



High Court (COVID-19 Preparedness) Amendment Rules 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 9th day of April 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

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

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

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Rules

1 Title

These rules are the High Court (COVID-19 Preparedness) Amendment Rules 2020.

2 Commencement

These rules come into force immediately upon their notification in the *Gazette*.

3 Principal rules

These rules amend the High Court Rules 2016.

Allowing electronic filing

4 Rule 1.3 amended (Interpretation)

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

to **file**, in relation to any document, means to file the document pursuant to rule 5.1A in the proper registry of the court

5 Rule 3.4 replaced (Epidemics and emergencies)

Rule 3.4 is revoked and the following rules substituted:

3.4 Emergencies

- (1) Despite rule 3.1, the Chief High Court Judge may order that the court or one or more of its registries be closed for a period not exceeding one week specified in the order if an emergency exists in the place where the court or one or more of its registries is located.
- (2) For the avoidance of doubt, the Chief High Court Judge may make orders under subclause (1) in respect of consecutive periods of time.
- (3) In these rules, **emergency** includes the existence of a state of danger to the health and wellbeing of persons in a place (including the whole of New Zealand) as a result of the existence of a natural disaster, pandemic, armed conflict, or the like in that place:
provided that, for the purposes of these rules, an emergency exists in a place in respect of which,—
 - (a) an epidemic notice has been given pursuant to section 5(1) of the Epidemic Preparedness Act 2006; or
 - (b) a state of national emergency has been declared pursuant to section 66(1) of the Civil Defence Emergency Management Act 2002; or
 - (c) a state of local emergency has been declared pursuant to section 68(1) of the Civil Defence Emergency Management Act 2002.
- (4) A Registrar must ensure that an order made under subclause (1) is immediately advertised in the manner the Judge directs.
- (5) For the avoidance of doubt, nothing in this rule, or any other provision of these rules, relating to the powers of a Judge in respect of a proceeding in circumstances in which an emergency exists is intended to limit the court's inherent jurisdiction.

*Ensuring hearings can proceed with remote participation***3.4A Judge may direct form of participation in hearings and at trials**

- (1) Where an emergency exists in any part of New Zealand, a Judge may make a direction as to the form of participation by counsel, parties, witnesses, and other persons at any hearing or trial conducted pursuant to these rules, by—
 - (a) dispensing with any requirement for a person to be physically present in the court and make provision for an alternative means of complying with any such requirement;
 - (b) directing particular methods of attendance at, and participation in, a hearing or trial (for example, in person, by telephone, or by audio-visual link) that will be permitted, required, or excused;
 - (c) directing where and how any person attending or participating in a hearing or trial in person must conduct themselves in respect of their physical proximity to other persons in attendance:

- (d) requiring any person attending or participating in a hearing or trial in person to be attired in a particular manner.
- (2) No direction may be made under subclause (1) that modifies any requirement imposed by another provision of these rules more than is reasonably necessary to protect the health and wellbeing of those required or compelled to attend or participate in a hearing or trial, having regard also to,—
 - (a) the requirements of natural justice; and
 - (b) the rights affirmed by the New Zealand Bill of Rights Act 1990.
- (3) Subject to subclause (2), the power in subclause (1) may be exercised notwithstanding that it is contrary to any other provision of these rules, regulation, or rule of law.

6 New rules 5.1A and 5.1B inserted

After rule 5.1, insert:

5.1A Filing generally

- (1) In this rule and in rule 5.1B,—
 - electronic address** means any method by which a document communicated in electronic form may be directed to the attention of a particular user of an electronic communications or information management, retrieval, or storage system, and includes, without limitation,—
 - (a) email addresses; and
 - (b) fax numbers; and
 - (c) remotely accessible locations in file directories located on computer hard-drives, servers, or internet-based servers
 - published** means having been made available at all reasonable times on an Internet website maintained by or on behalf of a Registrar
- (2) Subject to subclauses (3) to (8), any document required by these rules to be filed may be filed in the proper registry of the court by—
 - (a) delivering it to that registry by hand during registry hours; or
 - (b) sending it by mail to a postal address for that registry published by a Registrar; or
 - (c) sending a copy of that document in electronic form to an electronic address—
 - (i) to which the person filing the document has been directed by the court or a Registrar to send any documents that are to be filed electronically in a particular proceeding or interlocutory application; or
 - (ii) where no such direction has been made in respect of the particular proceeding or interlocutory application to which the document

relates, to an electronic address published by a Registrar for the purpose of allowing the electronic filing of documents in the proper registry of the court.

- (3) Subclause (4) applies where any copy of any document filed by means of an electronic communication pursuant to these rules contains a signature or other mark or writing intended by the person responsible for the inclusion of that signature or other mark or writing in the document to convey their authorisation, certification, endorsement or authentication of any matter contained within the document copied.
- (4) In respect of a copy of a document to which this subclause applies, despite any provision in these rules, or in any enactment, regulation or rule of law to the contrary, that copy of a document, and any matter contained within it, is deemed to have been sufficiently authorised, certified, authenticated, signed, or otherwise endorsed for the purposes of these rules as if the original document had been filed.
- (5) For the avoidance of doubt, parties to proceedings and interlocutory applications are not required to have regard to High Court Practice Note 2019/1 (The Use of Electronic Common Bundles and Electronic Casebooks in the High Court) so far as that practice note requires the delivery of any common bundle or casebook to a registry by hand or by post, provided that parties must have regard to that practice note so far as it regulates the preparation and format of, and technical requirements for, the electronic common bundle or casebook.
- (6) A Judge (including an Associate Judge) may, if satisfied that an emergency in the place at which the registry of the court in question is situated means that the filing of documents other than electronically would cause, or risk causing, disruption to the orderly and safe dispatch of the court's business, require that—
 - (a) any document required to be filed by these rules in the proper registry of the court; or
 - (b) any document intended by any person to be filed in a given registry of the court—

must not be filed pursuant to the provisions of subclause (2)(a) and must instead be filed pursuant to the provisions of either subclause (2)(b) or (c).
- (7) Subject to subclause (8), in the event of any inconsistency between any provision of this rule and any other provision of these rules or any other enactment, this rule prevails.
- (8) This rule is subject to rule 5.1B.

5.1B When documents filed

- (1) Subject to subclause (2), and despite any other provision of these rules or any other enactment or regulation to the contrary, a document—

- (a) delivered by hand to a registry of the court pursuant to rule 5.1A(2)(a) is filed on the day on which it is accepted for filing by the registry and at the time at which the registry receives it;
 - (b) sent by mail to a postal address in accordance with rule 5.1A(2)(b) is filed when the registry receives it;
 - (c) filed by sending it to an electronic address in accordance with rule 5.1A(2)(c)—
 - (i) is filed when it is received by the relevant electronic communications or information management, retrieval, or storage system, provided the document is received by that system during registry hours; or
 - (ii) at 9 am on the first day on which the relevant registry of the court is open after the document is received by the relevant electronic communications or information management, retrieval, or storage system.
- (2) A document is not filed until the earlier of the time that either—
- (a) any fee prescribed for the filing of that document by a provision of the High Court Fees Regulations 2013 has been paid; or
 - (b) the person responsible for the filing of the document has, in a manner directed by a Registrar, either—
 - (i) provided a Registrar with a credit card payment authority for a sum equal to the fee payable for the filing of that document; or
 - (ii) where the court is able to facilitate it, paid a sum equal to the fee payable for the filing of that document by means of electronic bank transfer into an account identified by the Registrar for that purpose; or
 - (c) in any case where the Registrar accepts it is impracticable for the person presenting the document to effect payment of the fee by any other means, and—
 - (i) there is a solicitor on the record for the party seeking to file the document, by providing together with the document filed that solicitor’s unconditional undertaking to the court to make the payment of the fee for the filing of that document within three working days from the day on which the document has been filed; or
 - (ii) where the party seeking to file a document is represented by a barrister sole permitted to represent that party without the intervention of an instructing lawyer pursuant to rules 14.4 to 14.12 of the Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008, by providing together with the document filed that barrister sole’s unconditional undertaking to the court to make

payment of the fee for the filing of that document within three working days from the day on which the document has been filed:

provided that in any case where an undertaking under this paragraph has not been fulfilled within the time provided for payment, the court may order that no reliance can be placed on that document or that the document not be used in the proceeding until the payment is received; or

- (d) the Registrar has determined that the document is to be treated as having been filed despite non-payment of the fee:

provided that such a determination may be made only if the court is satisfied that doing so is necessary in the interests of justice, having regard to—

- (i) the circumstances of the proceeding or interlocutory application in question; and
- (ii) the existence of an emergency in the place at which the registry of the court in question is situated.

7 Rule 5.6 revoked (Signature to be original)

Rule 5.6 is revoked.

8 Rule 6.1 amended (Methods of service)

Rule 6.1 is amended by inserting the following subclause after subclause (3):

- (4) This rule is subject to rule 6.1A.

9 New rule 6.1A inserted (Power to limit acceptable methods of service in emergency)

After rule 6.1, insert:

6.1A Power to limit acceptable methods of service in emergency

Any contrary provision of these rules notwithstanding, a Judge (including an Associate Judge) may, in respect of a proceeding, if satisfied that the existence of an emergency in any part of New Zealand means the service of documents by other than electronic means would cause or risk causing disruption to the orderly and safe dispatch of the court's business or harm to the health and well-being of any person, require that—

- (a) any party that has not already done so specify an electronic address by which documents can be served on that party pursuant to rule 6.1(1)(d)(iii); or
- (b) any document required by any person to be served on any other person not be served pursuant to rules 6.1(1)(a), (b), (c), or (d)(ii) and must instead be served pursuant to rule 6.1(1)(d)(i) or (iii).

10 Rule 7.3 amended (First case management review)

Rule 7.3(8) is revoked.

11 Rule 7.21 amended (Filing by post)

Rule 7.21(1) and (2) are revoked.

12 Rule 9.7 amended (Requirements in relation to briefs)

Rule 9.7(4)(a) is revoked.

13 Rule 9.12 amended (Evidence-in-chief at trial)

Rule 9.12(1) is amended by omitting “signed”.

14 Rule 9.13 amended (Briefs not given in evidence)

Rule 9.13(2) is amended by omitting “by the person who signed the brief” and substituting “by the person to whose evidence that brief relates”.

15 Rule 9.62 amended (Application to set aside New Zealand subpoena)

Rule 9.62(2)(b) and (6) are revoked.

16 Rule 19.10 amended (Application of rules relating to interlocutory applications)

Rule 19.10(1)(c) is revoked.

Reliance on unsworn affidavits

17 Rule 9.73 replaced (Swearing of affidavits)

Replace rule 9.73 with:

9.73 Swearing of affidavits

- (1) Subject to subclauses (4) to (6), an affidavit may be read and used in a proceeding or in respect of an interlocutory application only if it complies with subclause (2) or (3).
- (2) A sworn affidavit must be sworn—
 - (a) in accordance with the Oaths and Declarations Act 1957; and
 - (b) before a person authorised to administer oaths under that Act or under rule 9.85 or 9.86.
- (3) An affirmed affidavit must comply with the Oaths and Declarations Act 1957.
- (4) Subject to subclause (5), a Judge or Registrar may direct that an affidavit that does not comply with either subclause (2) or (3) may—
 - (a) be accepted for filing in respect of a proceeding or interlocutory application; and

- (b) nonetheless be read and used in a proceeding or interlocutory application.
- (5) A Judge may make an order, and a Registrar may make a direction, under subclause (4) in respect of an affidavit only if—
 - (a) satisfied that, due to the existence of an emergency in any part of New Zealand, requiring the affidavit to comply with either subclause (2) or (3) would—
 - (i) cause an unacceptable delay in the resolution of the proceeding, having regard to the nature and urgency of that proceeding or any application connected with it; or
 - (ii) endanger the health and wellbeing of any person; and
 - (b) the affidavit is presented for filing together with a memorandum of counsel—
 - (i) confirming that the document contains the same evidentiary matter as the affidavit complying with either subclause (2) or (3) that the intending deponent would have sworn to or affirmed had an emergency not existed; and
 - (ii) undertaking that an affidavit complying with either subclause (2) or (3) containing the same evidentiary matter as that presented for filing will be filed as soon as circumstances reasonably permit; and
 - (c) the affidavit contains, or there is attached to or covering the affidavit a document containing, a statement from the intending deponent to the effect that the matters stated in the affidavit are to the best of his or her knowledge true and correct.
- (6) For the avoidance of doubt, in the event of any inconsistency between subclauses (4) and (5) and any other provisions of these rules, subclauses (4) and (5) prevail.

Rachel Hayward,
for the Clerk of the Executive Council.

Explanatory note

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

These rules, which come into force immediately upon their notification in the *Gazette*, have been prepared in circumstances of urgency to facilitate the continuation of civil proceedings in the High Court during the course of the outbreak of COVID-19.

These rules amend the High Court Rules 2016 to—

- ensure hearings can proceed with remote participation:
- allow for the electronic filing of documents:
- provide for reliance on unsworn affidavits.

The continuing need for these amendments will be reviewed by the Rules Committee on a decision by the Government that the outbreak is at an end.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 9 April 2020.
These rules are administered by the Ministry of Justice.