges a claim to privilege or confidentiality made in an affidavit of documents, the party may apply to the Court for an order setting aside or modifying the claim.

“(2) In considering the application, the Court may require the document under review to be produced to the Court and inspect it for the purpose of deciding the validity of the claim.

“(3) The Court may—

“(a) set aside the claim to privilege or confidentiality; or

“(b) modify the claim to privilege or confidentiality; or

“(c) dismiss the application; or

“(d) make any other order with respect to the document under review that the Court thinks fit.

“308 Crown documents and public interest

Any order made under section 27(1) of the Crown Proceedings Act 1950 must be construed as not requiring disclosure of the existence of any document if—

- “(a) the Prime Minister certifies that the disclosure of the existence of that document would be likely to prejudice—
 - “(i) the security or defence of New Zealand or the international relations of the Government of New Zealand; or
 - “(ii) any interest protected by section 7 of the Official Information Act 1982; or
- “(b) the Attorney-General certifies that the disclosure of the existence of that document would be likely to prejudice the prevention, investigation, or detection of offences.

“Inspecting and copying discovered documents

“309 Inspection of documents

- “(1) As soon as a person who is required to make discovery has served an affidavit of documents, the person must make the documents listed in the affidavit available for inspection by the parties to the proceeding.
- “(2) The person is not required to make privileged documents or documents no longer in the person’s control available for inspection.
- “(3) The person may limit inspection of confidential documents to the persons specified in the affidavit of documents and subject to the restrictions proposed in the affidavit.
- “(4) Subclause (1) is subject to subclauses (2) and (3).
- “(5) Subclauses (2) and (3) are subject to any contrary order made under rule 307.

“310 Order facilitating inspection

- “(1) The Court may, on application, make any order it thinks appropriate to facilitate the efficient inspection of documents.
- “(2) An order under subclause (1) may, for example, require the person who is to produce the documents for inspection to do either or both of the following:
 - “(a) arrange the documents in a stated manner or order:

“(b) assist the party inspecting the documents to locate and identify particular documents or group of documents.

“311 Cost of production by non-party

If an order is made under rule 301(2) or rule 302(2), the Court may, if it thinks fit, order that the applicant pay the person from whom discovery is sought that person’s expenses (including solicitor and client costs) in making the documents discovered available for inspection by the parties to the proceeding.

“312 Right to make copies

“(1) A party to whom a document is produced for inspection under rule 309 or rule 310 may make copies of the document.

“(2) On the application of a party to whom a document is produced for inspection under rule 309 or rule 310, the Court may order the person who has control of the document to furnish the applicant with a legible copy.

“(3) An order under subclause (2) may be made on any terms the Court thinks fit, and, in particular, the Court may order the applicant to pay the reasonable expenses of the other party, and may order that the document be marked to the effect that it is a copy furnished for purposes of inspection only.

“(4) A party who obtains a copy under this rule—

“(a) may use that copy only for the purposes of the proceeding; and

“(b) except for the purposes of the proceeding, must not make it available to any other person.

“Evidentiary provisions related to discovery and inspection

“313 Effect of failure to include document

A document that should have been included in a party’s affidavit of documents may be produced in evidence at the hearing only with the consent of the other party or parties or the leave of the Court.

“314 Admission of documents discovered

“(1) Whenever a party (**party A**) is permitted to inspect a document specified in an affidavit of documents served by another party (**party B**) on party A under any of the provisions of rules

294 to 299, party A is (subject to any contrary order by the Court) deemed to have made the following admissions in favour of party B:

- “(a) that the document, if described in the affidavit as an original document, is an original document and was printed, written, signed, or executed as it appears to have been; or
 - “(b) that the document, if described in the affidavit as a copy, is a true copy.
- “(2) Subclause (1) does not apply if—
- “(a) a party has in a pleading denied the authenticity of the document; or
 - “(b) within 10 working days after inspecting the document, party A serves on party B a notice disputing the authenticity of the document.
- “(3) At the hearing of a proceeding, party A may give secondary evidence of a document and of its contents if—
- “(a) the document is shown in an affidavit served in accordance with any of the provisions of rules 294 to 299 to be in the control of party B; and
 - “(b) party B has not produced the document after being requested to do so by party A.
- “(4) Subclause (3) applies whether or not a notice to produce the document has been served on party B.
- “(5) Subclauses (1) to (3) apply, with all necessary modifications, in relation to an affidavit made in compliance with an order under any of the provisions of rules 300 to 302 (which relate to discovery of particular documents) as they apply in relation to an affidavit made under a discovery order.

“315 Notice to produce documents

- “(1) A party to a proceeding may serve on another party a notice requiring the other party to produce a document or thing for the purpose of evidence at the hearing of the proceeding, or before a Judge, officer, examiner, or other person having authority to take evidence in the proceeding.
- “(2) If the document or thing is in the control of the party who is served with the notice, the party must, unless the Court otherwise orders, produce the document or thing in accordance with the notice, without the need for a subpoena for production.

“(3) The notice must be treated as an order of the Court to produce the document or thing specified in the notice.

“316 Notice to admit authenticity of documents

“(1) A party (**party A**) to a proceeding may, by notice served on another party (**party B**), require party B to admit, for the purpose of that proceeding only, the authenticity of the documents specified in the notice.

“(2) For the purposes of the proceeding, party B is deemed to have admitted the authenticity of any document specified in the notice unless, within 10 working days after the date on which party B is served with the notice, party B serves on party A a notice disputing the authenticity of the document.

“(3) A party may, with the leave of the Court, withdraw an admission under subclause (2).

“317 Restricted effect of admission

An admission under rule 314 or rule 316 for the purpose of a proceeding may not be used against the admitting party in another proceeding.

“Non-compliance by non-parties with orders for discovery or inspection

“317A Contempt of Court

“(1) Every person is guilty of contempt of Court who,—

“(a) being a person from whom discovery is sought by an order made under rule 301(2) or rule 302(2), wilfully and without lawful excuse disobeys the order or fails to ensure that the order is complied with; or

“(b) being a person who is not a party to the proceeding and who is required by an order made under rule 310 to produce for inspection the whole or part of a document, wilfully and without lawful excuse disobeys the order or fails to ensure that it is complied with.

“(2) Nothing in this rule limits or affects any power or authority of the Court to punish any person for contempt of Court.”

13 First Schedule amended

(1) The First Schedule of the High Court Rules is amended by revoking form 25.

- (2) The First Schedule of the High Court Rules is amended by revoking form 26, and substituting the new form 26 set out in Schedule 1.

14 Transitional provision relating to discovery

- (1) Subclause (2) applies to a proceeding in which, before the commencement of these rules,—
- (a) a party has filed and served a notice in form 25 of the First Schedule of the High Court Rules; or
 - (b) the Court has made, or a party has applied for, an order under rule 297(1) of the High Court Rules (as in force immediately before that commencement).
- (2) The process of giving discovery must proceed in accordance with the High Court Rules as in force immediately before the commencement of these rules.

15 Rules 347 to 368 revoked

The High Court Rules are amended by revoking rules 347 to 368 and the heading above rule 347.

16 Transitional provision relating to payment into Court

Despite rule 15, rules 347 to 368 of the High Court Rules (as in force immediately before the commencement of these rules) continue to apply to every sum of money paid into Court or to any admission of relief under those rules before the commencement of these rules.

17 Application of Part IVA

- (1) Rule 458D(1)(a) of the High Court Rules is amended by inserting, after subparagraph (vii), the following subparagraph:
- “(viii) section 166E of the Customs and Excise Act 1996:”.
- (2) Rule 458D(1)(a)(xii) of the High Court Rules is amended by inserting, after the expression “145,”, the expression “145A,”.
- (3) Rule 458D(1)(a) of the High Court Rules is amended by inserting, after subparagraph (xvi), the following subparagraph:

“(xvia) sections 128, 131, 167, 168, 179, 181, 182, and 186 of the Personal Property Securities Act 1999.”.

- (4) Rule 458D(1)(a) of the High Court Rules is amended by inserting, after subparagraph (xxi), the following subparagraph:

“(xxia) section 47E of the Terrorism Suppression Act 2002:”.

- (5) Rule 458D of the High Court Rules is amended by adding the following subclause:

“(6) Despite subclause (1)(a)(xvia), a second or subsequent application to the Court under the Personal Property Securities Act 1999 with respect to the same security, whether brought by the plaintiff or the defendant, must be made by interlocutory application in the same proceeding as the first application.”

18 Liquidated demand

- (1) Rule 460 of the High Court Rules is amended by revoking paragraph (b), and substituting the following paragraph:

“(b) costs and disbursements of an amount fixed by the Registrar.”

- (2) Rule 460 of the High Court Rules is amended by adding, as subclauses (2) and (3), the following subclauses:

“(2) If the plaintiff claims costs and disbursements, the plaintiff must file a memorandum setting out the amount claimed and how that amount is calculated, together with any submissions in support of the claim.

“(3) Every Registrar has the jurisdiction and powers of the Court under these rules to fix costs and disbursements under subclause (1)(b).”

19 New rule 520 substituted

The High Court Rules are amended by revoking rule 520, and substituting the following rule:

“520 Swearing of affidavits

An affidavit may be read and used in a proceeding only if the affidavit is sworn—

“(a) in accordance with the Oaths and Declarations Act 1957; and

“(b) before a person authorised to administer oaths under that Act or under rule 521 or rule 522.”

20 Authority to take affidavits in New Zealand

Rule 521 of the High Court Rules is amended by revoking subclause (2), and substituting the following subclause:

“(2) In this rule,—

“**Registrar** includes—

“(a) a Deputy Registrar of the High Court:

“(b) a Registrar of a District Court:

“(c) a Deputy Registrar of a District Court

“**solicitor** means a person enrolled as a barrister and solicitor of the High Court.”

21 New rules 522 to 524A substituted

The High Court Rules are amended by revoking rules 522 to 524, and substituting the following rules:

“522 Authority to take affidavits in places outside New Zealand

“(1) An affidavit may be sworn in a place outside New Zealand before—

“(a) a Commissioner of the High Court of New Zealand who has authority in that place; or

“(b) a person who is authorised to administer oaths by the law of that place; or

“(c) a person who is authorised by a Judge to administer the oath required for the affidavit.

“(2) The person administering an oath under subclause (1) must state in the jurat of the affidavit that he or she is—

“(a) a Commissioner of the High Court of New Zealand who has authority in the place where the affidavit is sworn; or

“(b) a person authorised to administer oaths by the law of the place where the affidavit is sworn; or

“(c) a person who is authorised by a Judge to administer the oath.

“(3) An affidavit that appears to comply with subclauses (1) and (2) must be taken to have been properly sworn unless the Court requires verification by evidence or other means of any matter affecting compliance with either of those subclauses.

“(4) Nothing in this rule affects the administering of oaths under the Oaths and Declarations Act 1957.

“523 **Meaning of authenticated deposition**

In rules 524 and 524A, **authenticated deposition** means a written statement—

- “(a) made in a place outside New Zealand before a court or a judicial or other authority or person; and
- “(b) the maker of which is, under the law in force in the place in which the statement is made, liable to imprisonment or a fine or to some other punishment if the statement is false; and
- “(c) that purports to be—
 - “(i) signed by a person holding judicial office or by an official exercising authority under the law in force in the place in which the statement is made; or
 - “(ii) sealed with an official or public seal or with the seal of a Minister of State, or of a department or an official of the government exercising authority in the place in which the statement is made; or
 - “(iii) endorsed with or accompanied by a certificate given by a person having authority under the law in force in the place in which the statement is made to give the certificate that the statement complies with the requirements of the law in force in that place and that, under that law, the maker of the statement is liable to imprisonment, or a fine or to some other punishment if the statement is false.

“524 **Admissibility of authenticated deposition**

Evidence that may, under these rules, be given by affidavit, may be given in an authenticated deposition.

“524A **Application of other rules**

- “(1) Rules 504 to 510 apply, with such modifications as may be necessary, in relation to an authenticated deposition as if the deposition were an affidavit.
- “(2) Nothing in rule 524 or this rule affects rules 369 to 381.”

22 Time and mode of giving judgment

Rule 540 of the High Court Rules is amended by revoking subclauses (4) to (6), and substituting the following subclauses:

- “(4) On receiving a written judgment from the Judge responsible for it, the Registrar must endorse the judgment with a date and time directed by the Judge or, if no direction is given, with a date and time nominated by the Registrar (the **delivery time**). The date and time nominated by the Registrar must be subsequent to the date and time the Registrar endorses the judgment.
- “(5) A written judgment must for all purposes be treated as having been given at the delivery time directed or nominated under subclause (4).
- “(6) Immediately after endorsing a judgment, the Registrar must attempt to notify the parties, by telephone or otherwise, of the delivery time.
- “(7) A party may request the Registrar to—
 - “(a) send the party, immediately after the delivery time, a copy of the written judgment by email or facsimile; or
 - “(b) make a copy of the written judgment available, immediately after the delivery time, for uplifting from the Registry.
- “(8) If a party who has given an address for service does not make a request under subclause (7), the Registrar must immediately after the delivery time post a copy of the written judgment to that party.
- “(9) A failure by the Registrar to comply with any of subclauses (6) to (8) does not affect the validity of a judgment or its delivery time.”

23 Judgments to be sealed and dated

- (1) Rule 541 of the High Court Rules is amended by omitting the heading, and substituting the heading “**Judgments to be sealed, dated, and served**”.
- (2) Rule 541 of the High Court Rules is amended by inserting, after subclause (3), the following subclause:
 - “(3A) Except with the leave of the Court, a judgment may not be sealed until any application under rule 542 for the recall of the judgment has been determined.”

- (3) Rule 541 of the High Court Rules is amended by adding the following subclause:
- “(5) A party who has a judgment sealed must forthwith serve a sealed copy of the judgment on—
- “(a) every other party who has given an address for service; and
 - “(b) any other person who, although not a party, is affected by the judgment.”

24 New rule 542 substituted

The High Court Rules are amended by revoking rule 542, and substituting the following rule:

“542 When judgment takes effect

- “(1) A judgment takes effect when it is given.
- “(2) Unless the Judge otherwise directs, no step may be taken on a judgment before it has been sealed.
- “(3) A judgment, whether given orally or in writing, may be recalled by the Judge at any time before a formal record of it has been drawn up and sealed.
- “(4) A party may bring an appeal under rule 7 of the Court of Appeal (Civil) Rules 1997 even though the judgment appealed against has not been sealed, as long as the party takes steps to ensure that the judgment is sealed promptly after the appeal is brought.
- “(5) In this rule—
- “(a) subclause (2) overrides subclause (1);
 - “(b) subclause (4) overrides subclause (2).”

25 Request for issue of bankruptcy notice

Rule 827 of the High Court Rules is amended by adding, as subclause (2), the following subclause:

- “(2) If the creditor claims costs in accordance with section 20 of the Act, the bankruptcy notice must state the amount of costs claimed.”

26 Application for adjudication

Rule 831 of the High Court Rules is amended by adding the following subclause:

“(3) If the creditor claims costs, the summons to debtor must state the amount of costs claimed.”

27 New forms substituted in First Schedule of High Court Rules

- (1) The First Schedule of the High Court Rules is amended by revoking form 90, and substituting the form set out in Schedule 2.
- (2) The First Schedule of the High Court Rules is amended by revoking form 94, and substituting the form set out in Schedule 3.

28 Amendments to forms in First Schedule of High Court Rules

The First Schedule of the High Court rules is amended in the manner indicated in Schedule 4.

29 Forms consequentially revoked

The First Schedule of the High Court Rules is amended by revoking forms 27 to 31.

30 Amendments consequential on designation of Masters as Associate Judges

- (1) The provisions of the High Court Rules specified in Part 1 of Schedule 5 are amended by omitting the words “a Master” wherever they occur, and substituting in each case the words “an Associate Judge”.
 - (2) The provisions of the High Court Rules specified in Part 2 of Schedule 5 are amended by omitting the word “Master” wherever it occurs and is not immediately preceded by the word “a”, and substituting in each case the words “Associate Judge”.
 - (3) The provisions of the High Court Rules specified in Part 3 of Schedule 5 are amended by omitting the word “Masters” wherever it occurs, and substituting in each case the words “Associate Judges”.
-

r 13(2)

Schedule 1

New form 26 substituted in First Schedule of High Court Rules

r 297

Form 26

Affidavit of Documents

[General heading as in form 1 and endorsement]

I *[full name]*, of *[address]*, swear:

1 I am *[state which party you are (or the capacity in which you make the affidavit) and your authority to make the affidavit]*.

2 I make this affidavit under an order for discovery made under rule 294 on *[state date]* (referred to in this affidavit as the discovery order).

*3 The discovery order contains particular terms that are not set out in rule 295, and those particular terms are *[state nature of particular terms]*.

4 I am aware of my obligations under the discovery order and understand those obligations.

5 In order to fulfil my obligations under the discovery order, I have diligently searched for all documents required to be discovered under the order, and I have also taken the following particular steps *[describe the steps taken, such as, for example, inquiries made of named persons]*.

6 I identify the documents that I am required to discover in the Schedule of this affidavit.

7 I identify in Part 1 of the Schedule the documents that are in my control and for which I do not claim privilege or confidentiality.

8 I list in Part 2 of the Schedule the documents in my control for which I claim privilege and state in relation to each document the applicable privilege.

*9 I list in Part 3 of the Schedule the documents in my control for which I claim confidentiality. I propose that inspection of these documents be restricted to *[state persons]* and that the following restrictions apply *[state proposed restrictions on inspection]*.

Form 26—*continued*

- 10 I list in Part 4 of the Schedule documents that are no longer in my control and state when, to the best of my knowledge and belief, each document ceased to be in my control and the persons who, to the best of my knowledge and belief, now have control of each document.
- 11 I list in Part 5 of the Schedule other documents known to me relating to a matter in question in the proceeding.
- 12 To the best of my knowledge and belief, this affidavit is correct in all respects and faithfully carries out my obligations under the discovery order.

Sworn at this day of..... 20....., before me:

A solicitor of the High Court of New Zealand

* Delete if inapplicable.

Schedule

Part 1

[Documents that are in the control of the party giving discovery and for which neither privilege nor confidentiality is claimed.]

Documents numbered 1 to ...

Part 2

[Documents that are in the control of the party giving discovery and for which privilege is claimed. State the nature of the privilege claimed for each document or category of document, eg, legal professional privilege, litigation privilege, privilege against self-incrimination.]

Part 3

[Documents in the control of the party giving discovery for which confidentiality is claimed.]

Form 26—*continued*

Part 4

[Documents that are no longer in the control of the party giving discovery. State, to the best of your knowledge and belief—

- (a) when each document or category of document ceased to be in the control of the party giving discovery; and*
- (b) the persons who now have control of each document.]*

Part 5

[Other documents that relate to a matter in question in the proceeding that are not and have never been in the control of the party giving discovery. Identify the documents by category or their nature. State, to the best of your knowledge and belief, where the documents are.]

r 27(1)

Schedule 2
New form 90 substituted in First Schedule of High Court Rules

r 827(a)

Form 90
Bankruptcy notice

[General heading as in form 1 and rule 824]

To *[full name and address of judgment debtor]*

1 Take notice that within *[14 days]* or, if the notice is served outside New Zealand, *[period specified in the order for service]* after service of this notice on you (excluding the day of service)—

(a) you must pay to *[full name and address of judgment creditor]* (**judgment creditor**) either in person or at the address for service of (the solicitor for) the judgment creditor the amount of *[amount]* claimed by the judgment creditor as being the amount due or so much as remains unpaid on a final judgment or final order obtained by the judgment creditor against you in the *[name]* Court on *[date]* on which execution has not been stayed.

or

(b) you must secure or compound for the amount referred to in paragraph (a) to the judgment creditor's satisfaction or the satisfaction of the High Court.

or

(c) you must satisfy the High Court that you have a counterclaim, set-off, or cross-demand against the judgment creditor—

(i) that equals or exceeds the amount claimed by the judgment creditor; and

(ii) that you could not set up in the action or proceeding in which the judgment or order was obtained.

2 The judgment creditor also claims costs against you of *[amount]* including a fee for filing a request for this notice *[amount]* and a fee for serving this notice *[amount]*.

Form 90—*continued***Memorandum**

Your attention is particularly drawn to the following information.

Consequences of not complying with notice

If you do not comply with paragraph 1, you will have committed an act of bankruptcy on which bankruptcy proceedings may be taken against you.

Procedure for counterclaiming, etc

If you consider you have a counterclaim, set-off, or cross-demand against the judgment creditor that comes within paragraph 1(c), you must apply to the High Court to set aside this notice.

You must apply within the period specified in paragraph 1. Your application must be supported by affidavit.

You must also serve a copy of the application and supporting affidavit on the judgment creditor within the period specified in paragraph 1.

Costs

If you do not dispute the claim for costs, you must, within the period specified in paragraph 1, pay the costs claimed to the judgment creditor either in person or at the address for service of (the solicitor for) the judgment creditor, unless—

- (a) the amount claimed has been secured or compounded for to the judgment creditor's satisfaction or to the satisfaction of the High Court; or
- (b) the amount of any counterclaim, set-off, or cross-demand that you advance is sufficient to cover the costs claimed as well as the amount specified in paragraph 1(a).

If you dispute the claim for costs, you must, within the period specified in paragraph 1, apply to the High Court to fix costs.

If you do not pay the costs claimed or dispute the claim for costs, you will commit an act of bankruptcy for which you may be adjudicated bankrupt.

This notice is issued by [*full name and address of judgment creditor*] in person or by [*full name and address for service of solicitor for judgment creditor*].

Form 90—*continued**Notes*

- 1 The amount claimed for costs in paragraph 2 must be determined as if the proceeding were a category 2 proceeding specified in the Second Schedule of the High Court Rules and the time allocation were the time allocation for item 18 and band B specified in the Third Schedule of the High Court Rules.
 - 2 The fee for service of this notice claimed in paragraph 2 must be \$100.
-

r 27(2)

Schedule 3
New form 94 substituted in First Schedule of High Court Rules

r 831(2)

Form 94
Summons to debtor

[General heading as in form 1 and rule 824]

To *[full name, address, and description of debtor]*.

- 1 You are summoned to attend before the High Court at *[place]* at *[time and date]* (**hearing date**).
- 2 *[Full name, address, and description of petitioner]* has filed a petition in this Court to adjudge you bankrupt.
- 3 The Court will consider whether you should be adjudged bankrupt—
 - (a) on the following grounds:
 - (i) *[ground]*;
 - (ii) *[ground]*;
 - (iii) *[ground]*; and
 - (b) on the evidence contained in the affidavit filed in support of the petition.
- 4 If, by the hearing date, you have not paid the sum of *[amount specified in paragraph 2 of the creditor's petition]* to the petitioner either in person or at the address for service of the (solicitor for the) petitioner or you have not paid or disputed the amount of the costs claimed by the petitioner in the bankruptcy notice served on you, the petitioner will be entitled to ask the Court to adjudge you bankrupt.
- 5 The petitioner also claims costs against you of *[amount]*, including a fee for filing this summons *[amount]* and a fee for serving this summons *[amount]*.
- 6 If you do not dispute the claim for costs you must, by the hearing date, pay the costs claimed to the petitioner either in person or at the address for service of (the solicitor for) the petitioner.
- 7 If you dispute the claim for costs, you may—
 - (a) before the hearing date, apply to the Court to fix costs; or
 - (b) at the hearing apply orally to the Court to fix costs.

Form 94—continued

8 You are not required to attend the hearing and no warrant will be issued if you do not attend, but if you do not attend the hearing the Court will proceed in your absence.

Dated at [place] [date].

.....

.....

(Deputy) Registrar.

This summons is issued by [full name and address for service of petitioner] in person or by [full name and address for service of solicitor for petitioner].

Notes

- 1 The amount claimed for costs in paragraph 5 must be determined as if the proceeding were a category 2 proceeding specified in the Second Schedule of the High Court Rules and the time allocation were the time allocation for item 19 and band B specified in the Third Schedule of the High Court Rules.
- 2 The fee for service of this summons claimed in paragraph 5 must be \$100.

r 28

Schedule 4

Amendments to forms in First Schedule of High Court Rules

Form 6

Omit clause 1 of the memorandum and substitute:

- “1 Although it is not essential to employ a solicitor for the purpose of this proceeding, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to defend this proceeding or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—
- “(a) carry on proceedings in the Court except by a solicitor; and
 - “(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).”

Form 13

Omit clause 1 of the memorandum and substitute:

- “1 Although it is not essential to employ a solicitor for the purpose of this application, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this application or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—
- “(a) carry on proceedings in the Court except by a solicitor; and
 - “(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).”

Form 64C

Omit clause 1 of the memorandum and substitute:

- “1 If the defendant company wishes to oppose this application or to appear at the hearing, it is essential that it consult a solicitor without delay. A company cannot—
- “(a) carry on proceedings in the Court except by a solicitor; and

- “(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).”

Form 64O

Omit clause 1 after the heading “*Legal advice*” and substitute:

- “1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—
 - “(a) carry on proceedings in the Court except by a solicitor; and
 - “(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).”

Form 64P

Omit clause 1 after the heading “*Legal advice*” and substitute:

- “1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—
 - “(a) carry on proceedings in the Court except by a solicitor; and
 - “(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).”

Form 64Q

Omit clause 1 after the heading “*Legal advice*” and substitute:

- “1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—
 - “(a) carry on proceedings in the Court except by a solicitor; and

- “(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).”

Form 64R

Omit clause 1 after the heading “*Legal advice*” and substitute:

- “1 Although it is not essential to employ a solicitor for the purpose of this notice, you are recommended to consult a solicitor about this matter without delay. However, a company or other corporation that wishes to oppose this notice or appear at any hearing must consult a solicitor without delay. A company or other corporation cannot—
 - “(a) carry on proceedings in the Court except by a solicitor; and
 - “(b) appear to conduct a proceeding except by counsel (unless exceptional circumstances apply).”
-

r 30

Schedule 5
**Amendments to High Court Rules consequential on
designation of Masters as Associate Judges**

Part 1

Change of “a Master” to “an Associate Judge”

Paragraph (b) of the definition of **Court** in rule 3(1):

Definition of **Judge** in rule 3(1):

Rule 61B:

Rule 61C(1):

Rule 61D(1):

Rule 259(2)(c):

Rule 260(1)(b), (2), (3)(a):

Rule 442(4).

Part 2

Change of “Master” to “Associate Judge”

Heading to rule 48F:

Rule 48F:

Rule 48H(3):

Rule 61B:

Rule 61C(2), (3):

Rule 72A:

Rule 251(3):

Rule 437(3).

Part 3

Change of “Masters” to “Associate Judges”

Heading above rule 61A:

Heading to rule 61A:

Rule 61A(1), (2), (3):

Heading to rule 61C:

Heading above item 13 of Third Schedule.

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, which come into force on 1 November 2004, amend the High Court Rules. The principal changes to the High Court Rules are—

- new rules relating to discovery (*rules 3, 12 to 14, and the new form 26*):
- revocation of the rules relating to payment into court combined with *new rules 48G and 48GA* relating to *Calderbank* letters (*rules 7, 8, 15, 16, and 29*):
- new rules relating to the swearing of affidavits and to the giving of evidence outside New Zealand by means of an authenticated deposition (*rules 19, 20, and 21*).

The other rules make a number of miscellaneous and unrelated changes to the High Court Rules.

Rule 3 inserts a definition of **control** as the term is used in the new discovery rules.

Rule 4 replaces rule 33 of the High Court Rules with a new rule relating to the format of the first page of originating documents. In future, the first page of every originating document and notice of interlocutory application will be required to state the “next event date”, that is, the date and nature of a hearing or conference to be held next after filing the document. The first page of the document will also be required to state the name of the Judge or Associate Judge to whom the proceeding has been assigned.

Rules 5 and 6 respectively amend rule 48C and rule 48D of the High Court Rules as a consequence of the new discovery rules and the revocation of the rules relating to payment into Court.

Rule 7 revokes rule 48G of the High Court Rules and replaces it with *new rules 48G and 48GA*. Rule 48G provides for *Calderbank* letters, that is, offers to settle made by a party to a proceeding on a without prejudice basis except as to costs. Such an offer may be brought to the attention of the Court and taken into account in determining costs in the proceeding, but for no other purpose. The new rules relating to *Calderbank* letters should be read in conjunction with the revocation by *rule 15* of the rules relating to payment into Court (rules 347 to 368).

The issues relating to revoking the payment into Court rules and expanding the *Calderbank* procedure are discussed in a consultation paper prepared by the Rules Committee and available on the Rules Committee website <http://www.justice.govt.nz/rulescommittee/discussionpapers.htm>.

New rule 48G restates the current rule except for subclause (3).

New rule 48GA sets out the effect of *Calderbank* letters on costs and incorporates subclause (3) of current rule 48G. The principles applicable under *new rule 48GA* are that—

- the effect on costs of a *Calderbank* offer is always a matter for the Court's discretion:
- if a party (**party A**) makes an offer to settle that is better than the judgment obtained by the other party (**party B**), party A is entitled to costs on steps taken in the proceeding after the offer was made:
- if party A's offer to settle is not better than the judgment obtained by party B, but is close to the value or benefit of that judgment, the offer may be taken into account.

The rule is based on the presumption in favour of awarding costs to a party whose offer to settle was not bettered in the final judgment.

Rule 8 is a transitional rule and provides that the former rule 48G continues to apply to offers made under that rule before the commencement of the new rules.

Rule 9 amends rule 66(5) of the High Court Rules, which restricts access to Court records that relate to certain classes of proceedings. The amendment adds proceedings under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 to those classes of proceedings.

Rule 10 amends rule 271 of the High Court Rules as a consequence of the new discovery rules.

Rule 11 replaces rule 285 of the High Court Rules with a new rule. An earlier proposal to revoke rule 285 altogether and allow the common law rules to apply was not proceeded with. There are 2 changes to the former rule. The first, which addresses comments made by the Court of Appeal in *Lange v Atkinson* [2000] 3 NZLR 385 at 404 to 405 (paragraphs [55] to [58]) about the absolute nature of the current rule, will allow interrogatories if necessary in the interests of justice. The second is to replace the reference in the current rule to the defence of fair comment with a reference to the

defence of honest opinion to bring the rule into line with section 9 of the Defamation Act 1992.

Rule 12 replaces the rules relating to discovery and inspection of documents. The replacement includes the following changes:

- the discovery process is always initiated by an order of the Court made at a case management conference;
- *new rule 295* sets out the default terms of discovery orders. One of the default terms continues the existing requirement that parties must discover all documents that relate to a matter in question in the proceeding. The default terms may be modified by the Court;
- *new rule 296* requires the solicitors of parties who are to give discovery to ensure the parties understand and fulfil their obligations;
- confidentiality may be claimed for discovered documents and the party may propose that inspection be subject to restrictions. Claims for confidentiality, like claims for privilege, are subject to the determination of the Court;
- costs may be awarded against a party who impedes the discovery and inspection process by discovering irrelevant documents.

Rule 13 revokes form 25 (Notice for Discovery) and substitutes a *new form 26* (Affidavit of Documents) for the existing List of Documents as a consequence of the new discovery rules.

Rule 14 is a transitional rule relating to the new discovery rules. The High Court Rules in force before the commencement of the new rules will continue to apply to proceedings in which, before the commencement of the new rules,—

- a party has filed and served a notice for discovery; or
- the Court has made, or a party has applied for, an order for discovery under rule 297.

Rule 15 revokes the payment into Court rules (rules 347 to 368).

Rule 16 is a transitional rule relating to the revocation of the payment into Court rules. Rules 347 to 368 continue to apply to money paid into Court and to admissions of relief made under those rules.

Rule 17 adds a number of proceedings to the list of proceedings in rule 458D of the High Court Rules that may be commenced by originating application under Part IVA. The new proceedings are—

- applications under section 166E of the Customs and Excise Act 1996. Section 166E allows the Court to extend the period during which goods suspected to be tainted property that have been seized under section 166A may be detained:
- applications under section 145A of the Land Transfer Act 1952. Section 145A enables a caveator to apply to the Court, following application to the Registrar-General by a registered proprietor for the lapse of a caveat, for an order preventing the lapse of the caveat:
- applications under sections 128, 131, 167, 168, 179, 181, 182, and 186 of the Personal Property Securities Act 1999. Sections 128 and 131 relate to removal of accessions. Sections 167 and 168 relate to amendment or discharge of the registration of financing statements. Sections 179, 181, and 182 relate to information that a secured party may be required to provide relating to a security interest. Section 186 relates to the service of notices and documents:
- applications under section 47E of the Suppression of Terrorism Act 2002. Section 47E allows the Court to extend the period during which goods suspected to be terrorist property that have been seized under section 47A may be detained.

Rule 18 amends rule 460 of the High Court Rules. Currently, rule 460 entitles a plaintiff, if the defendant does not file a statement of defence, to seal judgment for a liquidated amount plus interest and costs to which the plaintiff is entitled up to the date of sealing. The rule change will require the plaintiff to file a memorandum setting out the amount claimed for costs and disbursements, how the amount has been calculated, and any submissions in support. The amount of costs and disbursements will then be determined by the Registrar.

Rules 19, 20, and 21 relate to the taking of affidavits and to giving evidence outside New Zealand by means of an authenticated deposition. The principal changes are—

- inconsistencies between the Oaths and Declarations Act 1957 and the High Court Rules are removed. Currently, section 10 of the Act authorises a Commonwealth representative to take an affidavit in a foreign country while rule 524 requires that he or she must be authorised under the law of that foreign country to administer an oath. In addition, section 12 of the

Act authorises members of the armed forces to take affidavits while the rules make no provision for this to occur:

- affidavits may be taken in New Zealand by a person enrolled as a barrister and solicitor of the High Court whether or not the person holds a practising certificate. They may also be taken by Registrars and Deputy Registrars of District Courts:
- the distinction between persons authorised to take affidavits in Commonwealth countries and foreign countries is removed. An affidavit may be taken in countries outside New Zealand by a Commissioner of the High Court, a person with authority to administer oaths under the local law, or a person authorised by a Judge:
- new rules provide for the evidence of a witness overseas to be in the form of an authenticated deposition.

Rule 22 amends rule 540 of the High Court Rules relating to the giving of written judgments. Written judgments must be endorsed by the Registrar with a date and time directed by the Judge or, in the absence of a direction, with a date and time nominated by the Registrar (**delivery time**). A written judgment is given at the delivery time so endorsed. After a judgment is endorsed, the Registrar must endeavour to notify the parties of the delivery time. Parties may request the Registrar to fax or email the judgment or make a copy available for collection. However, if a party who has given an address for service does not make a request, the Registrar must send a copy of the judgment by post to that party.

Rule 23 amends rule 541 of the High Court Rules in 2 respects. First, except with the leave of the Court, a judgment may not be sealed until any application for recall under rule 542 of the High Court Rules has been determined. Second, the requirement in the current rule 542 (which relates to when a judgment takes effect) to serve a sealed copy of a judgment is brought into rule 541. A sealed copy of the judgment must be served on every party who has given an address for service and on any other person who, although not a party, is affected by the judgment. The heading to the rule is also changed to reflect the requirement for service.

Rule 24 replaces rule 542 of the High Court Rules with a new rule. The effect of the new rule is to make 2 exceptions to the principle that no step may be taken on a judgment until it has been sealed. The first is that the Court may direct that a step may be taken before sealing. The second is that a party may commence an appeal under

the Court of Appeal (Civil) Rules 1997 before sealing as long as the party takes steps to have the judgment sealed promptly after the appeal is brought. The power to recall a judgment before sealing, formerly in rule 540(6), is brought into the new rule.

Rule 25 adds a *new subclause (2)* to rule 827 of the High Court Rules. The amendment will require a creditor who claims costs on the issue of a bankruptcy notice to state in the notice the amount of costs claimed. This will overcome the practical problem that the creditor may be unable to obtain payment of the costs of preparation, issue, and service of the notice if the amount of the judgment debt is paid before a hearing.

Rule 26 adds a *new subclause (3)* to rule 831 of the High Court Rules. The amendment is similar to the amendment to rule 827 and will require a petitioning creditor to include in the summons to debtor the amount claimed for costs.

Rule 27 substitutes a new form of bankruptcy notice (form 90) and a new form of summons to debtor (form 94) in line with the changes to rules 827 and 831 of the High Court Rules.

Rule 28 amends forms 6, 13, 64C, 64O, 64P, 64Q, and 64R in the First Schedule of the High Court Rules. These forms contain advice to defendants who may be either individuals or companies (forms 6, 13, 64O, 64P, 64Q, and 64R) or only companies (form 64C). A company cannot commence or carry on a proceeding except by a solicitor and cannot, except in exceptional circumstances, appear at a hearing except by counsel (see *Re G J Mannix* [1984] 1 NZLR 309; *Radford v Freeway Classics Ltd* [1994] BCLC 445; and *Time Ticket International Ltd v Broughton* [1996] 2 NZLR 176. The changes to the forms make this clear.

Rule 29 revokes a number of forms as a result of the revocation of the payment into Court rules (see *rule 15*).

Rule 30 replaces, in line with changes made by the Judicature Amendment Act 2004, references in the High Court Rules to the judicial office of Master with references to Associate Judge.

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These rules are administered in the Ministry of Justice.
