



Family Courts (Trans-Tasman Proceedings Act 2010) Amendment Rules 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 2nd day of September 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 16A of the Family Courts Act 1980, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following rules.

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Rules

- 1 Title**
 These rules are the Family Courts (Trans-Tasman Proceedings Act 2010) Amendment Rules 2013.

2 Commencement

These rules come into force on 11 October 2013.

3 Principal rules

These rules amend the Family Courts Rules 2002 (the **principal rules**).

4 Rule 8 amended (Interpretation)

In rule 8, definition of **address for service**, after “rules”, insert “or, if the party is a defendant as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010 who is served in Australia under section 13 of that Act with an initiating document for a proceeding, the address of a place in New Zealand or Australia that, under section 18 of that Act, is or is to be treated as the defendant’s address for service for the proceeding”.

5 Rule 43 amended (Appearance under protest to jurisdiction)

After rule 43(7), insert:

- “(8) To the extent that an application under this rule relates to service of process effected outside New Zealand under HCR 6.27 or HCR 6.28 (as applied by rule 130(2)(a) or (b)), it must be determined under HCR 6.29 (as applied by rule 130(2)(ba)).
- “(9) But both this rule and HCR 6.29 (as applied by rule 130(2)(ba)) are subject to section 27(1) of the Trans-Tasman Proceedings Act 2010, which provides that a New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act.”

6 Rule 82 amended (Memorandum to be on front page with first document filed)

In rule 82(3), after “rule”, insert “83A or”.

7 New rule 83A inserted (Authority of certain Australian solicitors in certain trans-Tasman proceedings: District Courts Rules 2009 apply)

After rule 83, insert:

“83A Authority of certain Australian solicitors in certain trans-Tasman proceedings: District Courts Rules 2009 apply

DCR 3.37.1A (which applies HCR 5.36A relating to authority of certain Australian solicitors in certain trans-Tasman proceedings) applies, so far as applicable and with all necessary modifications, to proceedings in a court.”

8 Rule 102 amended (How documents to be served)

After rule 102(2)(c), insert:

“(ca) if a defendant has been served in Australia under section 13 of the Trans-Tasman Proceedings Act 2010 with an initiating document for the proceeding, by posting the document to an address for service of the person to be served; or”.

9 Rule 113 amended (Personal service: District Courts Rules 2009 apply)

After rule 113(b), insert:

“(ba) 3.44.13A, which applies HCR 6.13A—personal service on Australian corporations, partnerships, and attorneys:
“(bb) 3.44.13B, which applies HCR 6.13B—personal service in Australia on foreign corporations:”.

10 Rule 119 amended (When and how documents under rule 118 to be treated as served)

After rule 119(3), insert:

“(3A) Despite subclause (3), when a document is, under rule 118(c) or (d), transmitted electronically to the fax number or email address of a solicitor in a State or Territory of Australia at a time later than 5 pm in that State or Territory, it is to be treated as having been served on the first subsequent working day.”

11 New rule 121A and cross-heading inserted

After rule 121, insert:

“Service: by post in trans-Tasman proceedings

“121A When and how documents under rule 102(2)(ca) to be treated as served

- “(1) Subclauses (2) to (5) apply to a document to be served in a proceeding if—
- “(a) the proceeding is one an initiating document for which is to be or has been served on a defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010; and
 - “(b) the document is one to be served—
 - “(i) by a party in New Zealand and on a party in Australia; or
 - “(ii) by a party in Australia and on a party in New Zealand.
- “(2) When a document is served in accordance with rule 102(2)(ca) or 118(a) or (b), it is to be treated as served on the earlier of—
- “(a) the sixth working day after the day on which it was posted or left at a document exchange; and
 - “(b) the day on which it was received.
- “(3) Subclause (4) applies to a document that is—
- “(a) a document in response to a requirement of or under these rules; and
 - “(b) served in accordance with rule 102(2)(ca) or 118(a) or (b).
- “(4) The party serving the document is entitled to an extra 5 working days within which to comply with that requirement.
- “(5) Despite subclause (3), subclause (4) does not apply when a rule requires a document to be served a prescribed number of days before a hearing or other specified event.
- “(6) This rule does not limit or affect rule 119(3A) (which relates to when a document is transmitted electronically to the fax number or email address of a solicitor in a State or Territory of Australia under rule 118(c) or (d)).
- “Compare: 1908 No 89 Schedule 2 r 6.6(6)–(11); SR 2009/257 r 3.44.7”.

12 Rule 130 amended (Service on absentee: District Courts Rules 2009 apply)

- (1) After rule 130(2)(b), insert:
“(ba) 3.44.23, which applies HCR 6.29—court’s discretion whether to assume jurisdiction.”
- (2) After rule 130(2)(c), insert:
“(d) 3.44.29A, which applies HCR 6.36—subpart does not apply to service in Australia of documents for or in certain trans-Tasman proceedings.”
- (3) After rule 130(2), insert:
“(2A) Without limiting subclause (1), the necessary modifications to HCR 6.29 include that the references in it to HCR 5.49 are to be read as references to rule 43 of these rules (*see*, in particular, rule 43(8) and (9)).”

13 Rule 173A replaced (Leave to serve New Zealand subpoena on witness in Australia: District Courts Rules 2009 apply)

Replace rule 173A with:

- “**173A Leave to serve New Zealand subpoena on witness in Australia: District Courts Rules 2009 apply**
DCR 12.4.2A (which applies HCR 9.60 relating to leave to serve a New Zealand subpoena on a witness in Australia) applies, so far as applicable and with all necessary modifications, to proceedings in a court.”

14 New rule 173CA inserted (Application to set aside New Zealand subpoena)

After rule 173C, insert:

- “**173CA Application to set aside New Zealand subpoena**
The following DCRs apply, so far as applicable and with all necessary modifications:
- “(a) 12.4.3A, which applies HCR 9.62—application to set aside a New Zealand subpoena:
- “(b) 12.4.3B, which applies HCR 9.63—service of documents on applicant:
- “(c) 12.4.3C, which applies HCR 9.64—hearing of application.”

15 Rule 173E replaced (Evidence and submissions by remote appearance medium from Australia: District Courts Rules 2009 apply)

Replace rule 173E with:

“**173E Evidence and submissions by remote appearance medium from Australia: District Courts Rules 2009 apply** DCR 12.4.5 (which applies HCR 9.67 relating to evidence and submissions by remote appearance medium from Australia) applies, so far as applicable and with all necessary modifications, to proceedings in a court.”

16 Schedule 1, form G 25 amended

- (1) In Schedule 1, form G 25, paragraph 3, delete “, with the leave of the Honourable Justice [*name*]”.
- (2) In Schedule 1, form G 25, after paragraph 3, insert:
“**Note:** Section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form (namely, form G 27 of Schedule 1 of the Family Courts Rules 2002) of the rights and obligations of the person served.”

17 Schedule 1, form G 26 amended

- (1) In Schedule 1, form G 26,—
 - (a) replace “and things” with “or things” in each place; and
 - (b) replace “**and things**” with “**or things**”.
- (2) In Schedule 1, form G 26, paragraph 3, delete “, with the leave of the Honourable Justice [*name*]”.
- (3) In Schedule 1, form G 26, after paragraph 3, insert:
“**Note:** Section 156(2) of the Evidence Act 2006 of New Zealand allows this order of subpoena to be served in Australia only if it is accompanied by a copy of the order granting leave to serve it, and a statement in the prescribed form (namely, form G 27 of Schedule 1 of the Family Courts Rules 2002) of the rights and obligations of the person served.”

18 Schedule 1, form G 27 amended

In Schedule 1, form G 27,—

- (a) paragraphs 4, 6, 7(b), 10, 15, and 16, replace “High Court of New Zealand” with “Family Court at [*place*] in New Zealand”; and
- (b) paragraphs 7(c), 10, and 11, replace “the High Court” with “the Family Court” in each place; and
- (c) paragraph 12, replace “High Court of New Zealand in which leave to serve the subpoena was given” with “Family Court at [*place*] in New Zealand”; and
- (d) paragraphs 6 and 16, replace “video link or telephone conference” with “audio link or audiovisual link” in each place; and
- (e) paragraph 8, replace “and things” with “or things” in each place; and
- (f) paragraph 8, replace “7 working days” with “10 days”; and
- (g) paragraph 13, replace “fax. The fax number of the registry of the court is [*fax number*]” with “fax or email. The fax number and email address of the registry of the court are [*fax number and email address*]”; and
- (h) paragraph 14, after “a fax number in New Zealand or Australia”, insert “or email address”; and
- (i) paragraph 16, replace “if neither you nor the party who requested the issue of the subpoena states” with “if neither you (for example, in the application) nor the party who requested the issue of the subpoena (for example, in a document filed in response to the application) states”.

19 Schedule 1, form G 28 amended

In Schedule 1, form G 28, replace “the Honourable Justice” with “Family Court Judge”.

20 Schedule 6, form FP 17 amended

In Schedule 6, form FP 17, after the paragraph headed “Advice”, insert:

“Respondents served in Australia under Trans-Tasman Proceedings Act 2010

“If you are served in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010 of New Zealand, this no-

tice is affected by that Act and the information that section 15 of that Act requires to be served on you. By virtue of that Act you may, for example,—

- “• respond to the application by taking steps yourself or by using an Australian lawyer (rather than by instructing a New Zealand lawyer to act for you); and
- “• respond within a period that is at least 30 working days after the day on which you were served; and
- “• give an address for service that is an address of a place in Australia or New Zealand.

“**Note:** An initiating document for a civil proceeding that relates wholly or partly to a matter that, under sections 4(1) and 12(2)(a) of the Trans-Tasman Proceedings Act 2010, is an excluded matter (for example, the dissolution of a marriage) cannot be served in Australia and under section 13 of that Act.”

21 Schedule 7, form FP and TP 2 amended

In Schedule 7, form FP and TP 2, after the paragraph headed “**Advice**”, insert:

“**Respondents served in Australia under Trans-Tasman Proceedings Act 2010**

“If you are served in Australia and under section 13 of the Trans-Tasman Proceedings Act 2010 of New Zealand, this notice is affected by that Act and the information that section 15 of that Act requires to be served on you. By virtue of that Act you may, for example,—

- “• respond to the application by taking steps yourself or by using an Australian lawyer (rather than by instructing a New Zealand lawyer to act for you); and
- “• respond within a period that is at least 30 working days after the day on which you were served; and
- “• give an address for service that is an address of a place in Australia or New Zealand.”

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

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

These rules, which come into force on 11 October 2013, amend the Family Courts Rules 2002 in the light of the Trans-Tasman Proceedings Act 2010 (most of which also comes into force on 11 October 2013). The amendments, which follow in certain respects similar amendments made at the same time to the District Courts Rules 2009, relate in particular to the following matters:

- service in a proceeding an initiating document for which is served on a defendant in Australia under that Act; and
 - a subpoena issued in a civil proceeding in New Zealand being served and complied with in Australia.
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Issued under the authority of the Legislation Act 2012.
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These rules are administered by the Ministry of Justice.
