



Federal Court Amendment Rules 2005 (No. 1)¹

Select Legislative Instrument 2005 No. 183

We, Judges of the Federal Court of Australia, make the following
Rules of Court under the *Federal Court of Australia Act 1976*.

Dated 4 August 2005

M.E.J. BLACK C.J.
M.R. WILCOX J.
J.E.J. SPENDER J.
D.M. RYAN J.
R.S. FRENCH J.
M.C. LEE J.
D.G. HILL J.
T.J. HIGGINS J.
P.C. HEEREY J.
M.F. MOORE J.
C.M. BRANSON J.
K.E. LINDGREN J.
B.J.M. TAMBERLIN J.
R. SACKVILLE J.
S.M. KIEFEL J.
R.D. NICHOLSON J.
P.D. FINN J.
R.A. SUNDBERG J.

S.R. MARSHALL J.
A.M. NORTH J.
R.N. MADGWICK J.
R. MERKEL J.
A.H. GOLDBERG J.
A.R. EMMETT J.
M.S. WEINBERG J.
J.A. DOWSETT J.
P.G. HELY J.
R.V. GYLES J.
R.A. CONTI J.
M.A. STONE J.
J.L.B. ALLSOP J.
P.M. JACOBSON J.
A.C. BENNETT J.
B.T. LANDER J.
S.M. CRENNAN J.
A.N. SIOPIIS J.
R.F. EDMONDS J.
P.R. GRAHAM J.

Judges of the Federal
Court of Australia

W.G. SODEN
Registrar

1 Name of Rules

These Rules are the *Federal Court Amendment Rules 2005 (No. 1)*.

2 Commencement

These Rules commence on the day after they are registered.

3 Amendment of Federal Court Rules

Schedule 1 amends the Federal Court Rules.

Schedule 1 Amendments

(rule 3)

[1] Order 1, subrule 5AC (5)

substitute

- (5) Subject to subrule (5A), if the document is required to be signed or stamped, and is accepted at the Registry, the Registrar must:
- (a) for a document that, under these Rules, must be endorsed with a date for hearing — insert a notice of filing and hearing in accordance with Form 173 as the first page of the document; and
 - (b) for any other document — insert a notice of filing in accordance with Form 174 as the first page of the document; and
 - (c) make one copy of the document (including the notice mentioned in paragraph (a) or (b) (whichever is applicable)); and
 - (d) if the sender requests that the document be held for collection — hold it for collection for 7 days; and

- (e) if the sender does not request the document to be held for collection, or having made a request does not collect the document within 7 days — return the document by sending it:
 - (i) by electronic communication to the email address stated on the cover sheet; or
 - (ii) if there is no email address stated, to the postal address stated on the cover sheet.
- (5A) Paragraphs (5) (a) and (b) do not apply in relation to a subpoena.

[2] Order 41, after rule 7

insert

8 Documents filed electronically

If a document has been filed electronically and a notice has been inserted as the first page of the document in accordance with Order 1, paragraph 5AC (5) (a) or (b), the notice is deemed to be part of the document for the purposes of the Act and these Rules (including any rules about service of the document).

[3] Order 52, after rule 2, before Division 1

insert

2AA Exercise of appellate jurisdiction (Act s 25)

An application mentioned in subsection 25 (2) of the Act must be heard and determined by a single Judge unless:

- (a) the Chief Justice considers it appropriate for the application to be heard and determined by a Full Court and has given a direction to that effect; or
- (b) the application is made in a proceeding that has already been assigned to a Full Court, and the Full Court considers it is appropriate for it to hear and determine the application.

[4] Order 52, subrule 10 (2)

substitute

- (2) If an application has not been made in accordance with subrule (1), an application may be made by motion on notice.
- (2A) Order 19 applies to an application under subrule (2), and the notice of motion must be filed:
 - (a) if the interlocutory judgment is in the nature of a decision on a question under Order 29 — within 21 days after the date on which the interlocutory judgment was pronounced; and
 - (b) in any other case — within 7 days after the date on which the interlocutory judgment was pronounced;or within such further time as the Court or a Judge may allow.

[5] Order 52, after rule 10

insert

10A Revocation or variation of a grant of leave by a single judge

If leave to appeal has been granted, the Full Court hearing the appeal may:

- (a) revoke the leave to appeal, wholly or in part; or
- (b) impose conditions on the leave to appeal; or
- (c) vary any conditions of the leave to appeal.

[6] Order 53, subrule 13 (1)

substitute

- (1) A respondent who wishes to appeal from a decision, or a part of a decision, from which the applicant has appealed, must:
 - (a) file in the Registry a notice of cross-appeal within the time mentioned in subsection 44 (2A) of the *Administrative Appeals Tribunal Act 1975*; and
 - (b) serve a copy of the notice of cross-appeal upon the applicant and every other party to the proceeding.

[7] Order 62, subrule 36A (3)

substitute

- (3) This rule does not apply to a proceeding under the *Admiralty Act 1988*.

[8] Order 62, paragraph 46 (3) (c)

substitute

- (c) A party interested may, within 21 days after the date of issue of a notice under paragraph (b), file and serve on each other party a notice of objection to the estimate.
- (ca) If there is no notice of objection, the amount of the estimate is deemed to be the amount for which a certificate of taxation may be issued.
- (cb) If a certificate of taxation has been issued for an amount determined under paragraph (ca), a party that has not received a notice under paragraph (b) may apply by motion to the Court for an order to set aside the certificate of taxation.

[9] Order 62, paragraph 46 (4) (c)

substitute

- (c) A party interested may, within 21 days after the date of issue of a photocopy of the provisionally taxed bill, file and serve on each other party a notice requiring a full taxation.
- (ca) If there is no notice requiring a full taxation, the amount at which the bill was provisionally taxed is deemed to be the amount for which a certificate of taxation may be issued.
- (cb) If a certificate of taxation has been issued for an amount determined under paragraph (ca), a party that has not received a photocopy of the provisionally taxed bill may apply by motion to the Court for an order to set aside the certificate of taxation.

[10] Order 62, subrule 46 (4A)

substitute

- (4A) Subject to any order made under subrule (4B), if a notice of objection is filed under paragraph (3) (c), or a notice requiring a full taxation is filed under paragraph (4) (c), the party filing the notice must bear the costs of taxation of all parties from the date of filing the notice unless, on taxation, there is obtained in that party's favour a variation of at least 15% of the estimate of taxed costs or of the amount provisionally taxed.
- (4B) The taxing officer may order that the costs of all or part of the taxation from the date of filing the notice be paid by a party, including a party who has obtained in that party's favour a variation of at least 15% of the estimate of taxed costs or of the amount provisionally taxed.
- (4C) In considering whether to make an order under subrule (4B), the taxing officer may have regard to any relevant matter including the following:
- (a) any offer of compromise as to costs;
 - (b) any conduct by a party that added to the duration or cost of the taxation.

[11] Order 62, subrule 46 (6A)

substitute

- (6A) If a party that filed a notice of objection withdraws the notice of objection before the taxation or provisional taxation is completed:
- (a) the amount of the estimate of costs is the amount for which a certificate of taxation may be issued; and
 - (b) the party that filed the notice of objection must bear the costs of taxation of all parties from the date of service of the notice of objection to the date of notification of the withdrawal; and

- (c) the Registrar, having regard to the liability of any party to pay the costs of the taxation under this rule, must:
 - (i) determine how the amount paid under paragraph (3) (d) as security for the costs of taxation is to be distributed or refunded to the parties; and
 - (ii) direct that payment be made out of Court accordingly.

- (6B) If at least 21 days have passed after the date on which the Registrar notified the parties of a completed taxation or provisional taxation under this rule, and no party has objected to that taxation, the Registrar, having regard to the liability of any party to pay the costs of the taxation under this rule, must:
 - (a) determine how the amount paid under paragraph (3) (d) as security for the costs of taxation is to be distributed or refunded to the parties; and
 - (b) direct that payment be made out of Court accordingly.

[12] Orders 69 and 69A

substitute

Order 69 Trans-Tasman Market Proceedings Rules

Division 1 Preliminary

1 Short title

This Order may be cited as the Trans-Tasman Market Proceedings Rules.

2 Definitions for Order 69

In this Order:

New Zealand registry means a registry of the High Court of New Zealand.

Trade Practices Act means the *Trade Practices Act 1974*.

Note The following expressions are defined in section 32B of the Act:

- Australian injunction
- Australian judgment
- Australian proceeding
- High Court
- judgment creditor
- judgment debtor
- New Zealand injunction
- New Zealand judgment
- New Zealand proceeding
- registered.

3 Expressions used in the Trade Practices Act

An expression used in this Order and in the Trade Practices Act has the same meaning in this Order as in that Act.

4 Application of this Order and other rules of the Court

- (1) This Order applies to an Australian proceeding.
- (2) The other rules of the Court apply, so far as they are not inconsistent with this Order, to an Australian proceeding.

Division 2 Conduct of Trans-Tasman market proceedings

5 Filing documents in an Australian proceeding in New Zealand

- (1) A party may, unless the Court or a Judge otherwise orders, file a document in an Australian proceeding in a New Zealand registry.
- (2) A party that files a document in accordance with subrule (1) must, at the time of filing:
 - (a) obtain from the registry a receipt that gives a general description of the document that was filed; and
 - (b) specify whether the document is to be sent to the Court by facsimile or post; and

- (c) pay the registry an amount to meet the costs of sending the document to the Court in the way specified under paragraph (b).

6 Filing documents in a New Zealand proceeding in Australia

- (1) A party may file a document in a New Zealand proceeding in a registry of the Court if permitted by a law of New Zealand to do so.
- (2) If a party files a document in accordance with subrule (1):
 - (a) the party must, at the time of filing:
 - (i) specify the New Zealand registry to which the document is to be sent; and
 - (ii) specify whether the document is to be sent to the New Zealand registry by facsimile or post; and
 - (iii) pay the registry an amount to meet the costs of sending the document to the New Zealand registry in the way specified under subparagraph (ii); and
 - (b) the Registrar must, at the time of filing, give the party a receipt from the registry that:
 - (i) contains a general description of the document that was filed; and
 - (ii) states the way in which the document will be sent to the New Zealand registry; and
 - (c) the Registrar must, as soon as practicable after the document is filed:
 - (i) notify the New Zealand registry that the document has been filed; and
 - (ii) send the document to the New Zealand registry.

7 Stay of Australian proceeding

The Court or a Judge may make an order staying an Australian proceeding in whole or in part if:

- (a) proceedings involving the same issues or questions of fact have been commenced in the Court and in the High Court of New Zealand; and

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- (b) the Court or a Judge is satisfied that, in the interests of justice, the Australian proceeding should be stayed until the New Zealand proceeding is determined.

8 Federal Court sittings in New Zealand

The Court or a Judge may give directions about the procedures for conducting or continuing a proceeding at a place in New Zealand in accordance with section 32C of the Act.

9 Offences under Part IIIA of the Act

Order 49 applies to a prosecution for an offence under Part IIIA of the Act.

Division 3 Registration of judgment of High Court of New Zealand

10 Definition for Division 3

In this Division:

judgment means a final or interlocutory judgment or order.

11 Application for registration of judgment of High Court of New Zealand

- (1) An application by a judgment creditor for registration of a New Zealand judgment under section 32W of the Act must:
- (a) be in accordance with Form 170; and
 - (b) subject to subrule (5), be accompanied by:
 - (i) a copy of the judgment certified by the High Court of New Zealand; and
 - (ii) an affidavit that complies with subrule (2).
- (2) The supporting affidavit must state:
- (a) the full name, occupation and the usual or last known residential or business address of each party; and

- (b) that the judgment was given in a proceeding in which a matter for determination arose, as is the case, under section 36A, 98H or 99A of the Commerce Act 1986 (New Zealand); and
 - (c) that, if the judgment were registered, the registration would not be, or be liable to be, set aside under section 32Y of the Act; and
 - (d) that, on the day on which the application was made, the judgment can be enforced in New Zealand; and
 - (e) if the judgment is a money judgment — that, on the day on which the application is made, the judgment has not been wholly satisfied.
- (3) If the judgment is a money judgment, a further supporting affidavit must be filed on the day of hearing stating:
- (a) that the judgment has not been wholly satisfied; and
 - (b) if the judgment has been partly satisfied — the balance remaining payable on that day; and
 - (c) the amount of interest (if any) payable on the judgment under New Zealand law as at that date; and
 - (d) the sum of the amounts of the reasonable costs of registration of the judgment and the costs incidental to the registration of the judgment, including the costs of obtaining a certified copy of the judgment from the High Court of New Zealand as at that date.
- (4) The further supporting affidavit must:
- (a) set out the facts and grounds relied on for each statement made in the affidavit; and
 - (b) include any certificates issued by the original court with respect to the judgment, stating:
 - (i) the causes of action to which the judgment relates; and
 - (ii) the enforceability of the judgment in New Zealand; and
 - (iii) the rate of interest (if any) payable under the New Zealand law on any amount payable under the judgment.

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- (5) If it is not practicable for the applicant to comply with subparagraph (1) (b) (i):
 - (a) a facsimile copy of the judgment certified by the High Court of New Zealand may be filed; and
 - (b) unless the Court or a Judge gives leave — a copy of the judgment certified by the High Court of New Zealand must be filed before any step is taken to enforce the judgment.
 - (6) The application may be heard in the absence of the judgment debtor.
 - (7) An order for the registration of a New Zealand judgment must:
 - (a) if the judgment is a money judgment — be in accordance with Form 171; or
 - (b) if the judgment is a non-money judgment — be in accordance with Form 172.

12 Notice of registration of judgment of High Court of New Zealand

- (1) The applicant must give notice, in accordance with subrule (2), of registration of a judgment of the High Court of New Zealand to the party against whom the registered judgment is enforceable.
- (2) Unless the Court or a Judge otherwise orders, the applicant must personally serve upon a party against whom the registered judgment is enforceable:
 - (a) a copy of the certified judgment of the High Court of New Zealand; and
 - (b) an authenticated copy of the order for registration of the judgment; and
 - (c) a copy of each supporting affidavit.
- (3) If the party against whom the registered judgment is enforceable is out of Australia, the documents mentioned in subrule (2) may be served without leave of the Court or a Judge.

Note Order 8 provides for service of documents outside Australia.

- (4) An affidavit of service of the documents mentioned in subrule (2) must be filed before any step is taken to enforce the registered judgment.
- (5) The Court may order the applicant to give such security as the Court thinks fit for the costs of the application and for the costs of any application that may be brought to set aside the registration of the judgment.

13 Application to set aside registration of judgment of High Court of New Zealand

- (1) An application to set aside the registration of the judgment (which may include an application for a stay of the enforcement of the registered judgment) must be made by motion on notice.
- (2) The Court may give such directions as may be necessary for the statement and trial of any issue arising in the application.

14 Record of registered judgments of High Court of New Zealand

The Registrar must keep a record of the following details of each registered judgment:

- (a) the details of the judgment of the High Court of New Zealand;
- (b) the date of the order that the judgment be registered;
- (c) the full name and address of the judgment creditor, or the name and address of the judgment creditor's solicitor or agent on whom a document can be served;
- (d) the full name, occupation and last known address of the party against whom the judgment is enforceable;
- (e) if the judgment is a money judgment:
 - (i) the judgment amount expressed in Australian dollars; and
 - (ii) the amount of interest (if any) payable on the judgment under New Zealand law expressed in Australian dollars; and

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- (iii) the rate at which the registered judgment carries interest;
 - (f) if the judgment is a non-money judgment — the terms of the judgment;
 - (g) the sum of the amounts of the reasonable costs of registration of the judgment and the costs incidental to the registration of the judgment;
 - (h) the details of any enforcement or proceeding in respect of the registered judgment.

Order 69A Trans-Tasman Proceedings

Division 1 Preliminary

1 Short title

This Order may be cited as the Trans-Tasman Proceedings Rules.

2 Definition for Order 69A

In this Order:

Evidence and Procedure Act means the *Evidence and Procedure (New Zealand) Act 1994*.

Note The following expressions are defined in section 3 of the Evidence and Procedure Act:

- court
- document
- expenses
- family proceeding
- fax
- federal court
- inferior court
- New Zealand Act
- New Zealand Minister
- official instrument
- person named

- public document
- spouse
- subpoena
- subpoena for production
- subpoena to give evidence
- superior court.

3 Expressions used in the Evidence and Procedure Act

An expression used in this Order and in the Evidence and Procedure Act has the same meaning in this Order as in that Act.

4 Application of this Order and other rules of the Court

- (1) This Order applies to a proceeding to which the Evidence and Procedure Act applies.
- (2) The other rules of the Court apply, so far as they are not inconsistent with this Order, to a proceeding to which the Evidence and Procedure Act applies.

Division 2 Service of Australian subpoena in New Zealand

5 Application for leave to serve a subpoena in New Zealand

- (1) An application for leave to serve a subpoena in New Zealand must be made by motion on notice.
- (2) A single application may be made for leave to serve 2 or more subpoenas in New Zealand.
- (3) The application must be accompanied by:
 - (a) a copy of each subpoena in respect of which leave is sought; and
 - (b) an affidavit that complies with subrule (4).
- (4) The supporting affidavit must state the following matters:
 - (a) the name, designation or occupation and address of each person named;

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- (b) whether each person named is over 18 years old;
 - (c) the nature and significance of the evidence to be given, or the document or thing to be produced, by each person named;
 - (d) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to each person named;
 - (e) the date by which it is intended to serve each subpoena in New Zealand;
 - (f) details of the amounts to be paid or tendered to each person named to meet the person's reasonable expenses of complying with the subpoena;
 - (g) details of the way in which the amounts mentioned in paragraph (f) are to be paid or tendered to each person named;
 - (h) if the subpoena requires a person named to give evidence — an estimate of the time that the person will be required to attend to give evidence;
 - (i) any facts or matters known to the applicant that may be grounds for an application by a person named to have the subpoena set aside under subsection 14 (2) or (3) of the Evidence and Procedure Act.
- (5) A subpoena to which this Order applies, if issued by the Court, must be in accordance with Form 69A.
 - (6) Subrule (7) applies in relation to a person named in a subpoena if the person is not a party to the proceeding.
 - (7) Before granting leave under the Evidence and Procedure Act to serve the subpoena, the Court may require the applicant for leave to undertake to meet the expenses reasonably incurred by the person named in complying with the subpoena, if those expenses exceed the allowances and travelling expenses to be provided to that person at the time of service of the subpoena.

6 Hearing of application for leave to serve a subpoena in New Zealand

An application for leave to serve a subpoena issued by an inferior court may be heard by the Court or a Judge in the absence of any party or the person named.

7 Documents relating to application

Except with the leave of the Court or a Judge, a person must not search in the Registry for, inspect or copy any document relating to an application under the Evidence and Procedure Act for leave to serve a subpoena issued in a proceeding in New Zealand.

Division 3 Setting aside Australian subpoena

8 Application to set aside subpoena

- (1) An application to set aside a subpoena served in New Zealand must be made by motion on notice.
- (2) The heading of the motion must be the same as the heading on the copy of the order giving leave to serve the subpoena in New Zealand.
- (3) The application must be accompanied by:
 - (a) a copy of the subpoena; and
 - (b) an affidavit that complies with subrule (4).
- (4) The supporting affidavit must state:
 - (a) the grounds on which the application is based; and
 - (b) an address for service within Australia or New Zealand of the person named; and
 - (c) whether the person named requests that the hearing be held by video link or telephone.

Note Order 7 rule 6 sets out the requirements for an address for service.

- (5) The application must be filed in the District Registry shown on the order of the Court granting leave to serve the subpoena in New Zealand.

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- (6) Upon receipt of the application, the Registrar must serve a copy of the application on the party that obtained leave to serve the subpoena in New Zealand.

Division 4 Compliance with subpoena

9 Subpoena for production

If the Registrar receives information under section 17 of the Evidence Amendment Act 1994 (New Zealand) that a document or thing has been produced to a registry of the High Court of New Zealand in compliance with a subpoena issued by the Court, the Registrar may ask the registry to confirm that the document or thing is able to be delivered to the Court before the date specified in the subpoena for production.

Division 5 Failure to comply with subpoena

10 Application for issue of certificate of non-compliance with subpoena

- (1) The Court may issue a certificate of non-compliance with a subpoena.
- (2) An application for a certificate of non-compliance may be made:
 - (a) orally to the Court if the proceeding in which the subpoena was issued is before the Court; or
 - (b) by motion on notice.
- (3) The application must be accompanied by:
 - (a) an affidavit of service of the subpoena and the order giving leave to serve the subpoena; and
 - (b) an affidavit that complies with subrule (4); and
 - (c) a draft certificate of non-compliance.
- (4) The supporting affidavit must:
 - (a) include a copy of:
 - (i) the subpoena and the order giving leave to serve the subpoena; and

- (ii) any other application to set aside the subpoena; and
 - (iii) any material in support of that application; and
 - (iv) the order finally deciding that application; and
- (b) set out the circumstances that are alleged to constitute a failure to comply with the subpoena.

11 Form of certificate of non-compliance with subpoena

- (1) A certificate of non-compliance with a subpoena must be in accordance with Form 69AB.
- (2) The Registrar must affix the stamp of the Court to a certificate issued under subrule (1).

Division 6 Enforcement of orders made in New Zealand proceedings

12 Request for enforcement of order made in New Zealand proceeding

- (1) This rule applies to a request for enforcement of an order made by a New Zealand court under section 32 of the Evidence and Procedure Act.
- (2) A request for enforcement of the order may be made:
 - (a) by the New Zealand court that made the order; or
 - (b) by a party to the proceeding.
- (3) The request for enforcement must be made by filing:
 - (a) a request in accordance with Form 69AC; and
 - (b) an affidavit that complies with subrule (4); and
 - (c) if the circumstances that are alleged to constitute a contravention of the order were recorded — a copy of the recording.
- (4) The supporting affidavit must:
 - (a) set out the order that is alleged to have been contravened; and
 - (b) state the name of the person alleged to have contravened the order; and

- (c) set out the circumstances that are alleged to constitute a contravention of the order.
- (5) On receipt of a request for enforcement of the order, the Court must determine whether to direct that:
 - (a) the provisions of Division 1 of Order 40, with any necessary modifications, apply; or
 - (b) rules 8 and 9 of Order 40, with any necessary modifications, apply.
- (6) Nothing in this rule affects the power of the Court to punish for contempt.

Division 7 Use of video links or telephones in Australian proceedings

13 Application for direction for use of video link or telephone

Subject to paragraph 8 (4) (c), an application for a direction that evidence be taken, or submissions be made, by video link or telephone from New Zealand, may be in accordance with Form 69AD.

[13] Schedule 1, Forms 66 to 72B

substitute

Form 69A Subpoena (incorporating Notice to Witness)

(Order 69A, subrule 5 (5))

NOTICE TO WITNESS

Evidence and Procedure (New Zealand) Act 1994

THIS NOTICE IS VERY IMPORTANT

PLEASE READ IT AND THE ATTACHED DOCUMENT OR DOCUMENTS
VERY CAREFULLY.

IF YOU HAVE ANY TROUBLE UNDERSTANDING THESE
DOCUMENTS YOU SHOULD GET LEGAL ADVICE AS SOON AS
POSSIBLE.

Attached to this notice is a subpoena.

The subpoena has been issued by the Federal Court of Australia.

The subpoena may be served in New Zealand under New Zealand law (see section 14 of the Evidence Amendment Act 1994 (New Zealand)).

This notice:

- sets out your rights relating to the subpoena; and
- sets out your obligations relating to the subpoena; and
- includes information about the way in which you may make an application to have the subpoena set aside.

YOUR RIGHTS

1. You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena.
2. An amount of money, or money and vouchers, that is sufficient to meet your reasonable expenses of complying with the subpoena must be given to you within a reasonable time before the date for compliance with the subpoena (see below: 'YOUR OBLIGATIONS').

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3. If, in complying with the subpoena, you incur expenses that are more than the amount that was given to you before you complied, you may obtain an order from the Federal Court of Australia that you be paid the additional amount you incurred.
 4. You may apply to the Federal Court of Australia to have the subpoena wholly or partly set aside. If you wish to apply to have the subpoena set aside you should get legal advice as soon as possible.
 5. An application can be made and determined by that court without you having to go to Australia, or to retain Australian solicitors. All the necessary arrangements can be made in New Zealand.

NOTE: Details of some of the grounds on which a subpoena can be set aside and the procedures for setting aside a subpoena are set out at the end of this notice.

YOUR OBLIGATIONS

1. Unless the subpoena is set aside, you must comply with the attached subpoena if:
 - (a) when the subpoena was served on you, or at some reasonable time before the date specified in the subpoena for compliance with it, you were offered or given either:
 - (i) enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or
 - (ii) a combination of money and vouchers (for example, travel tickets) to meet those expenses; and
 - (b) you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and
 - (c) the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and
 - (d) service of the subpoena complied with any other conditions specified in the order; and
 - (e) you are over the age of 18 years.

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2. If the subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the court or tribunal that issued the subpoena. You may comply with the subpoena by producing the documents or things at a registry of the High Court of New Zealand at least 10 days before the date specified in the subpoena. When you produce the documents or things at the registry you will be required to produce the subpoena and to pay the cost of sending the documents or things to the court or tribunal that issued the subpoena. You will be able to pay that cost out of the money given to you to meet your reasonable expenses of complying with the subpoena.

FAILURE TO COMPLY WITH THE SUBPOENA

If you do not comply with this subpoena you may be arrested and taken before the High Court of New Zealand. Unless the High Court is satisfied that failure to comply should be excused, a fine not exceeding NZ\$10 000 may be imposed.

GROUNDINGS FOR SETTING ASIDE A SUBPOENA

1. The court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and:
 - (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or
 - (b) if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or
 - (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or
 - (d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Trade Practices Act 1974* (Australia)); or
 - (e) you are subject to a restriction on your movements imposed by law or an order of a court that is inconsistent with you complying with the subpoena (for example, bail conditions, release conditions or terms of a community based sentence).
2. The grounds on which the court may set aside the subpoena include:
 - (a) the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense;
 - (b) compliance with the subpoena would cause you hardship or serious inconvenience;

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- (c) if the subpoena requires you to produce a document or thing and:
- (i) that document or thing should not be taken out of New Zealand; and
 - (ii) satisfactory evidence of the contents of the document or satisfactory evidence of the thing can be given by other means.

NOTE: The above list does not include all the matters the court will consider in an application to set aside a subpoena, but if any of the matters in the list apply to you they should be included in your application.

PROCEDURE FOR APPLYING TO SET ASIDE A SUBPOENA

1. Application must be made to the Federal Court of Australia.
 2. You may fax your application to that court on fax number [*fax number of the court*].
 3. Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be delivered, faxed or posted to you at that address.
 4. The Registrar of the Federal Court of Australia will arrange for service of your application and of any affidavit you lodge with the court with your application.
 5. The court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing.
 6. If there is a hearing the court can direct that it be held by video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone from a place in New Zealand.
 7. If, in your application or within a reasonable time after lodging your application, you request that the hearing be held by video link or telephone, the court must hold a hearing by video link or telephone. However, in such a case, the court will determine which of video link or telephone will be used.
-

IN THE [name of court]

File number:

DISTRICT REGISTRY [insert if filing in Federal Court]

APPLICANT/PLAINTIFF:

RESPONDENT/DEFENDANT:

SUBPOENA

To: [name]
[address]

YOU ARE ORDERED:

- *to attend to give evidence — see section A of this form; or
- *to produce this subpoena or a copy of it and the documents or things specified in the Schedule — see section B of this form; or
- *to attend to give evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule — see section C of this form

* Select one only of these three options. The sections that have not been selected may be omitted or struck out.

Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under section 16 of the Evidence Amendment Act 1994 (New Zealand)

The last date for service of this subpoena is:
(See Note 2)

Please read Notes 1 to 16 at the end of this subpoena.

[Seal or Stamp of the Court]

Date:

Issued at the request of [*name of party*], whose address for service is:

A. Details of subpoena to attend to give evidence only

Date, time and place at which you must attend to give evidence:

Date:

Time:

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

B. Details of subpoena to produce only

You must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to:
 - (i) the Registrar of the Federal Court at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production; or
 - (ii) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. (*See Notes 6–12*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
[Name of Courtetc as the case may be]

Schedule

The documents and things you must produce are as follows:

[If insufficient space attach list]

C. Details of subpoena both to attend to give evidence and to produce

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows:

Date:

Time:

Place:

You must continue to attend from day to day unless excused by the Court or the person authorised to take evidence in this proceeding or until the hearing of the matter is completed.

In so far as you are required by this subpoena to produce the subpoena or a copy of it and documents or things, you must comply with this subpoena:

- (a) by attending to produce this subpoena or a copy of it and the documents or things specified in the Schedule below at the date, time and place specified for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule below to:
 - (i) the Registrar of the Federal Court at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production; or
 - (ii) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. (*See Notes 6–12*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and the documents or things:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar
[*Name of Courtetc as the case may be*]

Schedule

The documents and things you must produce are as follows:

[If insufficient space attach list]

NOTES

Leave to serve subpoena

1. You need not comply with the subpoena unless it is accompanied by:
 - (a) a copy of the order giving leave to serve the subpoena in New Zealand; and
 - (b) a notice in the prescribed form that:
 - (i) sets out your rights and obligations in relation to the subpoena; and
 - (ii) includes information about the way in which an application to have the subpoena set aside may be made.

Last day for service

2. You need not comply with the subpoena unless it is served on you on or before the date specified in the subpoena as the last date for service of the subpoena.

Informal service

3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with its requirements, if you have, by the last date for service of the subpoena, actual knowledge of the subpoena and of its requirements.

Addressee a corporation

4. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

Production of subpoena or copy of it and documents or things by delivery or post

5. In so far as this subpoena requires production of the subpoena or a copy of it and a document or thing, instead of attending to produce the subpoena or a copy of it and the document or thing, you may comply with the subpoena by delivering or sending the subpoena or a copy of it and the document or thing:
 - (a) the Registrar of the Federal Court at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production; or

-
- (b) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production.
6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify the Registrar of the Federal Court in writing of your objection and of the grounds of your objection.
7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, the Registrar of the Federal Court may permit the parties to the proceeding to inspect the document or thing.

Production of a number of documents or things

8. If you produce more than one document or thing, you must, if requested by the Registrar of the Federal Court, produce a list of the documents or things produced.

Production of copy instead of original

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

Return or destruction of documents or copies

10. You may, at the time of production, inform the Court that any document or copy of a document produced need not be returned and may be destroyed.
11. If you have so informed the Court, the Registrar of the Federal Court may destroy the document or copy instead of returning it to you.

Applications in relation to subpoena

12. You have the right to apply to the Court for an order with respect to any claim for privilege, public interest immunity or confidentiality in relation to any document or thing the subject of the subpoena.

Loss or expense of compliance

13. If you are not a party to the proceeding, you may apply to the Court for an order that the issuing party pay an amount (in addition to conduct money and any witness's expenses) in respect of the loss or expense, including legal costs, reasonably incurred in complying with the subpoena.

Banker's book

14. In so far as this subpoena requires production of the subpoena or a copy of it and a banker's book, if section 47B of the Evidence Act 1908 (New Zealand) would have applied if this subpoena has been issued in a New Zealand proceeding, instead of producing the banker's book, you may produce proof of the relevant entries in accordance with section 47B of the Evidence Act 1908 (New Zealand).

Contempt of court — arrest

15. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under section 16 of the Evidence Amendment Act 1994 (New Zealand).
16. Note 15 is without prejudice to any power of the Court under any rules of the Court (including any rules of the Court providing for the arrest of an addressee who defaults in attendance in accordance with a subpoena) or otherwise, to enforce compliance with a subpoena.

Version 2

Form 69AB Certificate of non-compliance with subpoena

(Order 69A, subrule 11 (1))

To: The High Court of New Zealand
[Address]

THE FEDERAL COURT OF AUSTRALIA, respectfully requests that you exercise your powers under section 16 of the Evidence Amendment Act 1994 (New Zealand) in relation to non-compliance by *[person named in subpoena]* with a subpoena issued by the Federal Court of Australia and for which leave to serve in New Zealand was given by the Federal Court of Australia under the *Evidence and Procedure (New Zealand) Act 1994* on *[insert date of leave]*.

A copy of the subpoena and a copy of the order giving leave to serve in New Zealand are annexed to this certificate.

[Either]

No application to set aside the subpoena either wholly or in part has been made.

[Or]

An application to set aside the subpoena was dismissed by order made on *[insert date]*. A copy of this order is annexed to this certificate.

Date: *[eg 7 May 20]*

By the Court
[signature of Registrar]
[SEAL OF COURT TO BE AFFIXED]

Version 1

Form 69AC Request for enforcement of an order made by a New Zealand court under section 32 of the Act

(Order 69A, subrule 12 (3))

[*Name of court or party making request*] respectfully requests the Federal Court of Australia to punish, under subsection 33 (3) of the *Evidence and Procedure (New Zealand) Act 1994*, [*name of person contravening the order*] for contravention of an order made by [*New Zealand court which made the order*].

An affidavit setting out details of the contravention is attached.

Name of court or party making request: [*insert name*]

Address of court or party making request: [*insert address*]

Telephone number: [*insert number*]

Fax number: [*insert number*]

Date: [*eg 7 May 20*]

[*signed, applicant or applicant's solicitor*]

Version 1

Form 69AD Request for hearing by video link or telephone

(Order 69A, rule 13)

The applicant requests that the hearing of the application listed for hearing on [*insert date(s) of hearing*] be heard by video link or telephone.

Date: [*eg 7 May 20*]

[*signed, applicant or applicant's solicitor*]

Version 1

[14] Schedule 1, after Form 169

insert

Form 170 Application for registration of a New Zealand judgment under the *Federal Court of Australia Act 1976*

(Order 69, subrule 11 (1))

I, [*insert name of applicant*] apply under Part IIIA of the *Federal Court of Australia Act 1976* to have the following judgment of the High Court of New Zealand registered in the Court.

DETAILS OF JUDGMENT

JUDGE:

DATE OF JUDGMENT:

WHERE MADE:

[*if the judgment is a money judgment*]

AMOUNT: \$NZ

BALANCE REMAINING PAYABLE:

INTEREST TO DATE:

and/or

[*if the judgment is an order or injunction*]

TERMS OF JUDGMENT:

Date: [*eg 7 May 20*]

.....
[*Signed, applicant or applicant's solicitor*]

The applicant's address for service is:

Version 1

**Form 171 Order for registration of New Zealand
money judgment**

(Order 69, subrule 11 (7))

JUDGE:

DATE OF ORDER:

WHERE MADE:

ORDER

THE COURT ORDERS THAT:

1. The judgment dated [*insert date*] of the High Court of New Zealand by which it was ordered that [*insert name of respondent*] ('the judgment debtor') pay the sum of [*insert amount in \$NZ*] *and interest to [*insert name of applicant*] ('the judgment creditor') be registered under Part IIIA of the *Federal Court of Australia Act 1976*.

** omit if inapplicable*

2. The amount which the judgment debtor must pay to the judgment creditor is [*insert amount in \$A*]. The amount includes an amount of interest of [*insert amount in \$A*].

3. [*Insert any other orders made under the judgment*]

4. The reasonable costs of, and incidental to, the application for this order and registration of the judgment, *fixed at \$A[*amount*]* to be taxed, are to be paid by the judgment debtor to the judgment creditor.

**omit if inapplicable*

5. The judgment debtor may apply to have the registration set aside.

Date: [eg 7 May 20]

Registrar

Version 1

Form 172 Order for registration of New Zealand non-money judgment

(Order 69, subrule 11 (7))

JUDGE:

DATE OF ORDER:

WHERE MADE:

ORDER

THE COURT ORDERS THAT:

1. The judgment dated [insert date] of the of the High Court of New Zealand by which it was ordered that [insert name of respondent] ('the judgment debtor') [insert terms of order or injunction] be registered under Part IIIA of the *Federal Court of Australia Act 1976*.

2. The reasonable costs of, and incidental to, the application for this order and registration of the judgment, *fixed at \$A[amount]* to be taxed, are to be paid by the judgment debtor to the judgment creditor.

**omit if inapplicable*

3. The judgment debtor may apply to have the registration set aside.

Date: [eg 7 May 20]

Registrar

Version 1

Form 173 Notice of filing and hearing

(Order 1, subrule 5AC (5))

IN THE FEDERAL COURT OF AUSTRALIA

Form 173

DISTRICT REGISTRY

NOTICE OF FILING AND HEARING

This application was filed electronically in the Federal Court of Australia on [date].

CASE DETAILS

Case Number:

Case Description:

District Registry:

Time and date for hearing:

Place:

[Facsimile of Court Seal]

Dated:

Registrar

Note

This Notice forms part of the application and contains information that might otherwise appear elsewhere in the application. The Notice must be included in the application served on each party to the proceeding.

Form 174 Notice of filing

(Order 1, subrule 5AC (5))

IN THE FEDERAL COURT OF AUSTRALIA

Form 174

DISTRICT REGISTRY

NOTICE OF FILING

This document was filed electronically in the Federal Court of Australia on [*date*].

CASE DETAILS

Case Number:

Case Description:

District Registry:

Document Type:

[*Facsimile of Court Seal*]

Dated:

Registrar

Note

This Notice forms part of the document and contains information that might otherwise appear elsewhere in the document. The Notice must be included in the document served on each party to the proceeding.

[15] Schedule 2, item 24

substitute

- | | | |
|----|---|--|
| 24 | Telegram, facsimile copy, or telex including attendance to dispatch | <i>64 or</i> an amount that is reasonable in the circumstances |
|----|---|--|

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.