

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

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

*[(for a civil matter)

(name)

Plaintiff

and

(name)

Defendant]

*[(for a criminal matter)

(name of prosecuting entity)

and

(name of defendant)]

**delete if, or whichever is, inapplicable*

Filed for the *[party)/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)*

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 *Evidence Act 2006* (NZ), 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 Your application must contain an address for service in New Zealand or Australia or an email address. Any documents to be served on you will be delivered or posted to you at that address or emailed to you at that email address.
- 3 The Registrar of the Court will arrange for service of your application and of any affidavit you lodge with the court with your application.
- 4 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.
- 5 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.
- 6 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.

**delete if, or whichever is, inapplicable*