



Trans-Tasman Proceedings Act 2010

Fact sheet - Trans-Tasman Proceedings Act 2010

Requiring people to give evidence

From 11 October 2013 you can ask the court for permission to require someone in New Zealand to give evidence in criminal proceedings before an Australian court (you can already do this in civil proceedings). This process is known as the issuing of a subpoena.

What is a subpoena?

A subpoena is a court order requiring someone to appear at a court or tribunal hearing. A person who is subpoenaed (issued with a subpoena) and does not appear can be punished, usually by being held in contempt of court or being fined. The new regime allows Australian subpoenas to be issued to people located in New Zealand in a more streamlined and efficient way.

What cases are not covered by the arrangements?

Subpoenas cannot be issued in relation to certain family matters such as applications made under the 1980 *Convention on the Civil Aspects of International Child Abduction* or a proceeding in relation to the status or property of a person who is not fully able to manage his or her own affairs.

What Australian authorities can issue subpoenas in New Zealand?

The Australian Federal Court can issue subpoenas to be served on a person in New Zealand. State and territory courts and Australian tribunals prescribed by the Regulations can also issue subpoenas to be served in New Zealand.

How do I get an Australian subpoena served in New Zealand?

You must ask the Australian court for permission to serve the subpoena in New Zealand. If your proceeding is before an Australian tribunal, the subpoena must not be served in New Zealand without the leave (permission) of an inferior Australian court.

In deciding whether to give leave, a court must consider the significance of the evidence to be given and whether the court could get the evidence in another way without significantly greater expense.

Does the person giving evidence have to travel to Australia?

No. A party to the case can ask the Australian court to hear the person's evidence remotely from New Zealand (for example, by telephone conference or videolink).



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The Australian court may give permission for evidence to be given this way if it is satisfied that:

- the necessary facilities are available
- it is more convenient for the evidence to be given from Australia
- it is appropriate to give permission.

What costs are involved?

If you request for a court to issue a trans-Tasman subpoena you must pay for the reasonable expenses incurred by the person you are asking to give evidence.

For example: If you apply to the Australian Federal Court to issue a subpoena to a person in New Zealand, you will need to pay the costs associated with that person in New Zealand providing evidence in your matter. These costs may include travel, accommodation, food etc.

If the subpoena was not issued at the request of a particular person, the expenses will be paid by either the Australian commonwealth, state or territory government.