



# **Evidence and Procedure (New Zealand) Regulations 1995**

**Statutory Rules 1995 No. 22 as amended**

made under the

*Evidence and Procedure (New Zealand) Act 1994*

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Consolidated as in force on 20 October 1998

(includes amendments up to SR 1998 No. 317)

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**1 Name of regulations** [see Note 1]

These regulations are the *Evidence and Procedure (New Zealand) Regulations 1995*.

**2 Commencement** [see Note 1]

These regulations commence on the date of commencement of section 7 of the *Evidence and Procedure (New Zealand) Act 1994*.

**3 Interpretation**

In these regulations, unless the contrary intention appears:

*Act* means the *Evidence and Procedure (New Zealand) Act 1994*.

*prescribed registry* means a location of a court registry to which section 22 of the Act applies.

**4 Courts to which Part 2 of the Act applies**

Each of the courts mentioned in Column 3 of an item in Part 1 of Schedule 1 of the State or Territory mentioned in Column 2 of that item is a specified court for the purposes of paragraph 7 (b) of the Act.

**5 Notice under section 10 of the Act**

For the purposes of subsection 10 (3) of the Act, the prescribed form is the form set out in Schedule 2.

**6 No court fee payable for an application to set subpoena aside**

A fee is not payable by a person applying to a court under section 13 of the Act to set aside a subpoena:

- (a) for lodging or filing the application or any document in support of the application; or

- (b) for hearing all or any part of the application.

**7 Courts that are authorised to receive a document or thing required by subpoena to be produced**

- (1) Each of the courts mentioned in Column 3 of an item in Part 2 of Schedule 1 of the State or Territory mentioned in Column 2 of that item is a specified court for the purposes of subsection 22 (1) of the Act.
- (2) If, in relation to such a court, registry locations of that court are specified in Part 2 of Schedule 1, section 22 of the Act only applies in relation to the specified locations of that court's registry.

**8 Lodging, at an Australian court, documents or things for production under a New Zealand subpoena**

- (1) In this regulation:  
*subpoena* means a subpoena to which Part 3 (other than section 23) of the Act applies.
- (2) The Registrar of a court must accept for lodgment a document or thing that a person produces at a prescribed registry of the court for lodgment in compliance with a subpoena if the person:
  - (a) produces the subpoena to an officer of the court; and
  - (b) pays to the court an amount which, in the opinion of an officer of the court, is sufficient to meet the cost of transmitting the document or thing to the registry out of which the New Zealand court issued the subpoena.
- (3) If a document or thing referred to in subregulation (2) is lodged at the registry of the court, the Registrar of the court must:
  - (a) cause a receipt to be issued to the person that:
    - (i) describes the document or thing; and
    - (ii) specifies the date on which the document or thing was lodged; and
  - (b) cause a copy to be made of the subpoena; and
  - (c) cause a copy of:

- (i) the receipt; and
- (ii) the subpoena;  
to be sent by facsimile transmission to the registry, out of which the New Zealand court issued the subpoena, as soon as practicable after the document or thing is lodged; and
- (d) cause:
  - (i) the document or thing; and
  - (ii) a copy of the subpoena;  
to be transmitted to the registry, out of which the New Zealand court issued the subpoena, by a means that will ensure that the document or thing, and the copy of the subpoena, will arrive at the registry before the date on which the document or thing is required to be produced to that court.

*Note* For other obligations of the Registrar see subsection 22 (3) of the Act.

- (4) For the purposes of paragraph (2) (b), the officer must form his or her opinion on the basis that the document or thing will be transmitted by a means that:
  - (a) is reasonable; and
  - (b) in the opinion of the officer is likely to ensure that the document or thing will arrive at the registry, out of which the New Zealand court issued the subpoena, before the date on which the document or thing is required to be produced to that court.

## **9 Courts to which Part 4 of the Act applies**

Each of the courts mentioned in Column 3 of an item in Part 3 of Schedule 1 of the State or Territory mentioned in Column 2 of that item is a specified court for the purposes of paragraph 24 (b) of the Act.

**10 Australian courts whose officers may assist New Zealand courts**

Each of the courts mentioned in Column 3 of an item in Part 4 of Schedule 1 of the State or Territory mentioned in Column 2 of that item is a specified court for the purposes of paragraph 36 (2) (b) of the Act.



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## Schedule 1

### Part 1                      Courts of a State or Territory whose Subpoenas may be Served in New Zealand

(regulation 4)

<b>Column 1 Item</b>	<b>Column 2 State or Territory</b>	<b>Column 3 Court</b>
1	Australian Capital Territory	Supreme Court Magistrates Court Coroner's Court
2	South Australia	Supreme Court District Court Magistrates' Court
3	New South Wales	Supreme Court Industrial Court District Court Dust Diseases Tribunal Compensation Court Local Courts
4	Queensland	Supreme Court Industrial Court District Courts Planning and Environment Court
5	Western Australia	Supreme Court District Court Local Courts
6	Tasmania	Supreme Court Courts of Requests

<b>Column 1 Item</b>	<b>Column 2 State or Territory</b>	<b>Column 3 Court</b>
7	Norfolk Island	Supreme Court Court of Petty Sessions

*Note* The Dust Diseases Tribunal is a court of record: see section 4 of the Dust Diseases Act 1989 of New South Wales.

**Part 2**

**Courts of a state or territory that are authorised to receive a document or thing that is required by subpoena to be produced**

(regulation 7)

<b>Column 1 Item</b>	<b>Column 2 State or Territory</b>	<b>Column 3 Court</b>
1	Australian Capital Territory	Supreme Court
2	New South Wales	Supreme Court
3	Western Australia	Supreme Court District Court (only in relation to the following registry locations — Albany, Broome, Bunbury, Carnarvon, Derby, Esperance, Geraldton, Kalgoorlie, Karratha, Kununurra and Port Hedland)
4	Queensland	Supreme Court
5	Tasmania	Supreme Court (only registry locations at: (a) Launceston; (b) Burnie)
6	Norfolk Island	Supreme Court

**Part 3****Courts of a state or territory in which evidence etc may be taken by video links or telephones**

(regulation 9)

<b>Column 1 Item</b>	<b>Column 2 State or Territory</b>	<b>Column 3 Court</b>
1	Australian Capital Territory	Supreme Court Magistrates Court
2	South Australia	Supreme Court District Court Magistrates' Court
3	New South Wales	Supreme Court Industrial Court District Court Dust Diseases Tribunal Compensation Court Local Courts
4	Queensland	Supreme Court Industrial Court District Courts Planning and Environment Court
5	Western Australia	Supreme Court Family Court District Court Local Courts
6	Norfolk Island	Supreme Court
7	Tasmania	Supreme Court

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**Part 4**

**Courts of a state or territory whose officers may assist a New Zealand court**

(regulation 10)

<b>Column 1 Item</b>	<b>Column 2 State or Territory</b>	<b>Column 3 Court</b>
1	Australian Capital Territory	Supreme Court
2	New South Wales	Supreme Court
3	Western Australia	Supreme Court District Court
4	Queensland	Supreme Court
5	Norfolk Island	Supreme Court
6	Tasmania	Supreme Court

## **Schedule 2**

(regulation 5)

### **NOTICE TO WITNESS**

*Evidence and Procedure (New Zealand) Act 1994*

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 *[court or tribunal that issued the subpoena]*.

The subpoena may be served in New Zealand under New Zealand law (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

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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 *[court or tribunal that issued the subpoena]* that you be paid the additional amount you incurred.
4. You may apply to the *[court, a judge of which gave leave for the subpoena to be served]* 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 solicitors. 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:
  - (a) 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
  - (b) you were given with the subpoena a copy of an order by a judge giving leave to serve the subpoena in New Zealand; and
  - (c) 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

- (d) service of the subpoena complied with any other conditions specified in the order; and
  - (e) you are over the age of 18 years.
2. 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.

### **GROUND 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:
- (a) you do not have necessary travel documents and cannot reasonably get them within the time allowed for compliance with the subpoena; or
  - (b) if you complied with the subpoena — you would be liable to be detained for the purpose of serving a sentence; or
  - (c) you are being prosecuted or you are liable to prosecution for an offence in Australia; or
  - (d) you are liable to imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Trade Practices Act 1974* (Australia)); or
  - (e) you are subject to a restriction on your movements imposed by law or an order of a court that is inconsistent



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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 *[court, a judge of which gave leave for service of the subpoena in New Zealand]*.
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. The Registrar of the *[court]* 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.

*\*Note* If the process served is not called a subpoena, substitute the name of the process for the word “subpoena” throughout this notice.

**Table of Statutory Rules**

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**Notes to the *Evidence and Procedure (New Zealand) Regulations 1995*****Note 1**

The *Evidence and Procedure (New Zealand) Regulations 1995* (in force under the *Evidence and Procedure (New Zealand) Act 1994*) as shown in this consolidation comprise Statutory Rules 1995 No. 22 amended as indicated in the Tables below.

**Table of Statutory Rules**

<b>Year and number</b>	<b>Date of notification in Gazette</b>	<b>Date of commencement</b>	<b>Application, saving or transitional provisions</b>
1995 No. 22	28 Feb 1995	1 Apr 1995 (see r. 2 and Gazette 1995, No. GN8)	
1995 No. 405	19 Dec 1995	19 Dec 1995	—
1997 No. 135	23 June 1997	23 June 1997	—
1998 No. 317	1 Dec 1998	1 Dec 1998	—

**Table of Amendments**

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**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

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<b>Provision affected</b>	<b>How affected</b>
R. 1 .....	rs. 1998 No. 317
R. 7 .....	am. 1995 No. 405
Schedule 1 .....	am. 1995 No. 405; 1997 No. 135; 1998 No. 317

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