



## THE HIGH COURT AMENDMENT RULES (NO. 3) 1990

PAUL REEVES, Governor-General

### ORDER IN COUNCIL

At Wellington this 15th day of October 1990

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to section 51c of the Judicature Act 1908 (as amended by section 2 of the Judicature Amendment Act 1990), His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council and with the concurrence of the Right Honourable the Chief Justice and at least two of the other members of the Rules Committee (of whom at least one was a Judge of the High Court), hereby makes the following rules.

#### ANALYSIS

1. Title and commencement
2. New Part III<sub>B</sub> inserted

#### PART III<sub>B</sub>

SPECIAL PROVISIONS APPLYING TO CERTAIN PROCEEDINGS UNDER COMMERCE ACT 1986 AND TO CERTAIN PROCEEDINGS IN FEDERAL COURT OF AUSTRALIA UNDER TRADE PRACTICES ACT 1974 OF THE COMMONWEALTH OF AUSTRALIA

- 446r. Interpretation  
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- 446t. Office of the Court in which proceedings to be commenced  
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 446z. Payment of additional amounts to persons complying with subpoena in New Zealand proceeding

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- 446ZC. Evidence and submissions by video link and telephone conference
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RULES

**1. Title and commencement**—(1) These rules may be cited as the High Court Amendment Rules (No. 3) 1990, and shall be read together with and deemed part of the High Court Rules from time to time set out in the Second Schedule to the Judicature Act 1908 (hereinafter referred to as the High Court Rules).

(2) These rules shall come into force on the day after the date of their notification in the *Gazette*.

**2. New Part IIIb inserted**—The High Court Rules are hereby amended by inserting, after Part IIIA, the following Part:

“PART IIIB

“SPECIAL PROVISIONS APPLYING TO CERTAIN PROCEEDINGS UNDER  
COMMERCE ACT 1986 AND TO CERTAIN PROCEEDINGS IN FEDERAL COURT  
OF AUSTRALIA UNDER TRADE PRACTICES ACT 1974 OF THE  
COMMONWEALTH OF AUSTRALIA

“446R. **Interpretation**—In this Part, unless the context otherwise requires,—

“ ‘Australian proceeding’ means a proceeding in which a matter for determination arises under—

“ (a) Any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or

“ (b) A provision of Part VI or Part XII of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act;—

and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding:

“ ‘Federal Court’ means the Federal Court of Australia:

“New Zealand proceeding” means a proceeding in which a matter for determination arises under—

“(a) Any of sections 36A, 98H, or 99A of the Commerce Act 1986; or

“(b) A provision of Part VI or Part VII of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act;—

and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding.

**“446s. Commencement of New Zealand proceedings—**(1) Every New Zealand proceeding shall be commenced by filing a statement of claim in the office of the Court at Auckland or Wellington or Christchurch in accordance with rule 446T.

“(2) Notwithstanding subclause (1), the statement of claim may be filed in any of those offices of the Court if the parties agree, by endorsement on the statement of claim, to the filing of the statement of claim in that office.

**“446T. Office of the Court in which proceedings to be commenced—**(1) Notwithstanding rule 107, the office of the Court, for the purposes of rule 446s (1), shall, subject to subclauses (2) and (3), be determined as follows:

“(a) Where any defendant is resident or the defendant’s principal place of business is in New Zealand, that office shall be whichever of the offices of the Court at Auckland or Wellington or Christchurch is nearest to the residence or principal place of business of the defendant:

Provided that where there are 2 or more defendants, that office shall be determined by reference to the first-named defendant who is resident or whose principal place of business is in New Zealand:

“(b) Where no defendant is resident or no defendant’s principal place of business is in New Zealand, that office shall be such of those offices as the plaintiff selects:

“(c) Notwithstanding paragraphs (a) and (b), where the Crown is a defendant, that office shall be such of those offices as the plaintiff selects.

“(2) Where it appears to the Court on application made to it that the statement of claim has been filed in the wrong office of the Court or that any other office of the Court in which the statement of claim may be filed would be more convenient to the parties, it may direct that the statement of claim be filed in that other office, or that all documents filed in the proceeding be transferred to the proper office or, as the case may be, to that other office which shall thereupon be deemed to be the proper office.

“(3) Where an order is made under subclause (2), each party shall change that party’s address for service accordingly.

**“446U. Issue of subpoenas for service in Australia—**(1) Notwithstanding rule 497, an order of subpoena in a New Zealand proceeding for service in Australia shall not be issued without the leave of a Judge, and shall,—

“(a) In the case of an order of subpoena that requires a person to testify, whether or not it also requires a person to produce documents, be in form 34CA:

“(b) In the case of an order that requires a person to produce documents, but does not require a person to testify, be in form 34CB.

“(2) Application for the issue of an order of subpoena under subclause (1) shall be made *ex parte* and shall be accompanied by an affidavit containing the following matters:

“(a) The name, designation, occupation, and address of the witness:

“(b) The nature of the evidence required from the witness and the relevance of that evidence:

“(c) The date on which it is intended to serve the order of subpoena:

“(d) The availability of suitable means of transport to enable the witness to comply with the order of subpoena:

“(e) The amounts proposed to be paid or tendered to the witness in respect of expenses in complying with the order of subpoena:

“(f) In any case where the subpoena requires the witness to testify, an estimate of the date on which and the length of time that person will be required to attend at the Court:

“(g) If the applicant is aware of any fact or circumstance which may constitute a ground for setting the subpoena aside under section 56G of the Act, the fact or circumstance.

“(3) In determining whether to grant leave the Judge shall, in addition to any other matter which the Judge considers to be relevant, have regard to—

“(a) The adequacy of the amount proposed to be paid or tendered to the witness in respect of expenses; and

“(b) Whether the time between the date of service and the date on which the witness is required to comply with the order of subpoena is reasonable in the circumstances.

“(4) Leave may be granted under subclause (1) subject to such conditions the Judge thinks fit.

“(5) Without limiting the conditions which may be imposed by a Judge under subclause (4), leave may be granted under subclause (1) subject to conditions relating to—

“(a) The amount to be paid or tendered to the witness in respect of expenses:

“(b) The date or dates on which the witness is required to comply with the order of subpoena:

“(c) The documents or class or classes of documents to be produced.

“(6) A Judge may direct that service on a body corporate shall be effected by serving the order of subpoena on a member or officer or servant of the body corporate in such manner as the Judge directs.

“(7) Notwithstanding rule 66, no document relating to an application under this rule shall be searched or inspected or copied without the leave of a Judge.

“446v. **Service of subpoena**—(1) An order of subpoena issued in a New Zealand proceeding with the leave of a Judge may be served on a person in Australia personally by leaving with that person a sealed copy of the order together with a statement in form 34cc setting out the person’s rights and obligations.

“(2) Service of the order of subpoena on a corporation shall be in accordance with any directions given by the Judge under rule 446u (6).

“(3) A person who has been served with an order of subpoena under subclause (1) is not compellable to comply with the order unless, at the time of service or at some other reasonable time before the date on which

the person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to meet the person's reasonable expenses of complying with the order are tendered or paid to that person.

**“446w. Subpoenas for production—**(1) An order of subpoena issued in a New Zealand proceeding which requires a person in Australia to produce documents or things, but does not require the person to testify, shall permit the person to comply with the order by producing the documents or things at a specified registry of the Federal Court.

“(2) Unless the Court otherwise orders, the registry of the Federal Court specified under subclause (1) shall be the registry nearest to the place where the order of subpoena is served.

“(3) A person served with an order of subpoena of the kind described in subclause (1) may comply with the subpoena by—

“(a) Producing the subpoena and the required documents or things to the specified registry of the Federal Court not later than 7 working days before the date specified in the order as the date on which the documents or things are required for production in the High Court; and

“(b) Obtaining a receipt from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of the Federal Court for the documents or things produced and sending, as soon as practicable, a copy of the receipt with a copy of the order of subpoena by facsimile to the registry of the High Court where the order was made; and

“(c) Providing an officer of the Federal Court with a sum sufficient to send the documents or things to New Zealand.

“(4) A receipt obtained pursuant to paragraph (b) of subclause (3) shall be sufficient evidence of compliance with the order of subpoena.

**“446x. Setting aside subpoena issued in New Zealand proceeding—**

(1) An application to set aside an order of subpoena issued in a New Zealand proceeding and served on a person in Australia under section 56C of the Act may be filed by facsimile.

“(2) The Registrar shall send to the applicant by facsimile an acknowledgment of an application that has been filed by facsimile.

“(3) The Court shall give such directions for the conduct of the hearing of the application as it thinks fit.

“(4) Without limiting subclause (3), the Court may give directions requiring—

“(a) The applicant to give evidence or make submissions by video link or telephone conference; or

“(b) Further evidence by the applicant be taken in Australia; or

“(c) The application to be heard in Australia.

**“446y. Failure to comply with subpoena in New Zealand proceeding—**The Court may, on the application of a party to a New Zealand proceeding, or of its own motion, issue a certificate in form 34CD stating that a person in Australia who has been served with an order of subpoena in a New Zealand proceeding has failed to comply with the order and may direct the Registrar of the Court to transmit the certificate to the Federal Court.

**“446z. Payment of additional amounts to persons complying with subpoena in New Zealand proceeding—**The Court may, on the application of a person resident in Australia who has complied with an order of subpoena issued in a New Zealand proceeding, or of its own

motion, order the person on whose application the order was obtained to pay to that person—

“(a) An amount for expenses reasonably incurred by that person in complying with the order in addition to any expenses tendered or paid to that person under rule 446v; or

“(b) An amount for any loss of income occasioned by that person in complying with the order—

and may direct that the amount or amounts shall be fixed by the Registrar.

“446ZA. **Transmission of documents to Federal Court**—The Registrar exercising office at a registry at which a document or thing is produced in compliance with a subpoena for production issued by the Federal Court for service in New Zealand in an Australian proceeding shall—

“(a) Issue a receipt for the document or thing produced; and

“(b) Mark the document or thing so as to indicate the date and time of its production; and

“(c) Advise the officer of the Federal Court who issued the subpoena by facsimile; and

“(d) Send the document or thing to the Federal Court with a copy of the subpoena so as to ensure that it will be received by the Federal Court before the date on which it is required to be produced to that Court.

“446ZB. **Certification of judgments, orders, and injunctions in New Zealand proceedings**—(1) The Court may, on the application of a party to a New Zealand proceeding, issue to that party a copy of a judgment or order or injunction given or made or issued in that proceeding.

“(2) An application under this rule may be made *ex parte*.

“(3) Every copy of the judgment or order or injunction shall be—

“(a) Sealed with the seal of the Court; and

“(b) Certified to be a true copy of a judgment or order or injunction given, made, or issued in a New Zealand proceeding within the meaning of section 56D of the Act and section 32B of the Federal Court of Australia Act 1976.

“446ZC. **Evidence and submissions by video link and telephone conference**—(1) On an application by a party to a New Zealand proceeding a Judge may, if satisfied that the necessary equipment and facilities are available, direct that a witness may give evidence from Australia or a person appearing as a barrister or solicitor, or both, may make submissions from Australia by video link or telephone conference.

“(2) An application under subclause (1) may be made *ex parte* and shall be accompanied by an affidavit stating—

“(a) The reasons for the proposed course of action:

“(b) The nature of the evidence:

“(c) The witnesses to be examined:

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

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

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

“(3) In giving a direction under subclause (1), the Judge shall instruct the Registrar to make appropriate arrangements in New Zealand and Australia in accordance with any particular directions which the Judge may make.

“(4) Without limiting the generality of subclause (3), the Judge may direct that—

“(a) The evidence be given or the submissions be made at the Federal Court or at a place approved by the Federal Court:

“(b) An officer of the Federal Court or other person approved by the Judge be present to assist in the transmission of the 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) The evidence or the submissions be heard at a location other than the precincts of the High Court.

“(5) Unless the Court otherwise orders, the costs incurred in giving the evidence or making the submissions by video link or telephone conference and transmitting the evidence or submissions in accordance with a direction given under this rule shall be paid by the applicant.”

**3. New Part XIII added**—The High Court Rules are hereby amended by adding, as Part XIII, the following Part:

#### “PART XIII

#### “ENFORCEMENT OF CERTAIN JUDGMENTS AND ORDERS OF FEDERAL COURT OF AUSTRALIA

##### “General Provisions

“751. **Interpretation**—(1) In this Part, unless the context otherwise requires,—

“‘The Act’ means the Reciprocal Enforcement of Judgments Act 1934:

“‘Federal Court’ means the Federal Court of Australia:

“‘Judgment creditor’ means the person in whose favour a judgment or order or injunction was given or made or granted in a specified proceeding; and includes any person in whom the rights under it have become vested by succession or assignment or otherwise:

“‘Judgment debtor’ means the person against whom a judgment or order or injunction was given or made or granted in a specified proceeding; and includes any person against whom it is enforceable under the law of the Commonwealth of Australia or any State or Territory of Australia:

“‘The general rules’ means the rules comprised in the other Parts of these Rules.

“(2) Expressions not defined in this Part but defined in Part IA of the Act have, in this Part, the meanings so defined.

“752. **Application**—This Part applies to judgments, orders, and injunctions given or made or granted in specified proceedings.

“753. **Application of other Parts**—The general rules, except Part XII, shall apply except so far as those rules are modified by or are inconsistent with this Part.

*“Registration*

**“754. Mode of application—**(1) Every application for an order that a judgment or order or injunction to which this Part applies be registered under section 8D of the Act shall be accompanied by a copy of the judgment or order or injunction certified by the Federal Court to be a true copy or by a legible facsimile of such a copy so certified.

*“(2) An application under subclause (1) may be made ex parte.*

*“(3) If a facsimile of a certified copy of a judgment or order or injunction to which this Part applies accompanies the application, the application shall be supported by an affidavit of the judgment creditor, if that person is present in New Zealand, or, if not, by that person’s solicitor in New Zealand.*

*“(4) The affidavit shall state that the deponent has been advised by—*

*“(a) The Federal Court; or*

*“(b) A barrister or solicitor, or both, being a person entitled to practise in Australia before the Federal Court in all proceedings in respect of which that Court has jurisdiction and who also practised in relation to the proceeding in which the judgment or order or injunction appears to have been made or given or granted,—*

that the Federal Court gave the judgment, issued the order, or granted the injunction, as the case may be.

**“755. Title of proceeding—**The heading to an application under Rule 754 shall include a reference to Part 1A of the Act and shall include—

*“(a) A reference to the judgment or order or injunction; and*

*“(b) The names of the judgment creditor and of the judgment debtor.*

**“756. Place of filing—**Every application for an order that a judgment or order or injunction to which this Part applies be registered shall be filed in the office of the Court determined as follows:

*“(a) Where the judgment debtor is resident or the judgment debtor’s principal place of business is in New Zealand, that office shall be whichever of the offices of the Court at Auckland or Wellington or Christchurch is nearest to the residence or principal place of business of the judgment debtor:*

*Provided that where there are 2 or more judgment debtors, that office shall be determined by reference to the first-named judgment debtor who is resident or whose principal place of business is in New Zealand:*

*“(b) Where no judgment debtor is resident or no judgment debtor’s principal place of business is in New Zealand, that office shall be such of those offices as the plaintiff selects:*

*“(c) Notwithstanding paragraphs (a) and (b), where the Crown is the judgment debtor, the office shall be the office of the Court at Wellington.*

**“757. Evidence of exchange rates and interest—**In the case of an application for an order that a judgment or order to which this Part applies be registered, being a judgment or order for the payment of a sum of money in Australian currency, the application shall be supported by an affidavit stating—

*“(a) The rate of exchange prevailing at the date of the judgment or order between New Zealand currency and Australian currency:*



- “(b) The amount which the sum payable under the judgment or order represents in New Zealand currency calculated at the rate specified pursuant to paragraph (a);
- “(c) The rate of interest (if any) carried by the judgment or order;
- “(d) The amount of interest which will have become due under the judgment or order up to the time of registration, such amount being expressed in New Zealand currency;
- “(e) The rate of exchange prevailing at the date of filing the application.

“758. **Mode of registration**—(1) The registration under section 8D of the Act of every judgment or order or injunction to which this Part applies shall be effected by entry of particulars in an appropriate record book kept by the Registrar.

“(2) There shall be entered in that record book—

- “(a) The date of the order for registration;
- “(b) The name, title, and trade or business of the judgment debtor and the judgment creditor respectively;
- “(c) The usual or last-known place of abode or business of the judgment debtor and the judgment creditor respectively;
- “(d) In any case where a sum of money is payable under a judgment or order—
  - “(i) The sum expressed in New Zealand currency representing the amount payable under the judgment or order; and
  - “(ii) The interest, if any, up to the time of registration, for which the judgment or order is registered;
- “(e) In the case of an order or injunction, the terms of the order or injunction;
- “(f) The costs allowed of and incidental to registration;
- “(g) In the case of a judgment or order, the particulars of any execution issued.

“759. **Notice of registration**—(1) Notice in writing of the registration of a judgment or order or injunction to which this Part applies must be served on the judgment debtor.

“(2) The notice shall be served personally in accordance with the general rules unless some other mode of service is ordered by the Court.

“(3) If the judgment debtor is out of New Zealand, the notice may, notwithstanding rule 220, be served on the judgment debtor without the leave of the Court.

“760. **Contents of notice of registration**—The notice of registration shall state—

- “(a) Full particulars of—
  - “(i) The judgment or order or injunction; and
  - “(ii) The order for registration; and
- “(b) Whether the notice is issued by the judgment creditor or by a solicitor on behalf of that person; and
- “(c) An address for service; and
- “(d) The right of the judgment debtor to apply to the Court under section 8E of the Act on the grounds set out in that section to have the registration set aside or to apply to the Court under section 8G of the Act on the grounds set out in that section for a stay of execution.

“761. **Service of copy of judgment, order, or injunction**—Where a judgment or order or injunction to which this Part applies is registered, a copy of the judgment or order or injunction, or a legible facsimile of it, or

a legible copy of such a facsimile, shall be served on the judgment debtor either with notice of registration or separately.

**“762. Copy of judgment, order, or injunction to be filed if facsimile produced—**(1) Where a judgment or order or injunction to which this Part applies has been registered on the production of a facsimile of a copy of it, the applicant shall file the copy from which the facsimile was made not later than 7 working days after the making of the order.

“(2) No proceedings for the execution of the judgment or for the enforcement of the order or injunction, as the case may be, shall be commenced before the copy is filed without the leave of the Court.

**“763. Application to set aside registration or for stay of execution—**(1) An application to set aside the registration of a judgment or order or injunction to which this Part applies or an application for a stay of enforcement of such a judgment or order or injunction shall be made by interlocutory application.

“(2) On any such application the Court may direct that an issue between the judgment creditor and the judgment debtor shall be stated and tried and may give such directions in relation to the trial as may be necessary.”

**4. New forms inserted—**The First Schedule to the High Court Rules is hereby amended by inserting, after form 34C, the new forms 34CA, 34CB, 34CC, and 34CD set out in the Schedule to these rules.

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## SCHEDULE

NEW FORMS INSERTED IN FIRST SCHEDULE TO HIGH COURT RULES

## FORM 34CA

SUBPOENA TO GIVE EVIDENCE IN NEW ZEALAND PROCEEDING FOR SERVICE  
IN AUSTRALIA*(General heading—Form 1)*

Rule 446u

To [*Name, place of residence, occupation*]

You are ordered to attend at the High Court of New Zealand at [*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 to be produced*].

This order of subpoena is issued by [*Full name*] (\*solicitor for) the [*State party*] with the leave of the Honourable Mr Justice ..... under the Seal of the High Court of New Zealand at [*Place*] this ..... day of ..... 19.....

\*Delete if inapplicable

.....  
(Deputy) Registrar

Full name of (Deputy) Registrar:

Postal address of Registry:

Telephone:

Facsimile:

—

SCHEDULE—continued

FORM 34CB

SUBPOENA FOR PRODUCTION ONLY ISSUED IN NEW ZEALAND PROCEEDING FOR SERVICE IN AUSTRALIA

(General heading—Form 1)

Rules 446U, 446W

To [Name, place of residence, occupation]

You are ordered to produce this subpoena and the documents or things set out in the Schedule—

EITHER

at the High Court of New Zealand at [Place] on the ..... day of ..... 19..... at ..... a.m. (or p.m.)

OR

at the Federal Court of Australia at [Place] not later than [State a date that is 7 working days before the date given above].

[If you produce the documents or things at the Federal Court you must obtain a receipt for the documents or things produced from a Registrar, Deputy Registrar, District Registrar, or Deputy District Registrar of that Court and send a copy of that receipt and a copy of this subpoena by facsimile to the Registry of the High Court of New Zealand shown below and provide an officer of the Federal Court with a sum that is sufficient to send the documents or things to New Zealand.]

SCHEDULE (Description)

This order of subpoena is issued by [Full name] (\*solicitor for) the [State party] with the leave of the Honourable Mr Justice ..... under the Seal of the High Court of New Zealand at [Place] this ..... day of ..... 19.....

\*Delete if inapplicable

..... (Deputy) Registrar

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



SCHEDULE—*continued*

## FORM 34CC

STATEMENT OF RIGHTS AND OBLIGATIONS OF PERSON SERVED IN  
AUSTRALIA WITH SUBPOENA ISSUED IN NEW ZEALAND PROCEEDING

Rule 446v

*Allowances and travelling expenses*

- You are entitled to have tendered or paid to you, at the time of the service of this order on you or at some other reasonable time before the hearing, vouchers for, or a sum in respect of, allowances and travelling expenses sufficient to meet your reasonable expenses in complying with the order.
- You cannot be compelled to comply with this order unless vouchers are or that sum is tendered or paid to you.
- You are also entitled to apply to the High Court of New Zealand for an order that you be paid for expenses incurred by you in complying with the order additional to any amount paid or tendered to you and also for any loss of income as a result of complying with the order.

*Failure to comply*

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

*Setting subpoena aside*

- You are entitled to apply to the High Court of New Zealand to have the order of subpoena set aside. An application to do so must be made under section 56c of the Judicature Act 1908 of New Zealand. Section 56c of the Judicature Act 1908 provides that, without limiting the grounds on which the order may be set aside, the High Court may set the order aside on any of the following grounds:
  - (a) That the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:
  - (b) That the witness is liable to be detained for the purpose of serving a sentence:
  - (c) That the witness is liable to prosecution for an offence:
  - (d) That the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or section 83 of the Commerce Act 1986:
  - (e) That the evidence of the witness could be obtained without significantly greater expense by other means:
  - (f) That compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:
  - (g) In the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the Court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.

SCHEDULE—*continued*FORM 34cc—*continued*

- The application must be made by affidavit and must be filed in the office of the High Court of New Zealand that issued the order of subpoena.
- The affidavit must be sworn by the applicant and must set out the facts relied on to set the subpoena aside.
- You can send the affidavit by facsimile. If you do this—
  - (a) Mark the facsimile for the attention of the officer whose name appears on the subpoena; and
  - (b) Give a facsimile number so that a receipt can be sent to you; and
  - (c) Post the original affidavit to the Court.

Your affidavit will be served on the party who obtained the subpoena.

The High Court of New Zealand will decide whether a hearing is necessary. If it is, you will be advised by an officer of the Court.

**IF YOU ARE IN DOUBT ABOUT ANY MATTER RELATING TO THIS SUBPOENA YOU SHOULD OBTAIN LEGAL ADVICE**

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SCHEDULE—continued

FORM 34CD

CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA ISSUED IN NEW ZEALAND PROCEEDING FOR SERVICE IN AUSTRALIA

(General heading—Form 1)

Rule 446v

To: The Federal Court of Australia

[Place]

The High Court of New Zealand hereby certifies that [State name of person subpoenaed], having been served with a New Zealand subpoena within the meaning of section 32B of the Federal Court of Australia Act 1976, a copy of which subpoena is annexed to this certificate, has contravened that subpoena in that [State particulars of contravention].

No application to set aside the subpoena under section 56G of the Judicature Act 1908 of New Zealand has been made to the High Court.\*

An application to the High Court of New Zealand under section 56G of the Judicature Act 1908 of New Zealand has been dismissed. A copy of the reasons for judgment dismissing the application is annexed to this certificate.\*

Dated at ..... this ..... day of ..... 19 ..

.....  
(Deputy) Registrar

\*Delete if inapplicable

MARIE 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 High Court Rules by inserting a new Part III<sub>B</sub> and adding a new Part XIII respectively, and by inserting several new forms. These rules come into force on the day after the date of their notification in the *Gazette*.

*Rule 2* inserts a new Part III<sub>B</sub> into the High Court Rules. The new Part III<sub>B</sub> relates to proceedings under the Commerce Act 1986 in which a matter for determination arises under sections 36A, 98H or 99A of that Act or under Part VI or Part VII of that Act to the extent those Parts relate to any of those sections. Sections 36A, 98H and 99A were inserted into the Commerce Act 1986 by the Commerce Amendment Act 1990 and relate to the anti-competitive use of a dominant position in trans-Tasman markets.

The new *rule 446R* defines terms used in the new Part III<sub>B</sub>.

The material definitions are the definitions of “New Zealand proceedings” and “Australian proceedings”. “New Zealand proceedings” are proceedings in which a matter for determination arises under sections 36A, 98H, or 99A of the Commerce Act 1986 or under Part VI or Part VII of that Act to the extent those Parts relate to those sections. “Australian proceedings” are proceedings in which a matter for determination arises under equivalent provisions of the Australian Trade Practices Act 1974.

The new *rule 446S* requires New Zealand proceedings to be filed in the office of the High Court at either Auckland, Wellington, or Christchurch in accordance with *rule 446T*.

The new *rule 446T* specifies which of those offices the proceedings are to be filed in.

The new *rule 446U* relates to the forms of subpoena that may be issued in New Zealand proceedings requiring a person in Australia to testify or produce documents to the High Court. A subpoena requiring a person to testify, whether or not it also requires the production of documents, must be in form 34CA. A subpoena requiring only the production of documents must be in form 34CB.

A subpoena may be issued only with the leave of a Judge. The rule requires applications for subpoenas to be accompanied by an affidavit and sets out the matters that must be contained in the affidavit. The rule also makes provision for a Judge to give directions for service on a corporation.

The new *rule 446V* requires subpoenas requiring a person in Australia to testify or produce documents to be served personally together with a statement setting out the person's rights and obligations. The witness is not compellable to comply with the subpoena unless allowances and travelling expenses are paid or tendered at the time of service or at some reasonable time before the order has to be complied with.

The new *rule 446W* relates to subpoenas for production of documents. The subpoena must permit the documents to be produced at an office of the Federal Court of Australia.

The new *rule 446X* authorises the filing by facsimile of applications to set aside subpoenas for service in Australia. The rule makes provision for the Court to give directions for the conduct of the hearing of the application including directions for evidence or submissions to be given by video link or telephone conference.

The new *rule 446Y* relates to the form of certificate that may be issued by the High Court in the event of a failure to comply with a subpoena.

The new *rule 446Z* allows a person who has complied with the subpoena to apply to the Court for an order directing payment of additional expenses incurred in complying with the subpoena or for payment of an amount for loss of income occasioned by compliance with it.

The new *rule 446ZA* sets out the procedure to be followed when documents are produced to the High Court for transmission to the Federal Court of Australia for the purposes of Australian proceedings.

The new *rule 446ZB* relates to the certification of judgments, orders, and injunctions of the High Court in New Zealand proceedings.

The new *rule 446ZC* empowers the Court, on application, to direct that evidence may be given or submissions made to the Court in New Zealand proceedings by witnesses or counsel in Australia by video link or telephone conference if the Court is satisfied that the necessary equipment and facilities are available. The rule sets out the matters that must be contained in the affidavit in support of the application and specifies the types of directions that may be given by the Court in connection with the taking of the evidence and the making of submissions.

*Rule 3* adds a new Part XIII to the High Court Rules. The new Part XIII relates to the registration, under the new Part IA of the Reciprocal Enforcement of Judgments Act 1934, of judgments, orders, and injunctions of the Federal Court of Australia in specified proceedings. These are proceedings in the Federal Court of Australia in which—



- (a) A matter for determination arises under sections 46A, 155A or 155B of the Australian Trade Practices Act 1974 or under Part VI or Part XII of that Act to the extent that those Parts relate to any of those sections; or
- (b) Any other relief specified by the Governor-General by Order in Council is sought; or
- (c) A related interlocutory order is sought; or
- (d) The enforcement of a judgment, order, or injunction of the Federal Court of Australia in such proceedings is sought.

The new Part 1A was inserted by the Reciprocal Enforcement of Judgments Amendment Act 1990.

The new *rule 751* defines terms used in the new *Part XIII*.

The new *rule 752* applies the new *Part XIII* to judgments, orders, and injunctions in specified proceedings.

The new *rule 753* relates to the application of the High Court Rules generally.

The new *rule 754* sets out the procedure for applications. Every application must be accompanied by a certified copy of the judgment, order, or injunction or a legible facsimile of a certified copy.

The new *rules 755 and 756* relate to the title to the application and the place of filing, respectively.

The new *rule 757* is similar to existing *rule 735* and sets out the matters that must be included in an affidavit in support of an application to register a judgment or order for payment of an amount in Australian currency.

The new *rule 758* is similar to existing *rule 741* and relates to the procedure for registering the judgment or order or injunction.

The new *rule 759* is similar to existing *rule 743* and requires notice of registration to be served on the judgment debtor.

The new *rule 760* is similar to the existing *rule 744* and sets out the matters that must be stated in the notice.

The new *rule 761* requires a copy of a judgment or order or injunction that has been registered, or a facsimile of it, or a copy of the facsimile to be served on the judgment debtor.

The new *rule 762* provides that where a facsimile of a judgment or order or injunction was produced in support of an application for registration, the copy from which it was taken must be filed within 7 working days after registration. It prevents any action being taken to enforce or execute the judgment or order or injunction until the copy is so filed without leave of the Court.

The new *rule 763* requires an application to set registration aside to be by way of interlocutory application.

*Rule 4* prescribes 4 new forms.

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These rules are administered in the Department of Justice.