Form 98C

Rule 34.67(c)

Subpoena to give evidence and produce documents (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.

1. If the subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the court or tribunal that issued the subpoena. You may comply with the subpoena by producing the documents or things at a registry of the High Court of New Zealand at least 10 days before the date specified in the subpoena. When you produce the documents or things at the registry you will be required to produce the subpoena and to pay the cost of sending the documents or things to the court or tribunal that issued the subpoena. You will be able to pay that cost out of the money given to you to meet your reasonable expenses of complying with the subpoena.

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

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 and to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents.** 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 1984 (New Zealand).**

Please read Notes 1 to 16 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 to give evidence**

In so far as you are required by this subpoena to attend to give evidence, you must attend as follows, unless you receive 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.

**Details of subpoena to produce documents**

In so far as 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 specified in the Schedule of documents below at the date, time and place specified for attendance and production; or

(b) by delivering or sending this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to:

(i) a Registrar of the Federal Court at the address specified in the subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production; or

(ii) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is specified, at any of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production. (*See Notes 6–12*)

Date, time and place at which you must attend to produce the subpoena or a copy of it and documents or things:

Date:

Time:

Place:

Address, or any address, to which the subpoena (or copy) and documents or things may be delivered or posted:

The Registrar

Federal Court of Australia

[Registry] District Registry

[address]

**Schedule of documents**

The documents and things you must produce are as follows:

[If insufficient space attach list]

***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.

**Production of subpoena or copy of it and documents or things by delivery or post**

5. In so far as this subpoena requires production of the 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:

(a) a Registrar of the Federal Court at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 2 clear business days before the date specified in the subpoena for attendance and production; or

(b) the Registrar of the High Court of New Zealand at the address specified in the subpoena for the purpose, or if more than one address is so specified, at any one of those addresses, so that they are received not less than 10 clear days before the date specified in the subpoena for attendance and production.

6. If you object to a document or thing produced in response to this subpoena being inspected by a party to the proceeding or any other person, you must, at the time of production, notify a Registrar of the Federal Court in writing of your objection and of the grounds of your objection.

7. Unless the Court otherwise orders, if you do not object to a document or thing produced by you in response to the subpoena being inspected by any party to the proceeding, a Registrar of the Federal Court may permit 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 one document or thing, you must, if requested by a Registrar of the Federal Court, produce a list of the documents or things produced.

**Production of copy instead of original**

9. You may, with the consent of the issuing party, produce a copy, instead of the original, of any document that the subpoena requires you to produce.

9A. The copy of a document may be:

(a) a photocopy; or

(b) in an electronic form in any of the following electronic formats:

.doc and .docx – Microsoft Word documents

.pdf – Adobe Acrobat documents

.xls and .xlsx – Microsoft Excel spreadsheets

.jpg – image files

.rtf – rich text format

.gif – graphics interchange format

.tif – tagged image format

**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, a Registrar of the Federal Court 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 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**

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.

**Banker’s book**

14. In so far as this subpoena requires production of the subpoena or a copy of it and a banker’s book, if section 47B of the Evidence Act 1908 (New Zealand) would have applied if this subpoena has been issued in a New Zealand proceeding, instead of producing the banker’s book, you may produce proof of the relevant entries in accordance with section 47B of the Evidence Act 1908 (New Zealand).

**Contempt of court — arrest**

15. 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).

16. Note 15 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]