Form 98A

Rule 34.67(a)

Subpoena to give evidence (New Zealand)

No.       of 20

Federal Court of Australia

District Registry: [State]

Division: [Division]

**[Name of First Applicant]** [if 2 or more add "and [another/others] named in the schedule"]

Applicant[s]

**[Name of First Respondent]** [if 2 or more add "and [another/others] named in the schedule"]

Respondent[s]

**Notice to Witness**

*Trans-Tasman Proceedings Act 2010*

**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 Federal Court of Australia.

The subpoena may be served in New Zealand under New Zealand law (see section 14 of the Evidence Amendment Act 1994 (New Zealand)).

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 Federal Court of Australia that you be paid the additional amount you incurred.
  4. You may apply to the Federal Court of Australia 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**

1. Unless the subpoena is set aside, you must comply with the attached subpoena if:
   1. 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

* 1. you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and
  2. the subpoena was served on you before or on the date specified in the order as the last day on which the subpoena may be served; and
  3. service of the subpoena complied with any other conditions specified in the order; and
  4. you are over the age of 18 years.

**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 not exceeding 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:
2. you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or
3. if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or
4. you are being prosecuted or you are liable to prosecution for an offence in Australia; or
5. you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the Australian Consumer Law); or
6. 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:

(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 Federal Court of Australia.

2. You may fax your application to that court on fax number [fax number of the court].

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. A Registrar of the Federal Court of Australia 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 video link (that is, a conference television link) or telephone. In that case you or your lawyer can take part in the hearing by video link or by telephone 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 video link or telephone, the court must hold a hearing by video link or telephone. However, in such a case, the court will determine which of video link or telephone will be used.

**Subpoena to give evidence**

No.       of 20

Federal Court of Australia

District Registry: [State]

Division: [Division]

**[Name of First Applicant]** [if 2 or more add "and [another/others] named in the schedule"]

Applicant[s]

**[Name of First Respondent]** [if 2 or more add "and [another/others] named in the schedule"]

Respondent[s]

To: [name], [address]

**You are ordered to attend to give evidence.** See next page for details.

**Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest and the imposition of a fine under section 16 of the Evidence Amendment Act 1994 (New Zealand).**

Please read Notes 1 to 8 at the end of this subpoena.

The last date for service of this subpoena is [date]. *(See Note 2)*

Date:

|  |
| --- |
| Signed by an officer acting with the authority of the District Registrar |

Issued at the request of [name of party], whose address for service is:

Place: [see rule 11.01]

Email:

**Details of subpoena**

Date, time and place at which you must attend to give evidence, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted:

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.

***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 the subpoena unless it is served on you on or before the date specified 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 of its requirements.

**Addressee a corporation**

4. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.

**Applications in relation to subpoena**

5. You have the right to apply to the Court for an order with respect to any 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**

6. 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**

7. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under section 16 of the Evidence Amendment Act 1994 (New Zealand).

8. Note 7 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.

[\* If more than one applicant, respondent, cross-claimant or cross-respondent, insert names of the second, third, fourth etc as required in this schedule. Delete schedule if not required.]

**Schedule**

No.       of 20

Federal Court of Australia

District Registry: [State]

Division: [Division]

[\*]**Applicants**

Second Applicant: [Name]

[\* etc]

[\*]**Respondents**

Second Respondent: [Name]

[\* etc]

[\*]**Cross-claimants**

Second Cross-claimant: [Name]

[\* etc]

[\*]**Cross-respondents**

Second Cross-respondent: [Name]

[\* etc]

Date:

[\*delete if inapplicable]