



Prescribed Notice and Information Sheet

Trans-Tasman Proceedings Act 2010

THIS NOTICE IS VERY IMPORTANT

Please read it and the attached document/s 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 Family Court of Australia. The subpoena may be served in

New Zealand under New Zealand law, see section 163 of the *Evidence Act 2006* (New Zealand).

This notice sets out:

- your rights relating to the subpoena; and
- your obligations relating to the subpoena; and
- information about the way in which you may make an application to have the subpoena set aside.

Your rights

- You are entitled to receive payment of an amount equal to the reasonable expenses you incur in complying with the subpoena.
- 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 over: 'Your obligations').
- If, in complying with the subpoena, you incur reasonable expenses that are more than the amount that was given to you before you complied, you may seek an order from the Family Court of Australia that you be paid the additional amount you incurred.
- You may apply to the Family 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.
- An application can be made and determined by the Family Court of Australia without you having to go to Australia, or 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 later in this notice.

Your obligations

- Unless the subpoena is set aside, you must comply with the attached subpoena if:
 - 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:
 - enough money to meet your reasonable expenses in complying with it, including any travel and accommodation expenses; or
 - a combination of money and vouchers (for example, travel tickets) to meet those expenses; and
 - you were given with the subpoena a copy of an order by a judge or registrar giving leave to serve the subpoena in New Zealand; and
 - 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
 - service of the subpoena complied with any other conditions specified in the order; and
 - you are over the age of 18 years.

- 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 registry of the Family Court of Australia 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 Family Court of Australia 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 the 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

- The Court must set aside the subpoena if the subpoena requires you to attend at a place in Australia and:
 - you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or
 - if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or
 - you are being prosecuted or you are liable to prosecution for an offence in Australia; or
 - you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the Australian Consumer Law); or
 - 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).

- The grounds on which the Court may set aside the subpoena include:
 - the evidence you would give in the proceedings can be obtained satisfactorily by other means without significantly greater expense;
 - compliance with the subpoena would cause you hardship or serious inconvenience;
 - if the subpoena requires you to produce a document or thing and:
 - that document or thing should not be taken out of New Zealand; and
 - 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

- Application must be made to the Family Court of Australia.
- Your application must contain an address for service in New Zealand or Australia. Any documents to be served on you will be served at that address.
- A registrar of the Family Court of Australia will arrange for service of your application and of any affidavit you lodge with the Court with your application.
- 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.
- If there is a hearing a request can be made to the Family Court of Australia that you appear at the hearing by audio link or audio visual link from a place in New Zealand.

See further

- Chapter 26A of the *Family Law Rules 2004*.
- Division 34.4 of the *Federal Court Rules 2011*.
- Part 5 Division 2 of the *Trans-Tasman Proceedings Act 2010*.

SERVED IN ACCORDANCE WITH RULE 26A.03 of the *Family Law Rules 2004* and SECTION 32 (2) of the *Trans-Tasman Proceedings Act 2010*.
 APPROVED BY THE PRINCIPAL REGISTRAR IN ACCORDANCE WITH RULE 26A.03 OF THE *FAMILY LAW RULES 2004*.