



**THE DISTRICT COURTS RULES 1992,
AMENDMENT NO. 1**

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 27th day of March 1995

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the District Courts Act 1947, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following rules.

RULES

1. Title and commencement—(1) These rules may be cited as the District Courts Rules 1992, Amendment No. 1, and shall be read together with and deemed part of the District Courts Rules 1992 (hereinafter referred to as the principal rules).

(2) These rules shall come into force on the 1st day of April 1995.

2. New heading and rules inserted—The principal rules are hereby amended by inserting, after rule 500, the following heading and rules:

“Evidence in Trans-Tasman Proceedings

“500A. Interpretation—In rules 500B to 500E, unless the context otherwise requires, terms that are defined in the Evidence Amendment Act 1994 have the meanings given to them by that Act.

“500B. **Issue of subpoenas for service in Australia**—(1) A subpoena issued by the Court for service on a witness in Australia that requires the witness to testify, whether or not it also requires the witness to produce documents or things, shall be in form 41A.

“(2) A subpoena issued by the Court for service on a witness in Australia that requires the witness to produce documents or things, but does not require the witness to testify, shall be in form 41B.

“(3) A subpoena referred to in subclause (1) or subclause (2) may be obtained in the same manner and subject to the same conditions as a witness summons under rule 496.

“500C. **Service of subpoena on witness in Australia**—Every statement that, in accordance with section 7(2) of the Evidence Amendment Act 1994, is required to accompany a subpoena that is served on a witness in Australia shall be in form 41c.

“500D. **Failure to comply with subpoena**—A certificate under section 12 of the Evidence Amendment Act 1994 shall be in form 41D.

“500E. **Evidence and submissions by video link and telephone conference**—(1) An application under section 19 of the Evidence Amendment Act 1994 for a direction that evidence be given from Australia or submissions be made from Australia by video link or telephone conference may be made *ex parte* and shall be accompanied by an affidavit containing the following matters:

“(a) The nature of the evidence or the submissions:

“(b) The place in Australia from which the evidence is to be given or the submissions are to be made:

“(c) If it is proposed that evidence be given or submissions be made by video link, particulars of the video link facilities available at the courtroom or other place where the Court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:

“(d) If it is proposed that evidence be given or submissions be made by telephone conference, particulars of the telephone conference facilities available at the courtroom or other place where the Court is to sit in New Zealand and at the place where the evidence is to be given or the submissions are to be made in Australia:

“(e) In a case where evidence is proposed to be given, an estimate of the time that the examination of the witness will take:

“(f) Whether issues of character or credibility are likely to be raised:

“(g) In a case where submissions are proposed to be made, an estimate of the time that will be required to make the submissions.

“(2) Where the Court gives a direction under section 19(1) of the Evidence Amendment Act 1994, the Court shall instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions which the Court may make.

“(3) Without limiting the generality of subclause (2), the Court may—

“(a) Direct that the evidence be given or the submissions be made at an Australian Court or at another place in Australia:

“(b) Request that an officer of an Australian Court or other person approved by the Judge be present to assist in the transmission of evidence or submissions, and in particular to—

“(i) Introduce witnesses giving evidence or a barrister or solicitor, or both, making submissions:

“(ii) Assist with the administration of oaths:

“(iii) Assist with the implementation of any directions or requests given or made by the Judge hearing the evidence or submissions:

“(c) Direct that the evidence or the submissions be heard at a location other than the precincts of the Court.”

3. New forms inserted—The First Schedule to the principal rules is hereby amended by inserting, after form 41, the new forms 41A, 41B, 41C, and 41D set out in the Schedule to these rules.

SCHEDULE

NEW FORMS INSERTED IN FIRST SCHEDULE TO DISTRICT COURTS RULES 1992

Form 41A

Rule 500B(1)

SUBPOENA TO GIVE EVIDENCE FOR SERVICE IN AUSTRALIA

(General heading—Form 1)

TO [Name, place of residence, occupation].

You are ordered to attend at [Here state the District Court and the place of the Court or, if the witness is required to attend at a place other than the District Court, that other place] on the day of 19..... at a.m. (or p.m.) and from day to day thereafter until you are discharged from attendance to give evidence on behalf of the [State party] in the above-named proceeding.

*And you are ordered to bring with you and produce at the same time and place [Set out details of the documents or things to be produced].

This subpoena is issued by [Full name] (*solicitor for) the [State party] under the Seal of the District Court at [Place] this day of 19.....

*Delete if inapplicable.

.....
(Deputy) Registrar

Full name of (Deputy) Registrar:
Postal address of Court:
Telephone:
Facsimile:

SCHEDULE—continued

Rule 500B (2)

Form 41B

SUBPOENA FOR PRODUCTION ONLY FOR SERVICE IN AUSTRALIA

(General heading—Form 1)

TO [Name, place of residence, occupation].

You are ordered to produce this subpoena and the documents or things set out in the Schedule at the District Court at [Place] on theday of 19..... at a.m. (or p.m.).

You may comply with this subpoena by producing the documents or things at any registry of an Australian Court authorised by the law of the Commonwealth of Australia to receive such documents or things not later than 10 days before the above date.

SCHEDULE

(Description)

This subpoena is issued by [Full name] (*solicitor for) the [State party] under the Seal of the District Court at [Place] this day of 19.....

*Delete if inapplicable.

.....
(Deputy) Registrar

Full name of (Deputy) Registrar:
Postal address of Court:
Telephone:
Facsimile:

SCHEDULE—*continued*

Form 41c

Rule 500c

STATEMENT OF RIGHTS AND OBLIGATIONS OF PERSON SERVED
IN AUSTRALIA WITH SUBPOENA ISSUED BY DISTRICT COURT
(General heading—Form 1)THIS STATEMENT IS IMPORTANT
PLEASE READ THE STATEMENT AND THE ATTACHED
DOCUMENT OR DOCUMENTS CAREFULLYIF YOU ARE IN ANY DOUBT ABOUT THIS STATEMENT OR THE
ATTACHED DOCUMENT OR DOCUMENTS, YOU SHOULD GET
LEGAL ADVICE IMMEDIATELY

Attached to this statement is a subpoena issued by the District Court at [Insert place]. A subpoena is a summons to a witness to give evidence or produce documents. The subpoena attached to this statement requires you to [*Here state whether the witness is required to attend at the District Court or some other place to give evidence or give evidence and produce documents or is required only to produce documents*].

The subpoena may be served in Australia under section 19 of the Evidence and Procedure (New Zealand) Act 1994.

This statement sets out your rights and obligations relating to the subpoena.

YOUR RIGHTS

You are entitled to have paid or tendered to you at the time the subpoena is served on you or at some other reasonable time before you are required to comply with the subpoena, allowances and travelling expenses or vouchers in substitution for allowances and travelling expenses that are sufficient to meet your reasonable expenses of complying with the subpoena.

You are not required to comply with the subpoena unless those allowances and travelling expenses or vouchers are paid or tendered to you.

You are also entitled to be paid any reasonable expenses you incur in complying with the subpoena in addition to any expenses tendered or paid to you. You may apply to the District Court for an order specifying such an amount.

You may apply to the High Court of New Zealand to have the subpoena set aside. If you wish to have the subpoena set aside, you should get legal advice as soon as possible.

An application to set the subpoena aside can be made and determined without you having to go to New Zealand. You are entitled to have Australian solicitors act for you.

The High Court of New Zealand may determine the application without a hearing if neither you nor the party who requested the issue of the subpoena require a hearing. The Court may hold a hearing by video link or telephone conference if the Court thinks fit. If a party applies to the Court for a direction to hear the application by video link or telephone conference, the Court is required to hear it by video link or telephone conference.

SCHEDULE—*continued*Form 41c—*continued*

[Note: Details of the grounds on which a subpoena can be set aside and the procedure for setting aside a subpoena are referred to later in this statement.]

YOUR OBLIGATIONS

Unless the subpoena is set aside, you must comply with it if:

- (a) When the subpoena was served on you, or at some reasonable time before the time specified for compliance, there have been paid or tendered to you allowances and travelling expenses or vouchers in substitution for them sufficient to meet your reasonable expenses of complying with the subpoena; and
- (b) A copy of the order of the Judge of the High Court of New Zealand granting leave to serve the subpoena was served on you with the subpoena;
- (c) The subpoena was served on you not later than the date specified by the Judge of the High Court who granted leave to serve the subpoena; and
- (d) Any other conditions relating to the service of the subpoena have been complied with; and
- (e) You have attained 18 years of age.

If the subpoena only requires you to produce documents or things, you may comply with the subpoena by producing the documents or things at any registry of an Australian Court that is authorised by the law of the Commonwealth of Australia to receive them not later than 10 days before the date specified in the subpoena for producing them in the District Court. If you produce the documents or things at a registry of an Australian Court, you will be required to produce the subpoena and to pay the cost of sending the documents or things to the District Court. You are entitled to have the costs of producing the documents or things and of sending them to the New Zealand court paid or tendered to you before you are required to comply with the subpoena.

FAILURE TO COMPLY WITH THE SUBPOENA

Failure to comply with the subpoena constitutes contempt of the Federal Court of Australia, and unless you establish that the failure to comply should be excused, is punishable accordingly.

SETTING SUBPOENA ASIDE

You are entitled to apply to the High Court of New Zealand to have this subpoena set aside. An application to do so must be made under section 11 of the Evidence Amendment Act 1994. Section 11 provides that the High Court must set the subpoena aside if—

- (a) The subpoena requires the witness to attend at a sitting of a District Court and the High Court is satisfied that—
 - (i) The witness does not have, and cannot by the exercise of reasonable diligence within the time required for compliance obtain, the necessary travel documents; or
 - (ii) The witness is liable to be detained in New Zealand for the purpose of serving a sentence; or

SCHEDULE—*continued*Form 41c—*continued*

- (iii) The witness is liable to prosecution for an offence, or is being prosecuted for an offence, in New Zealand; or
- (iv) The witness is liable to the imposition of a civil penalty in civil proceedings in New Zealand, not being proceedings for a pecuniary penalty under the Commerce Act 1986; or
- (b) The witness is subject to a restriction on his or her movements, imposed by law or by order of a court, that would prevent the witness complying with the subpoena.

Section 11 further provides that the High Court may set a subpoena aside if it is satisfied that—

- (a) The evidence of the witness could be obtained satisfactorily without significantly greater expense by other means; or
- (b) Compliance with the subpoena would cause hardship or serious inconvenience to the witness; or
- (c) In the case of a subpoena that requires a witness to produce documents or things, whether or not it also requires the witness to give oral evidence, the documents or things should not be taken out of Australia and that satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.

An application to set the subpoena aside must be filed in the office of the High Court of New Zealand in which leave to serve the subpoena was given together with any affidavit setting out the grounds on which you rely.

The application and the affidavit may be sent by facsimile. The facsimile number of the office of the Court is [*Specify facsimile number*].

The application must contain an address for service in New Zealand or Australia and may also state a facsimile number in New Zealand or Australia to which documents relating to the application may be sent.

The Registrar of the High Court will arrange for service of the application and any affidavit.

The High Court can decide the application without a hearing if neither you nor the party who requested the issue of the subpoena state that a hearing is required. If there is to be a hearing, the hearing may, if the Court thinks fit, be by video link or telephone conference. You may, however, either in your application to set the subpoena aside or within a reasonable time after filing the application, request that the Court direct that the hearing be by video link or telephone conference. If you make such a request, the Court will direct that the hearing be by video link or telephone conference.

SCHEDULE—continued

Rule 500D

Form 41D

CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA FOR
SERVICE IN AUSTRALIA

(General heading—Form 1)

To: The Federal Court of Australia
[Place]

The District Court at [Specify place] hereby certifies that on the day of 19..... the Honourable Justice gave leave to serve a subpoena, being a subpoena to which Part 3 of the Evidence and Procedure (New Zealand) Act 1994 applies, on [Specify name of person subpoenaed] and that [Specify name of person subpoenaed] has failed to comply with the subpoena in that [State particulars of the failure to comply].

Dated at this day of 19.....

.....
(Deputy) RegistrarMARIE SHROFF,
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 amend the District Courts Rules 1992 by inserting a number of new rules and forms relating to the service of subpoenas on witnesses in Australia and the giving of evidence and the hearing of submissions from Australia by video link and telephone conference. The Evidence Amendment Act 1994 provides for the issue and service of subpoenas issued by New Zealand courts on witnesses in Australia and for evidence to be given and submissions made from Australia in proceedings in New Zealand courts by video link and telephone conference.

Rule 1 provides that the rules come into force on 1 April 1995. The Evidence Amendment Act 1994 also comes into force on that date.

Rule 2 inserts new rules 500A to 500E into the District Courts Rules 1992.

The new rule 500A relates to matters of interpretation.

The new rule 500B prescribes the form of subpoenas that may be issued by a District Court for service on witnesses in Australia and provides for the issue of such subpoenas in the same manner as a witness summons is issued under rule 496 of the District Courts Rules 1992.

The new rule 500C prescribes the form of statement that must, in accordance with section 7 (2) (b) of the Evidence Amendment Act 1994, be served on a witness in Australia with a subpoena.

The new rule 500D prescribes the form of certificate under section 12 of the Evidence Amendment Act 1994 to be issued by a District Court in the event of failure by a witness to comply with a subpoena issued by the Court and served in Australia. Section 12 of the Evidence Amendment Act 1994 provides that if a witness fails to comply with a New Zealand subpoena, the court that issued the subpoena may issue a certificate stating that a Judge of

the High Court has given leave to serve the subpoena and that the witness has failed to comply with it. By virtue of section 21 of the Evidence and Procedure (New Zealand) Act 1994, failure to comply with a subpoena issued by a New Zealand court and served on a witness in Australia constitutes contempt of the Federal Court of Australia and is punishable accordingly.

The new *rule 500E* relates to giving evidence and making submissions by video link or telephone conference from Australia in proceedings before a District Court. Section 19 of the Evidence Amendment Act 1994 provides that a New Zealand court may direct that evidence be given or submissions be made in proceedings before the court by video link or telephone conference from Australia if it is satisfied as to the necessary facilities and that the evidence or submissions could more conveniently be given from Australia. The new rule provides that such an application must be made *ex parte* and be accompanied by an affidavit and specifies the matters with which the affidavit is required to deal.

Rule 3 inserts a number of new forms into the First Schedule to the District Courts Rules 1992.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 March 1995.
These rules are administered in the Department of Justice.