

1996—No. 75

**SUPREME COURT RULES (AMENDMENT No. 299) 1996**

NEW SOUTH WALES



*[Published in Gazette No. 26 of 1 March 1996]*

1. These rules are made by the Rule Committee on 15 May 1995.
2. The Supreme Court Rules are amended as follows:
  - (a) Part 1 rule 8 (1)  
Insert in alphabetical order:  
“fax” means send a copy by facsimile transmission.
  - (b) Part 2 rule 2  
After subrule (5) insert:  
(5A) Subrules (4) and (5) shall not apply to the reckoning of time under Part 37 rule 4 (1) (b).
  - (c) Part 9 rule 6
    - (i) From subrules (1) and (2) omit “(1A) and (8)” wherever occurring and insert instead “(1A), (8) and (9)”.
    - (ii) After subrule (8) insert:  
(9) An address for service contained in an application to set aside a subpoena made under section 13 of the Evidence and Procedure (New Zealand) Act 1994 by a person who is not represented by a solicitor having a place of business in the State need not be the address of a place in the State if it is the address of a place within Australia or New Zealand.
  - (d) After Part 36 insert:

**PART 36A**

**EVIDENCE AND PROCEDURE (NEW ZEALAND) ACT  
1994 (COMMONWEALTH)**

**Interpretation**

1. In this Part, unless the contrary intention appears:
  - (a) “the subject Act” means the Evidence and Procedure (New Zealand) Act 1994;
  - (b) “another court” means an inferior court; and

- (c) the expressions used in this Part have the same meaning as in the subject Act.

#### **Application of this Part**

2. This Part applies to proceedings to which the subject Act applies.

#### **Leave to serve subpoena**

3. (1) Application for leave under the subject Act to serve a subpoena in New Zealand shall be made:

- (a) if the subpoena is issued in proceedings in the Court—by motion in the proceedings; or
- (b) otherwise—by summons in the Common Law Division joining as defendant the person to whom the subpoena is addressed.

- (2) The application shall be supported by an affidavit annexing a copy of the subpoena and setting out:

- (a) the name, designation or occupation, and address of the person named and whether that person is over 18 years of age;
- (b) the nature and significance of the evidence to be required from the person named, or of the document or thing required to be produced by that person;
- (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 sum sufficient to meet reasonable expenses in complying with the subpoena; and
  - (ii) how and when those expenses are to be paid, or tendered, to that person in money or in vouchers;
- (f) where the subpoena requires the person named to give evidence—an estimate of the time that person will be required to attend to give evidence; and
- (g) details of any facts or matters known to the deponent which may provide cause for the subpoena to be set aside under sections 14 (2) and (3) of the Act.

(3) The applicant for leave may, unless the Court otherwise orders, proceed without giving notice of the motion to any person or serving the summons on any person.

(4) Before granting leave under the subject Act to serve a subpoena, the Court may require the applicant for leave to undertake to meet the expenses or loss reasonably incurred by the person named, not being a party to the proceeding, in complying with the subpoena, if those expenses or loss exceed the allowances and travelling expenses to be provided to that person at the time of service of the subpoena.

(5) A subpoena issued by the Court to which this Part applies shall be in Form 45A, Form 45B, Form 45C, Form 45D or Form 45E as the case requires.

#### **Production of document or thing pursuant to subpoena**

4. If the registrar receives a fax under section 17 of the Evidence Amendment Act 1994 (New Zealand), the registrar may confirm with the registry that issued the receipt in New Zealand that the document or thing produced is able to be transported to the Court as soon as practicable so that the document or thing may be produced in the Court on the date the person named in the subpoena was to have attended.

#### **Failure to comply with subpoena issued by the Court**

5. (1) A certificate under section 16 of the subject Act, in the prescribed form, may be issued on the Court's own motion or on application by a party.

(2) Application for the issue of a certificate may be made:

(a) if the proceedings in which the certificate is sought are then before the Court—orally; or

(b) by filing:

(i) an affidavit of service of the subpoena and order and notice referred to in section 10 (3) of the subject Act; and

(ii) an affidavit stating:

(A) particulars of the order granting leave to serve the subpoena;

(B) whether application was made to set aside the subpoena and, if so, particulars of the application and of its outcome; and

(C) that the subpoena was not complied with.

(3) A draft certificate in the prescribed form shall be filed when making the application.

(4) The applicant need not, unless the Court otherwise orders, file or serve notice of motion for the issue of the certificate.

(5) An application under subrule (2) (b) may be determined or dealt with by the Court in the absence of the public and without any attendance by or on behalf of any person.

#### **Setting aside subpoena**

6. (1) An application to the Court under section 13 of the subject Act must be made by affidavit setting out the facts and grounds on which the application is based.

(2) The affidavit must be:

- (a) headed with the heading on the copy order of the Court granting leave to serve the subpoena; and
- (b) filed at, or faxed for filing to, the Sydney registry of the court.

(3) The affidavit must set out the address for service, and telephone number and, if applicable, the fax number of the applicant for an order to set aside the subpoena.

(4) The registry must:

- (a) if the affidavit, or a fax of the affidavit suitable for filing, is received—acknowledge, by post or fax, the receipt of the affidavit or the fax; or
- (b) if a fax of the affidavit that is unsuitable for filing is received—advise the applicant, by post or fax, of the unsuitability.

(5) The registrar must serve the affidavit on the party who obtained leave to serve the subpoena or fax the affidavit to that party's fax number.

(6) An application made under this rule will be determined at a date, time and place and in the manner directed by the Court.

(7) An objection under section 14 (4) of the subject Act must be made by filing notice in the prescribed form not later than 7 days after:

- (a) if the objection is made by the person named in the subpoena—the date when the application was filed; or
- (b) otherwise—the date when the application is served on the party who obtained leave to serve the subpoena.

(8) A request under section 14 (6) that is not made in the application must be made by filing a request in the prescribed form.

#### **Evidence by video-link or telephone**

7. (1) An application for a direction under section 25 of the subject Act may be made orally or by motion on notice.

(2) The application must be supported by an affidavit stating:

- (a) the reasons why such a procedure is desirable;
- (b) the nature of the evidence to be taken;
- (c) the number of witnesses to be examined;
- (d) the expected duration of the evidence;
- (e) whether issues of character are likely to be raised;
- (f) in the case of submissions—the expected duration of the submissions;
- (g) the facilities available for such a procedure or that can reasonably be made available;
- (h) that the requirements of section 26 or section 27 of the subject Act are able to be met.

(3) In deciding whether to grant the application, the Court may take account of the matters set out in the applicant's affidavit in addition to any other matters considered to be material, including cost and convenience to the witness and all parties.

(4) Where the Court makes a direction under section 25 (1) of the subject Act, it may direct the registrar to arrange and co-ordinate the appropriate facilities in Australia and New Zealand.

(5) Without limiting the generality of subrule (4), 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;
- (b) an officer of the High Court of New Zealand, or another person approved by the Court, be requested to be present to assist in the transmission of the evidence or submissions and, in particular, to:
  - (i) introduce witnesses to be called and legal representatives;
  - (ii) assist with the administration of oaths, if necessary; and

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- 
- (iii) assist with the implementation of any directions or requests given or made by the judge or officer hearing the evidence or submissions.

**Fax copies**

8. (1) Part 6 of the subject Act is taken to apply to a fax of a document in the same way as it applies to the original of the document (whether or not that original is itself a copy or an extract of a document).

(2) If a fax of a document is adduced in evidence pursuant to Part 6 of the subject Act, the party adducing that evidence must file in the registry a copy of the fax on paper of durable quality measuring about 295mm long and 210mm wide on which the writing is permanent, unless the fax 'meets those specifications.

(e) Part 37 rule 4 (1)

Omit the subrule and insert instead:

(1) A subpoena requiring production of any document or thing, being a subpoena requiring production before the Court or a Judge, Master, examiner or other officer of the Court, shall, unless the Court otherwise orders:

- (a) permit the person named to produce the document or thing to a clerk of the court at the clerk's office at the place stated in the subpoena by hand or by post, in either case so that the clerk receives it not later than 48 hours; and
- (b) if service of a subpoena for production is to be effected in New Zealand by leave of the Court under section 9 (1) of the Evidence and Procedure (New Zealand) Act 1994 of the Commonwealth—permit the person named to produce the document or thing at any registry of the High Court of New Zealand not later than 10 days,

before the date on which production before the Court or any of those persons is required instead of attending and producing it before the Court or any of those persons.

(f) Part 65 rule 7

- (i) From subrule (2), omit "subrule (3)" and insert instead "subrules (2A) and (3)".

- (ii) After subrule (2), insert:

(2A) A party must not search in the registry for or inspect any document in relation to an application under section 9 of the Evidence and Procedure (New Zealand) Act 1994 of the Commonwealth except with the leave of the Court.

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## (g) SCHEDULE E Part 2

After paragraph 19 insert:

**20.** Issuing a certificate under section 16 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth).

## (h) SCHEDULE F

After Form 45, insert:

**Form 454***(Subpoena to a natural person)**P. 36A, r. 3 (5).***SUBPOENA FOR PRODUCTION FOR SERVICE IN NEW  
ZEALAND**

To (1)

(2).

THE COURT ORDERS that you shall ATTEND AND PRODUCE this subpoena and the documents and things described in the schedule:

(a) before the Court (3);

(b) at (4);

(c) on (5) (6) at 18 am (3) and until you are excused by the Court from further attending; BUT:

(i) INSTEAD OF so ATTENDING, YOU MAY PRODUCE this subpoena and the documents and things described in the schedule to:

(A) a clerk of the Court at the above place by hand or by post, in either case so that the clerk receives them not later than 24 hours BEFORE THE DATE on which you are required so to attend; or

(B) any registry of the High Court of New Zealand not later than (8) PROVIDED THAT you:

(I) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;

- (II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and
- (III) forthwith send a copy of the receipt and the subpoena by fax to the Sydney registry of the Supreme Court of New South Wales;
- (ii) you need not comply with this subpoena:
  - (A) if:
    - (I) allowances and travelling expenses; or
    - (II) vouchers, I sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;
  - (B) if it is served on you after <sup>(9)</sup>;
  - (C) if the party who requested the issue of this subpoena has excused you from compliance; or
  - (D) if it is not accompanied by:
    - (I) a copy of the order giving leave to serve it in New Zealand; and
    - (II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;
- (iii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance and production to a later time.

## SCHEDULE

<sup>(10)</sup>

Dated 19

By the Court,

<sup>(11)</sup>

Issued at the request of <sup>(12)</sup> whose address for service is <sup>(13)</sup>.  
**See the reverse of this page.**

*On the reverse of the page, keeping clear a margin of 25 millimetres on the right hand side, add:*

Note that:

- (1) if you do not comply with this subpoena you may be arrested;
- (2) if, by paragraph (c) (i) (A), you are permitted to produce this subpoena and other documents and things to a clerk of the Court at Queen's Square, Sydney, you may produce them to the clerk by hand at the Exhibits Office, Level 4 at that place or by posting them to:

Exhibits Clerk,  
Prothonotary's Office, Level 4,  
Supreme Court of N.S.W.  
G.P.O. Box 3,  
Sydney 2001.  
AUSTRALIA

in accordance with paragraph (c) (i) (A);

- (3) in subparagraph (c) (i) (A) Saturdays, Sundays and other holidays are not counted in calculating time;
- (4) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;
- (5) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;
- (6) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena; and
- (7) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing the above form.*

- (<sup>1</sup>) name.
- (<sup>2</sup>) address.
- (<sup>3</sup>) or as the case may require.

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- (<sup>4</sup>) *address of Court or other place.*
- (<sup>5</sup>) *date, for example, 7 May 19 .*
- (<sup>6</sup>) *or on a date during the sittings beginning on (5) and ending on (7), notice of which date will be given to you.*
- (<sup>7</sup>) *date, for example, 21 May 19 .*
- (<sup>8</sup>) *specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 10 days before the date mentioned in note (5) above.*
- (<sup>9</sup>) *specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 15 days before the date mentioned in note (5) above.*
- (<sup>10</sup>) *description of documents and things.*
- (<sup>11</sup>) *signature and description of officer of the Court.*
- (<sup>12</sup>) *state person at whose request the subpoena was issued.*
- (<sup>13</sup>) *address for service.*

*(This form applies only to subpoenas to which Part 2 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth) applies.)*

### Form 45B

*(Subpoena to a corporation for production and for its proper officer to answer questions concerning possession, etc. of documents.)*

*P. 36A, r. 3 (5).*

### SUBPOENA FOR PRODUCTION AND TO ANSWER QUESTIONS FOR SERVICE IN NEW ZEALAND

To (<sup>1</sup>)

(<sup>2</sup>)

THE COURT ORDERS that:

1. (<sup>1</sup>) “the corporation”, shall produce this subpoena and the documents and things described in the schedule by causing its proper officer to ATTEND AND PRODUCE them:

- (a) before the Court (<sup>3</sup>);
- (b) at (<sup>4</sup>);

(c) on (5) (6) at 10 am (3) and until the officer is excused by the court from further attending;

BUT:

(i) INSTEAD OF causing its proper officer so to ATTEND, THE CORPORATION MAY PRODUCE this subpoena and the documents and things described in the schedule to:

(A) a clerk of the Court at the above place by hand or by post, in either ease so that the clerk receives them not later than 24 hours BEFORE THE DATE on which the officer is required so to attend; or

(B) any registry of the High Court of New Zealand not later than (8) PROVIDED THAT you:

(I) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;

(II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and

(III) forthwith send a copy of the receipt and the subpoena by ~~fax~~ to the Sydney registry of the Supreme Court of New South Wales;

(ii) the corporation need not comply with this subpoena:

(A) if:

(I) allowances and travelling expenses; or

(II) vouchers,

sufficient to meet the corporation's reasonable expenses are not paid, or tendered to it, at the time of service or at some other reasonable time before it is required to comply with this subpoena;

- (B) if it is served on the corporation after <sup>(9)</sup>;
  - (C) if the party who requested the issue of this subpoena has excused the corporation from compliance; or
  - (D) if it is not accompanied by:
    - (I) a copy of the order giving leave to serve it in New Zealand; and
    - (II) a notice in the prescribed form setting out the corporation's rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;
  - (iii) if the corporation is a bank and is required by this subpoena to produce a banker's book and the corporation is not a party to these proceedings and Part IV of the Evidence Act 1898 applies, the corporation need not cause its officer to produce it if the corporation causes him to produce proof of the relevant entries in it in accordance with that Part;
  - (iv) the party who requested the issue of this subpoena may, by written or oral notice to the corporation, alter the time for attendance or production to a later time.
2. the officer who is to attend shall make enquiries for the purpose of answering, and, on attending, shall answer, such questions as the Court requires him to answer concerning the possession or custody of those documents and things.

**SCHEDULE**<sup>(10)</sup>

Dated 19

By the Court

<sup>(11)</sup>Issued at the request of <sup>(12)</sup> whose address for service is <sup>(13)</sup>**See the reverse of this page.**

*On the reverse of the page, keeping clear a margin of 25 millimetres on the right hand side, add:*

Note that:

- (1) where the corporation fails to comply with this subpoena, this subpoena may be enforced by sequestration of the property of the corporation or by arrest of an officer of the corporation or by both means;
- (2) if, by paragraph (c) (i) (A), the corporation is permitted to produce this subpoena and other documents and things to a clerk of the Court at Queen's Square, Sydney, it may produce them to the clerk by hand at the Exhibits Office, Level 4 at that place or by posting them to:

The Exhibits Clerk,  
Prothonotary's Office,  
Level 4,  
Supreme Court of N.S.W.,  
G.P.O. Box 3,  
Sydney 2001.

AUSTRALIA

in accordance with paragraph (c) (i) (A);

- (3) in subparagraph (c) (i) (A) Saturdays, Sundays and other holidays are not counted in calculating time;

(4) documents and things produced by the corporation in accordance with this subpoena may be returned by post to it at its address shown on this subpoena but it may, in writing on or attached to this subpoena, request that they be posted to it at another address given by it;

(5) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;

(6) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena;

(7) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing this form.*

- (1) *name of corporation.*
- (2) *address.*
- (3) *or as the case may require.*
- (4) *address of Court or other place.*
- (5) *date, for example, 7 May 19 .*
- (6) *or on a date during the sittings beginning on (5) and ending on (7), notice of which date will be given to you.*
- (7) *date, for example, 21 May 19 .*
- (8) *specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 10 days before the date mentioned in note (5) above.*
- (9) *specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 15 days before the date mentioned in note (5) above.*
- (10) *description of documents and things.*
- (11) *signature and description of officer of the Court.*
- (12) *state person at whose request the subpoena was issued.*
- (13) *address for service.*

*(This form applies only to subpoenas to which Part 2 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth) applies.)*

**Form 45C**

*(Subpoena for production of original or photocopies of medical records.)*

*P. 36A, r. 3 (5).*

**SUBPOENA FOR PRODUCTION—FOR SERVICE IN NEW ZEALAND**

To (1)

(2)

THE COURT ORDERS that you shall ATTEND AND PRODUCE this subpoena and the medical records, or clear sharp photocopies of them, described in the schedule (in this subpoena called the “scheduled documents”):

- (a) before the Court (3);
- (b) at (4);
- (c) on (5) <sup>(6)</sup> at 10 am (3) and until you are excused by the Court from further attending; BUT:
  - (i) INSTEAD OF so ATTENDING, YOU MAY PRODUCE this subpoena and the scheduled documents to:
    - (A) a clerk of the Court at the above place by hand or by post, in either case so that the clerk receives them not later than 24 hours, BEFORE THE DATE on which you are required so to attend; or
    - (B) any registry of the High Court of New Zealand not later than (8) PROVIDED THAT you:
      - (I) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;
      - (II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and
      - (III) forthwith send a copy of the receipt and the subpoena by fax to the Sydney registry of the Supreme Court of New South Wales;
  - (ii) you need not comply with this subpoena:
    - (A) if \$ (*the amount prescribed by Part 37 rule 7A (4)*) have not been paid or tendered to you;
    - (B) if, in addition to the amount referred to in the preceding paragraph,:
      - (I) allowances and travelling expenses; or

- (II) vouchers, sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;
- (C) if it is served on you after <sup>(9)</sup>;
- (D) if the party who requested the issue of this subpoena has excused you from compliance; or
- (E) if it is not accompanied by:
- (I) a copy of the order giving leave to serve it in New Zealand; and
- (II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;
- (iii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance and production to a later time.

## SCHEDELE

<sup>(10)</sup>

Dated 19

By the Court,

<sup>(11)</sup>Issued at the request of <sup>(12)</sup> whose address for service is <sup>(13)</sup>.**See the reverse of this page.**

*On the reverse of the page, keeping clear a margin of 25 millimetres on the right hand side, add:*

Note that:

(1) if you do not comply with this subpoena you may be arrested;

(2) if, by paragraph (c) (i) (A), you are permitted to produce the subpoena and the scheduled documents to a clerk of the Court at Queen's Square, Sydney, you may produce them to the clerk by hand at the Exhibits Office, Level 4 at that place or by posting them to:

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Exhibits Clerk,  
 Prothonotary's Office, Level 4,  
 Supreme Court of N.S.W.,  
 G.P.O. Box 3,  
 Sydney 2001.  
 AUSTRALIA

in accordance with paragraph (c) (i) (A);

(3) in subparagraph (c) (i) (A) Saturdays, Sundays and other holidays are not counted in calculating time;

(4) documents produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;

(5) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;

(6) Being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena.

*Directions for completing the above form*

(1) name.

(2) address.

(3) or as the case may require.

(4) address of Court or other place.

(5) date, for example, 7 May 19 .

(6) or on a date during the sittings beginning on (5) and ending on (7), notice of which date will be given to you.

(7) date, for example, 21 May 19 .

(8) specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 10 days before the date mentioned in note (5) above.

(9) specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 15 days before the date mentioned in note (5) above.

(<sup>10</sup>) description of the medical records.

(<sup>11</sup>) signature and description of officer of the Court.

(<sup>12</sup>) state person at whose request the subpoena was issued.

(<sup>13</sup>) address for service.

(This form applies only to subpoenas to which Part 2 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth) applies.)

#### Form 45D

P. 36A, r. 3 (5).

#### SUBPOENA TO GIVE EVIDENCE—FOR SERVICE IN NEW ZEALAND

To (<sup>1</sup>)

(<sup>2</sup>)

THE COURT ORDERS that you shall attend for the purpose of giving evidence:

(a) before the Court (<sup>3</sup>);

(b) at (<sup>4</sup>);

(c) on (<sup>5</sup>) (<sup>6</sup>) at 10 a.m. (<sup>3</sup>) and until you are excused by the Court from further attending; but:

(i) you need not comply with this subpoena:

(A) if

(I) allowances and travelling expenses;  
or

(II) vouchers,

sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;

(B) if it is served on you after (<sup>8</sup>);

(C) if, as a medical expert, you are required by this subpoena to attend at a place in Sydney for the purposes of giving evidence on medical matters and it is served on you after (<sup>9</sup>);

(D) if the party who requested the issue of this subpoena has excused you from compliance; or

(E) if it is not accompanied by:

- (I) a copy of the order giving leave to serve it in New Zealand; and
- (II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;
- (ii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance to a later time.

Dated 19 . By the Court,

(<sup>10</sup>)

Issued at the request of (<sup>11</sup>) whose address for service is (<sup>12</sup>).

Note that:

- (1) if you do not comply with this subpoena you may be arrested;
- (2) if, as a medical expert, you are to give evidence of medical matters at a trial at Sydney and you are not called as a witness, you shall, unless the Court otherwise orders, be entitled to be paid \$ (<sup>13</sup>) in addition to any sum paid or tendered to you as reasonable expenses of complying with this subpoena;
- (3) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena;
- (4) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing the above form.*

(<sup>1</sup>) *name.*

(<sup>2</sup>) *address.*

(<sup>3</sup>) *or as the case may require.*

(<sup>4</sup>) *address of Court or other place.*

(<sup>5</sup>) *date, for example, 7 May 19 .*

(<sup>6</sup>) *or on a date during the sittings beginning on (<sup>5</sup>) and ending on (<sup>7</sup>), notice of which date will be given to you.*

(<sup>7</sup>) *date, for example, 21 May 19 .*

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- (8) specify a date, for example, 29 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d) and Part 37 rule 7 (7), which is not later than 5 days before the date mentioned in note (5) above.
  - (9) specify a date, for example, 15 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d) and Part 37 rule 7A (1), which is not later than 21 days before the date mentioned in note (5) above .
  - (10) signature and description of officer of the Court.
  - (11) state person at whose request the subpoena was issued.
  - (12) address for service.
  - (13) the amount prescribed by Part 37 rule 3A.

*(This form applies only to subpoenas to which Part 2 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth) applies.)*

#### Form 45E

P. 36A, r. 3 (5).

#### SUBPOENA FOR PRODUCTION AND TO GIVE EVIDENCE—FOR SERVICE IN NEW ZEALAND

To (1)

(2)

THE COURT ORDERS that you shall attend and produce this subpoena and the documents and things described in the schedule and attend for the purposes of giving evidence:

- (a) before the Court (3);
- (b) at (4);
- (c) on (5) (6) at 10 a.m. (3) and until you are excused by the Court from further attending; but:

(i) you need not comply with this subpoena:

(A) if

(I) allowances and travelling expenses;  
or

(II) vouchers,

sufficient to meet your reasonable expenses are not paid, or tendered to you, at the time of service or at some other reasonable time before you are required to comply with it;

- (B) if it is served on you after <sup>(8)</sup>;
- (C) if, as a medical expert, you are required by this subpoena to attend at a place in Sydney for the purposes of giving evidence on medical matters and it is served on you after <sup>(9)</sup>;
- (D) if the party who requested the issue of this subpoena has excused you from compliance; or
- (E) if it is not accompanied by:
  - (I) a copy of the order giving leave to serve it in New Zealand; and
  - (II) a notice in the prescribed form setting out your rights and obligations in relation to the subpoena and information on how to apply to set aside the subpoena;
- (ii) the party who requested the issue of this subpoena may, by written or oral notice to you, alter the time for attendance or production to a later time;
- (iii) you may produce this subpoena and the documents and things described in the schedule to:
  - (A) a clerk of the Court at the above place by hand or by post, in either case so that the clerk receives them not later than 24 hours BEFORE THE DATE on which you are required so to attend; or
  - (B) any registry of the High Court of New Zealand not later than <sup>(10)</sup> PROVIDED THAT you:
    - (I) tender to the registry such portion of the amount provided to you on account of expenses as is necessary to meet the costs of transportation for the document or thing produced to the Supreme Court of New South Wales;
    - (II) obtain from the New Zealand registry a receipt with a description of the document or thing produced in accordance with the subpoena; and

(III) forthwith send a copy of the receipt and the subpoena by fax to the Sydney registry of the Supreme Court of New South Wales;

**SCHE**DU**LE**

Dated 19 <sup>(11)</sup> — By the Court

<sup>(12)</sup>

Issued at the request of <sup>(13)</sup> whose address for service is <sup>(14)</sup>

**See the notes on the reverse of this page.**

*On the reverse of the page, keeping clear a margin of 25 millimetres on the right hand side, add:*

Note that:

- (1) if you do not comply with this subpoena you may be arrested;
- (2) if, as a medical expert, you are to give evidence of medical matters at a trial at Sydney and you are not called as a witness, you shall, unless the Court otherwise orders, be entitled to be paid \$ <sup>(15)</sup> in addition to any sum paid or tendered to you as reasonable expenses of complying with this subpoena;
- (3) if, by paragraph (c) (iii) (A), you are permitted to produce this subpoena and other documents and things to a clerk of the Court at Queen's Square, Sydney, you may produce them to him by hand at the Exhibits Office, Level 4 at that place or by posting them to:

Exhibits Clerk,  
Prothonotary's Office, Level 4,  
Supreme Court of N.S.W.  
G.P.O. Box 3,  
Sydney 2001.  
AUSTRALIA

- in accordance with paragraph (c) (iii) (A);
- (4) in subparagraph (c) (iii) (A) Saturdays, Sundays and other holidays are not counted in calculating time;
  - (5) documents and things produced by you in accordance with this subpoena may be returned by post to you at your address shown on this subpoena but you may in writing on or attached to this subpoena request that they be posted to you at another address given by you;

- 
- (6) any questions relating to the requirements of this subpoena should be directed not to the Court but to the person who requested the issue of this subpoena;
  - (7) being excused from compliance with this subpoena does not excuse you from compliance with any other subpoena;
  - (8) if there is a dispute over the amount of your reasonable expenses, you may apply to the Court for a decision on what is reasonable.

*Directions for completing the above form.*

- (1) *name.*
- (2) *address.*
- (3) *or as the case may require.*
- (4) *address of Court or other place.*
- (5) *date, for example, 7 May 19 .*
- (6) *or on a date during the sittings beginning on (5) and ending on (7), notice of which date will be given to you.*
- (7) *date, for example, 21 May 19 .*
- (8) *specify a date, for example 19 April 19 , having regard to Part 2 rule 2, Part 36A rule 3 (2) (d), Part 37 rules 4 (1) (b) and 7 (7) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 15 days before the date mentioned in note (5) above -*
- (9) *specify a date, for example, 15 April 19 , having regard to Part 2 rule 2 and Part 36A rule 3 (2) (d) and Part 37 rule 7A (1), which is not later than 21 days before the date mentioned in note (5) above .*
- (10) *specify a date, for example 26 April 19 , having regard to Part 2 rule 2, Part 37 rule 4 (1) (b) and section 12 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth), which is not later than 10 days before the date mentioned in note (5) above.*
- (11) *description of documents and things.*
- (12) *signature and description of officer of the Court.*
- (13) *state person at whose request the subpoena was issued.*
- (14) *address for service.*
- (15) *the amount prescribed by Part 37 rule 3A.*

*(This form applies only to subpoenas to which Part 2 of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth) applies.)*

**Form 45F**

*P. 36A, r. 5 (I).*

**CERTIFICATE OF NON-COMPLIANCE WITH SUBPOENA**

I certify that:

- (a) On *(date)* leave under section 9 of the Evidence and Procedure (New Zealand) Act 1994 of the Commonwealth was given to serve in New Zealand a subpoena issued by this court;
- (b) A copy of the subpoena and a copy of the order giving leave are annexed to this certificate;
- (c) *(name of person named)*, the person named in the subpoena, failed to comply with it; and
- (d) [No application to set aside the subpoena either wholly or in part has been made.

*OR*

An application to set aside the subpoena was dismissed by order made on *(date)*. A copy of this order is annexed to this certificate.}

Date:

By the Court

Registrar

*(Seal of Court to be affixed)*

**Form 45G**

*P. 36A, r. 6 (7).*

**OBJECTION TO DETERMINATION WITHOUT HEARING**

The *(identify objector)* objects to the application to set aside the subpoena *(identify subpoena)* being determined without a hearing.

**Form 45H**

*P. 36A, r. 6 (8).*

**REQUEST FOR HEARING BY VIDEO LINK OR  
TELEPHONE**

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

**(i) SCHEDULE F Index of Forms**

After the matter relating to Form 45 insert:

- 45A. Subpoena for production for service in New Zealand (P. 36A r. 3 (5))
  - 45B. Subpoena to a corporation for production and for its proper officer to answer questions concerning possession, etc. of documents for service in New Zealand (P. 36A r. 3 (5)).
  - 45C. Subpoena for production of original or photocopies of medical records for service in New Zealand (P. 36A r. 3 (5)).
  - 45D. Subpoena to give evidence for service in New Zealand (P. 36A r. 3 (5)).
  - 45E. Subpoena for production and to give evidence for service in New Zealand (P. 36A r. 3 (5)).
  - 45F. Certificate of non-compliance with subpoena (P. 36A, r. 5 (1)).
  - 45G. Objection to determination without hearing (P. 36A r. 6 (7)).
  - 45H. Request for hearing by video link or telephone (P. 36A r. 6 (8)).
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**EXPLANATORY NOTE**

*(This note does not form part of the rules)*

The object of the amendments contained in paragraph 2 is to make rule amendments to take account of the Evidence and Procedure (New Zealand) Act 1994 (Commonwealth).

M.A. Blay,  
Secretary of the Rule Committee

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