

Version
as at 12 April 2022



Senior Courts Act 2016

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Commencement see section 2

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Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Senior Courts Act 2016.

2 Commencement

- (1) This Act comes into force on 1 March 2017.
- (2) Subsection (1) applies with the following exceptions:
 - (a) the following provisions come into force on the day after the date of Royal assent:
 - (i) section 4, in relation to the definition of **High Court Rules**:
 - (ii) sections 147 to 155:
 - (iii) sections 173 and 174:
 - (iv) section 182(1):

- (v) section 183(c):
 - (vi) section 185:
 - (vii) Schedule 2:
 - (viii) Schedule 4:
- (b) section 182(4) comes into force on 1 January 2018.

Part 1

Preliminary provisions

3 Purposes

- (1) The purposes of this Act are to—
- (a) consolidate in a single statute the provisions of the Judicature Act 1908 and the Supreme Court Act 2003; and
 - (b) continue the High Court, the Court of Appeal, and the Supreme Court, and provide for their—
 - (i) constitution and jurisdiction; and
 - (ii) practice and procedure; and
 - (iii) judicial and other officers, including their—
 - (A) selection; and
 - (B) appointment and conditions; and
 - (c) make provision for any other related matters; and
 - (d) improve the transparency of court arrangements in a manner consistent with judicial independence.
- (2) Nothing in this Act affects New Zealand’s continuing commitment to the rule of law and the sovereignty of Parliament.

4 Interpretation

- (1) In this Act, unless the context otherwise requires,—

Associate Judge means an Associate Judge of the High Court

Chief High Court Judge—

- (a) means the person holding that office under section 100; and
- (b) includes a Judge of the High Court acting in place of the Chief High Court Judge under section 109

Chief Justice means the Chief Justice of New Zealand holding office under section 100

Court of Appeal means the Court of Appeal of New Zealand continued under section 45

defendant means a person served or intended to be served with any application to the High Court for the exercise of its civil or criminal jurisdiction

High Court means the High Court of New Zealand continued under section 6

High Court Rules means the High Court Rules 2016 that are part of this Act under section 147

interlocutory application—

- (a) means any application to the High Court in any civil proceedings or criminal proceedings, or intended civil proceedings or intended criminal proceedings, for—
 - (i) an order or a direction relating to a matter of procedure; or
 - (ii) in the case of civil proceedings, for some relief ancillary to that claimed in a pleading; and
- (b) includes an application to review an order made, or a direction given, on any application to which paragraph (a) applies

Judge means a Judge of the High Court

judgment includes decree

lawyer has the meaning given to it by section 6 of the Lawyers and Conveyancers Act 2006

medical practitioner means a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine

Minister means the Minister or Ministers of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is or are for the time being responsible for the administration of this Act

plaintiff means a person who makes an application (other than an interlocutory application) to the High Court for the exercise of its civil or criminal jurisdiction

President of the Court of Appeal means the Court of Appeal Judge holding office under section 100

Supreme Court means the Supreme Court of New Zealand continued under section 66

working day means a day that is not—

- (a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, or Labour Day; or
- (b) the day observed as the anniversary day of the province in which the court is located; or

- (c) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; or
 - (d) a day in the period commencing on 25 December in one year and ending with 15 January in the next year.
- (2) A reference in any enactment to a senior court in New Zealand must, unless the context otherwise requires, be read as a reference to the High Court, the Court of Appeal, or the Supreme Court.
- (3) A reference in any enactment to a senior court of a country other than New Zealand must, unless the context otherwise requires, be read as a reference to a court that has jurisdiction comparable to the jurisdiction of a senior court in New Zealand.

Section 4(1) **working day** paragraph (a): amended, on 12 April 2022, by wehenga 7 o Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/section 7 of the Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14).

5 This Act binds the Crown

This Act binds the Crown.

Part 2 High Court

Constitution of High Court

6 High Court continued

- (1) There continues to be a High Court of New Zealand.
- (2) The High Court consists of—
 - (a) the Chief Justice of New Zealand; and
 - (b) the other High Court Judges who are from time to time appointed.
- (3) The High Court is a court of record.
- (4) The High Court is the same court as the High Court continued by section 3(1) of the Judicature Act 1908.

Compare: 1908 No 89 s 4(1)

7 Number of High Court Judges

- (1) The number of High Court Judges appointed from time to time referred to in section 6(2)(b) may not exceed 55.
- (2) For the purposes of subsection (1),—
 - (a) a permanent Judge who is sitting on a full-time basis counts as 1;
 - (b) a permanent Judge who is sitting on a part-time basis counts as an appropriate fraction of 1;
 - (c) the aggregate number (for example 54.5) must not exceed 55.

- (3) Despite subsection (1), the Governor-General may appoint more than 55 High Court Judges (**additional Judges**) if the Governor-General thinks that 1 or more additional Judges are required because of—
 - (a) the absence of any Judge on leave preliminary to retirement; or
 - (b) the anticipated absence of any Judge on leave preliminary to retirement.
- (4) The appointment of an additional Judge under subsection (3) must fill the vacancy next occurring in the office of Judge, not being a vacancy filled by an earlier appointment under subsection (3).

8 Seal

- (1) The High Court must have a seal, and the Registrar of the court is responsible for the seal.
- (2) The seal must be used for sealing judgments, orders, certificates, and any other document issued by the court that must be sealed.

Compare: 1908 No 89 s 50

9 Powers of High Court to be exercised by High Court Judges

- (1) The powers of the High Court may be exercised in any part of New Zealand by a High Court Judge or 2 or more High Court Judges.
- (2) Subsection (1) is subject to any enactment that—
 - (a) requires the powers of the High Court to be exercised by the full court or by a specified number of High Court Judges; or
 - (b) provides for the appointment of persons other than High Court Judges to sit with the High Court or as members of the court in any specified proceeding or class of proceeding.

Compare: 1908 No 89 s 19

10 Sessions of High Court and adjournments

- (1) A High Court Judge may hold a session of the High Court at any time and place the Judge thinks fit.
- (2) A High Court Judge may adjourn a session of the High Court to a time and place the Judge thinks fit.
- (3) If a High Court Judge is not present at the time appointed for a session of the court, a Registrar must adjourn the session and may determine the time and place of the next session.

Compare: 1908 No 89 s 52

11 Court offices

- (1) The Governor-General may, by notice in the *Gazette*, declare that an office of the High Court is established at a place and on and after a date stated in the notice.

- (2) The Governor-General may, by notice in the *Gazette*, abolish an office of the High Court.
- (3) The following provisions apply on the abolition of an office of the High Court (the **abolished office**):
- (a) the Minister may direct that the documents and records in the abolished office must be transferred to another office of the court (the **substituted office**):
 - (b) when delivered to the Registrar of the substituted office, the documents and records become subject to the custody of that Registrar:
 - (c) the Registrar of the substituted office may do anything that could under an enactment or a rule have been done by the Registrar of the abolished office:
 - (d) a step in a proceeding that could under an enactment or a rule have been taken in the abolished office may be taken in the substituted office:
 - (e) an act or a thing required or authorised by an enactment or a rule to be done by a person at the abolished office in relation to a proceeding or transaction or document may be done by a person at the substituted office:
 - (f) an address for service given by a party in relation to a proceeding in the abolished office continues to be the address for service of the party, but if the address does not comply with any enactment or rule the party must give a new address for service on first filing a document in the proceeding in the substituted office:
 - (g) a High Court Judge may—
 - (i) decide a question as to the application of this section or the procedure to be followed; and
 - (ii) make any order the Judge thinks fit.

Compare: 1908 No 89 s 23A

Jurisdiction of High Court

12 Jurisdiction of High Court

The High Court has—

- (a) the jurisdiction that it had on the commencement of this Act; and
- (b) the judicial jurisdiction that may be necessary to administer the laws of New Zealand; and
- (c) the jurisdiction conferred on it by any other Act.

Compare: 1908 No 89 s 16

13 Power to award damages as well as, or in substitution for, injunction or specific performance

The High Court may award damages in addition to or in substitution for an injunction or specific performance.

Compare: 1908 No 89 s 16A

14 Jurisdiction in relation to persons who lack competence to manage their affairs

- (1) The High Court has jurisdiction and control in relation to—
 - (a) mentally impaired persons who, in the opinion of the court, lack wholly or partly the competence to manage their own affairs; and
 - (b) the property and managers of those persons.
- (2) Subsection (1) is subject to other enactments making provision in relation to those persons or their property or managers.

Compare: 1908 No 89 s 17

15 When civil proceeding to be tried before Judge alone

- (1) A civil proceeding must be tried before a High Court Judge sitting alone.
- (2) This section is subject to section 16.

Compare: 1908 No 89 s 19B

16 Certain civil proceedings may be tried by High Court Judge with jury

- (1) Any party to a proceeding for defamation, false imprisonment, or malicious prosecution may, on giving notice in accordance with the High Court Rules, require the proceeding to be tried by a High Court Judge with a jury.
- (2) Any party to a counterclaim in a proceeding for defamation, false imprisonment, or malicious prosecution may, on giving notice in accordance with the High Court Rules, require the counterclaim to be tried by a High Court Judge with a jury.
- (3) If a notice is given under subsection (1) or (2), the proceeding or counterclaim must be tried in accordance with the subsection that applies.
- (4) A High Court Judge may, on the application of either party, order that a proceeding for defamation, false imprisonment, or malicious prosecution or any issue in the proceeding be tried before a Judge without a jury if it appears to the Judge before the trial that the trial of the proceeding or the issue will—
 - (a) involve mainly the consideration of difficult questions of law; or
 - (b) require any prolonged examination of documents or accounts, or any investigation in which difficult questions in relation to scientific, technical, business, or professional matters are likely to arise, being an examination or investigation that cannot conveniently be made with a jury.

- (5) A proceeding for defamation, false imprisonment, or malicious prosecution that also contains other causes of action may be tried only before a High Court Judge without a jury.
- (6) No civil proceeding other than for defamation, false imprisonment, or malicious prosecution may be tried by a High Court Judge with a jury.
- Compare: 1908 No 89 s 19A(1)–(5)

17 Question of foreign law must be decided by High Court Judge

- (1) A question about the effect of evidence of a foreign law that arises in a civil or criminal proceeding that is tried by a High Court Judge with a jury must be decided by the Judge alone.
- (2) This section overrides section 16.
- Compare: 1908 No 89 s 19C

18 Proceedings in place of writs

- (1) This section applies in any case where, before the commencement of the Judicature Amendment Act (No 2) 1985,—
- (a) the High Court had jurisdiction to grant relief or a remedy or do any other thing by way of a writ; or
 - (b) the High Court could issue a writ for the commencement or conduct of a proceeding or in relation to a proceeding.
- (2) If this section applies,—
- (a) the court continues to have jurisdiction to grant the relief or remedy or to do the thing; but
 - (b) the court may not issue the writ; and
 - (c) the court may grant the remedy or relief or do the thing by way of a judgment or an order in accordance with this Act and the High Court Rules; and
 - (d) a proceeding for the remedy or relief or for the court to do the thing must be commenced and conducted in accordance with this Act and the High Court Rules.
- (3) This section does not apply to—
- (a) a writ of habeas corpus under the Habeas Corpus Act 2001; or
 - (b) any writ of execution for the enforcement of a judgment or an order of the court; or
 - (c) any writ in aid of any writ of execution.
- (4) Subsection (3) is subject to the High Court Rules.
- Compare: 1908 No 89 s 98A

*Panels of Judges***19 Panels**

- (1) The commercial panel of the High Court from which Judges may be selected to hear and determine commercial proceedings is established and may operate subject to this section.
- (2) The Governor-General may, by Order in Council made on the recommendation of the Attorney-General after consultation with the Chief Justice and the Chief High Court Judge,—
 - (a) specify a commencement date for the operation of the commercial panel:
 - (b) specify the types of proceedings that may be assigned to the commercial panel:
 - (c) if the Governor-General considers it necessary, provide for the commercial panel to cease its operations on or from a specified date.
- (3) The Chief High Court Judge, in consultation with the Attorney-General and the Chief Justice, may establish other panels of High Court Judges for the purposes of dealing with proceedings other than commercial proceedings.
- (4) The Chief High Court Judge may determine how many High Court Judges are to be on the commercial panel or any other panel and assign Judges to the panels.
- (5) The Chief High Court Judge may decide the basis on which cases are to be distributed as between Judges on the commercial panel or another panel and Judges who are not on any panel.
- (6) A party may nominate that the party's case be dealt with by a Judge on a panel and the Chief High Court Judge may assign to the case a Judge or Judges from a panel.
- (7) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 19(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Jurisdiction of Associate Judges

20 Associate Judge may exercise certain powers of High Court

- (1) An Associate Judge has the jurisdiction and powers of the High Court in relation to the following matters:
 - (a) an application for summary judgment:
 - (b) reinstating a company to the Register of Companies:
 - (c) any matter arising under the Insolvency Act 1967:
 - (d) case management of proceedings under the Admiralty Act 1973:
 - (e) a proceeding in which relief is claimed solely under any of sections 142, 143, 146, 177, 178, and 180 of the Land Transfer Act 2017 (which relate to caveats):
 - (f) an assessment of damages where liability has been determined or the trial of a proceeding in which only the amount of a debt or damages is in dispute:
 - (g) the entry of a judgment by consent or the making of an order by consent:
 - (h) the making of an order (other than an arrest order or an order relating to an arrest order) that may be made under the High Court Rules against a judgment debtor who has been ordered to attend the court for an examination:
 - (i) the making, variation, suspension, or discharge of an attachment order under the High Court Rules:
 - (j) any other matter that an Associate Judge has jurisdiction to deal with under an enactment.
- (2) An Associate Judge has the jurisdiction and powers of the court or a High Court Judge under the following enactments:
 - (a) article 11 of Schedule 1 of the Arbitration Act 1996:
 - (b) sections 123, 154, 165 to 168, 173, 179, 232 to 234, 236 to 238, Part 15A, Part 16, and section 329 of the Companies Act 1993:
 - (c) section 42(2) of the Corporations (Investigations and Management) Act 1989:
 - (d) the Insolvency Act 2006 (except sections 150, 166(3), 180, and 236(2)):
 - (e) regulations or rules made under the Insolvency Act 2006:
 - (f) regulations relating to liquidations made under the Companies Act 1993:
 - (g) sections 118, 128, 131, 167, 168, 170, 179, 181, 182, and 186 of the Personal Property Securities Act 1999:
 - (h) the Model Law on Cross-Border Insolvency as set out in Schedule 1 of the Insolvency (Cross-border) Act 2006:

- (i) subpart 2 of Part 2 and sections 25 and 26(1) and (2) of the Contempt of Court Act 2019.
- (3) An Associate Judge may adjourn a proceeding even though the Associate Judge does not have jurisdiction in relation to the proceeding.
- (4) An Associate Judge has the jurisdiction and powers of the court to deal with costs and other matters incidental to the matters over which the Associate Judge has jurisdiction under this section.
- (5) Rules made under section 148 or under any other Act in the same manner as rules under that section may contain any provisions that may be necessary to enable the proper exercise by Associate Judges of the jurisdiction and powers conferred by this section.

Compare: 1908 No 89 ss 26I(1)–(3), (4)(a), 26O

Section 20(1)(e): replaced, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Section 20(2)(i): inserted, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

21 Ancillary powers of Associate Judge

- (1) An Associate Judge has, in relation to a proceeding (including a proceeding on an interlocutory application) that is properly before the Associate Judge, the same jurisdiction and power to make an order or exercise an authority as a Judge of the High Court.
- (2) Despite subsection (1), an Associate Judge does not have the jurisdiction or powers referred to in section 22(4).

Compare: 1908 No 89 s 26IA

22 Rules conferring on Associate Judges specified jurisdiction and powers of High Court Judge in chambers

- (1) Rules made under section 148 and rules made under any other Act in the manner provided in that section may confer on an Associate Judge the jurisdiction and powers of a High Court Judge in chambers specified in the rules.
- (2) The rules may specify limitations and restrictions on the jurisdiction and powers.
- (3) The rules may contain any provisions that may be necessary to enable the proper exercise by Associate Judges of the jurisdiction and powers so conferred.
- (4) Despite subsection (1), no rules may be made that confer on Associate Judges jurisdiction and power in relation to any of the following:
 - (a) a criminal proceeding other than an uncontested application for bail or an application to set aside a witness summons:
 - (b) an application for a writ of habeas corpus:
 - (c) a proceeding for the issue or renewal of a writ of sequestration:

- (d) a proceeding under the Care of Children Act 2004:
- (e) an action *in rem* under the Admiralty Act 1973:
- (f) an application to review, or appeal against, the exercise, or the refusal to exercise, by a Registrar or a Deputy Registrar of any jurisdiction or power conferred on a Registrar or Deputy Registrar by this Act or any other enactment:
- (g) an application for a search order or an interlocutory or a permanent injunction:
- (h) an application for review or other relief under the Judicial Review Procedure Act 2016:
- (i) a proceeding for a writ or an order in the nature of mandamus, prohibition, or certiorari, or for a declaration or an injunction:
- (j) a proceeding to remove a person from public office:
- (k) a proceeding to try the right of a person to hold public office.

Compare: 1908 No 89 s 26J

23 Application of provisions relating to witnesses and contempt

- (1) Sections 42 and 43 (which relate to the power to deal with witnesses) apply to a proceeding before an Associate Judge in the same way as they apply to a proceeding before a High Court Judge.
- (2) Subpart 2 of Part 2 of the Contempt of Court Act 2019 (which relates to contempt) applies to a proceeding before an Associate Judge, and references in that subpart to a Judge include an Associate Judge.

Section 23: replaced, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

24 No power to order committal, attachment, or arrest

- (1) An Associate Judge does not have power to make an order for the committal, attachment, or arrest of a person.
- (2) This section is subject to section 23.

Compare: 1908 No 89 s 26L

25 Power to act as referee

An Associate Judge may act as a referee under the High Court Rules in a proceeding or on a question that arises in a proceeding.

Compare: 1908 No 89 s 26M

26 Transfer of proceeding to High Court Judge

- (1) An Associate Judge may, on the application of a party to a proceeding before the Associate Judge or on the Associate Judge's own initiative, refer the proceeding or a matter in the proceeding to a High Court Judge if the Associate

Judge is satisfied that because of the complexity of the proceeding or matter it is desirable to do so.

- (2) A High Court Judge may, on the application of a party to a proceeding that is being or is to be dealt with by an Associate Judge, order that the proceeding or any part of it be transferred to and dealt with by a High Court Judge if the Judge making the order is satisfied that it is desirable to do so.
- (3) A High Court Judge may—
 - (a) dispose of the proceeding; or
 - (b) refer the proceeding or matter back to the Associate Judge with any directions the High Court Judge thinks fit.

Compare: 1908 No 89 s 26N

27 Appeals against decisions of Associate Judges

- (1) A party to any proceedings may appeal to the Court of Appeal against any order or decision of an Associate Judge in those proceedings.
- (2) Section 56 applies to an appeal under subsection (1).

Compare: 1908 No 89 s 26P(1), (1A), (3)

28 Immunity of Associate Judges

Every Associate Judge has the same immunities as a Judge of the High Court.

Compare: 1908 No 89 s 26Q

29 Jurisdiction of High Court Judges not affected

Nothing in this Act or the High Court Rules prevents the exercise by a High Court Judge of the jurisdiction and powers conferred on an Associate Judge by this Act or those rules.

Compare: 1908 No 89 s 26R

Commissioners for oaths, affidavits, and affirmations

30 Power to appoint Commissioners

- (1) A High Court Judge may appoint a person to be a Commissioner of the High Court to administer and take an oath, affidavit, or affirmation outside New Zealand in connection with a proceeding or matter before a court in New Zealand.
- (2) Notification of the appointment must be published in the *Gazette*.

Compare: 1908 No 89 s 47

31 Effect of oath, affidavit, or affirmation

An oath, affidavit, or affirmation administered or taken by a Commissioner has the same effect as if it had been administered or taken by a person authorised to administer or take the oath, affidavit, or affirmation in New Zealand.

Compare: 1908 No 89 s 48

32 Revocation of commission

- (1) A High Court Judge may revoke a commission for any reason the Judge considers sufficient.
- (2) Revocation of a commission does not affect the validity of anything done by the Commissioner before notice of the revocation was given or sent to the Commissioner.
- (3) Notice of the revocation and of the date on which it was given or sent to the Commissioner must be published in the *Gazette*.

Compare: 1908 No 89 s 49

Registrars, Sheriffs, and officers of High Court

33 Appointment of Registrars, Deputy Registrars, and other officers of High Court

Registrars, Deputy Registrars, and other officers may be appointed under the Public Service Act 2020 for the conduct of the business of the High Court.

Compare: 1908 No 89 s 27

Section 33: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

34 Powers of Registrars

- (1) A Registrar has the duties and powers—
 - (a) conferred by this Act, any other enactment, or the High Court Rules:
 - (b) necessary or desirable to ensure the efficient and effective administration of the business of the High Court.
- (2) A Deputy Registrar has the same duties and powers as a Registrar.
- (3) Subsection (2) is subject to a provision to the contrary in any other enactment or the High Court Rules.

Compare: 1908 No 89 s 28

35 Sheriffs

- (1) A Registrar is also a Sheriff for New Zealand.
- (2) Deputy Sheriffs may be appointed under the Public Service Act 2020 for offices of the High Court.
- (3) In the absence of the Sheriff or when acting for the Sheriff, a Deputy Sheriff has the same duties and powers as a Sheriff.

Compare: 1908 No 89 s 29

Section 35(2): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

36 Powers of Sheriffs

A Sheriff has—

- (a) the power to enforce an order of the High Court:
- (b) the power to serve a process of the High Court:
- (c) the power to arrest a person in accordance with an order of the High Court:
- (d) any other powers conferred by this Act, any other enactment, or the High Court Rules.

Compare: 1908 No 89 s 32

37 Sheriff not to act as lawyer or agent

No Sheriff may be in any way concerned in any action in any court in New Zealand either as a lawyer or as an agent.

Compare: 1908 No 89 s 34

38 Service of process when Sheriff disqualified

- (1) If the Sheriff is disqualified by law from executing any process that has been issued, the court must authorise a fit person to execute the process.
- (2) The cause of the process must be entered in the records of the court.

Compare: 1908 No 89 s 35

39 Persons arrested by Sheriffs may be committed to prison at once

A Sheriff, Sheriff's officer, bailiff, or any other person employed to assist the Sheriff who arrests any person under or by virtue of any writ or process that authorises the committal of the arrested person may, without delay, take steps to have the arrested person taken to a prison and committed there.

Compare: 1908 No 89 s 36

Miscellaneous matters

40 Arrest of defendant about to leave New Zealand

- (1) A Judge may, on the application of a plaintiff in a proceeding to recover an amount of money, issue a warrant to arrest a defendant in the proceeding and bring the defendant before the court.
- (2) A Judge must not issue a warrant unless the Judge is satisfied that—
 - (a) the plaintiff has a good cause of action against the defendant; and
 - (b) there are reasonable grounds to suspect that the defendant is about to leave New Zealand with the intention of evading payment of the amount claimed.
- (3) The Judge may require the applicant for the warrant to deposit in the court an amount not exceeding the amount claimed in the proceeding or give a surety for that amount for the purposes of payment of any compensation that may be ordered to be paid to the defendant under subsection (9).

- (4) The defendant must be brought before the court unless the amount claimed in the proceeding is paid to the plaintiff before the warrant is executed.
- (5) The Judge may—
 - (a) release the defendant; or
 - (b) release the defendant on bail on any terms and conditions the Judge thinks fit and with a surety of an amount the Judge thinks fit (but not exceeding the amount claimed in the proceeding and costs) or without a surety; or
 - (c) remand the defendant in custody.
- (6) A defendant who is remanded in custody must be brought before the court within 4 days after the date of the order.
- (7) A defendant arrested under the warrant may either give to the enforcing officer or deposit in the court the amount shown on the warrant as the amount of the claim plus costs. If the defendant does so, he or she must be released and the amount must be retained and,—
 - (a) if judgment in the proceeding is given in favour of the plaintiff, paid or applied in accordance with the judgment; or
 - (b) if judgment in the proceeding is given in favour of the defendant, paid to the defendant.
- (8) The Judge may,—
 - (a) if the defendant consents, hear and determine the proceeding at the time the defendant is brought before the court; or
 - (b) fix a date and time for the hearing of the proceeding.
- (9) If judgment is given for the defendant, the Judge may order that the defendant be paid compensation for his or her arrest or arrest and detention of an amount not exceeding \$10,000.
- (10) Where a Judge is not available through absence, illness, or any other cause, a Registrar may exercise any of the powers conferred on a Judge by subsections (1) to (3) and (5)(a) and (b).

Compare: 1908 No 89 s 55; 1947 No 16 ss 109, 110

41 Witness not required to attend hearing of civil proceeding unless allowances and expenses paid

A witness is not required to attend the hearing of a civil proceeding in the High Court unless allowances and travelling expenses in accordance with regulations made under the Criminal Procedure Act 2011 have been paid or tendered to the witness—

- (a) at the time of service on the witness of the subpoena; or
- (b) a reasonable time before the hearing.

Compare: 1908 No 89 s 56A(3)

42 Failure of witness to attend

- (1) The High Court may, in civil proceedings, issue a warrant to arrest and bring before the court a witness who—
 - (a) is compellable to attend the court to give evidence; and
 - (b) has been summoned to attend the court to give evidence; and
 - (c) fails to attend the court.
- (2) The High Court may impose a fine not exceeding \$1,000 on a witness brought before the court under subsection (1) who does not have a reasonable excuse for failing to attend the court.
- (3) The onus of proving a reasonable excuse is on the witness.

Compare: 1908 No 89 s 56A(1), (2)

43 Refusal to give evidence

- (1) This section applies to a witness in a civil proceeding who, without reasonable excuse,—
 - (a) refuses to give evidence when required; or
 - (b) refuses to produce a document the witness has been required to produce; or
 - (c) refuses to be sworn; or
 - (d) having been sworn, refuses to answer a question.
- (2) The High Court may order that, unless the witness complies with subsection (1), the witness is to be detained in custody for a period not exceeding 7 days and may issue a warrant to arrest and detain the witness.
- (3) The High Court may exercise the powers in subsection (2) if the witness is again brought before the court, whether on 1 or more occasions, and still fails to comply with subsection (1).
- (4) Nothing in this section limits or affects any power or authority of the High Court under the Contempt of Court Act 2019.

Compare: 1908 No 89 s 56B

Section 43(4): replaced, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

44 High Court may require person to undergo medical examination

- (1) The High Court may order a party to a civil proceeding to undergo a medical examination by a registered medical practitioner at a time and place specified in the order if the court is satisfied, in the interests of justice, that the physical or mental condition of the person is relevant to a matter in the proceeding.
- (2) The person to be examined may have a registered medical practitioner of the person's own choice present at the examination.

- (3) The court may order a party seeking the order to pay to the person to be examined a reasonable sum to meet—
 - (a) the person’s travelling and other expenses in connection with the examination; and
 - (b) the expenses of having a registered medical practitioner chosen by the person attend the examination.
- (4) The person to be examined must do the things reasonably requested and answer the reasonable questions asked by the medical practitioner who conducts the examination.
- (5) If the person to be examined fails, without reasonable excuse, to comply with the order or wilfully obstructs the medical examination, the High Court may—
 - (a) stay the proceeding; or
 - (b) strike out a notice, statement, or other document filed, or a step taken, in the proceeding by the person to be examined.

Compare: 1908 No 89 s 100

Part 3 **Court of Appeal**

Constitution

45 Court of Appeal continued

- (1) There continues to be a Court of Appeal of New Zealand.
- (2) The Court of Appeal consists of—
 - (a) a Judge of the High Court appointed by the Governor-General as a Judge of the Court of Appeal and as President of that court; and
 - (b) no fewer than 5 nor more than 9 other Judges of the High Court appointed by the Governor-General as Judges of the Court of Appeal.
- (3) The Court of Appeal is a court of record.
- (4) The Court of Appeal is the same court as the Court of Appeal continued by section 57 of the Judicature Act 1908.

Compare: 1908 No 89 s 57(1), (2)

46 Seal

- (1) The Court of Appeal must have a seal, and the Registrar of the court is responsible for the seal.
- (2) The seal must be used for sealing judgments, orders, certificates, and any other document issued by the court that must be sealed.

Compare: 1908 No 89 s 74

47 Court of Appeal to sit in divisions

- (1) For the purposes of proceedings in the Court of Appeal, the Court of Appeal sits in divisions comprising 3 Judges.
- (2) Each division may exercise all the powers of the Court of Appeal.
- (3) A division may exercise the powers of the Court of Appeal even though 1 or more divisions of the court or a full court exercises those powers at the same time.
- (4) A majority of the members of a division may, if they consider it desirable, refer a proceeding, or state a case, or reserve a question for consideration by a full court of the Court of Appeal. A full court has power to hear and determine the proceeding, case, or question.

Compare: 1908 No 89 s 58

48 Composition of divisions

- (1) For the purposes of a proceeding that is heard by a division, the Court of Appeal comprises—
 - (a) 3 Judges of the Court of Appeal holding office under section 45(2) or 112; or
 - (b) 2 Judges of the Court of Appeal holding office under section 45(2) or 112 and 1 Judge of the High Court appointed under subsection (2); or
 - (c) 1 Judge of the Court of Appeal holding office under section 45(2) or 112 and 2 Judges of the High Court appointed under subsection (2).
- (2) The President of the Court of Appeal and the Chief High Court Judge may jointly appoint Judges of the High Court to be members of the Court of Appeal for the purposes of any proceedings.
- (3) Judges may be appointed under subsection (2) either—
 - (a) in respect of a specified case or specified cases; or
 - (b) in respect of every case to be heard by the Court of Appeal during a specified period not exceeding 3 months.
- (4) An appointment under subsection (2) may be made for 1 or more 3-month periods, but no Judge may be a member of the Court of Appeal under that subsection for more than 4 months in any calendar year.
- (5) Section 177 applies to an appointment under subsection (2) despite anything in subsection (3) or (4).

Compare: 1908 No 89 ss 58A, 58B

49 Powers exercisable by Judges

- (1) This section applies to all proceedings before the Court of Appeal other than proceedings under the Criminal Procedure Act 2011.

- (2) Any 2 or more Judges of the Court of Appeal may act as the court to determine—
 - (a) any contested application for leave to appeal;
 - (b) any contested application for an extension of time to appeal;
 - (c) any other contested application or matter (other than an appeal) that effectively determines or disposes of the substantive proceeding.
- (3) Any other application to or matter in the Court of Appeal (other than an appeal) may be heard and determined by a single Judge of the Court of Appeal.
- (4) If a single Judge acting under subsection (3) determines not to grant an application or not to resolve a matter in favour of a party, the party may apply to have the Judge's determination reviewed by 2 or more Judges of the Court of Appeal.
- (5) The Judges who determine an application under subsection (4) may confirm, modify, or reverse the single Judge's determination.
- (6) A single Judge of the Court of Appeal may—
 - (a) review a decision of the Registrar made within the civil jurisdiction of the court under—
 - (i) a power conferred on the Registrar by a rule made under section 148; or
 - (ii) in the exercise of the powers under section 64(1)(b); and
 - (b) confirm, modify, or revoke that decision as the Judge thinks fit.
- (7) Unless otherwise directed by the court—
 - (a) every application and matter dealt with under this section must be determined on the papers; and
 - (b) every review under this section must be conducted on the papers.

Compare: 1908 No 89 s 61A(1), (2)

Section 49(3): replaced, on 14 November 2018, by section 162 of the Courts Matters Act 2018 (2018 No 50).

50 Court of Appeal to sit as full court in certain cases

- (1) The Court of Appeal must sit as a full court to hear and determine—
 - (a) cases that are considered, in accordance with the procedure adopted under section 51, to be of sufficient significance to warrant the consideration of a full court;
 - (b) a proceeding, case, or question referred under section 47(4) for hearing and determination by a full court;
 - (c) an appeal from a decision of the Court Martial Appeal Court under section 10 of the Court Martial Appeals Act 1953.
- (2) A full court of the Court of Appeal consists of 5 Judges.

- (3) A full court is constituted only by Judges of the Court of Appeal holding office under section 45(2).

Compare: 1908 No 89 s 58D

51 Cases of sufficient significance for full court

- (1) The question whether a case is of sufficient significance to warrant the consideration of a full court must be determined in accordance with the procedure adopted by the Judges of the Court of Appeal holding office under section 45(2).
- (2) The President of the Court of Appeal must publish the procedure on an Internet site maintained by or on behalf of the court.

Compare: 1908 No 89 s 58E

52 Authority of High Court Judges to act as Judges of Court of Appeal

- (1) The fact that a High Court Judge acts as a Judge of the Court of Appeal is conclusive evidence of the Judge's authority to do so. No judgment or determination given or made by the Court of Appeal while the Judge so acts may be questioned on the ground that the occasion for the Judge acting had not arisen or had ceased to exist.
- (2) A Judge of the High Court who has acted as a Judge of the Court of Appeal may attend sessions of the Court of Appeal for the purpose of giving a judgment or imposing a sentence or completing a proceeding heard by the Court of Appeal while the Judge acted as a Judge of the court.

Compare: 1908 No 89 s 58G

53 Judgment of Court of Appeal

- (1) The judgment of the Court of Appeal must be in accordance with the opinion of a majority of the Judges hearing the proceeding.
- (2) If the Judges are equally divided, the judgment or order appealed from or under review is taken as affirmed.
- (3) A judgment of the Court of Appeal may be given in the manner prescribed by rules made under section 148.

Compare: 1908 No 89 s 59

54 Sessions of Court of Appeal

- (1) The President of the Court of Appeal presides at a session of the court at which he or she is present.
- (2) If the President is not present, the senior Judge of the Court of Appeal who is present presides.

Compare: 1908 No 89 s 60(2), (3)

55 Adjourments

- (1) The Court of Appeal may adjourn a session of the court to a time and place appointed by the court.
- (2) One or more Judges of the Court of Appeal may adjourn a session of the Court of Appeal to a time and place appointed by the Judge or Judges if it is necessary to do so because 1 or more Judges of the Court of Appeal are not present at the session.
- (3) If none of the Judges is present at the time appointed for a session of the court, the Registrar of the Court of Appeal must adjourn the session and may determine the time and place of the next session.

Compare: 1908 No 89 ss 60(4), 61

Jurisdiction

56 Jurisdiction

- (1) The Court of Appeal may hear and determine appeals—
 - (a) from a judgment, decree, or order of the High Court:
 - (b) under the Criminal Procedure Act 2011:
 - (c) from any court or tribunal under any other Act that confers on the Court of Appeal jurisdiction and power to hear and determine an appeal.
- (2) Subsection (1) is subject to subsections (3) and (5) and to rules made under section 148.
- (3) No appeal, except an appeal under subsection (4), lies from any order or decision of the High Court made on an interlocutory application in respect of any civil proceeding unless leave to appeal to the Court of Appeal is given by the High Court on application made within 20 working days after the date of that order or decision or within any further time that the High Court may allow.
- (4) Any party to any proceedings may appeal without leave to the Court of Appeal against any order or decision of the High Court—
 - (a) striking out or dismissing the whole or part of a proceeding, claim, or defence; or
 - (b) granting summary judgment.
- (5) If the High Court refuses leave to appeal under subsection (3), the Court of Appeal may grant that leave on application made to the Court of Appeal within 20 working days after the date of the refusal of leave by the High Court.
- (6) If leave to appeal under subsection (3) or (5) is refused in respect of an order or a decision of the High Court made on an interlocutory application, nothing in this section prevents any point raised in the application for leave to appeal from being raised in an appeal against the substantive High Court decision.

Compare: 1908 No 89 s 66

57 Court of Appeal may remit proceeding to High Court

The Court of Appeal may—

- (a) remit a proceeding to the High Court; or
- (b) order a new trial in the High Court of a civil or criminal proceeding that is the subject of an appeal to the Court of Appeal.

Compare: 1908 No 89 s 62

58 Judgment of Court of Appeal may be enforced by High Court

A judgment, an order, or a decree of the Court of Appeal may be enforced by the High Court as if it had been given or made by the High Court.

Compare: 1908 No 89 s 63

59 Transfer of civil proceeding from High Court to Court of Appeal

- (1) A party to a civil proceeding in the High Court may apply for an order transferring the proceeding to the Court of Appeal.
- (2) In determining whether to make an order transferring the proceeding, the Court of Appeal must be satisfied that the circumstances of the proceeding are exceptional.
- (3) Without limiting subsection (2), the circumstances may be exceptional if—
 - (a) the party to the proceeding intends to submit that a relevant decision of the Court of Appeal should be overruled;
 - (b) the proceeding raises an issue of considerable public importance that—
 - (i) needs to be determined urgently; and
 - (ii) is unlikely to be determined urgently if the proceeding is heard and determined by both the High Court and the Court of Appeal;
 - (c) the proceeding does not raise a question of fact or a significant question of fact, but raises a question of law that is the subject of conflicting decisions of the Court of Appeal.
- (4) In deciding whether to make an order transferring the proceeding, the Court of Appeal must have regard to the following matters:
 - (a) the primary purpose of the Court of Appeal as an appellate court;
 - (b) the desirability of obtaining a determination of the proceeding in the High Court and a review of that determination on appeal;
 - (c) whether a full court of the High Court could effectively determine the question in issue;
 - (d) whether the proceeding raises a question of fact or a significant question of fact;
 - (e) whether the parties have agreed to the transfer of the proceeding;
 - (f) any other matter to which regard should be had in the public interest.

- (5) It is not a sufficient ground that the parties agree to the transfer.
- (6) The Court of Appeal has the jurisdiction of the High Court to hear and determine a proceeding transferred under this section.
- (7) The Court of Appeal may transfer back to the High Court a proceeding that has been transferred to the Court of Appeal.

Compare: 1908 No 89 s 64

60 Appeals against decisions of High Court on appeal from District Court, Family Court, or Youth Court

- (1) The decision of the High Court on appeal from the District Court, the Family Court, or the Youth Court is final unless a party, on application, obtains leave to appeal against the decision to the Court of Appeal.
- (2) An application under subsection (1) for leave to appeal to the Court of Appeal must be made to the High Court or, if the High Court refuses leave, to the Court of Appeal.
- (3) If leave to appeal is obtained under subsection (1), the decision of the Court of Appeal is final unless a party obtains leave to appeal against that decision to the Supreme Court.
- (4) If there is non-compliance with any procedural rules in relation to an application or appeal under this section before the Court of Appeal, the court may dismiss the application or appeal or deal with it in any other manner and on any terms that the court decides.
- (5) Subsections (1) to (4) are subject to Part 4.

Compare: 1908 No 89 s 67

61 Reasons for granting or refusing leave to appeal

- (1) The Court of Appeal may, but does not have to, give reasons for granting leave to appeal to the Court of Appeal.
- (2) The Court of Appeal must give reasons for refusing leave to appeal to the Court of Appeal.
- (3) Reasons given by the Court of Appeal may be stated—
 - (a) briefly; and
 - (b) in general terms only.

Compare: 2003 No 53 s 16

62 Procedure if Judges absent

- (1) This section applies if, because of the death or unavailability of 1 or 2 of the Judges of the Court of Appeal who are about to begin or have begun hearing a proceeding, only 2 of those Judges (in the case of a division of the court) or 3 or 4 of those judges (in the case of a full court) remain available to hear and determine the proceeding.

- (2) The remaining Judges must decide whether the proceeding must be adjourned or reheard, or may continue.
- (3) If the remaining Judges decide that the proceeding may continue,—
 - (a) they may—
 - (i) act as the Court of Appeal in relation to the proceeding and hear and determine the proceeding; and
 - (ii) make any order or decision on any interlocutory application; and
 - (iii) make any order or decision as to costs; and
 - (b) a reference in section 53(1) to a majority of the Judges hearing the proceeding must be read as a reference to the 2 remaining Judges (in the case of a division) or to a majority of those remaining Judges (in the case of a full court).
- (4) If the death or unavailability occurs while judgment is reserved in the proceeding, the remaining Judges must decide—
 - (a) whether the judgment should be produced or completed, and (if so) who should produce or complete the judgment; or
 - (b) whether the proceeding should be reheard.
- (5) If, at the time appointed for a session of the Court of Appeal, 1 or more Judges are absent, the Judge or Judges present may adjourn or further adjourn the session to some other time.
- (6) If none of the Judges of the Court of Appeal is present at the time appointed for a session of the court, the Registrar of the Court of Appeal must adjourn the session and may determine the time and place of the next session.

Compare: 2003 No 53 s 30

Registrar and other officers of Court of Appeal

63 Appointment of Registrar, Deputy Registrars, and other officers of Court of Appeal

A Registrar, Deputy Registrars, and other officers may be appointed under the Public Service Act 2020 for the conduct of the business of the Court of Appeal.

Compare: 1908 No 89 s 72

Section 63 heading: amended, on 1 July 2020, by section 139(1) of the Statutes Amendment Act 2019 (2019 No 56).

Section 63: amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 63: amended, on 1 July 2020, by section 139(2) of the Statutes Amendment Act 2019 (2019 No 56).

64 Powers of Registrar and Deputy Registrars

- (1) The Registrar has the powers and duties—

- (a) conferred by this Act, any other enactment, or rules made under section 148:
 - (b) necessary or desirable to ensure the efficient and effective administration of the business of the Court of Appeal.
- (2) A Deputy Registrar has the same duties and powers as the Registrar.
- (3) Subsection (2) is subject to a provision to the contrary in any rules made under section 148 or any other enactment.

Compare: 1908 No 89 s 73

Section 64 heading: amended, on 1 July 2020, by section 140(1) of the Statutes Amendment Act 2019 (2019 No 56).

Section 64(2): amended, on 1 July 2020, by section 140(2) of the Statutes Amendment Act 2019 (2019 No 56).

Part 4 Supreme Court

Preliminary matters

65 Interpretation

In this subpart, unless the context otherwise requires,—

civil proceeding—

- (a) means a proceeding that is not a criminal proceeding; and
- (b) includes a proceeding under the Bail Act 2000

decision includes a judgment, decree, order, direction, or determination

District Court includes—

- (a) the Family Court and the Youth Court; and
- (b) the District Court sitting in its admiralty jurisdiction

High Court includes the High Court sitting—

- (a) in its admiralty jurisdiction; or
- (b) as a permanent Prize Court under the jurisdiction conferred by section 8 of the Admiralty Act 1973

interlocutory application—

- (a) means an application in a proceeding or an intended proceeding for—
 - (i) an order or a direction relating to a matter of procedure; or
 - (ii) in the case of a civil proceeding, for relief ancillary to the relief claimed in the proceeding; and
- (b) includes an application for a new trial; and
- (c) includes an application to review a decision made on an interlocutory application

New Zealand court means—

- (a) the Supreme Court, the Court of Appeal, the High Court, or the District Court; or
- (b) any of the following specialist courts: the Court Martial of New Zealand established under section 8 of the Court Martial Act 2007, the Court Martial Appeal Court constituted by the Court Martial Appeals Act 1953, the Employment Court, the Environment Court, the Māori Appellate Court, and the Māori Land Court

Registrar means the Registrar of the Supreme Court appointed under section 87

Supreme Court means the Supreme Court continued by section 66.

Compare: 2003 No 53 s 4

Constitution of Supreme Court

66 Supreme Court continued

- (1) There continues to be a Supreme Court of New Zealand for the hearing of appeals in New Zealand on important legal matters, including matters relating to the Treaty of Waitangi, which would formerly have been determined by the Judicial Committee of the Privy Council.
- (2) The Supreme Court consists of—
 - (a) the Chief Justice; and
 - (b) no fewer than 4 nor more than 5 other Judges appointed by the Governor-General as Judges of the Supreme Court.
- (3) The Supreme Court is a court of record.
- (4) The jurisdiction of the Supreme Court is not affected by a vacancy in its membership.

Compare: 2003 No 53 ss 3(1), 6, 17

67 Seal

- (1) The Supreme Court must have a seal, and the Registrar of the Supreme Court is responsible for the seal.
- (2) The seal must be used for sealing judgments, orders, certificates, and any other document issued by the Supreme Court that must be sealed.

Compare: 2003 No 53 s 38

Jurisdiction of Supreme Court

68 Appeals against decisions of Court of Appeal in civil proceedings

The Supreme Court may hear and determine an appeal by a party to a civil proceeding in the Court of Appeal against a decision made in the proceeding, unless—

- (a) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (b) the decision is a refusal to give leave or special leave to appeal to the Court of Appeal.

Compare: 2003 No 53 s 7

69 Appeals against decisions of High Court in civil proceedings

The Supreme Court may hear and determine an appeal by a party to a civil proceeding in the High Court against a decision made in the proceeding, unless—

- (a) an enactment other than this Act makes provision to the effect that there is no right of appeal against the decision; or
- (b) the decision is a refusal to give leave or special leave to appeal to the High Court or the Court of Appeal; or
- (c) the decision is made on an interlocutory application.

Compare: 2003 No 53 s 8

70 Appeals against decisions of other courts in civil proceedings

The Supreme Court may hear and determine an appeal against a decision made in a civil proceeding in a New Zealand court other than the Court of Appeal or the High Court to the extent only that an enactment other than this Act provides for the bringing of an appeal against the decision to the Supreme Court.

Compare: 2003 No 53 s 9

71 Appeals against decisions in criminal proceedings

The Supreme Court may hear and determine appeals authorised by—

- (a) Part 6 of the Criminal Procedure Act 2011; or
- (b) section 10 or 10A of the Court Martial Appeals Act 1953.

Compare: 2003 No 53 s 10

72 Procedural requirements

Sections 68 to 71 are subject to—

- (a) this Act; and
- (b) all applicable rules, orders, and directions for regulating the terms and conditions on which appeals may be allowed, made, or given under this Act.

Compare: 2003 No 53 s 11

Leave to appeal

73 Appeals to be by leave

- (1) Appeals to the Supreme Court may be heard only with the court's leave.

- (2) A reference in an enactment other than this Act to the leave of the Supreme Court must be read subject to sections 74 and 75.

Compare: 2003 No 53 s 12

74 Criteria for leave to appeal

- (1) The Supreme Court must not give leave to appeal to it unless it is satisfied that it is necessary in the interests of justice for the court to hear and determine the appeal.
- (2) It is necessary in the interests of justice for the Supreme Court to hear and determine a proposed appeal if—
- (a) the appeal involves a matter of general or public importance; or
 - (b) a substantial miscarriage of justice may have occurred, or may occur unless the appeal is heard; or
 - (c) the appeal involves a matter of general commercial significance.
- (3) For the purposes of subsection (2)(a), a significant issue relating to the Treaty of Waitangi is a matter of general or public importance.
- (4) The Supreme Court must not give leave to appeal to it against an order made by the Court of Appeal on an interlocutory application unless satisfied that it is necessary in the interests of justice for the Supreme Court to hear and determine the proposed appeal before the proceeding concerned is concluded.
- (5) Subsection (2) does not limit the generality of subsection (1) and subsection (3) does not limit the generality of subsection (2)(a).

Compare: 2003 No 53 s 13

75 No direct appeal from court other than Court of Appeal unless exceptional circumstances established

The Supreme Court must not give leave to appeal directly to it against a decision made, a conviction entered, or a sentence imposed in a proceeding in a New Zealand court other than the Court of Appeal unless the court is satisfied,—

- (a) in accordance with section 74, that it is necessary in the interests of justice for the court to hear and determine the appeal; and
- (b) that there are exceptional circumstances that justify taking the proposed appeal directly to the court.

Compare: 2003 No 53 s 14

76 Applications for leave

- (1) The parties to an application for leave to appeal to the Supreme Court may make written submissions to the court, and may include in the submissions—
- (a) additional relevant written material; and
 - (b) responses to submissions made by another party.

- (2) Neither the parties nor their representatives have a right to appear before the court on the application; but the court may, if it thinks fit,—
 - (a) authorise the parties, their representatives, or both to appear;
 - (b) exclude from any authority to appear a party who is an appellant in custody.
- (3) In determining the application, the court must consider—
 - (a) the written submissions before it; and
 - (b) if an oral hearing was held, the matters raised at the hearing.
- (4) The court may consider the written submissions in any manner it thinks fit.
Compare: 2003 No 53 s 15

77 Court to state reasons for refusal to give leave

- (1) The Supreme Court must state its reasons for refusing to give leave to appeal to it.
 - (2) The reasons may be stated—
 - (a) briefly; and
 - (b) in general terms only.
- Compare: 2003 No 53 s 16

Powers and judgments of Supreme Court

78 Appeals to proceed by way of rehearing

Appeals to the Supreme Court proceed by way of rehearing.
Compare: 2003 No 53 s 24

79 General powers

- (1) On an appeal in a proceeding that has been heard in a New Zealand court, the Supreme Court—
 - (a) may make any order or grant any relief that could have been made or granted by that court; and
 - (b) even if the proceeding has not been heard in the Court of Appeal, has the powers the Court of Appeal would have if hearing the appeal.
 - (2) In a proceeding, the Supreme Court may, as it thinks fit, make—
 - (a) any ancillary order; and
 - (b) any order or decision on an interlocutory application; and
 - (c) any order as to costs.
- Compare: 2003 No 53 s 25

80 Power to remit proceeding

The Supreme Court may remit a proceeding that began in any New Zealand court to a New Zealand court that has jurisdiction to deal with it.

Compare: 2003 No 53 s 26

81 Exercise of powers of court

- (1) For the purposes of the hearing and determination of a proceeding, the Supreme Court comprises 5 Judges of the court.
- (2) Two or more permanent Judges of the Supreme Court may act as the court—
 - (a) to decide whether an oral hearing of an application for leave to appeal to the court should be held, or the application should be determined just on the basis of written submissions:
 - (b) to determine an application for leave to appeal to the court.
- (3) A judgment of the Supreme Court may be delivered in the manner and by the number of Judges provided by rules made under section 148.
- (4) This section is subject to sections 82(1) and 84(1).

Compare: 2003 No 53 s 27

82 Orders and directions on interlocutory applications may be made or given by 1 Judge

- (1) In a proceeding before the Supreme Court, a permanent Judge of the court may, on an interlocutory application, make any order and give any direction that the Judge thinks fit (other than an order or a direction excluded by subsection (2)).
- (2) Subsection (1) does not apply to an order or a direction that determines the proceeding or disposes of a question or an issue that is before the court in the proceeding.
- (3) A permanent Judge of the Supreme Court may—
 - (a) review a decision of the Registrar made within the civil jurisdiction of the court under a power conferred on the Registrar by a rule made under section 148; and
 - (b) confirm, modify, or revoke that decision as the Judge thinks fit.
- (4) The Judges of the Supreme Court who together have jurisdiction to hear and determine a proceeding may—
 - (a) discharge or vary an order or a direction made or given under subsection (1); or
 - (b) confirm, modify, or revoke a decision confirmed or modified under subsection (3).

Compare: 2003 No 53 s 28

83 Presiding Judge

- (1) The Chief Justice presides over the Supreme Court.
- (2) If the Chief Justice is absent, or the office of Chief Justice is vacant, the most senior available Judge of the Supreme Court presides over the court.
- (3) The fact that a Judge of the Supreme Court other than the Chief Justice presides over the court is conclusive proof of the Judge's authority to do so. No action of the Judge, and no judgment or decision of the court, may be questioned on the ground that the occasion for the Judge to preside over the court had not arisen or had ceased.

Compare: 2003 No 53 s 29

84 Procedure if Judges absent

- (1) This section applies if, because of the death or unavailability of 1 or 2 of the Judges of the Supreme Court who are about to begin or have begun hearing a proceeding, only 3 or 4 of those Judges remain available to hear and determine the proceeding.
- (2) The remaining Judges must decide whether the proceeding must be adjourned or reheard, or may continue.
- (3) If the remaining Judges decide that the proceeding may continue,—
 - (a) they may—
 - (i) act as the Supreme Court in relation to the proceeding and hear and determine the proceeding; and
 - (ii) make any order or decision on any interlocutory application; and
 - (iii) make any order or decision as to costs; and
 - (b) a reference in section 85(1) to a majority of the Judges hearing the proceeding must be read as a reference to a majority of those remaining Judges.
- (4) If the death or unavailability occurs while judgment is reserved in the proceeding, the remaining Judges must decide—
 - (a) whether the judgment should be produced or completed, and (if so) who should produce or complete the judgment; or
 - (b) whether the proceeding should be reheard.
- (5) If, at the time appointed for a session of the Supreme Court, 1 or more Judges are absent, the Judge or Judges present may adjourn or further adjourn the session to some other time.
- (6) If none of the Judges of the Supreme Court is present at the time appointed for a session of the court, the Registrar of the Supreme Court must adjourn the session and may determine the time and place of the next session.

Compare: 2003 No 53 s 30

85 Judgment of Supreme Court

- (1) The judgment of the Supreme Court must be in accordance with the opinion of a majority of the Judges hearing the proceeding concerned.
- (2) If the Judges are equally divided in opinion, the decision appealed from or under review is taken to be affirmed.

Compare: 2003 No 53 s 31

86 Decisions of Supreme Court may be enforced by High Court

A judgment, decree, or order of the Supreme Court may be enforced by the High Court as if it had been given or made by the High Court.

Compare: 2003 No 53 s 32

*Registrar and other officers of Supreme Court***87 Appointment of Registrar, Deputy Registrar, and other officers of Supreme Court**

- (1) A Registrar of the Supreme Court must be appointed under the Public Service Act 2020.
- (2) There may also be appointed under that Act Deputy Registrars of the Supreme Court, and any other officers required for the conduct of the court's business.

Compare: 2003 No 53 s 36

Section 87(1): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

88 Powers of Registrar

The Registrar, Deputy Registrars, and other officers of the Supreme Court have the powers and duties conferred or imposed by this Act, rules made under section 148, or any other enactment.

Compare: 2003 No 53 s 37

**Part 5
Senior court Judges***Head Judges***89 Head of New Zealand judiciary**

The Chief Justice is the head of the New Zealand judiciary.

Compare: 2003 No 53 s 18(1)

90 Head of Supreme Court

- (1) The Chief Justice is the head of the Supreme Court and is responsible for ensuring the orderly and efficient conduct of the Supreme Court's business.
- (2) The Chief Justice may make all necessary arrangements for—

- (a) the sessions of the Supreme Court; and
- (b) the conduct of the Supreme Court's business.

91 Head of Court of Appeal

- (1) The President of the Court of Appeal is the head of the Court of Appeal and is responsible to the Chief Justice for ensuring the orderly and efficient conduct of the Court of Appeal's business.
- (2) The President of the Court of Appeal may make all necessary arrangements for—
 - (a) the sessions of the Court of Appeal; and
 - (b) the conduct of the Court of Appeal's business.

92 Head of High Court

- (1) The Chief High Court Judge is the head of the High Court and is responsible to the Chief Justice for ensuring the orderly and efficient conduct of the High Court's business.
- (2) The Chief High Court Judge may make all necessary arrangements for—
 - (a) the sessions of the High Court; and
 - (b) the conduct of the High Court's business.

Compare: 1908 No 89 s 4B

Judicial appointment process

93 Attorney-General to publish information concerning judicial appointment process

The Attorney-General must publish information explaining his or her process for—

- (a) seeking expressions of interest for the appointment of Judges and Associate Judges; and
- (b) recommending persons for appointment as a Judge or an Associate Judge.

Eligibility for appointment

94 Eligibility for appointment as Judge or Associate Judge

- (1) A person may only be appointed a Judge or an Associate Judge if—
 - (a) that person has, for at least 7 years, held a New Zealand practising certificate as a barrister or as a barrister and solicitor; or
 - (b) that person—
 - (i) holds a degree in law granted or issued by any university within New Zealand; and

- (ii) has been admitted as a barrister and solicitor of the High Court; and
 - (iii) has held a practising certificate in a jurisdiction specified by Order in Council—
 - (A) for at least 7 years; or
 - (B) for a lesser number of years, but, when that number of years is added to the number of years that the person has held a New Zealand practising certificate, the total number of years is at least 7 years.
- (2) An order under subsection (1)(b)(iii) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1908 No 89 ss 6, 26C(4)

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 94(2): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

95 Eligibility for appointment as Court of Appeal Judge

A person may only be appointed a Court of Appeal Judge if that person is—

- (a) a High Court Judge; or
- (b) appointed a High Court Judge at the same time as being appointed a Court of Appeal Judge.

Compare: 1908 No 89 s 57(3)

96 Eligibility for appointment as Supreme Court Judge

A person may only be appointed a Supreme Court Judge if that person is—

- (a) a Court of Appeal Judge; or
- (b) a High Court Judge; or
- (c) appointed a High Court Judge at the same time as being appointed a Supreme Court Judge.

Compare: 2003 No 53 s 20(1)

97 Eligibility for appointment as Chief High Court Judge

A person may only be appointed the Chief High Court Judge if that person—

- (a) is—
 - (i) a High Court Judge; or

- (ii) appointed a High Court Judge at the same time as being appointed the Chief High Court Judge; but
- (b) is not—
 - (i) a Supreme Court Judge; or
 - (ii) a Court of Appeal Judge.

Compare: 1908 No 89 s 4A(1)

98 Eligibility for appointment as President of Court of Appeal

- (1) A person may only be appointed the President of the Court of Appeal if that person is—
 - (a) a High Court Judge; or
 - (b) appointed a High Court Judge at the same time as being appointed the President of the Court of Appeal.
- (2) If a person who is a Supreme Court Judge is appointed the President of the Court of Appeal, the person immediately ceases to hold office as a Supreme Court Judge.
- (3) A person who ceases to hold office as a Supreme Court Judge under subsection (2) may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the Supreme Court.

99 Eligibility for appointment as Chief Justice

- (1) A person may only be appointed the Chief Justice if that person is—
 - (a) a High Court Judge; or
 - (b) appointed a High Court Judge at the same time as being appointed the Chief Justice.
- (2) If a person who is a Court of Appeal Judge is appointed the Chief Justice, the person immediately ceases to hold office as a Court of Appeal Judge.
- (3) A person who ceases to hold office as a Court of Appeal Judge under subsection (2) may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the Court of Appeal.

Appointments

100 Judges appointed by Governor-General

- (1) A Judge is appointed by the Governor-General in the name and on behalf of Her Majesty.
- (2) The Chief Justice is appointed on the recommendation of the Prime Minister.

- (3) Every other Judge, and every Associate Judge, is appointed on the recommendation of the Attorney-General.

Compare: 1908 No 89 s 4(2); 2003 No 53 s 17(1)(b)

101 Appointment as permanent Judge

- (1) A Judge is appointed as a permanent Judge of a court unless the Judge is appointed as an acting Judge.
- (2) An Associate Judge is appointed as a permanent Associate Judge of the High Court unless the Associate Judge is appointed as an acting Associate Judge.

Compare: 1908 No 89 ss 4C(1), 26D(1), 57A(1)

102 High Court Judge or Associate Judge may not hold lower judicial office

- (1) When a person who is a District Court Judge is appointed a High Court Judge or an Associate Judge, that person ceases to hold office as a District Court Judge.
- (2) A person who ceases to hold office as a District Court Judge under subsection (1) may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the District Court.
- (3) When a person who is an Employment Court Judge is appointed a High Court Judge or an Associate Judge, that person ceases to hold office as an Employment Court Judge.
- (4) A person who ceases to hold office as an Employment Court Judge under subsection (3) may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by that person (either alone or with others) when he or she sat in the Employment Court.

103 Court of Appeal Judge continues as Judge of High Court

When a person who is a Judge of the High Court is appointed a Judge of the Court of Appeal, that person continues to be a Judge of the High Court and may sit as, or exercise the powers of, a Judge of the High Court.

Compare: 1908 No 89 s 57(4)

104 Supreme Court Judge continues as Judge of High Court but no other court

- (1) When a person who is a Judge of the High Court is appointed a Supreme Court Judge, that person—
- (a) continues to be a High Court Judge and may exercise any of the powers of a High Court Judge; but
 - (b) ceases to hold office as a Court of Appeal Judge if, immediately before being appointed a Supreme Court Judge, the person was a Court of Appeal Judge.

- (2) A Supreme Court Judge who ceases to hold office as a Judge of the Court of Appeal (under subsection (1)(b)) may nevertheless continue in that office to determine, give judgment in, or otherwise complete a proceeding heard by the Judge (either alone or with others) when he or she sat in that court.

Compare: 2003 No 53 ss 20(2), 21

105 Terms and conditions of appointment not to be changed without consent

- (1) No changes may be made to the terms and conditions of a Judge's appointment without the Judge's consent.
- (2) No changes may be made to the terms and conditions of an Associate Judge's appointment without the Associate Judge's consent.

Compare: 1908 No 89 ss 4C(7), 26D(7), 57A(7)

Part-time Judges

106 Attorney-General may authorise Judges to sit part-time

- (1) Judges (other than Supreme Court Judges) and Associate Judges may seek the authorisation of the Attorney-General to sit part-time for a specified period.
- (2) The Attorney-General may grant an authorisation sought by a Judge or an Associate Judge under subsection (1) only with the agreement of—
- (a) the President of the Court of Appeal, if the Judge is a Court of Appeal Judge;
- (b) the Chief High Court Judge, if—
- (i) the Judge is a High Court Judge but not a Court of Appeal Judge; or
- (ii) the Judge is an Associate Judge.
- (3) An authorisation may take effect from—
- (a) the date the Judge or Associate Judge commences office; or
- (b) any other date specified in the authorisation.
- (4) A Judge or an Associate Judge may be authorised to sit part-time for a specified period on more than 1 occasion.
- (5) A Judge or an Associate Judge authorised to sit part-time for a specified period resumes sitting on a full-time basis at the end of that period.

Compare: 1908 No 89 ss 4C(1)–(6), 26D(2)–(6), 57A(2)–(6)

Acting Judges

107 Acting Chief Justice

- (1) During any period that the office of the Chief Justice is vacant, the most senior available Judge of the Supreme Court is authorised to act as Chief Justice.

- (2) During any period that the Chief Justice is unable for any reason (including illness) to perform the duties of that office, the next most senior available Judge of the Supreme Court is authorised to act as Chief Justice.
- (3) A Judge authorised under subsection (1) or (2) to act as Chief Justice is empowered while so acting to—
 - (a) perform the duties of the Chief Justice; and
 - (b) exercise any power of the Chief Justice.
- (4) This section does not affect clause 12 of the Letters Patent Constituting the Office of Governor-General of New Zealand.
Compare: 2003 No 53 s 19(1)–(3), (5)

108 Acting President of Court of Appeal

- (1) During any period that the office of the President of the Court of Appeal is vacant, the most senior available Judge of the Court of Appeal is authorised to act as President of the Court of Appeal.
 - (2) During any period that the President of the Court of Appeal is unable for any reason (including illness) to perform the duties of that office, the next most senior available Judge of the Court of Appeal is authorised to act as President of the Court of Appeal.
 - (3) A Judge authorised under subsection (1) or (2) to act as President of the Court of Appeal is empowered while so acting to—
 - (a) perform the duties of the President of the Court of Appeal; and
 - (b) exercise any power of the President of the Court of Appeal.
- Compare: 1908 No 89 s 57(7)

109 Acting Chief High Court Judge

- (1) During any period that the office of the Chief High Court Judge is vacant, the most senior available Judge of the High Court is authorised to act as Chief High Court Judge.
 - (2) During any period that the Chief High Court Judge is unable for any reason (including illness) to perform the duties of that office, the next most senior available Judge of the High Court is authorised to act as Chief High Court Judge.
 - (3) A Judge authorised under subsection (1) or (2) to act as Chief High Court Judge is empowered while so acting to—
 - (a) perform the duties of the Chief High Court Judge; and
 - (b) exercise any power of the Chief High Court Judge.
- Compare: 1908 No 89 s 4A(4), (5)

110 Appointment of acting Judges of Supreme Court by Chief Justice

- (1) The Chief Justice, in consultation with the President of the Court of Appeal, may appoint a Court of Appeal Judge as an acting Supreme Court Judge to hear and determine 1 or more specified proceedings.
- (2) An appointment under subsection (1) may be made because of the absence, or anticipated absence, of any Judge of the Supreme Court, or for any other temporary purpose.
- (3) Only 1 Court of Appeal Judge appointed under subsection (1) may be present at a sitting of the Supreme Court for the hearing of a proceeding.
- (4) To avoid doubt, section 104 does not apply to a Court of Appeal Judge appointed under subsection (1).

Compare: 2003 No 53 s 23(4)

111 Appointment of acting Judges of Supreme Court by Governor-General

- (1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Judges of the Supreme Court.
- (2) A person is eligible for appointment under subsection (1) if that person is—
 - (a) a retired Supreme Court Judge; and
 - (b) under the age of 75 years.
- (3) During the term of his or her appointment under subsection (1), an acting Judge of the Supreme Court may only act to the extent authorised by the Chief Justice under subsection (4).
- (4) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court—
 - (a) to hear and determine any proceedings within a specified period; or
 - (b) to hear and determine 1 or more specified proceedings.
- (5) The Chief Justice may authorise an acting Judge to act as a member of the Supreme Court only if satisfied that—
 - (a) there is a vacancy in the Supreme Court; or
 - (b) a Judge of the Supreme Court is for any reason unavailable to hear proceedings or particular proceedings.
- (6) An acting Judge is authorised when the Chief Justice gives the Attorney-General a certificate under section 115.

Compare: 2003 No 53 s 23(1), (3)–(6)

112 Appointment of acting Judges of Court of Appeal

- (1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Judges of the Court of Appeal.
- (2) A person under the age of 75 years is eligible for appointment under subsection (1) if that person has retired or resigned from office as—

- (a) a Court of Appeal Judge; or
 - (b) a High Court Judge.
- (3) An appointment under subsection (1) may be made because of the illness or absence of any Judge of the Court of Appeal, or for any other temporary purpose.
- (4) During the term of his or her appointment, an acting Judge of the Court of Appeal may only act to the extent authorised by the President of the Court of Appeal.
- (5) An acting Judge of the Court of Appeal may be authorised by the President of the Court of Appeal to hear and determine proceedings within a specified period.

113 Appointment of acting Judges of High Court

- (1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Judges of the High Court.
- (2) A person under the age of 75 years is eligible for appointment under subsection (1) if that person—
- (a) has retired or resigned from office as—
 - (i) a High Court Judge; or
 - (ii) an Associate Judge; or
 - (iii) a District Court Judge; or
 - (b) is—
 - (i) an Associate Judge; or
 - (ii) a District Court Judge.
- (3) An appointment under subsection (1) may be made because of the illness or absence of any Judge of the High Court, or for any other temporary purpose.
- (4) During the term of his or her appointment, an acting Judge of the High Court may only act to the extent authorised by the Chief High Court Judge.
- (5) An acting Judge of the High Court may be authorised by the Chief High Court Judge to—
- (a) act during 1 or more specified periods; and
 - (b) act in 1 or more specified places.

Compare: 1908 No 89 ss 11(1), 11A(1), (2)

114 Appointment of acting Associate Judges

- (1) The Governor-General may, on the advice of the Attorney-General, appoint 1 or more acting Associate Judges.
- (2) A person is eligible for appointment under subsection (1) if the person—

- (a) is eligible under section 94 to be appointed an Associate Judge and is under the age of 75 years; or
 - (b) is a District Court Judge; or
 - (c) has retired or resigned from office as a District Court Judge.
- (3) An appointment under subsection (1) may be made because of the illness or absence of any Associate Judge, or for any other temporary purpose.
- (4) During the term of his or her appointment, an acting Associate Judge may only act to the extent authorised by the Chief High Court Judge.
- (5) An acting Associate Judge may be authorised by the Chief High Court Judge to—
- (a) act during 1 or more specified periods; and
 - (b) act in 1 or more specified places.

Compare: 1908 No 89 s 26H(1)

115 Requirements before Attorney-General gives advice on appointment of acting Judge

- (1) Before advising the Governor-General to make an appointment under any of sections 111 to 114, the Attorney-General must have received from the Chief Justice a certificate certifying that the appointment is necessary for the proper conduct of the court in respect of which the appointment is to be made.
- (2) A certificate required by subsection (1) must be signed by the Chief Justice.

Compare: 1908 No 89 s 11B; 2003 No 53 s 23(6)

116 Term of appointment of acting Judges appointed by Governor-General

- (1) An appointment under any of sections 111 to 114 must be for a specified term that—
- (a) is not more than the time until the Judge will reach the age of 75 years; and
 - (b) in any case, is not more than 2 years.
- (2) When an acting Judge's term of appointment ends, the acting Judge, if under the age of 75 years, may at any time be reappointed for a further 1 or more terms.
- (3) However, an acting Judge may not be reappointed for a term that, when aggregated with all previous terms, exceeds 5 years if that acting Judge is—
- (a) an acting Court of Appeal Judge appointed under section 112; or
 - (b) an acting High Court Judge appointed under section 113.

Compare: 1908 No 89 s 11(2); 2003 No 53 s 23(2)

117 Term of appointment of acting Associate Judges

- (1) An appointment under section 114 must be for a specified term that—

- (a) is not more than the time until the Associate Judge will reach the age of 75 years; and
 - (b) in any case, is not more than 2 years.
- (2) When an acting Associate Judge's term of appointment ends, the acting Associate Judge, if under the age of 75 years, may at any time be reappointed under section 114 for a further 1 or more terms.
- (3) However, an acting Associate Judge may not be reappointed under section 114 for a term that, when aggregated with all previous terms, exceeds 5 years.

Compare: 1908 No 89 s 26H(2)–(4)

118 Jurisdiction, powers, protections, etc, of acting Judges

- (1) An acting Judge, while acting to the extent authorised as a member of a court, has the jurisdiction, powers, protections, privileges, and immunities of a Judge of that court.
- (2) An acting Associate Judge, while acting to the extent authorised as a member of the High Court, has the jurisdiction, powers, protections, privileges, and immunities of an Associate Judge of that court.

Compare: 1908 No 89 ss 11A(4), 26Q; 2003 No 53 s 23(7)

119 Conclusive proof of authority to act

The fact that an acting Judge or acting Associate Judge does the following is conclusive proof of the Judge's authority to do so:

- (a) performs or exercises any function, duty, or power in reliance on section 107(3), 108(3), or 109(3):
- (b) acts to the extent authorised under section 110(1), 111(4), 112(5), 113(5), or 114(5) as a member of a court.

Compare: 1908 No 89 s 4A(6); 2003 No 53 ss 19(4), 23(9)

Seniority of Judges

120 Chief Justice most senior Judge

The Chief Justice is senior to all other Judges.

Compare: 2003 No 53 s 18(1)

121 Seniority of Supreme Court Judges

- (1) Supreme Court Judges are senior to—
- (a) Court of Appeal Judges; and
 - (b) High Court Judges who are not Supreme Court Judges.
- (2) Supreme Court Judges (other than the Chief Justice) are senior to each other in order of date of appointment.

- (3) If 2 or more Supreme Court Judges (other than the Chief Justice) have the same date of appointment, then seniority among those Judges is determined as follows:
- (a) Judges who have been Court of Appeal Judges are senior to Judges who have not been Court of Appeal Judges:
 - (b) Judges who have been Court of Appeal Judges have among themselves the seniority they would have if still Court of Appeal Judges:
 - (c) Judges who have not been Court of Appeal Judges but have previously been High Court Judges have seniority among themselves according to their seniority as High Court Judges:
 - (d) Judges who have not previously been High Court Judges but have previously held other judicial office in New Zealand are senior to Judges who have not previously held judicial office in New Zealand.

Compare: 2003 No 53 s 18(2)–(4)

122 Seniority of Court of Appeal Judges

- (1) Court of Appeal Judges are senior to High Court Judges.
- (2) The President of the Court of Appeal is senior to all other Court of Appeal Judges.
- (3) Court of Appeal Judges (other than the President) are senior to each other in order of date of appointment.
- (4) If 2 or more Court of Appeal Judges (other than the President) have the same date of appointment, then seniority among those Judges is determined according to their seniority as High Court Judges.

Compare: 1908 No 89 s 57(6)–(6C)

123 Seniority of High Court Judges

- (1) High Court Judges are senior to—
 - (a) Associate Judges; and
 - (b) District Court Judges.
- (2) Among the High Court Judges who are not Supreme Court Judges or Court of Appeal Judges,—
 - (a) the Chief High Court Judge is senior to those Judges:
 - (b) the other Judges are senior to each other in order of date of appointment:
 - (c) 2 or more High Court Judges having the same date of appointment—
 - (i) have seniority according to the precedence assigned to them by the Governor-General on appointment; or
 - (ii) if no precedence was assigned to them, according to the order in which they took the judicial oath.

- (3) To avoid doubt, a Court of Appeal Judge who resigns from that office without resigning as a High Court Judge has, as a High Court Judge, the seniority that he or she would have had if he or she had not been appointed a Court of Appeal Judge.

Compare: 1908 No 89 ss 4(3), 57(6D)

124 Permanent Judges senior to acting Judges

A permanent Judge of a court is senior to an acting Judge of the same court.

Compare: 1908 No 89 s 4(3A); 2003 No 53 s 18(5)

125 Seniority of acting Judges

Acting Judges of a court have among themselves the seniority they would have if they were permanent Judges of that court.

126 Seniority of Associate Judges

- (1) Associate Judges are senior to each other in order of date of appointment.
- (2) If 2 or more Associate Judges have the same date of appointment, then seniority among those Judges is determined according to—
- (a) the precedence assigned to them by the Governor-General on appointment; or
 - (b) if no precedence was assigned to them, the order in which they took the judicial oath.

Tenure of office

127 Tenure of Chief Justice

The Chief Justice continues to hold the office of Chief Justice until the earliest of the following:

- (a) the Chief Justice resigns from that office;
- (b) the Chief Justice resigns from office as a High Court Judge;
- (c) the Chief Justice retires;
- (d) the Chief Justice is removed from that office.

128 Tenure of President of Court of Appeal

The President of the Court of Appeal continues to hold the office of President of the Court of Appeal until the earliest of the following:

- (a) the President is appointed a Supreme Court Judge;
- (b) the President resigns from that office;
- (c) the President resigns from office as a High Court Judge;
- (d) the President retires;
- (e) the President is removed from that office.

129 Tenure of Chief High Court Judge

The Chief High Court Judge continues to hold the office of Chief High Court Judge until the earliest of the following:

- (a) the Judge is appointed a Supreme Court Judge:
- (b) the Judge is appointed a Court of Appeal Judge:
- (c) the Judge resigns from that office:
- (d) the Judge resigns from office as a High Court Judge:
- (e) the Judge retires:
- (f) the Judge is removed from that office.

Compare: 1908 No 89 s 4A(2)

130 Tenure of Supreme Court Judges, Court of Appeal Judges, High Court Judges, and Associate Judges

- (1) A Supreme Court Judge (other than the Chief Justice) continues to hold the office of Supreme Court Judge until the earliest of the following:
 - (a) the Judge resigns from that office:
 - (b) the Judge ceases to hold office as a Supreme Court Judge:
 - (c) the Judge resigns from office as a High Court Judge:
 - (d) the Judge retires:
 - (e) the Judge is removed from that office.
- (2) A Court of Appeal Judge (other than the President of the Court of Appeal) continues to hold the office of Court of Appeal Judge until the earliest of the following:
 - (a) the Judge resigns from that office:
 - (b) the Judge ceases to hold office as a Court of Appeal Judge:
 - (c) the Judge resigns from office as a High Court Judge:
 - (d) the Judge retires:
 - (e) the Judge is removed from that office.
- (3) A High Court Judge (other than the Chief High Court Judge) continues to hold the office of High Court Judge until the earliest of the following:
 - (a) the Judge resigns from that office:
 - (b) the Judge retires:
 - (c) the Judge is removed from that office.
- (4) An Associate Judge continues to hold the office of Associate Judge until the earliest of the following:
 - (a) the Judge resigns from that office:
 - (b) the Judge retires:

(c) the Judge is removed from that office.

Compare: 1908 No 89 ss 26C(6), 57(5); 2003 No 53 s 22

131 Resignation

- (1) A Judge may at any time, by written notice to the Attorney-General,—
- (a) resign from office as a High Court Judge; or
 - (b) resign from any of the following offices without resigning from office as a High Court Judge:
 - (i) Chief Justice:
 - (ii) President of the Court of Appeal:
 - (iii) Court of Appeal Judge:
 - (iv) Chief High Court Judge.
- (2) In subsection (1), **Judge** includes—
- (a) an acting Judge; and
 - (b) an Associate Judge; and
 - (c) an acting Associate Judge.

Compare: 1908 No 89 s 26E(2); 2003 No 53 s 23(10)

132 Governor-General must approve certain resignations

Before written notice is given to the Attorney-General under section 131(1), the approval of the Governor-General is required if—

- (a) the Chief Justice proposes to resign from that office without resigning from office as a Supreme Court Judge or High Court Judge:
- (b) the President of the Court of Appeal proposes to resign from that office without resigning from office as a Court of Appeal Judge or a High Court Judge:
- (c) a Court of Appeal Judge (other than the President of the Court of Appeal) proposes to resign from office without resigning from office as a High Court Judge:
- (d) the Chief High Court Judge proposes to resign from that office without resigning from office as a High Court Judge.

Compare: 1908 No 89 ss 4A(3), 57(5)

133 Judges to retire at 70 years

- (1) Every Judge must retire on attaining the age of 70 years, but may be appointed an acting Judge.
- (2) Every Associate Judge must retire on attaining the age of 70 years, but may be appointed an acting Associate Judge.

Compare: 1908 No 89 ss 13, 26E(3)

134 Removal from office

- (1) A High Court Judge may be removed from office only in accordance with section 23 of the Constitution Act 1986.
- (2) The Governor-General may, if the Governor-General thinks fit, remove an Associate Judge from office for inability or misbehaviour.

Compare: 1908 No 89 s 26E(1)

Salaries and allowances

135 Remuneration of Judges

- (1) Judges must be paid, out of public money, without further appropriation than this section,—
 - (a) salaries at such rates as the Remuneration Authority from time to time determines; and
 - (b) such allowances as the Remuneration Authority from time to time determines; and
 - (c) such additional allowances, being travelling allowances or other incidental or minor allowances, as the Governor-General may from time to time determine.

- (2) In this section,—

Judge means—

- (a) a permanent or an acting Judge of a senior court;
- (b) a Judge authorised to sit part-time in a senior court;
- (c) a permanent or an acting Associate Judge;
- (d) an Associate Judge authorised to sit part-time

senior court means—

- (a) the Supreme Court;
- (b) the Court of Appeal;
- (c) the High Court.

Compare: 1908 No 89 ss 9A(1), 26F(1); 1947 No 16 s 6(1)

Section 135 heading: replaced, on 1 July 2020, by section 141(1) of the Statutes Amendment Act 2019 (2019 No 56).

Section 135(1): amended, on 1 July 2020, by section 141(2) of the Statutes Amendment Act 2019 (2019 No 56).

Section 135(2): inserted, on 1 July 2020, by section 141(3) of the Statutes Amendment Act 2019 (2019 No 56).

136 Salaries and allowances of part-time Judges

The salary and allowances payable for a period during which a Judge or an Associate Judge acts on a part-time basis must be calculated and paid as a pro

rata proportion of the salary and allowances for a permanent Judge of that court (other than the head of that court) or an Associate Judge.

Compare: 1908 No 89 ss 9A(4), 26F(5)

137 Salaries and allowances of acting Judges

An acting Judge or acting Associate Judge, while acting as a member of a court to the extent authorised, but not otherwise, must be paid—

- (a) a salary at the rate for the time being payable to a permanent Judge of that court (other than the head of that court) or an Associate Judge; and
- (b) the allowances referred to in section 135(1)(c) payable to a Judge of that court (other than the head of that court) or an Associate Judge.

Compare: 1908 No 89 ss 11(3), 11A(3); 2003 No 53 s 23(8)

Section 137: amended, on 1 July 2020, by section 142(1) of the Statutes Amendment Act 2019 (2019 No 56).

Section 137(b): amended, on 1 July 2020, by section 142(2) of the Statutes Amendment Act 2019 (2019 No 56).

138 Superannuation of acting Judges

- (1) A superannuation subsidy must not be paid to a person who is appointed as an acting Judge or acting Associate Judge under section 111, 112, 113(2)(a), or 114(2)(c) (which relate to retired Judges and Judges who have resigned from office).
- (2) A person who is appointed as an acting Judge or acting Associate Judge under section 110, 113(2)(b), or 114(2)(b) (which relate to serving Judges) must not be paid a superannuation subsidy at a rate that is higher than the rate that would have been payable calculated only on the basis of the person's permanent appointment.
- (3) Subsection (1) does not apply to a compulsory employer contribution within the meaning of section 101A of the KiwiSaver Act 2006.

139 Superannuation or retiring allowances of Associate Judges

For the purpose of providing a superannuation fund or retiring allowance for persons appointed as Associate Judges, sums by way of subsidy or contribution may from time to time be paid under Part 5B of the Government Superannuation Fund Act 1956 or to any retirement scheme (within the meaning of section 6(1) of the Financial Markets Conduct Act 2013) in accordance with a determination of the Remuneration Authority.

Compare: 1908 No 89 s 26G

140 Higher duties allowance

- (1) In addition to the payments specified in sections 135 to 139, a higher duties allowance calculated in accordance with subsection (2) is—
 - (a) payable to a High Court Judge who—

- (i) is, or has been, serving as a member of—
 - (A) a division of the Court of Appeal; or
 - (B) the full Court of Appeal; but
 - (ii) is not, or was not, a permanent Court of Appeal Judge; and
 - (b) payable only in respect of the periods of the Judge’s service as a member of the division or full Court of Appeal.
- (2) The higher duties allowance is calculated at a rate expressed per day of service as a member of the division or full court in accordance with the following formula:

$$(a - b) \times c/d$$

where—

- a is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a permanent Court of Appeal Judge
 - b is the applicable yearly rate of salary determined by the Remuneration Authority to be payable to a Judge who is not a permanent Court of Appeal Judge
 - c is 0.0383561 (the standard payroll factor, which represents the proportion of an annual salary that is paid per fortnight)
 - d is 10 (the number of working days per fortnight).
- (3) In this section **permanent Court of Appeal Judge** means a Court of Appeal Judge holding office under section 45(2).

Compare: 1908 No 89 s 9A(1A)

141 Salary of Judge not to be reduced

- (1) As provided in section 24 of the Constitution Act 1986, the salary of a Judge or an Associate Judge must not be reduced during the continuance of the Judge’s appointment.
- (2) For the purpose of subsection (1), neither of the following is a reduction of salary:
 - (a) the payment of a salary on a pro rata basis under section 136:
 - (b) the cessation of the payment of a higher duties allowance payable and calculated under section 140.

Compare: 1908 No 89 ss 9A(5), 26F(2), (6)

Restrictions

142 Judge not to undertake other employment or hold other office

- (1) A Judge or an Associate Judge must not undertake any other paid employment or hold any other office (whether paid or not) without the approval of the Chief

Justice in consultation (in the case of an Associate Judge, a High Court Judge, or a Court of Appeal Judge) with the appropriate head of court.

- (2) An approval under subsection (1) may only be given if the appropriate head of court is satisfied that undertaking the employment or holding the office is consistent with the Judge's judicial office.
- (3) However, subsection (1) does not apply to another office if an enactment permits or requires the office to be held by a Judge.
- (4) In this section, **appropriate head of court** means—
 - (a) the President of the Court of Appeal, if the Judge is a Court of Appeal Judge;
 - (b) the Chief High Court Judge, if—
 - (i) the Judge is a High Court Judge but not a Court of Appeal Judge; or
 - (ii) the Judge is an Associate Judge.

Compare: 1908 No 89 ss 4(2A), 26C(5)

143 Protocol relating to activities of Judges

- (1) The Chief Justice must develop and publish a protocol containing guidance on—
 - (a) the employment, or types of employment, that he or she considers may be undertaken consistent with being a Judge or an Associate Judge; and
 - (b) the offices, or types of offices, that he or she considers may be held consistent with being a Judge or an Associate Judge.
- (2) The Chief Justice may only develop and publish a protocol under subsection (1) after consultation with—
 - (a) the President of the Court of Appeal; and
 - (b) the Chief High Court Judge.

144 Judge not to practise as lawyer

- (1) A Judge must not practise as a lawyer.
- (2) In subsection (1), **Judge** includes—
 - (a) an acting Judge; and
 - (b) an Associate Judge; and
 - (c) an acting Associate Judge.

Part 6

Rules of court and miscellaneous provisions

Rules of practice and procedure

145 Purpose of rules of practice and procedure

The purpose of rules of practice and procedure is to facilitate—

- (a) the just, speedy, and inexpensive dispatch of the business of the High Court, the Court of Appeal, and the Supreme Court; and
- (b) the administration of justice.

Compare: 1908 No 89 s 51C(1)

146 High Court Rules

- (1) The practice and procedure of the High Court in all civil proceedings is regulated by the High Court Rules.
- (2) The High Court Rules are subject to any other rules that are made under section 148 that regulate the practice and procedure of any senior court in any class of civil proceedings.
- (3) If any provision of the High Court Rules or of any rules made under section 148 restricts or excludes the application of any provisions of the High Court Rules, the provision giving effect to the restriction or exclusion has effect according to its terms.
- (4) If in any civil proceedings any question arises as to the application of any provision of the High Court Rules or of any rules made under section 148, the court may, either on the application of any party or on its own initiative, determine the question and give any directions that it thinks fit.
- (5) Subsection (1) is subject to—
 - (a) subsections (2) to (4); and
 - (b) sections 10, 40 to 43, 148 to 155, 162, 172, 176, and 181; and
 - (c) the Contempt of Court Act 2019.

Compare: 1908 No 89 s 51

Section 146(5)(b): replaced, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

Section 146(5)(c): inserted, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

147 High Court Rules part of Act

- (1) The High Court Rules set out in Schedule 2 of the Judicature Act 1908 as at the date that this Act receives the Royal assent continue in force and those rules, as altered, amended, added to, or revoked under section 148, are deemed to be part of this Act.

- (2) However, the High Court Rules and consolidations of those rules must be published, as the High Court Rules 2016, as if they were secondary legislation (rather than as part of this Act).
- (3) The Legislation Act 2019 applies accordingly to the rules published in that way.
- (4) The Chief Parliamentary Counsel may add to the rules, as published,—
 - (a) minimum legislative information (within the meaning of the Legislation Act 2019); and
 - (b) any other information that the Chief Parliamentary Counsel considers to be necessary or appropriate for the purposes of arranging publication of the rules and making them accessible for users.

Section 147(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 147(3): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 147(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

148 Rules of practice and procedure generally

- (1) The Governor-General may, by Order in Council, make rules of practice and procedure for each of the senior courts relating to the purpose stated in section 145.
- (2) Rules may be made only with the concurrence of the Chief Justice and 2 or more members of the Rules Committee of whom at least 1 is a Judge of the High Court.
- (3) The power to make rules includes the power to—
 - (a) alter, amend, add to, or revoke existing High Court Rules, other rules of the High Court, rules of the Court of Appeal, or rules of the Supreme Court; and
 - (b) revoke existing High Court Rules, other rules of the High Court, rules of the Court of Appeal, or rules of the Supreme Court and replace them with new rules; and
 - (c) fix scales of costs.
- (4) The following are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements):
 - (a) rules under this section:
 - (b) rules of practice and procedure for a senior court under any other enactment.

Compare: 1908 No 89 s 51C

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives <i>This note is not part of the Act.</i>	LA19 ss 115, 116

Section 148(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

149 Rules of practice and procedure of High Court

Without limiting the matters on which rules may be made under section 148, rules may be made under that section in relation to the practice and procedure of the High Court—

- (a) providing for the enforcement of judgments or orders, including by any of the following:
 - (i) an attachment order:
 - (ii) a charging order:
 - (iii) a sale order:
 - (iv) a possession order:
 - (v) a freezing order:
 - (vi) an arrest order:
 - (vii) a search order:
 - (viii) a contempt order:
 - (ix) a sequestration order:
- (b) providing that the purchaser of personal property sold by order of the court by way of enforcement of a judgment obtains good title to the property free of all ownership interests and other proprietary interests held in the property before that sale.

150 Rules of practice and procedure of Court of Appeal and Supreme Court

Without limiting the matters on which rules may be made under section 148, rules may be made under that section in relation to the practice and procedure of the Court of Appeal and the Supreme Court—

- (a) providing for the appointment of technical advisers, including—
 - (i) the information to be given to a party to an appeal, before a technical adviser is appointed for the appeal,—
 - (A) about the persons who are considered suitable for appointment; and
 - (B) about the matters on which the assistance of the proposed technical adviser is to be sought:

(ii) the submissions that those parties may make to the court about the proposed appointment of a technical adviser and the assistance to be given by the technical adviser:

(b) providing for the conduct of proceedings involving technical advisers.

Compare: 1908 No 89 s 99D

151 Rules conferring specified jurisdiction and powers of High Court Judge on Registrars and Deputy Registrars

(1) Rules may be made under section 148—

(a) conferring on a Registrar or Deputy Registrar of the High Court or the Court of Appeal or the Supreme Court the jurisdiction and powers of a Judge in chambers conferred by this Act or any other Act or by rules made under that section:

(b) containing any provisions that may be necessary to enable a Registrar or Deputy Registrar to exercise the jurisdiction and powers of a Judge in chambers.

(2) The jurisdiction and powers may be conferred on any of those specified offices or classes of those offices.

(3) A Registrar or Deputy Registrar on whom jurisdiction and powers are conferred may refer a matter to a Judge of the same court if the Registrar or Deputy Registrar considers the matter to be of special difficulty. The Judge may—

(a) dispose of the matter; or

(b) refer the matter back to the Registrar or Deputy Registrar with any directions the Judge thinks fit.

(4) A party to a proceeding or an intended proceeding who is dissatisfied with an order or a decision made by a Registrar or Deputy Registrar under rules made under section 148 may apply to the same court to review the order or decision. The court may then make any order or decision the court thinks just.

(5) The fact that a Registrar or Deputy Registrar has jurisdiction and powers under the rules does not prevent a Judge of the same court from exercising the jurisdiction and powers.

Compare: 1908 No 89 s 51F

152 Rules of practice and procedure under other Acts

The power to make rules of practice and procedure in relation to civil proceedings in the High Court, the Court of Appeal, or the Supreme Court under an Act other than this Act must be exercised in the manner prescribed by section 148.

Compare: 1908 No 89 s 51D

153 Power to prescribe procedure on applications to High Court, Court of Appeal, or Supreme Court

- (1) Despite anything to the contrary in any Act, rules may be made under section 148 prescribing the form and manner in which any class or classes of applications to the High Court or a High Court Judge or to the Court of Appeal or to the Supreme Court are to be made.
- (2) To the extent that the provisions of any Act prescribing the form or manner in which any of those applications are to be made (whether by petition, motion, summons, or otherwise) are inconsistent with or repugnant to rules made or having effect under this Act, the Act prescribing that form or manner is deemed to be subject to the rules made or having effect under this Act.

Compare: 1908 No 89 s 51E

154 Publication of High Court Rules under Legislation Act 2012

[Repealed]

Section 154: repealed, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

155 Rules Committee

- (1) For the purposes of this Act, the District Court Act 2016, the Criminal Procedure Act 2011, and any other relevant Act, there continues to be a Rules Committee consisting of—
 - (a) the Chief Justice:
 - (b) the Chief High Court Judge:
 - (c) 2 other Judges of the High Court appointed by the Chief Justice:
 - (d) the Chief District Court Judge:
 - (e) 1 other District Court Judge appointed by the Chief Justice on the recommendation of the Chief District Court Judge:
 - (f) the Attorney-General:
 - (g) the Solicitor-General:
 - (h) the chief executive of the ministry responsible for the administration of this Act:
 - (i) 2 persons, who are barristers and solicitors of the High Court, nominated by the Council of the New Zealand Law Society and approved by the Chief Justice.
- (2) The Chief Justice may appoint any other person to be a member of the Rules Committee for a special purpose. That person holds office during the pleasure of the Chief Justice.
- (3) The members appointed under subsection (1)(c), (e), and (i)—
 - (a) must be appointed for terms not exceeding 3 years:

- (b) may be reappointed:
- (c) may resign office by notice in writing to the Chief Justice.
- (4) The Rules Committee is a statutory board within the meaning of the Fees and Travelling Allowances Act 1951.
- (5) The members of the Rules Committee referred to in subsections (1)(i) and (2) may be paid fees, salary, and allowances in accordance with the Fees and Travelling Allowances Act 1951.

Compare: 1908 No 89 s 51B

Regulations

156 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) prescribing the applications, matters, and proceedings for which fees are payable under this Act:
 - (b) prescribing scales of fees for the purposes of this Act and for the purposes of any applications, matters, and proceedings before a senior court under this Act or any other enactment:
 - (c) prescribing the fees, travelling allowances, and expenses payable to interpreters and to persons giving evidence in proceedings to which this Act applies:
 - (d) in relation to a service performed by a Registrar or Deputy Registrar under this Act and specified in regulations made under paragraph (e), authorising a Registrar or Deputy Registrar to charge a reasonable fee calculated on the actual expense incurred in performing the service:
 - (e) specifying the services (other than services for which a fee is already prescribed under this Act) performed by a Registrar or Deputy Registrar under this Act for which that person may charge a fee:
 - (f) making provision in relation to the postponement, under the regulations, of the payment of any fee, which provision may (without limitation) include provision—
 - (i) for the recovery of the fee after the expiry of the period of postponement; and
 - (ii) for restrictions to apply (after the expiry of the period of postponement and so long as the fee remains unpaid) on the steps that may be taken in the proceedings in respect of which the fee is payable:
 - (g) altering or revoking any rules relating to fees contained in the High Court Rules, any rules made under section 148, or any other rules of court:

- (h) providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.
- (2) Regulations made under this section may prescribe different fees in respect of proceedings in different courts.
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1908 No 89 s 100A

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 156(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

157 Regulations providing for waiver, etc, of fees

- (1) In order to promote access to justice, the Governor-General may, by Order in Council, make regulations authorising a Registrar or Deputy Registrar of a senior court to waive, reduce, or postpone the payment of a fee required in connection with a proceeding or an intended proceeding, or to refund in whole or in part a fee that has already been paid.
- (2) Regulations made under subsection (1) must provide that a Registrar or Deputy Registrar may only exercise a power under the regulations if he or she is satisfied on the basis of prescribed criteria that—
 - (a) the person responsible for payment of the fee is unable to pay or absorb the fee in whole or in part; or
 - (b) unless 1 or more of those powers are exercised in respect of a proceeding that concerns a matter of genuine public interest, the proceeding is unlikely to be commenced or continued.
- (3) For the purposes of subsection (2), regulations may prescribe criteria—
 - (a) for assessing a person’s ability to pay a fee; and
 - (b) for identifying proceedings that concern matters of genuine public interest.
- (4) No fee is payable for an application for the exercise of a power specified in subsection (1).
- (5) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1908 No 89 s 100A(1)(d), (da)

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 157(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

158 Postponement of fees

- (1) The Governor-General may, by Order in Council, make regulations authorising a Registrar or Deputy Registrar to postpone the payment of a fee pending the determination of—
 - (a) an application for the exercise of a power specified in section 157(1); or
 - (b) an application for review under section 160.
- (2) No fee is payable for an application for the exercise of a power specified in subsection (1).
- (3) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1908 No 89 s 100A(1)(db)

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 158(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

159 Manner in which section 157 or 158 applications to be made

Regulations made under section 156 may provide for the manner in which an application for the exercise of a power specified in section 157(1) or 158(1) is to be made, including, without limitation, requiring an application to be in a form approved for the purpose by the chief executive of the Ministry of Justice.

Compare: 1908 No 89 s 100A(1)(dd)

160 Review of Registrar's decision concerning fees

- (1) A person who disagrees with a decision of a Registrar or Deputy Registrar under regulations made under section 157(1) may apply to a Judge or an Associate Judge of the relevant court to review the decision.
- (2) The application must be made within—

- (a) 20 working days after the date on which the applicant is notified of the decision; or
 - (b) any further time that the Judge or Associate Judge allows on application, which may be made either before or after the expiry of that period.
- (3) The application may be made informally.
- (4) A review is—
 - (a) conducted by way of rehearing of the matter in respect of which the Registrar or Deputy Registrar made the decision; and
 - (b) dealt with on the papers, unless the Judge or Associate Judge directs otherwise.
- (5) The Judge or Associate Judge may confirm, modify, or reverse the decision of the Registrar or Deputy Registrar.
- (6) No fee is payable on the application.

Compare: 1908 No 89 s 100B

161 Judge or Registrar may waive certain fees

A Judge or Registrar of a senior court may, subject to any terms or conditions that the Judge or Registrar thinks fit, waive the payment of a fee prescribed under section 156 for accessing documents (in whole or in part) if the Judge or Registrar is satisfied that the person is unable, or should not be required, to pay the fee.

Costs

162 Jurisdiction of court to award costs in all cases

- (1) If any Act confers jurisdiction on the High Court or a Judge of the High Court for the purpose of any civil proceedings or any criminal proceedings or any appeal, without expressly conferring jurisdiction to award or otherwise deal with the costs of the proceedings or appeal, jurisdiction to award and deal with those costs and to make and enforce orders relating to costs must be treated as also having been conferred on the court or Judge.
- (2) Costs may be awarded or otherwise dealt with under subsection (1) at the discretion of the court or Judge, and may, if the court or Judge thinks fit, be ordered to be charged on or paid out of any fund or estate before the court.

Compare: 1908 No 89 s 51G

Appointment of technical advisers

163 Court of Appeal and Supreme Court may appoint technical advisers

- (1) The Court of Appeal or the Supreme Court may appoint a suitably qualified person (a **technical adviser**) to assist it by giving advice in an appeal in a proceeding involving a question arising from evidence relating to scientific, tech-

nical, or economic matters, or from other expert evidence, if the court is of the opinion that it is desirable to have expert assistance.

- (2) The technical adviser must give the advice in the manner directed by the court during the course of the proceeding on any question referred to the technical adviser.
- (3) Advice given by a technical adviser—
 - (a) is information provided to the court; and
 - (b) may be given the weight the court thinks fit.

Compare: 1908 No 89 s 99B

164 Appointment and other matters

- (1) A technical adviser may be appointed by the court under section 163 on—
 - (a) its own initiative; or
 - (b) the application of a party to the proceeding.
- (2) A technical adviser may be removed from office by the court for disability affecting the performance of duty, neglect of duty, bankruptcy, or misconduct proved to the satisfaction of the court.
- (3) A technical adviser may resign office by notice in writing to the court.
- (4) The remuneration of a technical adviser must—
 - (a) be fixed by the court; and
 - (b) include a daily fee for each day on which the technical adviser is required to assist the court.
- (5) Civil or criminal proceedings may not be commenced against a technical adviser in relation to advice given to the court in good faith.

Compare: 1908 No 89 s 99C

Contempt

[Repealed]

Heading: repealed, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

165 Contempt of court

[Repealed]

Section 165: repealed, on 26 August 2020, by section 29 of the Contempt of Court Act 2019 (2019 No 44).

Restriction on commencing or continuing proceeding

166 Judge may make order restricting commencement or continuation of proceeding

- (1) A Judge of the High Court may make an order restricting a person from commencing or continuing a civil proceeding.
- (2) The order may have—
 - (a) a limited effect (a **limited order**); or
 - (b) an extended effect (an **extended order**); or
 - (c) a general effect (a **general order**).
- (3) A limited order restrains a party from commencing or continuing civil proceedings on a particular matter in a senior court, another court, or a tribunal.
- (4) An extended order restrains a party from commencing or continuing civil proceedings on a particular or related matter in a senior court, another court, or a tribunal.
- (5) A general order restrains a party from commencing or continuing civil proceedings in a senior court, another court, or a tribunal.
- (6) Nothing in this section limits the court's inherent power to control its own proceedings.

167 Grounds for making section 166 order

- (1) A Judge may make a limited order under section 166 if, in civil proceedings about the same matter in any court or tribunal, the Judge considers that at least 2 or more of the proceedings are or were totally without merit.
- (2) A Judge may make an extended order under section 166 if, in at least 2 proceedings about any matter in any court or tribunal, the Judge considers that the proceedings are or were totally without merit.
- (3) A Judge may make a general order if, in at least 2 proceedings about any matter in any court or tribunal, the Judge considers that the proceedings are or were totally without merit.
- (4) In determining whether proceedings are or were totally without merit, the Judge may take into account the nature of any interlocutory applications, appeals, or criminal prosecutions involving the party to be restrained, but is not limited to those considerations.
- (5) The proceedings concerned must be proceedings commenced or continued by the party to be restrained, whether against the same person or different persons.
- (6) For the purpose of this section and sections 168 and 169, an appeal in a civil proceeding must be treated as part of that proceeding and not as a distinct proceeding.

168 Terms of section 166 order

- (1) An order made under section 166 may restrain a party from commencing or continuing any proceeding (whether generally or against any particular person or persons) of any type specified in the order without first obtaining the leave of the High Court.
- (2) An order made under section 166, whether limited, extended, or general, has effect for a period of up to 3 years as specified by the Judge, but the Judge making it may specify a longer period (which must not exceed 5 years) if he or she is satisfied that there are exceptional circumstances justifying the longer period.

169 Procedure and appeals relating to section 166 orders

- (1) A party to any proceeding may apply for a limited order or an extended order.
- (2) Only the Attorney-General may apply for a general order.
- (3) A Judge of the High Court may make a limited order, an extended order, or a general order either on application (under subsection (1) or (2), as applicable) or on his or her own initiative.
- (4) An application for leave to continue or commence a civil proceeding by a party subject to a section 166 order may be made without notice, but the court may direct that the application for leave be served on any specified person.
- (5) An application for leave must be determined on the papers, unless the Judge considers that an oral hearing should be conducted because there are exceptional circumstances and it is appropriate to do so in the interests of justice.
- (6) The Judge's determination of an application for leave is final.
- (7) A section 166 order does not prevent or affect the commencement of a private criminal prosecution in any case.
- (8) The party against whom a section 166 order is made may appeal against the order to—
 - (a) the Court of Appeal;
 - (b) the Supreme Court, with the leave of that court, in any case.
- (9) The appellant in an appeal to the Court of Appeal under subsection (8) or the applicant for the section 166 order concerned may, with the leave of the Supreme Court, appeal to the Supreme Court against the determination of that appeal by the Court of Appeal.
- (10) A court determining an appeal under this section has the same powers as the court appealed from has to determine an application or appeal, as the case may be.
- (11) In this section, a **section 166 order** means an order made under section 166.

Compare: 1908 No 89 s 88B

Reserved judgments

170 Reserved judgments

- (1) The Chief High Court Judge must, in consultation with the Chief Justice,—
 - (a) publish information about the process by which parties to proceedings before the High Court may obtain information about the status of any reserved judgment in those proceedings; and
 - (b) periodically publish information about the number of judgments of the court that he or she considers are outstanding beyond a reasonable time for delivery; and
 - (c) publish any other information about reserved judgments that he or she considers is useful.
- (2) The President of the Court of Appeal must, in consultation with the Chief Justice,—
 - (a) publish information about the process by which parties to proceedings before the Court of Appeal may obtain information about the status of any reserved judgment in those proceedings; and
 - (b) periodically publish information about the number of judgments of the court that he or she considers is outstanding beyond a reasonable time for delivery; and
 - (c) publish any other information about reserved judgments that he or she considers is useful.
- (3) The Chief Justice must—
 - (a) publish information about the process by which parties to proceedings before the Supreme Court may obtain information about the status of any reserved judgment in those proceedings; and
 - (b) periodically publish information about the number of judgments of the court that he or she considers are outstanding beyond a reasonable time for delivery; and
 - (c) publish any other information about reserved judgments that he or she considers is useful.

Recusal

171 Recusal guidelines

- (1) The Chief High Court Judge and the President of the Court of Appeal must, in consultation with the Chief Justice, develop and publish guidelines for their respective courts to assist Judges to decide if they should recuse themselves from a proceeding.
- (2) The Chief Justice must develop and publish guidelines to assist Supreme Court Judges to decide if they should recuse themselves from a proceeding.

*Foreign creditors***172 Memorials of judgments obtained out of New Zealand may be registered**

- (1) This section applies to any judgment, decree, rule, or order (the **judgment**) obtained in any court of any Commonwealth country (the **overseas court**) for the payment of money.
- (2) A person in whose favour the judgment was obtained may file in the High Court a memorial containing the specified particulars that is authenticated by the seal of that court. Once filed, the memorial becomes a record of the judgment and execution may issue upon it in accordance with this section.
- (3) The memorial must be signed by a party in whose favour the judgment was obtained or by the party's lawyer, and must contain—
 - (a) the names and additions of the parties; and
 - (b) the form or nature of the action or other proceeding; and
 - (c) when commenced, the date of the signing or entering-up of the judgment, the passing of the decree, or the making of the rule or order; and
 - (d) the amount recovered, or the decree pronounced, or rule or order made; and
 - (e) if there was a trial, the date of the trial and amount of verdict given.
- (4) A seal purporting to be the seal of an overseas court is deemed and taken to be the seal of the court until the contrary is proved, and the onus of proving that the seal is not the seal of the court lies on the party denying or objecting to the seal.
- (5) A party in whose favour the judgment was obtained, or the party's lawyer, may apply to the High Court or any Judge of the court for the making of a rule or the issue of a summons calling on the person against whom the judgment was obtained to show cause, within the time after personal or other service of the rule or summons as the court or Judge directs, why execution should not issue upon the judgment.
- (6) The rule or summons must give notice that, in default of appearance, execution may issue accordingly, and if the person served with the rule or summons does not appear, or does not show sufficient cause against such rule or summons, the court or Judge, on due proof of service under subsection (5), may make the rule absolute or make an order for issuing execution, subject to any terms and conditions (if any) that the court or Judge thinks fit.
- (7) The judgment may be enforced in the same manner as a judgment of the High Court.
- (8) This section is subject to section 13 of the Reciprocal Enforcement of Judgments Act 1934.

Compare: 1908 No 89 s 56

Access to information

173 Access to court information, judicial information, or Ministry of Justice information

- (1) Any person may have access to court information of a senior court to the extent provided by, and in accordance with, rules of court.
- (2) Access to judicial information is not subject to any enactment that applies to the provision of, or access to, any other information.
- (3) Any person may have access to any Ministry of Justice information to the extent provided by, and in accordance with, the Official Information Act 1982, the Privacy Act 2020, the Public Records Act 2005, or any other enactment providing for or regulating access to the information.
- (4) In this section, **court information**, **judicial information**, and **Ministry of Justice information** mean the documents and information described as such in Schedule 2.

Section 173(3): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

174 Sharing of permitted information with other agencies

- (1) This section applies to permitted information specified in Part B of the items relating to court information in Schedule 2, regardless of whether the information is controlled by the judiciary.
- (2) In response to a request from an agency for information to which this section applies, the Ministry of Justice may, by way of an approved information sharing agreement under the Privacy Act 2020, share any permitted information with the agency.
- (3) The Ministry of Justice holds permitted information solely for the purpose of entering into approved information sharing agreements under the Privacy Act 2020, and that information is not otherwise subject to the Privacy Act 2020 and is not subject to the Official Information Act 1982 or the Public Records Act 2005.
- (4) Nothing in this section or an approved information sharing agreement under the Privacy Act 2020 requires the Ministry of Justice to disclose any matter suppressed by or under a court order or any enactment.
- (5) The Governor-General may, by Order in Council made on the recommendation of the Minister of Justice, amend or replace Part B of the items relating to court information in Schedule 2.
- (6) The Minister of Justice may make a recommendation under subsection (5) only after consultation with the Attorney-General and with the consent of the Chief Justice.
- (7) An order under subsection (5) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the <i>Gazette</i>	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 174(2): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 174(3): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 174(4): amended, on 1 December 2020, by section 217 of the Privacy Act 2020 (2020 No 31).

Section 174(7): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

175 Requirements that Registrars disclose information

- (1) If any enactment requires a Registrar to notify a registration authority of certain information about any court proceedings, that requirement is not affected by any suppression order imposed by the court or by operation of law.
- (2) Even if the enactment provides that the court may order otherwise in any case, the requirement is not affected by any suppression order imposed by the court unless the court specifically orders otherwise in that case.

*Payment of fees collected***176 Fees to be paid into Crown Bank Account**

All fees taken or received under this Act must be paid into a Crown Bank Account.

Compare: 1908 No 89 ss 42, 53

*Provisions and rules of general application***177 Judicial officers to continue in office to complete proceedings**

- (1) This section applies to proceedings in a senior court, another court, or a tribunal.
- (2) A judicial officer whose term of office has expired or who has retired may continue in office for the purpose of completing the hearing of a matter, or determining or giving judgment in proceedings, that the judicial officer has heard either alone or with others.
- (3) A judicial officer must not continue in office under subsection (1) for longer than 3 months without the consent of the nominating Minister.
- (4) The fact that a judicial officer continues in office does not affect the power to appoint another person to that office.

- (5) A judicial officer who continues in office is entitled to be paid the appropriate rate for the days or half-days worked in completing the proceedings, and that rate is the rate of the remuneration and allowances to which the officer would have been entitled for those days or half-days if the term of office had not expired or the officer had not retired.
- (6) In this section, **judicial officer** means a person who has in New Zealand authority under an enactment to hear, receive, and examine evidence.

Compare: 1908 No 89 s 88A

178 Costs where intervener or counsel assisting court appears

- (1) This section applies to proceedings in any senior court or other court.
- (2) If the Attorney-General or the Solicitor-General or any other person appears as an intervener or counsel to assist the court in any civil proceedings or in any proceedings on any appeal and argues any question of law or of fact arising in the proceedings, the court may, subject to the provisions of any other Act, make any order it thinks just—
 - (a) as to the payment by any party to the proceedings of the costs incurred by the Attorney-General or the Solicitor-General in so doing; or
 - (b) as to the payment by any party to the proceedings or out of public funds of the costs incurred by any other person in so doing; or
 - (c) as to the payment by the Attorney-General or the Solicitor-General or that other person of any costs incurred by any of those parties by reason of his or her so doing.
- (3) If the court makes an order under subsection (2)(b), the Registrar of the court must forward a copy of the order to the chief executive of the Ministry of Justice who must make the payment out of money appropriated by Parliament for the purpose.

Compare: 1908 No 89 s 99A

179 Judgment against one of several persons jointly liable not a bar to action against others

- (1) This section applies to proceedings in any senior court or other court.
- (2) A judgment against 1 or more of several persons jointly liable does not operate as a bar or defence to civil proceedings against any of the persons against whom judgment has not been recovered, except to the extent to which the judgment has been satisfied.
- (3) This section does not apply to any action or other proceeding to which Part 5 of the Law Reform Act 1936 applies.

Compare: 1908 No 89 s 94

180 Rules of equity prevail over rules of common law

- (1) This section applies to proceedings in a senior court, another court, or a tribunal where equitable jurisdiction may be exercised.
- (2) If there is any conflict or variance between the rules of equity and the rules of the common law in relation to the same matter, the rules of equity prevail.

Compare: 1908 No 89 s 99

*Discharge of jurors***181 Discharge of juror or jury**

Nothing in this Act affects the powers of a court or Judge to discharge a juror or jury for a civil case under section 22 of the Juries Act 1981.

Compare: 1908 No 89 s 54B

*Repeals, revocations, consequential amendments, and savings and transitional provisions***182 Repeals**

- (1) Sections 51A to 51F and 99D of the Judicature Act 1908 are repealed.
- (2) The rest of the Judicature Act 1908 (1908 No 89), except section 87 of that Act, is repealed.
- (3) The Supreme Court Act 2003 (2003 No 53) is repealed.
- (4) Section 87 of the Judicature Act 1908 is repealed.

183 Consequential amendments

The enactments specified in each of the following Schedules are consequentially amended in the manner indicated in that schedule:

- (a) Schedule 1:
- (b) Schedule 3:
- (c) Schedule 4.

184 Regulations continued

- (1) The following regulations continue in force and are deemed to have been made under section 156:
 - (a) the Court of Appeal Fees Regulations 2001:
 - (b) the High Court Fees Regulations 2013:
 - (c) the Supreme Court Fees Regulations 2003:
 - (d) the Witnesses and Interpreters Fees Regulations 1974.
- (2) The regulations continued in force by this section may be amended, revoked, or replaced under section 156.

185 Rules continued

- (1) The following rules continue in force and are deemed to have been made under section 148:
 - (a) the Court of Appeal (Access to Court Documents) Rules 2009:
 - (b) the Court of Appeal (Civil) Rules 2005:
 - (c) the Court of Appeal (Criminal) Rules 2001:
 - (d) the Court of Appeal (List Election Petitions) Rules 1998:
 - (e) the Evidence (Trans-Tasman Service of, and Compliance with, New Zealand Subpoenas and Australian Subpoenas Issued in Criminal Proceedings) Rules 2013:
 - (f) the Supreme Court Rules 2004:
 - (g) the Trans-Tasman Proceedings Regulations and Rules 2013.
- (2) The rules continued in force by this section may be amended, revoked, or replaced under section 148.
- (3) The repeal of sections 51A to 51D of the Judicature Act 1908 by section 182(1) does not affect—
 - (a) the Constituency Election Petition Rules 2008:
 - (b) the Court Martial Appeal Court Rules 2008:
 - (c) the Criminal Procedure Rules 2012:
 - (d) the Criminal Proceedings (Enforcement of Fines) Rules 2011:
 - (e) the Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008.

186 Transitional provisions

The transitional provisions set out in Schedule 5 apply.

Schedule 1

Consequential amendments to High Court Rules 2016

s 183(a)

High Court Rules 2016

In rule 1.3(1), replace the definition of **Act** with:

Act means the Senior Courts Act 2016

In rule 1.3(1), definition of **court**, paragraph (b), replace “section 26J” with “section 148”.

In rule 1.3(1), definition of **Judge**, replace “section 26J” with “section 22”.

Replace rule 1.4(3)(a) with:

(a) the enactments referred to in section 146(5) of the Act:

In rule 1.4(3)(d), replace “section 51C” with “section 148”.

After rule 1.4, insert:

1.4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.

In rule 2.1(2), replace “section 26I of the Act” with “section 20 of the Act”.

Replace rule 2.1(3) with:

(3) Despite subclause (1), an Associate Judge does not have jurisdiction or powers in respect of the matters specified in section 22(4) of the Act.

In rule 2.2, replace “section 26N(1) of the Act” with “section 26(1) of the Act”.

Revoke rule 2.3.

Revoke rule 2.4.

In rule 2.11(3), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In rule 3.3(3)(b), delete “despite section 54 of the Act,”.

Replace rule 4.4(3) with:

(3) A third party notice may be issued only with the leave of the court if an application for judgment is pending under rule 12.2 or 12.3.

In rule 4.6(3), replace “Rule” with “Rules”.

In rule 5.1(d)(i), replace “Part 1 of the Judicature Amendment Act 1972” with “the Judicial Review Procedure Act 2016”.

In rule 5.64(1), replace “made under section 43, 44, or 45 of the District Courts Act 1947” with “made under any of sections 86 to 91 of the District Court Act 2016”.

In rule 5.64(2), replace “made under section 43(6) of the District Courts Act 1947” with “made under section 89 of the District Court Act 2016”.

High Court Rules 2016—*continued*

Replace rule 5.69 with:

5.69 Transfer under section 91 of District Court Act 2016

- (1) An application under section 91 of the District Court Act 2016 must be by interlocutory application.
- (2) It must,—
 - (a) if made by the counterclaimant, be made within 5 working days after the counterclaim or set-off and counterclaim is filed in the District Court;
 - (b) if made by the party against whom the counterclaim or set-off and counterclaim is made, be made within 5 working days after service on that party.
- (3) At any time after an application under subclause (1) has been filed, the court may order the proceedings in the District Court to be stayed pending its disposal.
- (4) The order in subclause (3) may be made without notice and subject to any conditions or undertakings that the court thinks just.
- (5) If the court orders that the counterclaim or set-off and counterclaim alone be transferred, references in these rules to the plaintiff must be read as references to the counterclaimant and references to the defendant must be read as references to the party against whom the counterclaim or set-off and counterclaim is made.

Compare: 1908 No 89 Schedule 2 r 5.69 (as substituted by 2008 No 90 s 8)

After rule 5.73A, insert:

Subpart 15—Registration of users for e-filing purposes

5.74 Interpretation

In this subpart and in subpart 16, unless the context otherwise requires,—

e-file means to file a document electronically (as those concepts are defined in rule 1.3)

formal undertaking is an undertaking by a party or a party's solicitor on the record to do or abstain from doing some specified thing

registered user means a lawyer or a firm of lawyers registered to e-file documents under these rules

working hours means hours, whether on the same day as the day on which a document was received in a registry or on that day and the next day during which the registry of the court is open.

High Court Rules 2016—continued**5.75 Registration procedure**

- (1) A lawyer or a firm of lawyers may apply in writing to a Registrar for registration under this subpart.
- (2) The Registrar must register the applicant as a registered user if—
 - (a) the applicant has, in the Registrar’s opinion, instituted sufficient measures to prevent unauthorised persons filing documents in the applicant’s name; and
 - (b) the applicant has nominated an acceptable electronic address for service; and
 - (c) the applicant’s name is sufficiently distinctive to avoid confusion between the applicant and another firm or lawyer (including that part of a partnership that has an office in a different place).
- (3) The Registrar may require an applicant to supply the names of those persons who are, from time to time, authorised to e-file on behalf of the applicant.
- (4) No fee is chargeable for registration.
- (5) When granting the application, the Registrar must—
 - (a) assign the registered user an electronic identity for use whenever a document is e-filed; and
 - (b) open an account in the name of the registered user.
- (6) The Registrar must keep a register recording the name, electronic address for service, and electronic identity of each registered user and the date of that user’s registration under this subpart.
- (7) The register kept under subclause (6) may be searched by or on behalf of a registered user.

5.76 Effect of registration

- (1) A registered user may e-file any document that complies with subpart 16.
- (2) A registered user may file any document in hard copy by physical lodgement (whether or not that document has already been e-filed).
- (3) If there is any difference between the content of an e-filed document and the filed hard-copy version of the same document, the hard-copy version prevails, and the document is treated as filed when it is physically lodged.

5.77 Renewal of registration

Registration lasts 36 months and is then renewable.

High Court Rules 2016—continued

Subpart 16—E-filing documents

5.78 Requirements for e-filing

- (1) A document may be e-filed if it complies with this rule.
- (2) An electronic communication sent with a document for e-filing must be authenticated by a current electronic identity assigned by the Registrar.
- (3) A document that is e-filed, and any electronic communication by which the document is e-filed, must comply with the requirements set out in a practice note issued by the Chief Judge or by a list Judge for a particular registry of the court with the approval of the Chief Judge.
- (4) The practice note may also limit the number of documents that may be filed on a single occasion or in a stated period, and impose other requirements to ensure that electronic filing is convenient to registered users and is efficient and reliable and causes no injustice to other parties.
- (5) A document that is e-filed other than in imaged form need not comply with the rules as to shape, size, and format in subpart 2 (formal requirements for documents).
- (6) A document that is e-filed in imaged form must comply with subpart 2.
- (7) An e-filed document must be adequately labelled so that it is obvious what it is (for example, “Interlocutory application without notice for interim injunction”).
- (8) If, under these rules, a document can be filed only if it is signed or otherwise authenticated, use of the registered user’s electronic identity to authenticate the electronic communication sent with the document must be treated for all purposes as equivalent to that user’s signature or other authentication of that document.
- (9) This rule is subject to rule 5.81.

5.79 Provisional filing

- (1) An e-filed document must be treated as provisionally filed on the date and at the time it enters the information system designated for this purpose in the applicable practice note issued under rule 5.78(3), and that date and time must be recorded on the court file.
- (2) The Registrar or a Deputy Registrar must ensure that every provisionally filed document is checked to ensure it meets the requirements imposed by this subpart and by that practice note.
- (3) Checking must—
 - (a) be completed within 2 working hours of the provisional filing of an e-filed document; and
 - (b) comply with operational standards not conflicting with this subpart issued by the Ministry of Justice and available on request to registered

High Court Rules 2016—continued

users and any person considering registration under subpart 15 or the practice note issued under rule 5.78(3).

5.80 Acceptance of provisionally filed documents

- (1) Acceptance of a document by the Registrar or a Deputy Registrar must be recorded by dating and timing that acceptance and endorsing the document “Accepted for filing” and verifying that date, time, and endorsement.
- (2) The Registrar must immediately notify the registered user if an e-filed document is not accepted.
- (3) If an e-filed document is accepted it must be treated for all purposes as having been filed on the date and at the time when it is recorded as having been provisionally filed.
- (4) Upon acceptance of an e-filed document, the Registrar must direct debit the registered user with the appropriate fee for filing that document.

5.81 Affidavits and formal undertakings

- (1) An affidavit or a formal undertaking may be e-filed if the e-filing complies with this rule.
- (2) If an affidavit or a formal undertaking is being e-filed, it must be transmitted to the court in imaged form.
- (3) Rule 5.78(2), (3), and (7) applies to the e-filing of an affidavit or a formal undertaking.
- (4) The original hard-copy form of the affidavit or formal undertaking, sworn or signed or authenticated as required by these rules, must be retained by the registered user,—
 - (a) if the affidavit or formal undertaking is filed in connection with an application under Part 18 or 19, or in a proceeding that does not go to trial, for 12 months from the date of e-filing;
 - (b) if it is filed in connection with a proceeding, and that proceeding goes to trial, until no appeal or further appeal from a judgment given in that proceeding is possible.
- (5) If uncertainty as to the content of an affidavit or formal undertaking arises, or a Judge considers that justice requires its production, the Judge, on application or on the Judge’s own initiative, may order that it be filed in court and served on the other party or parties in hard copy form, and may make such order as to a further hearing as the Judge thinks just.

Revoke rule 6.19(2).

Revoke rule 7.1AA(4).

Replace rule 7.1AA(5) with:

High Court Rules 2016—*continued*

- (5) An application for judicial review may be subject to case management under section 13 of the Judicial Review Procedure Act 2016 and any rules relating to the case management of those proceedings.

Revoke rule 7.1(5)(g).

In rule 7.16, replace “section 19A” with “section 16”.

In rule 7.49(2)(b), delete “; or”.

Revoke rule 7.49(2)(c).

Revoke rule 8.9(b).

In rule 9.32(2), replace “section 100(1)” with “section 44(1)”.

In rule 9.53, replace “section 56A(3)” with “section 41”.

Replace rule 10.24(1) with:

- (1) A Judge may, by video link, preside at the hearing of any matter referred to in section 20 of the Act.

In rule 15.20(1)(a)(iii), replace “section 8 of the Judicature Amendment Act 1972” with “section 15 of the Judicial Review Procedure Act 2016”.

In rule 17.40(2), replace “form E 4, form E 5, or form E 6” with “form E 4, E 5, or E 6”.

In rules 17.88(1), 17.89(1), and 17.90(1), replace “section 55” with “section 40”.

In rule 19.2(c), replace “299,” with “and 299,”.

Replace rule 19.2(g) with:

- (g) section 89 of the District Court Act 2016:

Replace rule 19.2(k) with:

- (k) section 172 of the Senior Courts Act 2016:

In rule 20.13(5),—

- (a) replace “under the District Courts Act 1947” with “under the District Court Act 2016”; and

- (b) replace “under section 74” with “under section 126 of that Act”.

In rule 23.1(2)(b), replace “(section 56 of the Judicature Act 1908)” with “(see section 172 of the Senior Courts Act 2016)”.

In rule 23.1(3), replace “under section 56(4) of the Judicature Act 1908” with “under section 172(5) of the Senior Courts Act 2016”.

In rule 28.7(1), replace “section 56G of the Act” with “under section 84 of the Trans-Tasman Proceedings Act 2010”.

In rule 28.11(3)(b), replace “section 56D of the Act” with “section 81 of the Trans-Tasman Proceedings Act 2010”.

Revoke Part 29.

High Court Rules 2016—*continued*

In rule 30.3(1) and (2), replace “under Part 1 of the Judicature Amendment Act 1972” with “under the Judicial Review Procedure Act 2016”.

In rule 31.39, replace “coming into force of these rules applies” with “commencement of the Schedule of the Judicature (High Court Rules) Amendment Act 2008 applies”.

In Schedule 1, form G 22, paragraph 5, replace “under section 56G of the Judicature Act 1908 of New Zealand. Section 56G of the Judicature Act 1908 provides” with “under section 84 of the Trans-Tasman Proceedings Act 2010 of New Zealand. Section 84 of the Trans-Tasman Proceedings Act 2010 provides”.

In Schedule 1, form G 23, paragraph 2, statement A and statement B, replace “section 56 of the Judicature Act 1908” with “section 84 of the Trans-Tasman Proceedings Act 2010” in each place.

Insert the following Schedule 1AA as the first schedule to appear after the last rule of the principal rules:

Schedule 1AA
Transitional, savings, and related provisions

r 1.4A

Part 1

Provisions relating to Senior Courts Act 2016 as enacted

1 **References to enactments not yet in force**

- (1) A reference in these rules to an enactment not yet in force (**enactment A**) is, until enactment A comes into force, a reference to the provision that (with or without modification) enactment A will replace or that corresponds to enactment A.
- (2) To avoid doubt, subclause (1) does not affect the application of section 22 of the Interpretation Act 1999 (references to repealed enactments).
- (3) In this clause, **enactment** means the whole or a part of the Senior Courts Act 2016, the District Court Act 2016, the Judicial Review Procedure Act 2016, the Interest on Money Claims Act 2016, the Electronic Courts and Tribunals Act 2016, or any other Act, regulations, or rules.

2 **Other transitional provisions applying**

- (1) Part 2 of Schedule 5 of the Senior Courts Act 2016 contains further provisions about how proceedings that are begun before the Senior Courts Act 2016 comes into force are to be dealt with, including—
 - (a) the High Court Rules under which those proceedings are to be continued, completed, and enforced:

High Court Rules 2016—*continued*

- (b) the application of Part 2 of the former High Court Rules (which relates to the Commercial List):
 - (c) the continued effect of certain transitional provisions in the former High Court Rules.
- (2) In this clause, **former High Court Rules** means the High Court Rules as in force immediately before the commencement of this clause.

Schedule 2

Categories of information for purposes of sections 173 and 174

ss 173, 174

Court information

Part A Description of court information

Item	Category	Description
1	Formal court record	<p>Any of the following kept in the registry of the court that relate to a criminal, civil, or family proceeding:</p> <ul style="list-style-type: none"> (a) a register or index: (b) any published list that gives notice of a hearing: (c) a document that— <ul style="list-style-type: none"> (i) may be accessed under an enactment other than this Act; or (ii) constitutes notice of its content to the public: (d) a judgment, order, or minute of the court, including any record of the reasons given by a Judge or other judicial officer: (e) the rolls of barristers and solicitors kept under section 56 of the Lawyers and Conveyancers Act 2006 or any former corresponding enactment <p>The permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced)</p>
2	Court file	A collection of documents in the custody and control of the court that relate to criminal or civil proceedings (including family proceedings) for example, applications, submissions, and supporting affidavits, but excluding notes made by or for a judicial officer for his or her personal use
3	Information relating to particular cases	Information held by the Ministry of Justice in hard copy form, or on the Ministry's data sets or databases, for the purpose of assisting with the management of court proceedings
4	Electronic records of hearings	

Part B Permitted information

Item	Category	Description
	Permitted information	<ul style="list-style-type: none"> (1) The permanent court record, as prescribed by rule 7.2 of the Criminal Procedure Rules 2012 (as from time to time amended or replaced) (2) Information that any of the following orders have been made in respect of a person: <ul style="list-style-type: none"> (a) any protection order under the Family Violence Act 2018 or the Sentencing Act 2002: (b) any restraining order under the Harassment Act 1997: (c) any extended supervision order under the Parole Act 2002: (d) any non-contact order under the Victims' Orders Against Violent Offenders Act 2014: (e) any public protection order under the Public Safety (Public Protection Orders) Act 2014 (3) Information that any probation report exists in respect of a person

Ministry of Justice information

Item	Category	Description
1	Separate or collated administrative information and statistics taken primarily from case management systems to enable the ministry to efficiently budget, plan, and administer the court system	Includes information on the relative costs of proceedings, use of courtrooms, and deployment of court staff
2	Case-level information that is combined with Police, Corrections, and other government agency data to support policy formation, statistics, and research	Case-level information, where all personal identification details are removed to ensure that the identity of any individual cannot be derived from the published information or data
3	Information relating to court staff personnel matters	
4	Aggregate information about judicial expenditure	Includes information relating to judicial travel
5	Information on operational matters	Includes information about court buildings, resources, support systems, and other operational matters
6	Information held by or on behalf of the Rules Committee	
7	Statistics (counts, averages, trends, etc) and performance measures (to assess achievement against operating targets, etc) about court processes and case outcomes	Data that is extracted from case-level transactions, where all personal identification details are removed and outputs are checked to ensure that the identity of any individual cannot be derived from the published data
8	Correspondence and other information relating to liaison between the judiciary and the Ministry of Justice about the management and administration of judicial matters	
9	Minutes of joint committee meetings of the judiciary at which representatives of the Ministry of Justice are present	

Judicial information

Item	Category
1	Information about individual judicial expenditure
2	Judicial communications not relating to particular cases
3	Information about a Judge that relates to the Judge's performance of his or her role and function as a Judge
4	Internal communications, via email or in hard copy, between Judges and between Judges and administrative personnel about judicial administrative and management matters
5	Minutes of committee meetings of the judiciary that relate to the management and administration of judicial affairs (but not including the Rules Committee)
6	Judicial personnel matters, such as salary, leave, and sabbatical records, that have not been anonymised, including allocations of technology, personal expenses records, judicial training programmes, and attendance at overseas conferences

Item	Category
7	Separate or collated information relating to the rostering of Judges, judicial activity information, and judicial activity statistics that identify particular Judges
8	Judicial communications, including Judges' papers or notes relating to particular cases

Schedule 2 Part B paragraph (2)(a): amended, on 1 July 2019, by section 259(1) of the Family Violence Act 2018 (2018 No 46).

Schedule 3

Consequential amendments relating to Senior Courts

s 183(b)

Part 1

Amendments to Acts

Administration Act 1969 (1969 No 52)

In section 59, replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Admiralty Act 1973 (1973 No 119)

In section 11(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 13(2), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Adoption Act 1955 (1955 No 93)

In section 28A(a), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Animal Products Act 1999 (1999 No 93)

In section 155(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Animal Welfare Act 1999 (1999 No 142)

In section 156G(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Arbitration Act 1996 (1996 No 99)

In section 16(a), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Biosecurity Act 1993 (1993 No 95)

In section 154F(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Canterbury Earthquake Recovery Act 2011 (2011 No 12)

In section 70(4), replace “Supreme Court Act 2003” with “Senior Courts Act 2016”.

Care of Children Act 2004 (2004 No 90)

In section 135B(2), replace “section 100A of the Judicature Act 1908” with “section 156 of the Senior Courts Act 2016”.

Care of Children Act 2004 (2004 No 90)—*continued*

In section 141(3), replace “section 88B of the Judicature Act 1908” with “sections 166 to 169 of the Senior Courts Act 2016”.

In section 146(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 147(1), replace “section 100A of the Judicature Act 1908” with “section 156 of the Senior Courts Act 2016”.

Child Support Act 1991 (1991 No 142)

In section 226D(2), replace “section 100A of the Judicature Act 1908” with “section 156 of the Senior Courts Act 2016”.

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

In section 448(2)(a), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Citizens Initiated Referenda Act 1993 (1993 No 101)

In section 58A, replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Civil List Act 1979 (1979 No 33)

In section 27(7), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Commerce Act 1986 (1986 No 5)

In section 97(1), replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Commissions of Inquiry Act 1908 (1908 No 25)

In section 13(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 13(3), replace “section 56A(1) of the Judicature Act 1908” with “section 42 of the Senior Courts Act 2016”.

In section 13(3), replace “section 56B of the Judicature Act 1908” with “section 43 of the Senior Courts Act 2016”.

In section 13(4), replace “section 56A(1) of the Judicature Act 1908” with “section 42 of the Senior Courts Act 2016”.

In section 13(4), replace “section 56B of the Judicature Act 1908” with “section 43 of the Senior Courts Act 2016”.

In section 13A(1)(a), replace “section 56A(1) of the Judicature Act 1908” with “section 42 of the Senior Courts Act 2016”.

In section 13A(1)(b), replace “section 56B of the Judicature Act 1908” with “section 43 of the Senior Courts Act 2016”.

In section 13A(2)(a), replace “section 56A(1) of the Judicature Act 1908” with “section 42 of the Senior Courts Act 2016”.

Commissions of Inquiry Act 1908 (1908 No 25)—*continued*

In section 13A(2)(b), replace “section 56B of the Judicature Act 1908” with “section 43 of the Senior Courts Act 2016”.

In section 13B, replace “section 56C of the Judicature Act 1908” with “section 165 of the Senior Courts Act 2016” in each place.

In section 13C, replace “section 56A(1) of the Judicature Act 1908” with “section 42 of the Senior Courts Act 2016”.

In section 13C, replace “section 56B of the Judicature Act 1908” with “section 43 of the Senior Courts Act 2016”.

In section 13D, replace “section 56A(1) of the Judicature Act 1908” with “section 42 of the Senior Courts Act 2016”.

In section 13D, replace “section 56B of the Judicature Act 1908” with “section 43 of the Senior Courts Act 2016”.

In section 14, replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Construction Contracts Act 2002 (2002 No 46)

In section 81(2)(b), replace “section 51B of the Judicature Act 1908” with “section 155 of the Senior Courts Act 2016”.

Cook Islands Act 1915 (1915 No 40)

In section 175, replace “Sections 47 to 49 of the Judicature Act 1908” with “Sections 30 to 32 of the Senior Courts Act 2016”.

In section 175, replace “within the meaning of section 47 aforesaid, and Commissioners in the Cook Islands may be appointed by a Judge of the High Court” with “of New Zealand, and Commissioners in the Cook Islands may be appointed by a Judge of the High Court of New Zealand”.

Coroners Act 2006 (2006 No 38)

In section 34(5), delete “(as defined in section 2 of the Judicature Act 1908)”.

Court Martial Appeals Act 1953 (1953 No 100)

In section 2(1), definition of **Court of Appeal**, replace “Part 2 of the Judicature Act 1908” with “Part 3 of the Senior Courts Act 2016”.

In section 4(6), replace “superior” with “senior”.

In section 10(2), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

In section 26(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Courts (Remote Participation) Act 2010 (2010 No 94)

In section 3, definition of **Court of Appeal**, replace “Part 2 of the Judicature Act 1908” with “Part 3 of the Senior Courts Act 2016”.

In section 3, definition of **Supreme Court**, replace “section 4 of the Supreme Court Act 2003” with “section 65 of the Senior Courts Act 2016”.

Crimes Act 1961 (1961 No 43)

In section 2(1), definition of **Supreme Court**, replace “section 6 of the Supreme Court Act 2003” with “section 66 of the Senior Courts Act 2016”.

In section 406A(4), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Criminal Procedure Act 2011 (2011 No 81)

In section 5, definition of **rules of court**, replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Replace section 213(1) with:

- (1) All rights of appeal to the Supreme Court under this Part are subject to Part 4 of the Senior Courts Act 2016. *See*, especially, sections 73 to 75 of that Act.

In section 314(5), replace “section 99A of the Judicature Act 1908” with “section 178 of the Senior Courts Act 2016”.

In section 316(6), replace “section 99A of the Judicature Act 1908” with “section 178 of the Senior Courts Act 2016”.

In section 318(4), replace “section 99A of the Judicature Act 1908” with “section 178 of the Senior Courts Act 2016”.

In section 325(3), replace “section 15(2) of the Supreme Court Act 2003” with “section 76 of the Senior Courts Act 2016”.

In section 333(1), after “Judges of the Court of Appeal”, insert “(of whom at least 1 must hold office under section 45 of the Senior Courts Act 2016)”.

In section 333(2) and (4), after “Judge of the Court of Appeal”, insert “(whether holding office under section 45 or 48 of the Senior Courts Act 2016)” in each place.

In section 386(1), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Criminal Proceeds (Recovery) Act 2009 (2009 No 8)

Repeal sections 206 and 207 and the cross-heading above section 206.

Criminal Records (Clean Slate) Act 2004 (2004 No 36)

In section 22(1) and (2), replace “section 51B of the Judicature Act 1908” with “section 155 of the Senior Courts Act 2016”.

In section 22(2), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Criminal Records (Clean Slate) Act 2004 (2004 No 36)—continued

In section 22(3), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Crown Proceedings Act 1950 (1950 No 54)

In section 22(1), replace “each district constituted under the Judicature Act 1908” with “a district”.

In section 29(2), replace “Section 55 of the Judicature Act 1908” with “Section 40 of the Senior Courts Act 2016”.

In Schedule 1, replace the item relating to the Judicature Act 1908 with “**Senior Courts Act 2016 (2016 No 48)**”.

Customs and Excise Act 1996 (1996 No 27)

In section 110(4), replace “section 55 of the Judicature Act 1908” with “section 40 of the Senior Courts Act 2016”.

Declaratory Judgments Act 1908 (1908 No 220)

In section 6, replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Replace section 7 with:

7 Removal of summons into Court of Appeal

An originating summons under section 3 may be removed into the Court of Appeal in the same manner as the matters specified in section 59 of the Senior Courts Act 2016 are removable, and section 59 of that Act applies to any originating summons removed into the court.

Domestic Actions Act 1975 (1975 No 53)

In section 9A(a), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Electoral Act 1993 (1993 No 87)

In section 234(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Electricity Industry Act 2010 (2010 No 116)

In section 71(2), replace “Section 66 of the Judicature Act 1908” with “Section 56 of the Senior Courts Act 2016”.

Electronic Transactions Act 2002 (2002 No 35)

In the Schedule, Part 4, paragraph (1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Employment Relations Act 2000 (2000 No 24)

In section 214(1), replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Employment Relations Act 2000 (2000 No 24)—*continued*

In section 214A(4), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

In section 218, replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Employment Relations Amendment Act 2016 (2016 No 9)

In new section 214AA(3), replace “Section 66 of the Judicature Act 1908” with “Section 56 of the Senior Courts Act 2016”.

Environment Canterbury (Transitional Governance Arrangements) Act 2016 (2016 No 20)

In section 27, replace “Section 66 of the Judicature Act 1908” with “Section 56 of the Senior Courts Act 2016”.

Evidence Act 2006 (2006 No 69)

In section 199(1), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

In section 200(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 202(3)(a), replace “superior” with “senior”.

Extradition Act 1999 (1999 No 55)

In section 103, replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Family Proceedings Act 1980 (1980 No 94)

In section 162D(2), replace “section 100A of the Judicature Act 1908” with “section 156 of the Senior Courts Act 2016”.

Family Protection Act 1955 (1955 No 88)

In section 15(3), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Food Act 2014 (2014 No 32)

In section 340(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

In section 365(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Gas Act 1992 (1992 No 124)

In section 43ZJ(2), replace “Section 66 of the Judicature Act 1908” with “Section 56 of the Senior Courts Act 2016”.

Goods and Services Tax Act 1985 (1985 No 141)

In section 78(4), replace “section 94A(1) of the Judicature Act 1908” with “section 74A(1) of the Property Law Act 2007”.

In section 78(4), replace “section 94A(2) of the Judicature Act 1908” with “section 74A(2) of the Property Law Act 2007”.

Government Superannuation Fund Act 1956 (1956 No 47)

In section 72, definition of **Judge**, paragraph (a), replace “section 4 of the Judicature Act 1908” with “section 100 of the Senior Courts Act 2016”.

In section 72, definition of **temporary Judge**, paragraph (a), replace “section 11 of the Judicature Act 1908” with “section 113 of the Senior Courts Act 2016”.

In section 81A, definition of **Judge**, paragraph (a), replace “section 4 of the Judicature Act 1908” with “section 100 of the Senior Courts Act 2016”.

In section 81A, definition of **temporary Judge**, paragraph (a), replace “section 11 of the Judicature Act 1908” with “section 113 of the Senior Courts Act 2016”.

In section 81X, definition of **Associate Judge**, replace “section 26C of the Judicature Act 1908” with “section 100 of the Senior Courts Act 2016”.

Governor-General Act 2010 (2010 No 122)

In section 17(3), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Greater Christchurch Regeneration Act 2016 (2016 No 14)

In section 120(3), replace “Supreme Court Act 2003” with “Senior Courts Act 2016”.

Habeas Corpus Act 2001 (2001 No 31)

In section 7(7), replace “Section 51E of the Judicature Act 1908” with “Section 153 of the Senior Courts Act 2016”.

In section 15(1), replace with “sections 68 to 71 of the Senior Courts Act 2016”.

In section 16(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 20(1) and (2), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Harmful Digital Communications Act 2015 (2015 No 63)

In section 27(1), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Immigration Act 2009 (2009 No 51)

In section 246(1), replace “Section 66 of the Judicature Act 1908” with “Section 56 of the Senior Courts Act 2016”.

In section 249B(2), replace “Section 66 of the Judicature Act 1908” with “Section 56 of the Senior Courts Act 2016”.

Immigration Act 2009 (2009 No 51)—continued

Replace section 251 with:

251 Relationship with Senior Courts Act 2016

The Senior Courts Act 2016 is subject to sections 247, 248, 249, 250, and 262.

Insolvency Act 2006 (2006 No 55)

In section 442(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Insolvency (Cross-border) Act 2006 (2006 No 57)

In section 9, replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Insurance (Prudential Supervision) Act 2010 (2010 No 111)

In section 43(1), replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

In section 225(1), replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Judicial Conduct Commissioner and Judicial Conduct Panel Act 2004 (2004 No 38)

In section 5, definition of **Judge**, replace paragraph (b) with:

- (b) includes a person who holds office as an acting Judge, or an acting Associate Judge; but

In section 31(3)(b), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Juries Act 1981 (1981 No 23)

Repeal section 34.

Land Valuation Proceedings Act 1948 (1948 No 50)

In section 18A(1), replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Law Reform Act 1936 (1936 No 31)

In section 17(5), replace “Section 94 of the Judicature Act 1908” with “Section 99 of the District Court Act 2016”.

Lawyers and Conveyancers Act 2006 (2006 No 1)

In section 49(3)(a), replace “the superior” with “a senior”.

In section 53(1)(a), replace “the superior” with “a senior”.

In section 53(1), replace “that superior” with “that senior” in each place.

Lawyers and Conveyancers Act 2006 (2006 No 1)—*continued*

In section 54(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 254(1), replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

In section 276(a), replace “the superior” with “a senior”.

Legislation Act 2012 (2012 No 119)

In Schedule 1, repeal the item relating to the Judicature Act 1908.

Limitation Act 2010 (2010 No 110)

In section 13, replace “section 16A of the Judicature Act 1908” with “section 13 of the Senior Courts Act 2016”.

Local Government Official Information and Meetings Act 1987 (1987 No 174)

In section 35, replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Local Government (Rating) Act 2002 (2002 No 6)

In section 67(2)(b), replace “section 100A of the Judicature Act 1908” with “section 156 of the Senior Courts Act 2016”.

In section 70(2), replace “section 100A of the Judicature Act 1908” with “section 156 of the Senior Courts Act 2016”.

Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3)

In section 9(1), definition of **High Court Rules**, replace “the Judicature Act 1908” with “the Senior Courts Act 2016”.

In section 108, replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Members of Parliament (Remuneration and Services) Act 2013 (2013 No 93)

In section 46(7), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Niue Act 1966 (1966 No 38)

In section 128, replace “Sections 47 to 49 of the Judicature Act 1908” with “Sections 30 to 32 of the Senior Courts Act 2016”.

In section 128, replace “section 47” with “section 30”.

Non-bank Deposit Takers Act 2013 (2013 No 104)

In section 63(1), replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Official Information Act 1982 (1982 No 156)

In section 2(1), definition of **official information**, paragraph (c), replace “section 51B of the Judicature Act 1908” with “section 155 of the Senior Courts Act 2016”.

In section 32C, replace “section 66 of the Judicature Act 1908” with “section 56 of the Senior Courts Act 2016”.

Patents Act 2013 (2013 No 68)

In section 215(3), replace “sections 7 and 8 of the Supreme Court Act 2003” with “sections 68 and 69 of the Senior Courts Act 2016”.

PGG Trust Limited Act 1989 (1989 No 1 (P))

In section 17, replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Property (Relationships) Act 1976 (1976 No 166)

In section 39B(1), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 53(1) and (4), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In section 53(2), replace “section 100A of the Judicature Act 1908” with “section 156 of the Senior Courts Act 2016”.

Protection of Personal and Property Rights Act 1988 (1988 No 4)

In section 111(a), replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

In section 114, replace “section 17 of the Judicature Act 1908” with “section 14 of the Senior Courts Act 2016”.

Reciprocal Enforcement of Judgments Act 1934 (1934 No 11)

In section 2(1), definition of **judgments given in the superior courts of New Zealand**, replace “**superior**” with “**senior**”.

In section 3(1A), (1B), (1C), (2), (2A), and (3), replace “superior” with “senior” in each place.

In section 3B(1), replace “superior” with “senior” in each place.

In section 10(1), replace “superior” with “senior” in each place.

Replace section 13 with:

13 Section 172 of Senior Courts Act 2016 modified

Section 172 of the Senior Courts Act 2016 applies only in respect of any judgments, decrees, rules, and orders that, being enforceable under that section, are not enforceable in New Zealand in accordance with this Act.

Referenda (Postal Voting) Act 2000 (2000 No 48)

In section 80(2), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

Resource Management Act 1991 (1991 No 69)

In section 149V(6), replace “sections 12 to 15 of the Supreme Court Act 2003” with “sections 73 to 76 of the Senior Courts Act 2016”.

In section 149V(7), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Road User Charges Act 2012 (2012 No 1)

In section 71(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Rugby World Cup 2011 (Empowering) Act 2010 (2010 No 123)

In Schedule 2, clause 9(2), replace “sections 12 to 14 of the Supreme Court Act 2003” with “sections 73 to 75 of the Senior Courts Act 2016”.

In Schedule 2, clause 9(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Social Security Act 1964 (1964 No 136)

In section 12S(1), replace “Supreme Court Act 2003” with “Senior Courts Act 2016”.

Te Ture Whenua Maori Act 1993 (1993 No 4)

In section 58B(3), replace “section 14 of the Supreme Court Act 2003” with “section 75 of the Senior Courts Act 2016”.

Terrorism Suppression Act 2002 (2002 No 34)

In section 58(3), replace “Supreme Court Act 2003” with “Senior Courts Act 2016”.

Trustee Act 1956 (1956 No 61)

In section 72(4), replace “Judicature Act 1908” with “Senior Courts Act 2016”.

United Nations Convention on the Law of the Sea Act 1996 (1996 No 69)

In section 16, replace “section 51C of the Judicature Act 1908” with “section 148 of the Senior Courts Act 2016”.

Weathertight Homes Resolution Services Act 2006 (2006 No 84)

In section 125(2)(b), replace “section 51B of the Judicature Act 1908” with “section 155 of the Senior Courts Act 2016”.

Schedule 3 Part 1: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Part 2

Amendments to other enactments

Court of Appeal (Civil) Rules 2005 (SR 2005/69)

In rule 26B(2)(b), replace “section 100B of the Judicature Act 1908” with “section 160 of the Senior Courts Act 2016”.

In rule 26B(4), replace “section 100B of the Judicature Act 1908” with “section 160 of the Senior Courts Act 2016”.

In rule 31(5), replace “section 64 of the Judicature Act 1908” with “section 59 of the Senior Courts Act 2016”.

Court of Appeal Fees Regulations 2001 (SR 2001/309)

In regulation 3, replace the definition of **Act** with:

Act means the Senior Courts Act 2016

Criminal Procedure Rules 2012 (SR 2012/415)

In rule 2.8(6)(b), replace “sections 27 to 29 of the Judicature Act 1908” with “sections 33 to 35 of the Senior Courts Act 2016”.

Health (Retention of Health Information) Regulations 1996 (SR 1996/343)

In regulation 8(2)(b), replace “Judicature Act 1908” with “Companies Act 1993”.

High Court Fees Regulations 2013 (SR 2013/226)

In regulation 4, definition of **Act**, replace “Judicature Act 1908” with “Senior Courts Act 2016”.

In the Schedule, item 34, replace “section 55 of the Judicature Act 1908” with “section 40 of the Senior Courts Act 2016”.

Judicial Superannuation Determination 2006 (SR 2006/37)

Replace clause 5(1)(a) with:

(a) for Judges of the High Court and Associate Judges of the High Court, is 37.5% of his or her salary:

Maori Land Court Rules 2011 (SR 2011/374)

In rule 6.19(1)(a), replace “superior” with “senior”.

In the Schedule, Form 7, replace “superior” with “senior”.

In the Schedule, Form 8, replace “superior” with “senior”.

Schedule 4
**Consequential amendments relating to new publishing requirements
for High Court Rules, etc**

s 183(c)

Part 1
Amendments to Acts

Accident Compensation Act 2001 (2001 No 49)

In section 162(5), replace “High Court Rules” with “High Court Rules 2016”.

Admiralty Act 1973 (1973 No 119)

In section 13(1A), replace “High Court Rules” with “High Court Rules 2016”.

Agricultural Compounds and Veterinary Medicines Act 1997 (1997 No 87)

In section 46(2), replace “High Court Rules” with “High Court Rules 2016”.

Animal Products Act 1999 (1999 No 93)

In section 154(2), replace “High Court Rules” with “High Court Rules 2016”.

Animal Welfare Act 1999 (1999 No 142)

In section 153(2), replace “High Court Rules” with “High Court Rules 2016”.

In section 156G(2), replace “High Court Rules” with “High Court Rules 2016”.

Biosecurity Act 1993 (1993 No 95)

In section 154F(2), replace “High Court Rules” with “High Court Rules 2016”.

Care of Children Act 2004 (2004 No 90)

In section 88(b), replace “High Court Rules” with “High Court Rules 2016”.

In section 143(4), replace “High Court Rules” with “High Court Rules 2016”.

Child Support Act 1991 (1991 No 142)

In section 120(1A), replace “High Court Rules” with “High Court Rules 2016”.

In section 120(3A), replace “High Court Rules” with “High Court Rules 2016”.

Children, Young Persons, and Their Families Act 1989 (1989 No 24)

In section 346(1), replace “High Court Rules” with “High Court Rules 2016”.

Civil Aviation Act 1990 (1990 No 98)

In section 69(2), replace “High Court Rules” with “High Court Rules 2016”.

Companies Act 1993 (1993 No 105)

In section 239AES(2)(c), replace “High Court Rules” with “High Court Rules 2016”.

In section 239AES(3), replace “High Court Rules” with “High Court Rules 2016”.

In section 271A(3)(c), replace “High Court Rules” with “High Court Rules 2016”.

In section 271A(4), replace “High Court Rules” with “High Court Rules 2016”.

Coroners Act 2006 (2006 No 38)

In section 34(5), replace “High Court Rules” with “High Court Rules 2016”.

In section 35(5), replace “High Court Rules” with “High Court Rules 2016”.

Domestic Violence Act 1995 (1995 No 86)

In section 91(2), replace “High Court Rules” with “High Court Rules 2016”.

Electricity Act 1992 (1992 No 122)

In section 14(1A), replace “High Court Rules” with “High Court Rules 2016”.

Employment Relations Act 2000 (2000 No 24)

In section 160(4), replace “High Court Rules” with “High Court Rules 2016”.

In section 173(4), replace “High Court Rules” with “High Court Rules 2016”.

In section 190(3), replace “High Court Rules” with “High Court Rules 2016”.

Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010 (2010 No 12)

In section 54(2), replace “High Court Rules” with “High Court Rules 2016”.

Environment Canterbury (Transitional Governance Arrangements) Act 2016 (2016 No 20)

In section 26(2), replace “High Court Rules” with “High Court Rules 2016”.

In Schedule 2, clause 5(2), replace “High Court Rules” with “High Court Rules 2016”.

Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 (2012 No 72)

In the heading to section 112, replace “**High Court Rules**” with “**High Court Rules 2016**”.

In section 112, replace “High Court Rules” with “High Court Rules 2016”.

Family Proceedings Act 1980 (1980 No 94)

In section 174(1B), replace “High Court Rules” with “High Court Rules 2016”.

Family Protection Act 1955 (1955 No 88)

In section 15(1A), replace “High Court Rules” with “High Court Rules 2016”.

Food Act 2014 (2014 No 32)

In section 339(3), replace “High Court Rules” with “High Court Rules 2016”.

In section 364(2), replace “High Court Rules” with “High Court Rules 2016”.

Gas Act 1992 (1992 No 124)

In section 15(1A), replace “High Court Rules” with “High Court Rules 2016”.

Governor-General Act 2010 (2010 No 122)

In section 17(2), replace “High Court Rules” with “High Court Rules 2016”.

Habeas Corpus Act 2001 (2001 No 31)

In section 3, repeal the definition of **High Court Rules**.

In section 3, definition of **working day**, replace “High Court Rules” with “High Court Rules 2016”.

In section 7(1), replace “High Court Rules” with “High Court Rules 2016”.

In section 10(3), replace “High Court Rules” with “High Court Rules 2016”.

In section 21, replace “High Court Rules” with “High Court Rules 2016”.

Harassment Act 1997 (1997 No 92)

In section 34(2), replace “High Court Rules” with “High Court Rules 2016”.

Hazardous Substances and New Organisms Act 1996 (1996 No 30)

In section 126(2), replace “High Court Rules” with “High Court Rules 2016”.

In section 126(3), replace “High Court Rules” with “High Court Rules 2016”.

Inquiries Act 2013 (2013 No 60)

In section 24(2), replace “High Court Rules” with “High Court Rules 2016”.

Insolvency Act 2006 (2006 No 55)

In section 35(d), replace “High Court Rules” with “High Court Rules 2016”.

Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (2003 No 116)

In section 133(2), replace “High Court Rules” with “High Court Rules 2016”.

International Crimes and International Criminal Court Act 2000 (2000 No 26)

In section 124(3)(b)(iii), replace “High Court Rules” with “High Court Rules 2016”.

In section 124(4)(b), replace “High Court Rules” with “High Court Rules 2016”.

Land Transport Management Act 2003 (2003 No 118)

In section 144(2), replace “High Court Rules” with “High Court Rules 2016”.

In section 145(3), replace “High Court Rules” with “High Court Rules 2016”.

Law Reform (Testamentary Promises) Act 1949 (1949 No 33)

In section 5A(1A), replace “High Court Rules” with “High Court Rules 2016”.

Local Government (Rating) Act 2002 (2002 No 6)

Replace section 66(1) with:

- (1) Despite rule 17.52 of the High Court Rules 2016, a charging order issued under rule 17.41 or 17.42 for a judgment of rates, and registered against a rating unit under rule 17.48, continues in force until a memorandum of satisfaction is registered under rule 17.51.

Marine and Coastal Area (Takutai Moana) Act 2011 (2011 No 3)

In section 9(1), repeal the definition of **High Court Rules**.

In section 99(1)(b), replace “High Court Rules” with “High Court Rules 2016”.

In section 125(3)(b), replace “High Court Rules” with “High Court Rules 2016”.

Members of Parliament (Remuneration and Services) Act 2013 (2013 No 93)

In section 46(6), replace “High Court Rules” with “High Court Rules 2016”.

Personal Property Securities Act 1999 (1999 No 126)

In section 167A(1)(b)(iv), replace “High Court Rules” with “High Court Rules 2016”.

Property (Relationships) Act 1976 (1976 No 166)

In section 39(3), replace “High Court Rules” with “High Court Rules 2016”.

In section 65(2)(c)(ii), replace “High Court Rules” with “High Court Rules 2016”.

Protection of Personal and Property Rights Act 1988 (1988 No 4)

In section 83(3), replace “High Court Rules” with “High Court Rules 2016”.

In section 83A, replace “High Court Rules” with “High Court Rules 2016”.

Public Safety (Public Protection Orders) Act 2014 (2014 No 68)

In section 105(2), replace “High Court Rules” with “High Court Rules 2016”.

Radiation Safety Act 2016 (2016 No 6)

In section 52(2), replace “High Court Rules” with “High Court Rules 2016”.

Railways Act 2005 (2005 No 37)

In section 71(2), replace “High Court Rules” with “High Court Rules 2016”.

In section 72(4), replace “High Court Rules” with “High Court Rules 2016”.

In section 90(2), replace “High Court Rules” with “High Court Rules 2016”.

Residential Tenancies Act 1986 (1986 No 120)

In section 119(2), replace “High Court Rules” with “High Court Rules 2016”.

Resource Management Act 1991 (1991 No 69)

In section 149V(3)(c), replace “High Court Rules” with “High Court Rules 2016”.

In section 299(2), replace “High Court Rules” with “High Court Rules 2016”.

In section 308I(2), replace “High Court Rules” with “High Court Rules 2016”.

Road User Charges Act 2012 (2012 No 1)

In section 70(2), replace “High Court Rules” with “High Court Rules 2016”.

Sentencing Act 2002 (2002 No 9)

In section 129E(6)(a), replace “High Court Rules” with “High Court Rules 2016”.

In section 129EA(6)(a), replace “High Court Rules” with “High Court Rules 2016”.

In section 139(2)(a), replace “High Court Rules” with “High Court Rules 2016”.

Submarine Cables and Pipelines Protection Act 1996 (1996 No 22)

In section 26(3), replace “High Court Rules” with “High Court Rules 2016”.

In section 32(5), replace “High Court Rules” with “High Court Rules 2016”.

Summary Proceedings Act 1957 (1957 No 87)

In section 88A(4)(b), replace “High Court Rules” with “High Court Rules 2016”.

Tax Administration Act 1994 (1994 No 166)

In section 138B(1)(c), replace “High Court Rules” with “High Court Rules 2016”.

In section 138B(2)(c), replace “High Court Rules” with “High Court Rules 2016”.

In section 138B(3)(c), replace “High Court Rules” with “High Court Rules 2016”.

In section 138B(4)(d), replace “High Court Rules” with “High Court Rules 2016”.

In section 138C(b), replace “High Court Rules” with “High Court Rules 2016”.

Veterans’ Support Act 2014 (2014 No 56)

In section 233(2), replace “High Court Rules” with “High Court Rules 2016”.

Part 2

Amendments to other enactments

Companies Act 1955 Liquidation Regulations 1994 (SR 1994/129)

In regulation 2, revoke the definition of **High Court Rules**.

In regulation 3(3), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 15(2), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 40(1), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 40(2), replace “High Court Rules” with “High Court Rules 2016”.

Companies Act 1993 Liquidation Regulations 1994 (SR 1994/130)

In regulation 2, revoke the definition of **High Court Rules**.

In regulation 3(3), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 15(2), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 40(1), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 40(2), replace “High Court Rules” with “High Court Rules 2016”.

Constituency Election Petition Rules 2008 (SR 2008/383)

In rule 3, replace the definition of **High Court Rules** with:

High Court Rules means the High Court Rules 2016

Court Martial Appeal Court Rules 2008 (SR 2008/238)

In rule 22(1), replace “High Court Rules” with “High Court Rules 2016”.

Court of Appeal (Access to Court Documents) Rules 2009 (SR 2009/401)

In rule 3, definition of **interlocutory application**, replace “High Court Rules” with “High Court Rules 2016”.

In rule 3, definition of **originating application**, replace “High Court Rules” with “High Court Rules 2016”.

Court of Appeal (Civil) Rules 2005 (SR 2005/69)

In rule 3(1), definition of **working day**, after paragraph (a), insert:

(ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; or

In rule 11(2), replace “High Court Rules” with “High Court Rules 2016”.

In rule 11(3)(b), replace “rule 521 of the High Court Rules” with “rule 9.85 of the High Court Rules 2016”.

In rule 35(5), replace “High Court Rules” with “High Court Rules 2016”.

In rule 45(1)(c), replace “rules 369 to 376 of the High Court Rules” with “rules 9.17 to 9.25 of the High Court Rules 2016”.

In rule 53C(1)(a), replace “High Court Rules” with “High Court Rules 2016”.

In rule 53C(1)(b), replace “High Court Rules” with “High Court Rules 2016”.

In rule 53C(2), replace “High Court Rules” with “High Court Rules 2016” in each place.

In rule 53E(6), replace “Rules 54 to 59 of the High Court Rules” with “Rules 14.18 to 14.23 of the High Court Rules 2016”.

In rule 53H(2)(a)(i), replace “rule 48H(1) of the High Court Rules” with “rule 14.12(1) of the High Court Rules 2016”.

Court of Appeal (Criminal) Rules 2001 (SR 2001/371)

In rule 3(1), definition of **working day**, after paragraph (a), insert:

- (ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; or

In rule 18(1), replace “High Court Rules” with “High Court Rules 2016”.

Court of Appeal (List Election Petitions) Rules 1998 (SR 1998/326)

In the heading to rule 4, replace “**High Court Rules**” with “**High Court Rules 2016**”.

In rule 4(1), replace “High Court Rules” with “High Court Rules 2016”.

Criminal Procedure Rules 2012 (SR 2012/415)

In rule 6.1, definition of **interlocutory application**, replace “High Court Rules” with “High Court Rules 2016”.

In rule 6.1, definition of **originating application**, replace “High Court Rules” with “High Court Rules 2016”.

Criminal Proceedings (Enforcement of Fines) Rules 2011 (SR 2011/397)

In rule 3, replace “rules from time to time set out in Schedule 2 of the Judicature Act 1908 (as amended from time to time)” with “High Court Rules 2016”.

Criminal Proceeds (Recovery) Regulations 2009 (SR 2009/311)

In the Schedule, form 2, replace “High Court Rules” with “High Court Rules 2016”.

In the Schedule, form 4, replace “High Court Rules” with “High Court Rules 2016”.

District Courts Rules 2014 (LI 2014/179)

In rule 1.4(1), definition of **HCF**, replace “High Court Rules” with “High Court Rules 2016”.

In rule 1.4(1), definition of **High Court Rules**, replace “rules from time to time set out in Schedule 2 of the Judicature Act 1908 (as amended from time to time)” with “High Court Rules 2016”.

Employment Court Regulations 2000 (SR 2000/250)

In regulation 6(2)(a)(ii), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 9(1), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 9(2), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 10(1), replace “High Court Rules” with “High Court Rules 2016”.

Evidence (Trans-Tasman Service of, and Compliance with, New Zealand Subpoenas and Australian Subpoenas Issued in Criminal Proceedings) Rules 2013 (SR 2013/353)

In rule 4(2), replace “High Court Rules” with “High Court Rules 2016”.

Family Courts Rules 2002 (SR 2002/261)

In rule 8(1), definition of **HCRs** or **High Court Rules**, replace “rules from time to time set out in Schedule 2 of the Judicature Act 1908 (as amended from time to time)” with “High Court Rules 2016”.

High Court Fees Regulations 2013 (SR 2013/226)

In regulation 4, definition of **appeal**, replace “High Court Rules” with “High Court Rules 2016”.

In regulation 4, definition of **exempt application**, paragraph (a), replace “High Court Rules” with “High Court Rules 2016”.

In regulation 4, definition of **High Court Rules**, replace “rules set out in Schedule 2 of the Act” with “High Court Rules 2016”.

High Court Rules 2016 (LI 2016/225)

In rule 1.3, definition of **these rules**, after “High Court Rules”, insert “2016”.

In rule 3.2(1), after paragraph (g), insert:

- (ga) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday:

In rule 31.9(2), after paragraph (a), insert:

- (ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; and

In rule 31.22(1)(b), replace “rule 1.9 or rule 31.6(2)” with “rule 1.9, 31.6(2)”.

In Schedule 1, form C 15, note, definition of **working day**, after paragraph (a), insert:

- (ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; and

In Schedule 1, form C 16, note, definition of **working day**, after paragraph (a), insert:

- (ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; and

Joint Family Homes Regulations 1965 (SR 1965/65)

In regulation 20, replace “High Court Rules” with “High Court Rules 2016”.

Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008 (SR 2008/195)

In rule 4(1), definition of **High Court Rules**, replace “High Court Rules set out in Schedule 2 of the Judicature Act 1908” with “High Court Rules 2016”.

Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008 (SR 2008/195)
—*continued*

In the Schedule, form LA 1, replace “High Court Rules” with “High Court Rules 2016”.

Proceeds of Crime Rules 1992 (SR 1992/166)

In the Schedule, replace “*High Court Rules*” with “*High Court Rules 2016*”.

Property (Relationships) Forms Regulations 2001 (SR 2001/379)

In Schedule 2, notes, replace “High Court Rules” with “High Court Rules 2016”.

Supreme Court Rules 2004 (SR 2004/199)

In rule 3, definition of **working day**, after paragraph (a), insert:

- (ab) if Anzac Day or Waitangi Day falls on a Saturday or a Sunday, the following Monday; or

In rule 40(1)(c), replace “High Court Rules” with “High Court Rules 2016”.

Trans-Tasman Proceedings Regulations and Rules 2013 (SR 2013/350)

In regulation 16(4)(a), replace “High Court Rules” with “High Court Rules 2016”.

Schedule 4 Part 2: amended, on 12 November 2018, by section 250 of the Land Transfer Act 2017 (2017 No 30).

Schedule 5

Transitional provisions relating to Senior Courts

s 186

Part 1

Continuation of certain provisions of Supreme Court Act 2003

1 Application

Clauses 2 to 6 continue the application of certain provisions of the Supreme Court Act 2003 so far as they are applicable.

2 Imperial enactments ceasing to have effect in New Zealand

On 1 January 2004, the following Imperial enactments ceased to have effect as part of the law of New Zealand:

- (a) the Imperial enactments listed in Part 1 of Schedule 4 of the Supreme Court Act 2003:
- (b) the Imperial subordinate legislation listed in Part 2 of Schedule 4 of that Act.

Compare: 2003 No 53 s 49

3 Privy Council may still determine appeals in certain existing proceedings

- (1) The Privy Council may hear and determine, or continue to hear and determine,—
 - (a) an appeal against a final judgment of the Court of Appeal made before 1 January 2004, or made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004, where—
 - (i) the matter in dispute on the appeal amounts to or is of the value of \$5,000 or upwards; or
 - (ii) the appeal involves, directly or indirectly, some claim or question to or respecting property or some civil right amounting to or of the value of \$5,000 or upwards; or
 - (b) an appeal arising out of a successful application to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against a decision of the Court of Appeal—
 - (i) made before 1 January 2004; or
 - (ii) made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004; or
 - (c) an appeal arising out of a successful application to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against a decision of the Court of Appeal—

- (i) made before 1 January 2004; or
 - (ii) made after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
- (2) Subclause (1) does not apply to an appeal if—
 - (a) the Privy Council has not begun hearing the appeal; and
 - (b) all parties agree in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against the decision concerned.

Compare: 2003 No 53 s 50

4 Limitation on right to appeal to Supreme Court in certain existing proceedings

- (1) This subclause applies to a decision if—
 - (a) it was made by any New Zealand court before 1 January 2004; or
 - (b) it was made by the Court of Appeal after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
- (2) There is no right to appeal to the Supreme Court against a decision to which subclause (1) applies if—
 - (a) the Privy Council has already heard or begun hearing an appeal against it; or
 - (b) a New Zealand court has declined to give leave to appeal to the Privy Council against it and the Privy Council has not later given special leave to appeal against it; or
 - (c) the Privy Council has declined to give special leave to appeal against it; or
 - (d) all the parties to the proceeding in which it was made have not agreed in writing that an application should be made to the Supreme Court for leave to appeal to the Supreme Court against it.
- (3) Subclause (2) overrides sections 68 to 71.

Compare: 2003 No 53 s 51

5 Transitional effect of sections 42 and 49 of Supreme Court Act 2003

- (1) The following applications must be determined as if sections 42 and 49 of the Supreme Court Act 2003 had not been enacted:
 - (a) all applications to a New Zealand court (whether made before, on, or after 1 January 2004) for leave to appeal to the Privy Council against—
 - (i) a decision of a New Zealand court made before 1 January 2004; or
 - (ii) a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004;

- (b) all applications to the Privy Council (whether made before, on, or after 1 January 2004) for special leave to appeal to it against—
 - (i) a decision of a New Zealand court made before 1 January 2004; or
 - (ii) a decision of the Court of Appeal delivered after 31 December 2003 in a proceeding whose hearing was completed before 1 January 2004.
- (2) All appeals that, by virtue of clause 3(1), the Privy Council may hear and determine, or continue to hear and determine, must be heard and determined as if—
 - (a) sections 42 and 49 of the Supreme Court Act 2003 had not been enacted; and
 - (b) the reference in section 112(1) of the Credit Contracts and Consumer Finance Act 2003 to the Supreme Court included a reference to the Privy Council.

Compare: 2003 No 53 s 52

6 No new rights of appeal against decisions made before 1 January 2004

- (1) A person does not have a right to appeal to a particular New Zealand court or the Privy Council on any grounds against a decision made before 1 January 2004 unless, when the decision was made, the person had the right to appeal against the decision to that court on those grounds.
- (2) Subclause (1) does not limit or affect the right of any person to appeal to a New Zealand court on any grounds against a decision made—
 - (a) on or after 1 January 2004; but
 - (b) on appeal against a decision—
 - (i) made before 1 January 2004; or
 - (ii) made at any time on appeal against a decision made before 1 January 2004.

Compare: 2003 No 53 s 54

Part 2

Other provisions relating to senior courts

7 Interpretation

In this Part, unless the context otherwise requires,—

judicial officer means a Judge, an acting Judge, a Registrar, or a Deputy Registrar of a senior court

proceedings includes actions and matters

relevant Act means the Judicature Act 1908 or the Supreme Court Act 2003.

Judicial officers of senior courts

8 Judicial officers to continue in office

- (1) This clause applies to every person who is a judicial officer under the relevant Act immediately before the commencement of this clause.
- (2) A judicial officer to whom this clause applies continues to hold his or her judicial office under the conditions of his or her appointment.

Other officers of senior courts

9 Other officers of court to continue in office

- (1) This clause applies to every person who is an officer of a court (other than a judicial officer as defined in clause 7) under the relevant Act immediately before the commencement of this clause.
- (2) An officer to whom this clause applies continues to hold his or her office subject to this Act.

Proceedings and other matters

10 Proceedings, etc, continue under relevant Act

- (1) All proceedings pending or in progress in a court operating under the relevant Act immediately before the commencement of this clause may be continued, completed, and enforced only under the relevant Act (including the relevant rules of court) as if that Act had not been repealed by this Act.
- (2) All jurisdictions, offices, appointments, Orders in Council, orders, warrants, rules, regulations, seals, forms, books, records, instruments, and generally all acts of authority that originated under the relevant Act or another enactment continued or repealed by this Act, and that are subsisting or in force on the commencement of this clause, have full effect as if they had originated under the corresponding provisions of this Act and, where necessary, must be treated as having originated under this Act.
- (3) This clause is subject to clause 11.

11 Proceedings subject to former High Court Rules

- (1) In this clause, **former High Court Rules 2016** means the High Court Rules 2016 as in force immediately before 1 March 2017.
- (2) A proceeding that is pending on 1 March 2017 must be continued, completed, and enforced under the High Court Rules 2016 as in force immediately after that date, except as provided in subclause (3).
- (3) A proceeding that is pending on 1 March 2017 must be dealt with as if—
 - (a) Part 29 of the former High Court Rules 2016 (if applicable) were in force:

- (b) the provisions of the former High Court Rules 2016 referring to section 26P of the Judicature Act 1908 were in force.

12 Continued effect of transitional provisions in former High Court Rules

- (1) The repeal of the Judicature Act 1908 does not affect the operation of the transitional provisions in—
 - (a) rule 9 of the High Court Amendment Rules 2009; or
 - (b) rule 7 of the High Court (Access to Court Documents) Amendment Rules 2009; or
 - (c) rule 5 of the High Court Amendment Rules 2010.
- (2) So far as the enactments referred to in subclause (1)(a) to (c) may be applicable, they continue to have effect as if the Judicature Act 1908 had not been repealed.

Notes

1 *General*

This is a consolidation of the Senior Courts Act 2016 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 *Amendments incorporated in this consolidation*

Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14): wehenga 7/section 7

Secondary Legislation Act 2021 (2021 No 7): section 3

Public Service Act 2020 (2020 No 40): section 135

Privacy Act 2020 (2020 No 31): section 217

Statutes Amendment Act 2019 (2019 No 56): Part 39

Contempt of Court Act 2019 (2019 No 44): section 29

Courts Matters Act 2018 (2018 No 50): Part 4 subpart 11

Family Violence Act 2018 (2018 No 46): section 259(1)

Land Transfer Act 2017 (2017 No 30): section 250