

IN CONFIDENCE

High Court (Improved Access to Civil Justice) Amendment Rules 20XX

Governor-General

Order in Council

At Wellington this day of 20XX

Present:
in Council

These rules are made under section 148 of the Senior Courts Act 2016—

- (a) on the advice and with the consent of the Executive Council; and
- (b) with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee continued under section 155 of that Act (of whom at least 1 was a Judge of the High Court).

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Amendment Rules 20XX**

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Rules

- 1 Title**
These rules are the High Court (Improved Access to Civil Justice) Amendment Rules 20XX.
- 2 Commencement**
These rules come into force on [X date].
- 3 Principal rules**
These rules amend the High Court Rules 2016.

4 Rule 1.2 replaced (Objective)

Replace rule 1.2 with:

1.2 Overriding objective

- (1) The overriding objective of these rules is to secure the just, speedy, and inexpensive determination of any proceeding or interlocutory application by proportionate means.
- (2) When deciding how subclause (1) applies in any case, the court may consider the following:
 - (a) how best to both fairly and expeditiously identify and resolve the issues in dispute:
 - (b) how best to deal with the proceeding in ways that are, and at a cost that is, proportionate to the nature of the dispute and the issues in dispute:
 - (c) the need to share the court's resources fairly across the court's caseload.

1.2A General duty to co-operate

- (1) The parties and their solicitors and counsel have a duty to co-operate with the other parties and their solicitors and counsel in accordance with the overriding objective in rule 1.2.
- (2) The duty includes lawyers and counsel representing the parties having direct discussions with each other or, in the case of a self-represented litigant, with the litigant, to attempt to agree on how the proceeding will be conducted.
- (3) For specific duties to co-operate under these rules, *see* the following:
 - (a) rule 7.5 (preparing for and participating in judicial issues conference):
 - (b) rule 8.2 (disclosure):
 - (c) rule 8.4A (further disclosure):
 - (d) rule 9.4 (preparing common bundle):
 - (e) rule 11.22 (sale of property).

5 Rule 1.3 amended (Interpretation)

In rule 1.3(1), insert in their appropriate alphabetical order:

disclosure obligation means a requirement to make disclosure under these rules or as directed by the court

ordinary proceeding means a proceeding commenced under Part 5 of the rules, but excluding an application for judicial review

overriding objective means the overriding objective of the rules described in rule 1.2

6 Rules 7.1AA to 7.3A revoked

Revoke rules 7.1AA to 7.3A.

7 Rule 7.4 replaced (Further case management conferences)

Replace rule 7.4 with:

7.4 Standard directions prior to judicial issues conference for ordinary proceedings

- (1) Subject to subclause (7), the following standard directions apply for steps in an ordinary proceeding between the filing of pleadings and the scheduling of the judicial issues conference:
 - (a) if a party wishes to apply for any of the matters listed in subclause (5),—
 - (i) they must give notice to the other party or parties and the court that they intend to do so no later than 10 working days—
 - (A) from the date of service of the pleading by the defendant or, if there is more than 1 defendant, the last pleading by a defendant; or
 - (B) if an affirmative defence is pleaded or a counterclaim is made, from the date of service of the pleading responding to it or, if more than 1 party is the subject of the affirmative defence or counterclaim, the last pleading by a party responding to it; and
 - (ii) they must file the application no later than 15 working days from the date that notice is given; and
 - (iii) *see rule 7.33(1) for allocation of a hearing date:*
 - (b) if no notice is given or application filed under paragraph (a), paragraph (c) applies to the plaintiff, paragraph (d) applies to the defendant, and paragraph (e) applies if an affirmative defence is pleaded or a counterclaim is made by a party:
 - (c) the plaintiff must serve the following on the defendant no later than 25 working days from the date referred to in paragraph (a)(i)(A) or (B):
 - (i) factual witness statements (excluding any relating to any affirmative defence or counterclaim); and
 - (ii) a draft chronology of events and facts in form G 41 (a **draft chronology**) that—
 - (A) refers to all pleaded material facts and any other events or facts of significance they intend to establish by the documentary record; and
 - (B) includes a corresponding reference to the relevant document or documents in each case; and
 - (iii) copies of any documents referred to in a witness statement or the draft chronology that were not disclosed in initial disclosure:

- (d) the defendant must then serve the documents described in paragraph (c)(i) to (iii), including for any affirmative defence pleaded or counterclaim made, no later than 45 working days from the date they receive the plaintiff's evidence and draft chronology:
 - (e) if an affirmative defence is pleaded or a counterclaim is made, any party that is the subject of it must serve the documents described in paragraph (c)(i) to (iii) relating to the affirmative defence or counterclaim no later than 25 working days from the date they receive the defendant's evidence and draft chronology.
- (2) For the purpose of subclause (1)(e), the party—
- (a) may amend witness statements, or the draft chronology, served earlier under subclause (1)(c) or (d) if amendments are required to respond to the affirmative defence or counterclaim; and
 - (b) may serve new witness statements relating to the affirmative defence or counterclaim.
- (3) For proceedings with multiple parties,—
- (a) if there is more than 1 plaintiff or defendant, the references to the plaintiff or the defendant in subclause (1) apply to each of them:
 - (b) if there are 1 or more third or other parties, the references to the defendant in subclause (1) apply to each of them.
- (4) The parties referred to in subclause (3) include any party joined to the proceeding by a decision on an interlocutory application.
- (5) The matters referred to in subclause (1)(a) are the following:
- (a) to strike out or add a party under rule 4.56:
 - (b) for security of costs under rule 5.45:
 - (c) protest to jurisdiction under rule 5.49:
 - (d) for summary judgment under Part 12 (including an application for leave, if required):
 - (e) to dismiss or stay without trial (strike out) under rule 15.1 or the inherent jurisdiction.
- (6) If any interlocutory applications need to be determined under subclause (1)(a), the 25 working days in subclause (1)(c) run from the date of the last decision on an interlocutory application, unless directed otherwise by a Judge.
- (7) A party may apply to the court to request alternative directions to those provided in this rule. A Judge may give alternative directions if satisfied that this will best achieve the overriding objective in rule 1.2.
- (8) The plaintiff must advise the Registrar once all evidence and chronologies have been served by the parties but must confer with the other party or parties before doing so. The Registrar must then schedule a judicial issues conference.

8 Rule 7.5 replaced (Issues conferences)

Replace rule 7.5 with:

7.5 Judicial issues conference for defended ordinary proceedings

- (1) A judicial issues conference must take place for all defended ordinary proceedings unless a Judge determines that a conference is not required in a particular case to best achieve the overriding objective in rule 1.2.
- (2) The parties and their solicitors and counsel have a duty to co-operate when preparing for and participating in a judicial issues conference and, when doing so, must have regard to the purposes of the conference set out in subclause (3).
- (3) The purposes of a judicial issues conference are to—
 - (a) identify the issues in the case, including issues that may be dispositive, and the position of the parties on those issues; and
 - (b) taking into account the overriding objective in rule 1.2, consider—
 - (i) the procedural requirements for the fair disposition of the case; and
 - (ii) whether it is appropriate to seek to resolve the proceeding by alternative means, for example, by mediation.
- (4) A Judge may issue a direction before a judicial issues conference requiring the attendance at the conference of all or any of the following:
 - (a) instructing solicitors:
 - (b) all counsel engaged:
 - (c) the parties (or, in the case of corporate parties, 1 or more of their senior officers or authorised representatives).
- (5) At a judicial issues conference, a Judge may give any directions they consider appropriate for the proceeding that will best achieve the overriding objective in rule 1.2.
- (6) A Judge may direct that a further judicial issues conference take place.

7.5A Agenda for judicial issues conference

Unless a Judge directs otherwise, the agenda for the judicial issues conference is the following:

- (a) the identification of the issues and the position of the parties on those issues, including—
 - (i) whether any amendment to the pleadings is appropriate;
 - (ii) whether any supplementary witness statements are needed (*see* rule 9.8):
- (b) whether any steps should be taken to consider settlement by means of mediation or otherwise:

- (c) whether there are steps that can be taken to minimise the matters in dispute through facilitation, mediation, or otherwise:
- (d) the nature of any significant facts that are disputed between the parties:
- (e) whether any further disclosure is needed (*see* rule 8.4A):
- (f) resolving, or timetabling and deciding the mode of hearing for, any interlocutory matters:
- (g) whether there are any issues of tikanga raised in the proceedings, and what steps should be taken as a consequence:
- (h) whether any expert evidence is to be relied upon and, if so, identifying the particular topics on which that evidence will be directed, timetabling of expert witness statements, setting a date for an experts conference, timetabling of joint expert statements, and the sequencing of the evidence at trial (*see* rules 9.1A(3), 9.36AAA, 9.36, and 9.43 to 9.46):
- (i) the manner and timing for finalising the parties' draft chronologies under rule 9.2 and combining these into a merged chronology for trial under rule 9.9:
- (j) the preparation of the common bundle (*see* rules 9.2 and 9.4), whether it will be an electronic bundle, and when it must be served (*see* rule 9.3):
- (k) whether the proceedings can be set down for trial and, if so, allocation of key dates (*see* rule 7.6):
- (l) the requirements for trial, including—
 - (i) the time required for trial including closing submissions:
 - (ii) the time required for reading days:
 - (iii) any electronic requirements.

7.5B What parties must do before judicial issues conference

- (1) Unless directed otherwise by a Judge, the following directions apply:
 - (a) the plaintiff must file and serve a position paper and a bundle of the key materials that they wish to refer to at the conference no later than 10 working days before the conference:
 - (b) the defendant must file and serve a position paper and a bundle of the key materials that they wish to refer to at the conference no later than 5 working days before the conference.
- (2) A position paper must explain the party's case and what is required to fairly address it.
- (3) A position paper may not exceed 10 pages.
- (4) Each party must advise the Registrar of the number of persons attending for that party no later than 5 working days before the conference.

- (5) If there is more than 1 plaintiff or defendant, the references to the plaintiff or the defendant in subclause (1) apply to each of them.
- (6) If there are 1 or more third or other parties, the reference to the defendant in subclause (1) applies to each of them.

9 Rules 7.33 and 7.34 replaced

Replace rules 7.33 and 7.34 with:

7.33 Hearing of interlocutory applications

- (1) If an application is made under rule 7.4(1)(a), the Registrar must allocate a date for an in-person hearing of the application.
- (2) If an application is made following, and in accordance with directions made at, a judicial issues conference, the Registrar must proceed in accordance with those directions.
- (3) In the case of an application not provided for in subclauses (1) and (2), the court must determine whether a hearing of the application is required or whether it will be determined on the papers.
- (4) When making a decision under subclause (3), the court must consider which option will best achieve the overriding objective in rule 1.2.
- (5) The standard time for the hearing of an interlocutory application is 2 hours, except for applications that fall within subclause (1) or if a Judge directs otherwise.
- (6) This rule and rule 7.34 are subject to rule 7.36, which requires every application for summary judgment to be heard in open court.

7.34 Mode of hearing

- (1) An interlocutory application for which a hearing is required and that does not fall within rule 7.33(1) must be heard in chambers and may be heard remotely in accordance with the Courts (Remote Participation) Act 2010.
- (2) However, for any interlocutory application referred to in rule 7.33 for which a mode of hearing has been set, if the parties agree on an alternative mode of hearing they may apply to the court within 5 working days of the allocated hearing date for a Judge to approve that alternative mode of hearing.
- (3) A Judge may accept an application under subclause (2) at a later time if the Judge considers there is good reason for the delay in making the application.

10 Rule 7.48 amended (Enforcement of interlocutory order)

- (1) Replace the heading to rule 7.48 with “**Enforcement of orders and requirements of rules**”.
- (2) Replace rule 7.48(1) with:
 - (1) If a party (the **party in default**) fails to comply with an order or a requirement imposed by or under subpart 1 of Part 7 (judicial issues conferences) or Part 8

(disclosure and interrogatories), the Judge may, subject to any express provision of these rules, make any order the Judge thinks just.

11 Rule 8.2 replaced (Co-operation)

Replace rule 8.2 with:

8.2 Co-operation

- (1) The parties must co-operate to ensure that the process of disclosure is conducted in accordance with the overriding objective in rule 1.2 and, in particular, is—
 - (a) appropriately focused and proportionate to the subject matter of the proceeding; and
 - (b) facilitated by agreement on practical arrangements.
- (2) The parties must, when appropriate,—
 - (a) consider options to focus the scope of disclosure; and
 - (b) achieve reciprocity in the electronic format and processes of disclosure; and
 - (c) ensure technology is used efficiently and effectively; and
 - (d) agree on and employ a format compatible with the subsequent preparation of an electronic bundle of documents for use at trial.

12 Rule 8.4 amended (Initial disclosure)

(1) Replace rule 8.4(1) to (3) with:

- (1) Unless a Judge directs otherwise, a party must, at the same time as serving its first substantive pleading, serve on the other parties a bundle of documents verified by affidavit that complies with rule 8.15(2) and contains copies of all of the following:
 - (a) all the documents referred to in that pleading;
 - (b) any additional principal documents in the party's control—
 - (i) that they have used when preparing the pleading;
 - (ii) on which they presently intend to rely at the trial or hearing;
 - (c) all known adverse documents.
- (1A) **Known adverse documents** are documents known to a party that contain information adverse to their case or another party's case or that support the case of another party.
- (1B) Knowledge in subclause (1A) exists if the party—
 - (a) knows the document exists; or
 - (b) has good reason to believe the document exists.
- (1C) A party must take reasonable steps to check for known adverse documents.

- (2) After rule 8.4(9), insert:
(10) *See* rule 8.18 for continuing obligations to give disclosure.

13 New rule 8.4A inserted (Further disclosure)

After rule 8.4, insert:

8.4A Further disclosure

- (1) The parties may agree on what (if any) further disclosure is given.
(2) A party may request that specific documents be disclosed to them by another party if the first party has good reason to believe that the documents exist, are relevant and material, and have not been provided under disclosure.
(3) A party who receives a request for further disclosure of specific documents must respond to that request in accordance with the duty of co-operation in rule 8.2.
(4) Despite subclauses (1) to (3), a Judge may order further disclosure at any time, if satisfied that this will best achieve the overriding objective in rule 1.2.
(5) If further disclosure is ordered, the Judge may also order that an affidavit verifying that disclosure be provided in a form directed by the Judge.

14 Rule 8.15 replaced (Affidavit of documents)

Replace rule 8.15 with:

8.15 Affidavit for disclosure

- (1) Each party must serve an affidavit for disclosure as follows:
(a) for initial disclosure that accompanies a bundle of documents under rule 8.4, the affidavit must comply with subclause (2);
(b) for further or particular disclosure, if ordered by a Judge, the affidavit must be in a form, and filed and served by the time, directed by the Judge.
(2) An affidavit for initial disclosure need not give a detailed description of any document but must—
(a) include a list of all the documents contained in the bundle; and
(b) state that the party understands their obligations under rule 8.4; and
(c) give brief particulars of the steps taken by the party to check for known adverse documents; and
(d) give a brief description of any document or part of a document for which privilege or confidentiality is claimed and specify the ground on which the claim is based in each case; and
(e) confirm that the party believes that the list of documents refers to, and the bundle contains, all documents that they are obliged to disclose

under rule 8.4 except those for which privilege or confidentiality is claimed.

- (3) An affidavit may be in form G 37.

15 Rule 8.16 amended (Schedule appended to affidavit of documents)

- (1) Before rule 8.16(1), insert:

(1AAA) If a Judge makes an order for further or particular disclosure,—

- (a) the affidavit must list the documents to be disclosed under the order only, unless the Judge orders otherwise;
- (b) the Judge may also order that the affidavit verifying the disclosure contain a schedule that complies with all or part of this rule.

- (2) In rule 8.16(1), replace “The schedule referred to in rule 8.15(2)(e) must, in accordance with that discovery order,” with “The schedule must”.
- (3) In rule 8.16(2), replace “Subject to Part 2 of Schedule 9,” with “Part 2 of Schedule 9 applies to a schedule under this rule, except that”.
- (4) In rule 8.16(5)(b), replace “correspondence” with “any documents”.

16 Rule 8.18 replaced (Continuing obligations)

Replace rule 8.18 with:

8.18 Continuing obligations

- (1) A party must disclose any document they become aware of that contains information adverse to their case or another party’s case or that supports the case of another party.
- (2) This obligation applies at all stages of a proceeding, including in the course of complying with any disclosure order.

17 Rule 8.24 replaced (Who may swear affidavit of documents)

Replace rule 8.24 with:

8.24 Who may swear affidavit for disclosure

- (1) If a Judge orders that an affidavit for disclosure be filed, they may—
 - (a) specify, by name or otherwise, the person who must make the affidavit; or
 - (b) specify, by description or otherwise, a group or class of persons, any of whom may make the affidavit.
- (2) In any other case, the affidavit may be made by the following:
 - (a) if the person required to make disclosure is an individual person, by that person;
 - (b) if the person required to make disclosure 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 9.82:

- (c) if the person required to make disclosure is the Crown, or is an officer of the Crown who may sue or be sued in an official capacity, or is representing a government department, by an officer of the Crown.

18 Rule 8.33 replaced (Enforcement of order)

Replace rule 8.33 with:

8.33 Enforcement of orders and requirements of rules

(1AAA) If a party fails to comply with an order or a requirement imposed by or under this Part, a Judge may enforce it under rule 7.48 (which applies with any necessary modifications).

- (1) An order made under this subpart may be enforced under subpart 4 of Part 2 of the Contempt of Court Act 2019 against any person who is required to comply with that order.
- (2) This rule does not limit or affect any power or authority of the court to punish a person for not complying with a court order.

19 New rule 9.1A inserted (Exchange of witness statements of factual evidence and expert evidence)

After rule 9.1, insert:

9.1A Exchange of witness statements of factual evidence and expert evidence

- (1) Witness statements of the factual evidence that a party wishes to rely on at trial must be served by the time required by the standard directions in rule 7.4 unless further time is given by a Judge under rule 7.4(7).
- (2) Those witness statements must meet the requirements of rule 9.7(2).
- (3) Statements of the expert evidence that a party wishes to rely on at trial must be served by the time and in accordance with directions given at the judicial issues conference or at another time directed by a Judge.
- (4) *See* rule 9.43, which requires expert witnesses to comply with the code of conduct set out in Schedule 4.

20 Rule 9.2 replaced (Exchange of documents and index)

Replace rule 9.2 with:

9.2 Exchange of documents and index and finalising chronologies of parties

- (1) Each party must provide the party who will prepare the common bundle with an index of documents to be relied upon no later than the date directed at the judicial issues conference.
- (2) If the index refers to a document not previously disclosed, the party must—

- (a) include a copy of the document with the index; and
 - (b) seek the leave of the court for it to be included in the common bundle (and *see* rule 9.4(5)(d) that requires the document to be identified in the bundle index as requiring leave to be included).
- (3) Each party must finalise their chronology (previously prepared as a draft under rule 7.4) and file and serve it no later than the date directed at the judicial issues conference.
- (4) In this rule, **documents to be relied upon** means any of the following:
- (a) any document previously disclosed that is:
 - (i) referred to in a witness statement:
 - (ii) to be referred to by a witness:
 - (iii) referred to in the final version of the party’s chronology:
 - (iv) intended to be put to witnesses called by another party:
 - (v) to be referred to in opening submissions filed under rule 9.16; or
 - (b) any document not previously disclosed for which leave is required under subclause (2) for it to be included in the common bundle.
- (5) Nothing in this rule affects a party’s continuing obligations to give disclosure under rule 8.18.

21 Rule 9.4 replaced (Preparation of common bundle)

Replace rule 9.4 with:

9.4 Preparing common bundle

- (1) The parties must co-operate in the preparation of a bundle of documents (in this subpart referred to as the **common bundle**).
- (2) The duty to co-operate includes each party—
 - (a) providing the other parties promptly, after the judicial issues conference and no later than the date directed by the Judge at the conference, with the index, documents, and final chronology required by rule 9.2; and
 - (b) taking all practicable steps to assist the plaintiff in the preparation of the common bundle, for example, by making copies of documents available, or agreeing to the excision of part of a document if that part cannot be relevant; and
 - (c) conferring with the other parties about the format of the common bundle and, in particular, whether an electronic format of the common bundle is appropriate.
- (3) If a party other than the plaintiff has been ordered to prepare the common bundle, the references in subclause (2) to the plaintiff are to be read as references to that different party.

- (4) Subject to rule 9.6, the common bundle must contain all the documents listed in the index of each party, and no other documents.
- (5) The common bundle must—
 - (a) arrange the documents chronologically, or in any other appropriate sequence or manner agreed by counsel and approved by a Judge:
 - (b) number each page in a consecutive sequence:
 - (c) set out before the first document a common bundle index that shows—
 - (i) a short description of each document:
 - (ii) the date of each document:
 - (iii) the party from whose custody each document has been produced:
 - (iv) the page number of each document as it appears in the common bundle:
 - (d) identify in the index (such as by colour coding) any document for which leave is required under rule 9.2 to be included in the common bundle:
 - (e) if disclosure was provided by way of an affidavit with a schedule that complies with rule 8.16, use a format that is, so far as possible, compatible with the format of that schedule.
- (6) If the parties have agreed to use an electronic format for the common bundle, the parties must have regard to any practice note on electronic formats issued from time to time by the Chief High Court Judge.

22 Rule 9.5 replaced (Consequences of incorporating document in common bundle)

Replace rule 9.5 with:

9.5 Consequences of incorporating document in common bundle

- (1) Each document contained in the common bundle is, unless a Judge directs otherwise, to be considered—
 - (a) to be accurately described in the common bundle index:
 - (b) to be what it appears to be:
 - (c) to have been signed by any apparent signatory:
 - (d) to have been sent by any apparent author and to have been received by any apparent addressee:
 - (e) to have been produced by the party indicated in the common bundle index.
- (2) A document in the common bundle is automatically received into evidence and presumed to be admissible if—
 - (a) it is referred to—
 - (i) in a witness's evidence:

- (ii) in a chronology provided to the court under rule 9.2 or 9.9:
- (iii) in opening submissions filed under rule 9.16; and
- (b) no objection to admissibility under rule 9.5A is upheld.
- (3) However, subclauses (1) and (2) do not apply to a document for which leave is required under rule 9.2 to be included in the common bundle unless a Judge gives that leave.
- (4) A Judge may direct that this rule or any part of it does not apply to a certain document or group of documents including a document referred to in subclause (3).

9.5A Objections to admissibility of documents in common bundle

- (1) A party may object to the admissibility of a document in the common bundle even though it is presumed to be admissible.
- (2) When considering an objection to admissibility, the Judge must have regard to the overriding objective in rule 1.2 and may consider—
 - (a) whether any concerns are more sensibly dealt with as a matter of weight:
 - (b) if the objection is allowed, whether an opportunity will be given to the party to adduce the evidence by other means:
 - (c) whether any costs consequences will apply to the objection in light of the overriding objective.

23 Rule 9.7 replaced (Requirements in relation to briefs)

Replace rule 9.7 with:

9.7 Requirements for witness statements of factual evidence

- (1) Whether or not some evidence is directed to be led orally, a witness statement of factual evidence is a statement from a fact witness that contains the testimony intended to be taken from them.
- (2) A witness statement must—
 - (a) be prepared in a manner that is consistent with the overriding objective in rule 1.2:
 - (b) be in the words of the witness and not in the words of the lawyer involved in drafting the witness statement:
 - (c) not contain evidence that is inadmissible in the proceeding:
 - (d) not contain any material in the nature of a submission or be argumentative:
 - (e) avoid repetition:
 - (f) avoid referencing documents unless the witness has relevant evidence to give relating to them:
 - (g) avoid reciting or summarising the contents of documents:

- (h) be confined to the matters in issue and, in the case of a fact witness, matters on which the witness can assist the court by giving evidence on the basis of their personal knowledge:
 - (i) be signed by the witness with a statement that the evidence is true and correct.
- (3) If a witness statement does not comply with the requirements of subclause (2), the court may, before or during the trial, direct that it not be read in whole or in part, and may make an order as to costs as the court sees fit.
- (4) A party intending to call a person as a witness must, if that person has not provided a witness statement,—
- (a) serve a notice on the other parties informing them that the party intends to call the person as a witness; and
 - (b) include all of the following information in the notice:
 - (i) the name of the intended witness:
 - (ii) the steps that have been taken to obtain a witness statement from the intended witness:
 - (iii) the reasons for the intended witness not providing a witness statement:
 - (iv) an explanation of the relevance of the evidence of the intended witness:
 - (v) details of the evidence that the party expects the intended witness to give.
- (5) At the trial or hearing, the person called as a witness must give their evidence in accordance with rules 9.10 and 9.12, subject to any directions that the court may give or any terms or conditions that the court may specify.
- (6) The party serving a notice under subclause (4) must, as soon as practicable after it is served, advise the Registrar on whom it was served on and the date of service.

24 Rule 9.9 replaced (Exchange of chronology of facts intended to be relied upon at trial or hearing)

Replace rule 9.9 with:

9.9 Merged chronology

- (1) A key purpose of the merged chronology (together with the common bundle) is to assist the court to identify—
- (a) the events and facts that are agreed and can therefore be taken by the court as being established in evidence (*see also* rule 9.5 relating to the common bundle); and
 - (b) the issues in dispute.

- (2) The plaintiff must, by the time set out in subclause (3), file and serve a merged chronology incorporating the chronologies of the parties and indicating the following entries in an appropriate way (such as by colour coding):
 - (a) entries that are agreed;
 - (b) entries that are not agreed and, in each case, which party asserts that the entry is incorrect.
- (3) The merged chronology must be filed and served—
 - (a) not later than 15 working days after the common bundle has been served; or
 - (b) by the time directed at the judicial issues conference.

25 Rule 9.12 replaced (Evidence-in-chief at trial)

Replace rule 9.12 with:

9.12 Evidence-in-chief at trial

The evidence-in-chief of a witness at trial may,—

- (a) if the court so directs, be in the form of the witness statement taken as read if the witness confirms it is true and correct;
- (b) if the court so directs, be given by the witness reading the witness statement as the witness's evidence-in-chief;
- (c) include further oral evidence permitted by the court;
- (d) comprise any evidence given under an oral evidence direction under rule 9.10;
- (e) be in the form of a witness statement received by the court as the witness's evidence without the witness confirming their witness statement under oath, provided that the witness statement is accompanied by a declaration that their witness statement is true and correct made under section 9 of the Oaths and Declarations Act 1957.

26 Rule 9.15 replaced (Cross-examination duties)

Replace rule 9.15 with:

9.15 Cross-examination duties

Before questioning a witness in order to meet what are perceived to be cross-examination duties under section 92 of the Evidence Act 2006, a party may first raise with the court when or the extent to which questioning is required.

27 Rule 9.16 replaced (Plaintiff's synopsis of opening)

Replace rule 9.16 with:

9.16 Filing of plaintiff's and defendant's openings before trial

- (1) Any plaintiff must, not later than 10 working days before the trial or hearing, file in the court and serve on every other party a copy of their opening that includes a narrative of material facts and events.
- (2) Any defendant or third or other party must, not later than 5 working days before the trial or hearing, file in the court and serve on every other party a copy of their opening that includes a narrative of material facts and events.
- (3) A Judge may give alternative directions for the filing of an opening by a party or the parties if satisfied that this will best achieve the overriding objective in rule 1.2.

28 New rule 9.36AAA and cross-headings inserted

Before rule 9.36, insert:

Party-appointed expert witnesses

9.36AAA Calling of party-appointed expert witnesses

- (1) Unless a Judge otherwise directs, at or after the judicial issues conference, each party may call only 1 expert witness on each particular topic identified at the conference.
- (2) A Judge may make a direction under subclause (1) only if the Judge considers this will best achieve the overriding objective in rule 1.2.

Court-appointed expert witnesses

29 New cross-heading above rule 9.43 inserted

After rule 9.42, insert:

Expert witnesses code of conduct

30 Rule 9.44 replaced and cross-heading inserted

Replace rule 9.44 with:

Conference of expert witnesses and arrangements for trial

9.44 Conference of expert witnesses

- (1) The court must, unless it considers the overriding objective in rule 1.2 is best achieved by a different direction, direct expert witnesses to confer, and may also direct them to do 1 or more of the following:
 - (a) confer on specified matters:
 - (b) confer in the absence of legal advisers of the parties:
 - (c) try to reach agreement on matters in the proceeding:

- (d) prepare and sign a joint witness statement stating the matters on which the expert witnesses agree and the matters on which they do not agree, including the reasons for their disagreement:
 - (e) prepare a joint witness statement without the assistance of the legal advisers of the parties.
- (2) The court may, on its own initiative or on the application of a party,—
- (a) appoint an independent person to convene and facilitate the conference of expert witnesses:
 - (b) give any directions for convening and facilitating the conference as the court thinks just.
- (3) Subject to any subsequent order of the court for costs, the court may determine the remuneration of the independent person and which of the parties must pay all or part of that remuneration.
- (4) The matters discussed at the conference must not be referred to at the hearing unless the parties by whom the expert witnesses have been engaged agree.
- (5) An independent person appointed under subclause (2)—
- (a) need not be an expert on any of the matters likely to be discussed at the conference:
 - (b) may not give evidence at the hearing unless all of the parties agree.

31 New rule 18.4A inserted (Case management)

After rule 18.4, insert:

18.4A Case management

- (1) Subpart 1 of Part 7 does not apply to proceedings filed under this Part.
- (2) The court may give directions for the case management of a proceeding under this Part as it thinks fit after considering what would best achieve the overriding objective in rule 1.2.

32 Schedule 1AA amended

In Schedule 1AA, after Part 1, insert:

Part 2

**Provisions relating to High Court (Improved Access to Civil Justice)
Amendment Rules 20XX**

3 Application of rules amended by High Court (Improved Access to Civil Justice) Amendment Rules 20XX to proceedings filed before commencement date

- (1) For any proceeding filed before the commencement date, these rules apply as if the amendment rules had not come into force except as provided in subclause (2).
- (2) The court may direct that 1 or more, or all, of the amendment rules apply in a particular proceeding commenced before the commencement date.
- (3) Before making a direction under subclause (2), the court must consider what would best achieve the overriding objective in rule 1.2.
- (4) In this clause—

amendment rules means the High Court (Improved Access to Civil Justice) Amendment Rules 20XX

commencement date means the date the amendment rules come into force.

33 Schedule 1, new form G 41 inserted

In Schedule 1, after form G 40, insert the form G 41 set out in Schedule 1 of these rules.

34 Consequential amendments to principal rules

Amend the principal rules as set out in Schedule 2. [These amendments need to be checked]

35 Revocations of principal rules

Revoke the principal rules set out in Schedule 3. [These revocations need to be checked]

Schedule 1
New form G 41 of Schedule 1 inserted

r 33

Form G 41
Chronology of events and facts

r 7.4(1)(c)(ii)

Use the template form as set out below:

Date	Pleaded material facts and other events or facts of significance intended to be established by documentary record	Supporting document
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Schedule 2 Consequential amendments

r 34

Subpart 1 heading in Part 1

In Part 1, replace the subpart 1 heading with:

Subpart 1—Overriding objective, general duty to co-operate, and interpretation

Rule 1.3

In rule 1.3(1), revoke the definition of **case management conference**.

Rule 1.6

In rule 1.6(2), replace “objective of these rules (*see* rule 1.2)” with “overriding objective in rule 1.2”.

Rule 1.13

In rule 1.13, replace “a case management” with “the judicial issues”.

In rule 1.13(a), replace “case management” with “judicial issues”.

Rule 1.16

In rule 1.16(1), replace “a case management” with “the judicial issues”.

Part 7 heading

In the Part 7 heading, replace “**Case management,**” with “**Judicial issues conference,**”.

Subpart 1 heading in Part 7

In Part 7, in the subpart 1 heading, replace “Case management” with “Judicial issues conferences”.

Rule 7.6

In rule 7.6(1) and (2), replace “first case management” with “judicial issues”.

Rule 7.8

In rule 7.8(3), replace “to secure the just, speedy, and inexpensive determination of the proceeding” with “that they consider will best achieve the overriding objective in rule 1.2”.

Rule 7.15

In rule 7.15(1)(e), replace “securing the just, speedy, and inexpensive determination of the appeal” with “achieving the overriding objective in rule 1.2”.

Rule 7.36

In rule 7.36, replace “Despite rule 7.34(1), every” with “Every”.

Rule 7.38

In rule 7.38(2), replace “a case management” with “the judicial issues”.

Rule 7.41

In rule 7.41(1)(c), replace “a memorandum filed for a case management” with “a position paper filed for the judicial issues”.

Rule 7.81

In rule 7.81(3)(b), replace “discovery under subpart 3 of Part 8” with “disclosure under Part 8”.

Part 8 heading

In the Part 8 heading, replace “**Discovery and inspection**” with “**Disclosure**”.

Subpart 1 heading in Part 8

In Part 8, in the subpart 1 heading, replace “Discovery” with “Disclosure”.

Rule 8.3

In rule 8.3(1), replace “discoverable in the proceeding” with “subject to disclosure obligations under these rules”.

In rule 8.3(2), replace “discoverable” with “subject to disclosure obligations”.

Rule 8.4

In rule 8.4(4), delete “or (3)”.

In rule 8.4(9), delete “prior to the making of a discovery order”.

Rule 8.13

In the heading to rule 8.13, replace “**discovery**” with “**disclosure**”.

In rule 8.13, replace “discovery order” with “disclosure obligation”.

In rule 8.13(a), delete “under the order”.

Rule 8.16

In the heading to rule 8.16, replace “**of documents**” with “**for disclosure**”.

In rule 8.16(1)(a), (b), (c), (d), and (e), replace “discovery” with “disclosure”.

In rule 8.16(1)(e), replace “be discoverable” with “need to be disclosed”.

Rule 8.19

In the heading to rule 8.19, replace “**discovery**” with “**disclosure**”.

In rule 8.19, replace “discovered” with “disclosed” in each place.

Rule 8.19—*continued*

In rule 8.19(a), replace “affidavit” with “affidavit in a form directed by the Judge”.

Rule 8.20

In the heading to rule 8.20, replace “**discovery**” with “**disclosure**”.

In rule 8.20(2)(a), replace “affidavit” with “affidavit in a form directed by the Judge”.

Rule 8.21

In the heading to rule 8.21, replace “**discovery**” with “**disclosure**”.

In rule 8.21(1), replace “discover” with “disclose”.

In rule 8.21(2)(a), replace “affidavit” with “affidavit in a form directed by the Judge”.

Rule 8.22

In the heading to rule 8.22, replace “**discovery**” with “**disclosure**”.

In rule 8.22(3), replace “discovery” with “disclosure”.

Rule 8.23

In the heading to rule 23, replace “**of documents**” with “**for disclosure**”.

In rule 8.23, replace “of documents” with “for disclosure” in each place.

In rule 8.23, replace “in response to a discovery order” with “to meet a disclosure obligation”.

In rule 8.23, replace “making discovery” with “making disclosure”.

Rule 8.25

In rule 8.25(1), replace “of documents” with “for disclosure”.

Rule 8.27

In rule 8.27(1) and (4), replace “discovery” with “disclosure”.

In the rule 8.27(1) and (3), replace “of documents” with “for disclosure”.

In rule 8.27(3), replace “If a discovery order exempts a party from giving discovery” with “If a party is exempted from giving disclosure”.

Rule 8.28

In the rule 8.28(3), replace “of documents” with “for disclosure”.

Rule 8.30

In the heading to rule 8.30, after “**documents**”, insert “**disclosed in the proceeding**”.

In rule 8.30(4), replace “inspection” with “disclosure”.

Rule 8.31

In the rule 8.31, replace “of documents” with “for disclosure”.

Subpart 1 heading in Part 9

In Part 9, in the subpart 1 heading, replace “Briefs” with “Witness statements”.

Rule 9.1

In the heading to rule 9.1, replace “**Objective**” with “**Overriding objective**”.

In rule 9.1(1), replace “pursue the just, speedy, and inexpensive determination of that proceeding” with “act in a manner that will best achieve the overriding objective of these rules in rule 1.2”.

In rule 9.1(2), replace “briefs” with “witness statements”.

Rule 9.3

In rule 9.3(2), replace “a case management, issues,” with “the judicial issues”.

Rule 9.6

In rule 9.6(2) and (3), replace “discovered” with “disclosed”.

Rule 9.8

In the heading to rule 9.8, replace “**briefs**” with “**witness statements**”.

In rule 9.8(1) and (2), replace “brief” with “witness statement”.

In rule 9.8(2), after “Judge”, insert “after taking account of the overriding objective in rule 1.2”.

Rule 9.11

In rule 9.11(1), replace “brief” with “witness statement” in each place.

Rule 9.13

In the heading to rule 9.13, replace “**Briefs**” with “**Witness statements**”.

In rule 9.13(1) and (2), replace “brief” with “witness statement” in each place.

Rule 9.14

In the heading to rule 9.14, replace “**briefs**” with “**witness statements**”.

In rule 9.14(d) and (e), replace “brief” with “witness statement”.

Rule 9.36

In rule 9.36(4), replace “an independent expert in a proceeding under rule 9.44(3)” with “the independent person who will convene a conference of expert witnesses under rule 9.44”.

Rule 9.43

In rule 9.43(2)(a), delete “served under rule 9.2 or 9.3”.

In rule 9.43(2)(b), delete “to be served under rule 9.2 or 9.3”.

Rule 9.45

In rule 9.45(2), delete “under rule 9.2 or 9.3”.

Rule 9.56

In rule 9.56(3), replace “rule 7.2” with “rule 7.5”.

Rule 10.10

In rule 10.10(5)(a), replace “rule 7.2” with “rule 7.5”.

Rule 12.4

In rule 12.4(2), replace “may be made either at the time the statement of claim is served on the defendant” with “must be made by the time required by rule 7.4(1)(a)”.

In rule 12.4(2A), replace “If an application by a plaintiff is made at the time that the statement of claim is served on the” with “For proceedings served on a”.

In rule 12.4(3), replace “may be made either at the time the statement of defence is served on the plaintiff” with “must be made by the time required by rule 7.4(1)(a)”.

Rule 14.6

In rule 14.6(3)(b)(iv), replace “an order for discovery” with “disclosure obligations”.

Rule 14.7

In rule 14.7(f)(iv), replace “an order for discovery” with “disclosure obligations”.

Schedule 1

In Schedule 1, form G 2, after the first signature block, first paragraph, replace “in accordance with” with “under”.

In Schedule 1, form G 2, after the first signature block, second paragraph, replace “will be notified of the date and time of the first case management conference.” with “must then follow the standard directions in rule 7.4. You will then be notified of the date of the judicial issues conference (*see* rules 7.5 to 7.5B).”.

In Schedule 1, form G 2, after the first signature block, revoke the third and fourth paragraphs.

In Schedule 1, form G 12, replace statements A to C with:

Select the statement that applies.

Statement A

all hearings and conferences relating to the above proceeding.

Statement B

all hearings and conferences relating to the above proceeding held after [*specify date or particular hearing or conference after which the person wishes to speak Māori*].

**High Court (Improved Access to Civil Justice)
Amendment Rules 20XX**

Schedule 2

Schedule 1—continued

Statement C

the hearing/conference* relating to the above proceeding to be held on [*specify date of particular hearing or conference at which the person wishes to speak Māori*].

*Select one.

In Schedule 1, form G 12, replace note 2 with:

2 If a person intends to speak Māori in a proceeding or at the hearing of an application, they (or, if the person is a witness, the party intending to call the person as a witness) must file this notice in the registry of the court and serve a copy of the notice on every other party to the proceeding or application by the time described in note 2A.

2A The notice must be filed and served at least 10 working days before—

- (a) the first hearing of an application; or
- (b) the judicial issues conference; or
- (c) the particular hearing or conference.

In Schedule 1, form G 12, revoke notes 3 and 4.

In Schedule 1, form G 12, note 5 replace “case management conference or hearing” with “hearing or conference”.

In Schedule 1, form G 12, note 5(a), replace “conference or hearing” with “hearing or conference”.

In Schedule 1, form G 12, note 5(a), delete “at the adjourned case management conference or hearing”.

In Schedule 1, in the heading to form G 37, replace “of documents” with “for disclosure”.

In Schedule 1, form G 37, replace paragraph 2 with:

2 I make this affidavit for disclosure under rule 8.4/under an order for further disclosure under rule 8.4A/under an order for particular disclosure* under rule 8.20/8.21* on [*date*].

*Select one.

In Schedule 1, form G 37, revoke paragraph 3.

In Schedule 1, form G 37, replace paragraph 4 with:

4 I understand the obligations to make disclosure under rule 8.4/the disclosure order* under rule 8.4A/8.20/8.21*.

*Select one.

In Schedule 1, form G 37, replace paragraph 5 with:

For initial disclosure under rule 8.4:

5A I have complied with those obligations and, in order to do so,—

Schedule 1—*continued*

- (i) I have disclosed the following:
- all documents referred to in the pleading; and
 - any additional principal documents in my/the plaintiff’s/the defendant’s [*whichever is applicable*] control that have been used when preparing the pleading; and
 - any additional principal documents in my/the plaintiff’s/the defendant’s [*whichever is applicable*] control on which I/the plaintiff/the defendant [*whichever is applicable*] presently intend to rely at trial or hearing; and
 - all known adverse documents; and
- (ii) I have also taken the following particular steps [*specify other steps taken, for example, inquiries made of named persons*].

For other disclosure:

5B I have complied with those obligations and, in order to do so, I have taken the following particular steps [*specify steps taken, for example, inquiries made of named persons*].

In Schedule 1, form G 37, paragraph 6, replace “discover” with “disclose”.

In Schedule 1, form G 37, paragraph 11, replace “be discoverable” with “need to be disclosed”.

In Schedule 1, form G 37, replace paragraph 12 with:

12 To the best of my knowledge and belief, this affidavit is correct in all respects and carries out my disclosure obligations under rule 8.4/the disclosure order*.

*Select one.

Schedule 3

In Schedule 3, above item 10, replace “*Case management*” with “*Judicial issues conference*”.

In Schedule 3, item 10, replace the words in the second column with “Preparation for judicial issues conference (and any additional judicial issues conference)”.

In Schedule 3, item 11, replace “memorandum” with “position paper and bundle of key evidence and documents”.

In Schedule 3, items 11 and 13, replace “first or subsequent case management conference” with “judicial issues conference (and any additional judicial issues conference)”.

In Schedule 3, in the heading above item 16, replace “*discovery*” with “*disclosure*”.

In Schedule 3, item 20, replace “on discovery” with “for disclosure”.

In Schedule 3, item 33, replace “briefs” with “witness statements”.

Schedule 3—continued

In Schedule 3, items 39 and 54, replace “Case management” with “Judicial issues conference”.

Schedule 9

In the Schedule 9 heading, replace “**Discovery checklist**” with “**Disclosure considerations**”.

In the Schedule 9 heading, replace “8.10, 8.11, 8.12,” with “8.4, 8.4A.”.

In Schedule 9, replace “carrying out discovery” with “carrying out disclosure”.

In Schedule 9, replace “when giving discovery” with “when giving disclosure”.

In Schedule 9, in the Part 1 heading, replace “**Discovery checklist**” with “**Disclosure considerations**”.

In Schedule 9, in Part 1, replace clauses 1 to 3 with:

1 Initial disclosure

The parties must, before filing a pleading, review their pleading and any other pleading that has been filed to identify the documents that are required to be disclosed under rule 8.4.

1A Extent of search for initial disclosure

The parties must comply with the duty to co-operate in rule 8.2 when doing the following:

- (a) identifying the documents described in rule 8.4(1)(a) and (b); and
- (b) taking reasonable steps to check for known adverse documents under rule 8.4(1)(c).

2 Further disclosure by agreement or following request

The parties must comply with the duty to co-operate in rule 8.2 when making further disclosure under rule 8.4A(1) to (3).

3 Further disclosure, and particular disclosure, by order of court

When further disclosure, or particular disclosure, is ordered by a Judge under rule 8.4A(4), 8.19, 8.20, or 8.21, the parties must—

- (a) comply with the duty to co-operate in rule 8.2; and
- (b) follow any directions given by the Judge.

In Schedule 9, Part 1, clause 4(1), replace “8.12(2)” with “8.16 (if ordered by a Judge)”.

In Schedule 9, Part 1, clause 4(1), replace “schedule unless a discovery order otherwise requires. Parties must—” with “schedule. Parties must comply with the duty to co-operate in rule 8.2 and—”.

In Schedule 9, Part 1, clause 4(1)(a), after “protocol”, insert “in Part 2”.

Schedule 9—*continued*

In Schedule 9, Part 1, clause 4(2), delete “The discovery order must record that the parties have agreed to modify the listing and exchange protocol, but it is not necessary for the specific modifications to be contained in the discovery order or be considered by the Judge.”.

In Schedule 9, Part 1, clause 4(3)(c) and (d), replace “discovery” with “disclosure or inspection”.

In Schedule 9, Part 1, clause 5, replace “The parties must—” with “The parties must comply with the duty to co-operate in rule 8.2 and with rule 9.4 and—”.

In Schedule 9, Part 2, clause 7(5), replace “discovery” with “disclosure”.

In Schedule 9, Part 2, clause 8(1)(a), replace “discovered” with “disclosed”.

In Schedule 9, Part 2, clause 8(2)(a), replace “individually discoverable emails” with “emails individually subject to disclosure obligations”.

In Schedule 9, Part 2, clause 8(2)(b)(i), replace “discover” with “disclose”.

In Schedule 9, Part 2, clause 8(6)(b), replace “discovery” with “disclosure”.

In Schedule 9, Part 2, clause 11(6), replace “discovery” with “disclosure”.

In Schedule 9, Part 3, definition of **metadata**, replace “discoverable” with “subject to disclosure obligations”.

In Schedule 9, Part 3, definition of **redaction**, replace “an otherwise discoverable document” with “a document otherwise subject to disclosure obligations”.

Schedule 3 Revocations

r 35

Rule 7.9
Rules 7.11 to 7.13
Rule 7.37
Rule 8.1
Rule 8.5 to 8.12
Rule 8.14
Rule 8.17
Rule 8.27(6)
Rule 9.3(1)
Rule 9.10(1) and (2)
Rule 9.42
Rule 12.4(4)(c) and (d)
Schedule 3, item 14
Schedule 5

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 [X date], amend the High Court Rules 2016 (the **principal rules**).

These rules amend the principal rules to—

- introduce proportionality as an overriding objective in the determination of any proceeding under the principal rules;
- impose a general duty on both parties and their solicitors and counsel to cooperate with other each in accordance with the overriding objective;
- replace the rules relating to case management procedures with standard directions that set out the steps to be taken between the filing of pleadings and the scheduling of a judicial issues conference;
- require parties to a proceeding to participate in a judicial issues conference, the aim of which is to identify the issues and position of the parties on those issues:

- introduce a presumption that interlocutory applications are to be heard by remote means:
- require the bundle of documents provided as part of initial disclosure (formerly initial discovery) to include known adverse documents and to be served at the same time as first substantive pleadings:
- replace the rules relating to standard and tailored discovery with a general rule enabling further disclosure of specified documents at the request of the parties or by order of the Judge.

These rules also amend the requirements in the principal rules relating to evidence at trial, in order to—

- require factual witness statements (formerly briefs of evidence) to be filed earlier in the process, after the service of pleadings:
- provide that documents included in the common bundle are automatically received into evidence and presumed to be admissible if referred to in a witness's evidence, a chronology provided to the court, or opening submissions:
- set out factors that the Judge may have regard to when considering an objection to the admissibility of a document in the common bundle:
- allow a witness statement to be received as evidence without the witness appearing in court to confirm it under oath:
- require the plaintiff to file in the court and serve on the other party a chronology that merges the chronologies of the parties 15 working days after the common bundle has been served:
- provide that a party may get the court's view on the timing and extent of cross-examination:
- require both the plaintiff and the defendant or third or other party to file in the court and serve on the other party an opening that includes a narrative of material facts and events:
- provide that each party may only call 1 expert witness to give evidence on each topic:
- require the court to order a conference of experts before expert evidence is led at trial.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These rules are administered by the Ministry of Justice.