



Australian Capital Territory

Supreme Court Rules¹ (Amendment)

Subordinate Law No. 44 of 1995²

We, Judges of the Supreme Court, make the following Rules of Court under section 36 of the *Supreme Court Act 1933*.

Dated 6 December 1995.

JEFFREY MILES

Chief Justice

J F GALLOP

Judge

T J HIGGINS

Judge

A G TOWILL

Registrar

Commencement

1. These Rules commence on the day on which they are notified in the *Gazette*.

Principal Rules

2. In these Rules, “Principal Rules” means the Supreme Court Rules.

Repeal

3. The following provisions of the Principal Rules are repealed:
rule 20 of Order 38
rule 3 of Order 39
rules 2, 3 and 5 of Order 70.

Affirmations

4. Rule 11 of Order 70 of the Principal Rules is amended by inserting in subrule (2) “and sincerely” after “solemnly”.

Insertion

5. After Part 11B of the Principal Rules the following Part is inserted:

**“PART 11C—MATTERS ARISING UNDER THE EVIDENCE AND
PROCEDURE (NEW ZEALAND) ACT 1994 OF THE
COMMONWEALTH**

“ORDER 80C

PRELIMINARY

Interpretation

“1. (1) In this Part—

‘the Act’ means the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth.

“(2) Unless the contrary intention appears, an expression that is used in this Part and in the Act has the same meaning in this Part as in the Act.

“(3) In this Part, a reference to a form by number is to be read as a reference to the form so numbered in Schedule 13B.

“ORDER 80D

SERVICE OF SUBPOENA IN NEW ZEALAND

Application for leave to serve

“1. An application for leave to serve a subpoena in New Zealand shall be—

- (a) if the subpoena was issued by the Court in proceedings—by motion in the proceedings; or
- (b) if the subpoena was issued by the Magistrates Court—by originating motion in the Court.

Supporting affidavit

“2. An application referred to in rule 1 shall be supported by an affidavit to which is annexed a copy of the subpoena and stating—

- (a) the name, designation or occupation, and address, of the person named and, if an individual, whether he or she is over 18 years of age;
- (b) the nature and significance of the evidence required from, or of the document or thing required to be produced by, the person named;
- (c) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the person named;
- (d) the date by which it is intended to serve the subpoena;
- (e) details of—
 - (i) the calculation of the amount sufficient to compensate the person named for expense or loss reasonably incurred in complying with the subpoena; and
 - (ii) how that amount (whether as money or otherwise) is to be paid to the person named;
- (f) in the case of a subpoena to give evidence—an estimate of the time that will be required for the person named to attend for that purpose; and
- (g) details of any facts or circumstances known to the deponent which may provide cause for the subpoena to be set aside under subsection 14 (2) or (3) of the Act.

Ex parte hearing

“3. A motion referred to in rule 1 shall be heard *ex parte*.

Undertaking about expenses

“4. Before granting leave to serve a subpoena in New Zealand, the Court may require the applicant to undertake to compensate the person named (not being a party to the proceedings in which the subpoena was issued) for any expense or loss reasonably incurred in complying with the subpoena.

Leave to search etc.

“5. A document filed relating to an application referred to in rule 1 is not to be searched, inspected or copied, other than by a party to the proceedings in which the subpoena was issued or by the person named, without leave of the Court.

“ORDER 80E**FAILURE TO COMPLY WITH SUBPOENA****Issue of certificate**

“1. (1) A certificate under section 16 of the Act in accordance with Form 1 may be issued of the Court’s own motion or on the application of a party to the proceedings in which the subpoena was issued.

“(2) A certificate shall be under the seal of the Court.

Application for issue of certificate

“2. An application for the issue of a certificate under section 16 of the Act may be—

- (a) in the proceedings in which the subpoena was issued—made orally; or
- (b) by motion;

and shall be accompanied by a draft certificate.

Supporting affidavit

“3. A motion referred to in rule 2 shall be supported by—

- (a) an affidavit of service of the subpoena and of the order and notice referred to in subsection 10 (3) of the Act; and

- (b) an affidavit stating—
 - (i) particulars of the order giving leave to serve the subpoena;
 - (ii) whether an application was made for the subpoena to be set aside and, if so, particulars of the application and any consequential orders made; and
 - (iii) that the subpoena was not complied with.

“ORDER 80F

SETTING ASIDE SUBPOENA

Application to set aside

“1. (1) An application under section 13 of the Act shall be made by affidavit stating the facts and grounds on which the application is based.

“(2) The affidavit shall—

- (a) be headed with the heading appearing on the copy of the order giving leave to serve the subpoena;
- (b) state the address, telephone number and, if applicable, the fax number, of the applicant; and
- (c) be filed by lodgment or by fax.

“(3) If an affidavit filed by fax is clear and legible, the Registrar shall acknowledge, by fax, having received a copy of the affidavit.

Copy of affidavit to party

“2. The Registrar shall cause a copy of an affidavit referred to in rule 1 to be served, by post or by fax, on the party who obtained leave for the subpoena to be served in New Zealand.

Determination of application

“3. An application under section 13 of the Act shall be determined at a time and place and in a manner directed by the Court.

Objection to no hearing

“4. An objection under subsection 14 (4) of the Act shall be made by filing a notice in accordance with Form 2 not later than 7 days after—

- (a) if the objection is by the applicant for the subpoena to be set aside—the date on which the application was filed; or

- (b) if the objection is by the party who obtained leave to serve the subpoena in New Zealand—the date on which the application was served on that party.

Hearing by video link or telephone

“5. A request under subsection 14 (6) of the Act that is not made in the application for the subpoena to be set aside shall be made by filing a notice in accordance with Form 3.

“ORDER 80G

EVIDENCE BY VIDEO LINK OR TELEPHONE

Application for direction

“1. An application for a direction under section 25 of the Act may be made orally or by motion on notice in the proceedings.

Supporting affidavit

“2. An application referred to in rule 1 shall be supported by an affidavit stating—

- (a) the reasons why it is desirable that the evidence be taken or submissions made by video link or telephone from New Zealand;
- (b) the nature of any evidence to be taken;
- (c) the number of any witnesses to be examined;
- (d) whether issues of character are likely to be raised;
- (e) the expected duration of any such evidence or submissions;
- (f) a description of the facilities that are available, or that can reasonably be made available, for the evidence to be taken or the submissions to be made; and
- (g) that the requirements of section 26 or 27, as the case requires, of the Act can be satisfied.

Relevant considerations

“3. In deciding whether to grant an application referred to in rule 1, the Court may have regard to, in addition to the matters set out in the applicant’s affidavit, any other matters that the Court considers to be material, including cost and convenience to the witnesses and parties.

Directions

“4. (1) If the Court gives a direction under section 25 of the Act, the Court may direct the Registrar to arrange for and coordinate the use of the appropriate facilities in Australia and New Zealand.

“(2) Without limiting the generality of subrule (1), the Court may direct that—

- (a) the Registrar arrange for the evidence to be given, or the submissions to be made, at the High Court of New Zealand or at another place approved by that court for the purpose; and
- (b) an officer of the High Court of New Zealand or another person approved by that court for the purpose be requested to be present to assist in the transmission of the evidence or submissions and, in particular, to—
 - (i) introduce witnesses or legal representatives;
 - (ii) assist with the administration of oaths, if necessary; and
 - (iii) assist with the implementation of any directions given or requests made by the Judge hearing the proceedings.

“ORDER 80H

FAX COPIES

Application of Part 6 of Act

“1. For the purpose of proceedings in the Court, Part 6 of the Act applies in relation to a fax of a document in the same way as it applies in relation to the original of the document (whether or not that original is itself a copy or an extract of a document).

Filed copy of fax

“2. If a fax of a document is adduced in evidence under rule 1, the party adducing that evidence shall file a copy of the fax on paper of durable quality measuring approximately 297 mm long by 210 mm wide on which the writing is permanent, unless the fax meets those specifications.”.

Insertion

6. After Schedule 13A to the Principal Rules the following Schedule is inserted:

SCHEDULE 13B**MATTERS ARISING UNDER THE EVIDENCE AND PROCEDURE
(NEW ZEALAND) ACT 1994 OF THE COMMONWEALTH**

FORM 1

O. 80E r. 1

CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA

IN THE SUPREME COURT OF
THE AUSTRALIAN CAPITAL
TERRITORY

No. _____ of 19 ____ .

Between

Plaintiff/Appellant

and

Defendant/Respondent

To: THE HIGH COURT OF NEW ZEALAND

IT IS HEREBY CERTIFIED that—

- (a) leave to serve in New Zealand a subpoena issued by the Supreme Court of the Australian Capital Territory was given under section 9 of the *Evidence and Procedure (New Zealand) Act 1994* of Australia by a Judge of the Court on (*date of leave*); and
- (b) the person named failed to comply with the subpoena.

Accordingly the Court respectfully requests you to exercise your powers under section 16 of the Evidence Amendment Act 1994 of New Zealand.

A copy of the subpoena and a copy of the order giving leave to serve it in New Zealand are annexed to this certificate.

*No application for the subpoena to be set aside in whole or in part has been made.

*An application for the subpoena to be set aside in whole or in part was dismissed by order made on (*date*). A copy of the order is annexed to this certificate.

**(Delete whichever is inapplicable)*

Date:

By the Court

(signature of Registrar and seal of Court)

FORM 2

O. 80F r. 4

OBJECTION TO DETERMINATION OF APPLICATION FOR SUBPOENA TO BE SET ASIDE
WITHOUT HEARING
(Heading as in Form 1)

The (*identify person as the applicant or the party who obtained leave to serve the subpoena in New Zealand*) objects to the application for the subpoena (*identify subpoena*) to be set aside being determined without a hearing.

Date:

(signature of applicant or applicant's solicitor)

FORM 3

O. 80F r. 5

REQUEST FOR HEARING BY VIDEO LINK OR TELEPHONE
(Heading as in Form 1)

The applicant requests that the hearing of the application for the subpoena (*identify subpoena*) to be set aside be held by video link or telephone.

Date:

(signature of applicant or applicant's solicitor)

NOTES

Principal Rules

1. Reprinted as at 19 February 1995. See also Subordinate Laws Nos. 11, 12, 13, 15, 19 and 27, 1995.

Notification

2. Notified in the ACT Gazette on 15 December 1995.