

## Form 6.27

## Trans-Tasman proceedings— subpoena

*Court Procedures Rules 2006*

(see r 6865 (2) (a) (Trans-Tasman proceedings—application for leave to serve subpoena in New Zealand))

In the \*[Supreme/Magistrates/Coroner’s] Court of the Australian Capital  
Territory

\*[Criminal jurisdiction]

No \*[SC/MC/CC] of (year)

*\*(for a civil matter)*

*(name)*

Plaintiff

*(name)*

Defendant

*\*(for a criminal matter)*

\*[The Queen]

and

*(name of accused person)*

*\*omit if, or whichever is, inapplicable*

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Filed for the \*[plaintiff/defendant/other (*specify*)] by:  
*(the person’s address for service and telephone number (if any) or, if the person  
is represented by a solicitor and the solicitor is the agent of another solicitor,  
the name and place of business of the other solicitor)*

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# Notice to Witness

*Trans-Tasman Proceedings Act 2010 (Cwlth)*

**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 \*[Supreme/Magistrates/Coroner's] Court of the Australian Capital Territory.

The subpoena may be served in New Zealand under New Zealand law (see the *Evidence Act 2006* (New Zealand), section 163).

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').
- 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 Court that you be paid the additional amount you incurred.

- 4 You may apply to the Court 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 lawyers. 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**

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 stated 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 stated in the order; and
- (e) you are 18 years old or older.

### **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 of not more than NZ\$10 000 may be imposed.

## Grounds 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 Australian Consumer Law); 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 the following:
  - (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;
  - (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 \*[Supreme/Magistrates/Coroner's] Court of the Australian Capital Territory.
- 2 You may fax your application to that court on (*fax number*).
- 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 Court 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 audiovisual link or audio link. In that case you or your lawyer can take part in the hearing by audiovisual link or audio link 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 audiovisual link or audio link, the court must hold a hearing by audiovisual link or audio link. However, in such a case, the Court will determine which of audiovisual link or audio link will be used.

\*omit if, or whichever is, inapplicable

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In the \*[Supreme/Magistrates/Coroner's] Court of the Australian Capital  
Territory

\*[Criminal jurisdiction]

No \*[SC/MC/CC]      of (year)

*\*(for a civil matter)*

*(name)*

Plaintiff

*(name)*

Defendant

*\*(for a criminal matter)*

\*[The Queen/*name of informant*]

and

*(name of accused person)*

*\*omit if, or whichever is, inapplicable*

To      \*[*name of addressee/description of addressee's position*]

*(address)*

**You are ordered:**

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

*\*(select 1 only of these 3 options)*

The last date for service of this subpoena is: *(see note 1)*

**Please read notes 1 to 15 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 where you must attend to give evidence (unless you are given notice under rule 6603A of a later date or time to attend)—

Date:

Time:

Place:

If you are given notice under rule 6603A stating a date or time for attendance or production or both, you must attend at the date or time stated in the notice.

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 stated in the schedule below at the date, time and place stated for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things stated in the schedule below to—
  - (i) the Registrar at the address below so that they are received not less than 2 days before the date stated for attendance and production; or
  - (ii) the Registrar of the High Court of New Zealand at the address below so that they are received not less than 10 days before the date stated for attendance and production. (*see notes 5-11*)



Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things (unless you are given notice under rule 6603A of a later date or time to attend)—

Date:

Time:

Place:

Address where the subpoena (or copy) and documents or things may be delivered or posted—

If you are given notice under rule 6603A stating a date or time for attendance or production or both, you must attend at the date or time stated in the notice.

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### **Schedule**

The documents and things you must produce are as follows:

*(if insufficient space, attach list)*

*\*omit if, or whichever is, inapplicable*

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

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To the extent that you are required by this subpoena to attend to give evidence, you must attend as follows (unless you are given notice under rule 6603A of a later date or time to attend):

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.

If you are given notice under rule 6603A stating a date or time for attendance or production or both, you must attend at the date or time stated in the notice.

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To the extent that 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 stated in the schedule below at the date, time and place stated for attendance and production; or
- (b) by delivering or sending this subpoena or a copy of it and the documents or things stated in the schedule below to—
  - (i) the Registrar at the address below so that they are received not less than 2 days before the date stated for attendance and production; or
  - (ii) the Registrar of the High Court of New Zealand at the address below so that they are received not less than 10 days before the date stated for attendance and production. (*see notes 5-11*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and the documents or things (unless you are given notice under rule 6603A of a later date or time to attend)—

Date:

Time:

Place:

Address where the subpoena (or copy) and documents or things may be delivered or posted:

If you are given notice under rule 6603A stating a date or time for attendance or production or both, you must attend at the date or time stated in the notice.

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### **Schedule**

The documents and things you must produce are as follows:

*(if insufficient space attach list)*

*\*omit if, or whichever is, inapplicable*

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## 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 this subpoena unless it is served on you on or before the date stated 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 its requirements.

### Addressee a corporation

- 4 If this 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 To the extent that this subpoena requires you to produce this 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 to the Registrar at the address stated for the purpose in the subpoena so that they are received not less than 2 days before the date stated in the subpoena for attendance and production or, if you are given notice under rule 6603A, before the later date stated in the notice.
- 6 If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or anyone else, you must tell the Court about your objection and the grounds of your objection either orally on the return date for this subpoena or in writing before or after the return date.
- 7 Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to this subpoena being inspected by any party to the proceeding, the Registrar may allow 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 1 document or thing, you must, if asked by the Registrar, produce a list of the documents or things produced.

### **Production of copy instead of original**

- 9 If the subpoena requires you to produce a document, you may produce a copy of the document unless the subpoena specifically requires you to produce the original.
- 10 The copy of the document may be—
  - (a) a photocopy; or
  - (b) in PDF format on a CD-ROM; or
  - (c) in any other electronic form that the issuing party has indicated will be acceptable.

## **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 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—
  - (a) for an order setting aside this subpoena (or a part of it) or for relief in relation to the subpoena; and
  - (b) for an order in relation to your 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.

## **Contempt of court—arrest**

- 14 Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand), section 165.
- 15 Note 14 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.