



Australian Capital Territory

Court Procedures Amendment Rules 2011 (No 3)

Subordinate Law SL2011-33

We, members of the rule-making committee, make the following rules of court under the *Court Procedures Act 2004*, section 7.

Dated 17 November 2011.

R REFSHAUGE

Acting Chief Justice

L CAMPBELL

Magistrate

L WALKER

Chief Magistrate



Australian Capital Territory

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made under the

Court Procedures Act 2004

Contents

		Page
1	Name of rules	1
2	Commencement	1
3	Legislation amended	1
4	Rule 4, note 2	1
5	Rule 3474 (1) (p)	1
6	Rule 4006 (j)	1
7	Division 6.8.9 heading, new note	1
8	Rule 6504, note 4	2
9	Division 6.8.10	2

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Contents

		Page
10	Rule 6605 (2), note	2
11	Rule 6700 (3), note 2	2
12	Rule 6700 (3), new note	2
13	Rule 6703 (2), note 1	3
14	Division 6.10.7	3
15	New part 6.10A	3
16	Schedule 5, part 5.1, items 120 to 123	13
17	Schedule 5, part 5.1, new item 128A	13
18	Schedule 5, part 5.4, new item 56A	13
19	Dictionary, new definition of <i>Trans-Tasman Proceedings Act</i>	13

1 Name of rules

These rules are the *Court Procedures Amendment Rules 2011 (No 3)*.

2 Commencement

These rules commence on the commencement of the *Trans-Tasman Proceedings Act 2010* (Cwlth), section 3.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

These rules amend the *Court Procedures Rules 2006*.

4 Rule 4, note 2

substitute

Note 2 Div 6.10A.3 (Trans-Tasman proceedings—service of subpoenas in New Zealand) applies to proceedings under the *Domestic Violence and Protection Orders Act 2008* and also to proceedings in the Coroner's Court (see r 6864 (Application—div 6.10A.3)).

5 Rule 3474 (1) (p)

omit

6 Rule 4006 (j)

omit

7 Division 6.8.9 heading, new note

insert

Note 3 Service of initiating documents in New Zealand for certain civil proceedings is dealt with in the *Trans-Tasman Proceedings Act*, pt 2. See also these rules, pt 6.10A (Trans-Tasman proceedings).

8 Rule 6504, note 4

substitute

Note 4 See also div 6.10A.3 (Trans-Tasman proceedings—service of subpoenas in New Zealand).

9 Division 6.8.10

omit

10 Rule 6605 (2), note

substitute

Note See also div 6.10A.3 (Trans-Tasman proceedings—service of subpoenas in New Zealand).

11 Rule 6700 (3), note 2

omit

- div 6.10.7 (Taking evidence from New Zealand by video link or telephone)

12 Rule 6700 (3), new note

insert

Note 3 See the Trans-Tasman Proceedings Act, pt 6 (Remote appearances) for other ways in which evidence from New Zealand may be given in civil proceedings.

13 Rule 6703 (2), note 1

omit

- from New Zealand—the *Evidence and Procedure (New Zealand) Act 1994* (Cwlth), pt 4 and these rules, div 6.10.7 (Taking evidence from New Zealand by video link or telephone).

substitute

- from New Zealand—the *Trans-Tasman Proceedings Act*, pt 6 (Remote appearances) and these rules, div 6.10A.4 (Trans-Tasman proceedings—remote appearances).

14 Division 6.10.7

omit

15 New part 6.10A

insert

Part 6.10A Trans-Tasman proceedings**Division 6.10A.1 Trans-Tasman proceedings—general****6860 Terms in Trans-Tasman Proceedings Act**

A term used in the *Trans-Tasman Proceedings Act* has the same meaning in this chapter.

Note For example, the following terms are defined in the *Trans-Tasman Proceedings Act*, s 4:

- audio link
- audiovisual link
- document
- enforcement
- entitled person
- given
- liable person

- NZ judgment
- party
- proceeding
- registered NZ judgment.

Division 6.10A.2 Trans-Tasman proceedings— orders under Trans-Tasman Proceedings Act

6861 Trans-Tasman proceedings—originating application

- (1) A proceeding for an order under the Trans-Tasman Proceedings Act must be started by an originating application.

Note See approved form 2.7 (Originating application).

- (2) The application must be accompanied by an affidavit that states the material facts on which the plaintiff relies that are necessary to give the defendant fair notice of the case to be made against the defendant at the hearing.

6862 Trans-Tasman proceedings—applications in proceedings

An application in a proceeding for an order under the Trans-Tasman Proceedings Act must be made in accordance with part 6.2 (Application in proceedings).

Note See approved form 6.2 (Application in proceedings).

6863 Trans-Tasman proceedings—application for interim relief

- (1) An application for an order for interim relief under the Trans-Tasman Proceedings Act, section 25 must be made by an originating application.

Note See approved form 6.25 (Trans-Tasman proceedings—originating application for order for interim relief).

-
- (2) The application must be accompanied by an affidavit stating—
- (a) if the person has started a proceeding in a New Zealand court—
 - (i) that the person has started a proceeding in a New Zealand court; and
 - (ii) the relief sought in the New Zealand proceeding; and
 - (iii) the steps taken in the New Zealand proceeding; or
 - (b) if the person intends to start a proceeding in a New Zealand court—
 - (i) when the intended proceeding will be started; and
 - (ii) the court in which the intended proceeding is to be started; and
 - (iii) the relief to be sought in the intended proceeding; and
 - (c) the interim relief sought; and
 - (d) why the interim relief should be given.

Division 6.10A.3 Trans-Tasman proceedings—service of subpoenas in New Zealand

6864 Application—div 6.10A.3

- (1) This division applies to a proceeding to which the Trans-Tasman Proceedings Act, part 5, division 2 applies.
- (2) This rule has effect despite rule 4 (Application of rules).

Note 1 This division applies to proceedings under the *Domestic Violence and Protection Orders Act 2001* (repealed) and the *Domestic Violence and Protection Orders Act 2008*.

Note 2 The Trans-Tasman Proceedings Act does not apply to a subpoena issued in an excluded family proceeding. *Excluded family proceeding* is defined in that Act, s 4.

6865 Trans-Tasman proceedings—application for leave to serve subpoena in New Zealand

- (1) An application for leave to serve a subpoena in New Zealand must be made by application in the proceeding in which the subpoena is issued.

Note 1 See approved form 6.26 (Trans-Tasman proceedings—application for leave to serve subpoena in New Zealand).

Note 2 Pt 6.2 (Application in proceedings) applies to the application.

- (2) The application must be accompanied by—

- (a) a copy of the subpoena in relation to which leave is sought; and

Note 1 See approved form 6.27 (Trans-Tasman proceedings—subpoena).

Note 2 Pt 6.9 (Subpoenas) applies to the subpoena.

- (b) an affidavit stating, briefly but specifically, the following:

- (i) the name, occupation and address of the person to be served with the subpoena (the *addressee*);
- (ii) whether the addressee is at least 18 years old;
- (iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the addressee;
- (iv) details of the steps taken to find out whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the addressee;
- (v) the date by which it is intended to serve the subpoena in New Zealand;

- (vi) details of the amounts to be given to the addressee to meet the addressee's reasonable expenses of complying with the subpoena;

Note 1 The addressee is entitled to payment of a reasonable amount for expenses incurred in complying with the subpoena (see Trans-Tasman Proceedings Act, s 37 (1)).

Note 2 Before granting leave under the Trans-Tasman Proceedings Act to serve the subpoena, the court may require the person making the application to undertake to meet the expenses reasonably incurred by the addressee in complying with the subpoena if those expenses are more than the allowances and travelling expenses to be provided to the addressee at the time of service of the subpoena (see Trans-Tasman Proceedings Act, s 37 (4)).

Note 3 **Expenses**, in relation to a subpoena—see the Trans-Tasman Proceedings Act, s 4.

- (vii) details of how the amounts mentioned in subparagraph (vi) are to be given to the addressee;
- (viii) if the subpoena is a subpoena to give evidence—an estimate of the time that the addressee will be required to attend, to give evidence;
- (ix) any facts or circumstances known to the person making the affidavit that may give cause for the subpoena to be set aside under the Trans-Tasman Proceedings Act, section 36 (2) or (3) (Setting aside Australian subpoenas).

6866 Trans-Tasman proceedings—application to set aside subpoena served in New Zealand

- (1) An application for leave to set aside a subpoena served in New Zealand must be made by application in the proceeding in which the subpoena was issued.

Note Pt 6.2 (Application in proceedings) applies to the application.

- (2) The application must be filed in the court in which the order granting leave to serve the subpoena in New Zealand was made.
- (3) The application must be accompanied by—
 - (a) a copy of the subpoena; and
 - (b) an affidavit stating—
 - (i) the material facts on which the application is based; and
 - (ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

6867 Trans-Tasman proceedings—noncompliance with subpoena served in New Zealand

- (1) This rule applies in relation to a subpoena issued by a court (the *issuing court*) if leave to serve the subpoena in New Zealand has been given under the Trans-Tasman Proceedings Act, section 31.
- (2) A party may apply to the issuing court for the issue of a certificate of non-compliance with the subpoena.
- (3) An application may be made—
 - (a) if the proceeding in which the subpoena was issued is before the court—orally to the court; or
 - (b) by application.

Note 1 If a person named in a subpoena fails to comply with it, the court that issued the subpoena may issue a certificate of noncompliance under the Trans-Tasman Proceedings Act, s 38. See approved form 6.28 (Trans-Tasman proceedings—certificate of noncompliance with subpoena).

Note 2 Pt 6.2 (Application in proceedings) applies to the application.

Note 3 A certificate of noncompliance is *issued* if it has been sealed or stamped by the court (see dict).

- (4) The application must be accompanied by—
- (a) a draft of the certificate of noncompliance; and
 - (b) a copy of the subpoena; and
 - (c) a copy of the order giving leave to serve the subpoena; and
 - (d) an affidavit of service of the subpoena; and
 - (e) a further affidavit stating the following:
 - (i) whether an application was made to set aside the subpoena;
 - (ii) the material in support of any application in subparagraph (i);
 - (iii) any order that disposed of the application in subparagraph (i);
 - (iv) the material facts relied on for the issue of a certificate of non-compliance.

Division 6.10A.4 Trans-Tasman proceedings—remote appearances

6868 Trans-Tasman proceedings—application for order for use of audio link or audiovisual link from New Zealand

- (1) A party to a proceeding to which the Trans-Tasman Proceedings Act, part 6, division 2 applies may apply for an order that evidence be taken, or submissions be made, by audio link or audiovisual link.

Note 1 See approved form 6.29 (Trans-Tasman proceedings—application for order to use audio link or audiovisual link).

Note 2 Pt 6.2 (Application in proceedings) applies to the application.

- (2) Subrule (1) does not apply to a request mentioned in rule 6866 (3) (b) (ii).

Division 6.10A.5 Trans-Tasman proceedings— enforcement of NZ judgments

6869 Trans-Tasman proceedings—notice of registration of NZ judgment

- (1) A party must not take any step to enforce a registered NZ judgment, in the period mentioned in the Trans-Tasman Proceedings Act, section 74 (2), unless the party has filed an affidavit stating that notice of the registration of the NZ judgment has been given, in accordance with the Trans-Tasman Proceedings Act, section 73 and any regulations made under that Act.
- (2) If a party against whom the registered NZ judgment is enforceable is out of Australia, the documents mentioned in subrule (1) may be served without leave of the court.

Note Div 6.8.9 otherwise provides for service of documents outside Australia.

- (3) The party must file an affidavit proving service of the documents mentioned in subrule (1) before any step is taken to enforce the registered NZ judgment.

6870 Trans-Tasman proceedings—application for extension of time to give notice of registration of NZ judgment

- (1) An application by an entitled person for an extension of the time within which to give notice of the registration of a NZ judgment, under the Trans-Tasman Proceedings Act, section 73 (3) must be made by originating application.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment).

Note 2 **Entitled person**, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

- (2) An application under subrule (1) must be accompanied by an affidavit stating—
 - (a) briefly but specifically, the grounds relied on in support of the application; and
 - (b) the material facts relied on in support of the application; and
 - (c) why notice was not given within time.

6871 Trans-Tasman proceedings—application to set aside registration of NZ judgment

- (1) An application by a liable person to set aside the registration of a NZ judgment, under the Trans-Tasman Proceedings Act, section 72 (1) must be made by originating application in the proceeding in which the judgment was registered.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment).

Note 2 **Liable person**, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

- (2) An application under subrule (1) must be accompanied by an affidavit stating—
 - (a) briefly but specifically, the grounds on which the registration of the judgment should be set aside; and
 - (b) the material facts relied on in support of the application.

6872 Trans-Tasman proceedings—application for stay of enforcement of registered NZ judgment

- (1) An application by a liable person for a stay of the enforcement of a registered NZ judgment, so that the liable person can appeal the judgment, under the Trans-Tasman Proceedings Act, section 76 (1) must be made by originating application.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment).

Note 2 **Liable person**, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

- (2) An application under subrule (1) must be accompanied by an affidavit stating—
- (a) the order sought; and
 - (b) briefly but specifically, the grounds relied on in support of the order sought; and
 - (c) the material facts relied on in support of the application.

6873 Trans-Tasman proceedings—application for extension of time to apply for stay of enforcement of registered NZ judgment

- (1) An application by a liable person for an extension of the time within which to apply for a stay of the enforcement of a registered NZ judgment, so that the liable person can appeal the judgment, under the Trans-Tasman Proceedings Act, section 76 (3) must be made by originating application.

Note 1 See approved form 6.30 (Trans-Tasman proceedings—originating application—enforcement of New Zealand judgment).

Note 2 **Liable person**, in relation to a judgment—see the Trans-Tasman Proceedings Act, s 4.

- (2) An application under subrule (1) must be accompanied by an affidavit stating—
- (a) the order sought; and
 - (b) briefly but specifically, the grounds relied on in support of the application; and
 - (c) the material facts relied on in support of the application; and
 - (d) why the application was not made within time.

16 Schedule 5, part 5.1, items 120 to 123

omit

17 Schedule 5, part 5.1, new item 128A

insert

128A	pt 6.10A	Trans-Tasman proceedings
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18 Schedule 5, part 5.4, new item 56A

insert

56A	pt 6.10A	Trans-Tasman proceedings
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19 Dictionary, new definition of *Trans-Tasman Proceedings Act*

insert

Trans-Tasman Proceedings Act means the *Trans-Tasman Proceedings Act 2010* (Cwlth).

Endnotes

1 Notification

Notified under the Legislation Act on 24 November 2011.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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