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Supreme Court Act 1935

Supreme Court Amendment (Subpoenas) Rules 2017

Made by the judges of the Supreme Court.

Part 1 — Preliminary matters

1. Citation

These rules are the *Supreme Court Amendment (Subpoenas) Rules 2017*.

2. Commencement

These rules come into operation as follows —

(a) Part 1 — on the day on which these rules are published in the *Gazette*;

(b) the rest of the rules — on the 14th day after that day.

3. Rules amended

These rules amend the *Rules of the Supreme Court 1971*.

Part 2 — Amendments about subpoenas

4. Order 36B amended

(1) In Order 36B rule 1(1) insert in alphabetical order:

Registry means the Central Office;

(2) In Order 36B rule 1(2) after "give" (1st occurrence) insert:

oral

(3) Delete Order 36B rule 2(2) and insert:

(2) An issuing officer must not issue either a subpoena to attend to give evidence or a subpoena to produce —

(a) if a written law or a law of another Australian jurisdiction prohibits its issue; or

(b) if a written law or a law of another Australian jurisdiction prohibits its issue except with the Court's leave and the Court has not given that leave; or

(c) if the Court has ordered that the subpoena not be issued; or

(d) if the Court has ordered that the subpoena not be issued without the Court's leave and the Court has not given that leave.

(2A) An issuing officer must not issue a subpoena to attend to give evidence unless —

(a) the oral evidence of the addressee is required at one of the following —

(i) a trial of substantive issues in a proceeding;

(ii) an assessment of damages under Order 34 rule 18;

(iii) a trial ordered under Order 35 to be before a referee or other person;

(iv) an examination ordered under Order 38 to be before an examiner;

(v) any other proceeding at which, under an express provision of a written law, the attendance of a person may be enforced by a subpoena;

and

(b) a date has been set for the trial, assessment, examination or proceeding.

(2B) An issuing officer must not issue a subpoena to produce —

(a) if it would require the production of a document or thing in the custody of the Court or another court; or

(b) in a proceeding in which a defence is required to be filed, unless —

(i) the defence has been filed; or

(ii) the Court has given leave for the subpoena to be issued; or

(iii) the subpoena is being issued under Order 73 rule 20(2);

or

(c) in a proceeding in which a defence is not required to be filed, unless —

(i) the date and time for production is the date and time of a trial; or

(ii) the Court has given leave for the subpoena to be issued.

(2C) A party may apply for leave under subrule (2B)(b) or (c) without notice to any other party.

(2D) The Court must not give leave under subrule (2B)(b) or (c) unless satisfied there are exceptional circumstances.

(2E) If the Court gives leave to issue a subpoena to produce, it must set the date and time for production to be specified in the subpoena which must be —

(a) the date and time of the trial in the proceeding at which production is required; or

(b) an earlier date and time.

(4) Delete Order 36B rule 3(1) and insert:

(1) Subject to subrule (1A) —

(a) a subpoena to attend to give evidence must be in the form of Form 21;

(b) a subpoena to produce must be in the form of Form 21A;

(c) a subpoena both to attend to give evidence and to produce must be in the form of Form 21B.

(1A) Subrule (1) does not apply to a subpoena issued in proceedings under the *Trans-Tasman Proceedings Act 2010* (Commonwealth).

(5) Delete Order 36B rule 3(4), (5), (6) and (7) and insert:

(4) A subpoena to attend to give evidence must specify the date and time and place at which the addressee is to attend.

(5) A subpoena to produce must specify —

(a) the date and time for production which must be —

(i) if the Court has given leave for the subpoena to be issued, the date and time set by the Court when giving leave; or

(ii) otherwise, the date and time of the trial which the addressee is to attend, or a date and time permitted by the issuing officer or a registrar;

and

(b) the place for production which must be —

(i) the address of the Court; or

(ii) the address of a person authorised to take evidence in the proceeding as permitted by the Court.

(6) Delete Order 36B rules 3A, 4 and 5 and insert:

4. Service of subpoenas

(1) A subpoena must be served personally on the addressee.

(2) As soon as practicable after a subpoena is served on the addressee, the issuing party must serve a copy of it on each other party.

5. Party may request notice that subpoena to produce has been obeyed

(1) A party may, in writing, request the Court to inform the party whether any document or thing has been produced to the court under a subpoena to produce.

(2) If a party has made a request under subrule (1), a registrar must inform the party whether any document or thing has been produced and, if so, include a description, in general terms, of the documents and things produced.

5A. Altering date for attendance or production

(1) This rule does not apply to a subpoena to produce that has been issued with the leave of the Court under rule 2(2B)(b)(ii) or (c)(ii).

(2) The issuing party may give the addressee of a subpoena notice of a date or time later than the date or time specified in the subpoena as the date or time for attendance or for production or for both.

(3) The later date or time specified in a notice given under subrule (2) must be —

(a) if the subpoena is a subpoena to attend to give evidence, a later date and time of a trial, assessment, examination or proceeding referred to in rule 2(2A);

(b) if the subpoena is a subpoena to produce in which the date and time for production is the date and time of a trial — a later date and time of a trial;

(c) if the subpoena is a subpoena to produce in which the date and time for production is not the date and time of a trial — any later date and time.

(4) As soon as practicable after giving a notice under subrule (2), the issuing party must —

(a) file a copy of the notice; and

(b) serve a copy of the notice on each other party.

(5) The notice need not be served personally.

(6) If notice is given under subrule (2), the subpoena has effect as if the date or time notified were specified in the subpoena instead of the date or time originally specified in the subpoena.

(7) Delete Order 36B rule 6(7)(b) and insert:

(b) in an electronic format that the subpoena indicates will be acceptable on a CD-ROM, DVD or USB device, unless the Court, on an application made by a party or the addressee, has directed otherwise.

(8) Delete Order 36B rule 7(1) and insert:

(1) This rule applies if, under a subpoena to produce, the addressee produces a document or thing to the Court otherwise than at a trial.

(9) Delete Order 36B rule 7(3) and insert:

(3) If the addressee produces more than 1 document or thing, the addressee must provide a list of them.

Note: The heading to amended rule 7 is to read:
Production otherwise than at a trial

(10) Delete Order 36B rule 8 and insert:

8. Setting aside subpoena to attend to give evidence

(1) This rule applies if a subpoena to attend to give evidence has been issued in a proceeding.

(2) On a request by the addressee, a party or any other person with a sufficient interest, the Court may set aside the subpoena or grant other relief in respect of it.

(3) A request under this rule may be made before the date and time for attendance specified in the subpoena.

(4) Subrule (3) does not limit when a request under this rule may be made.

(5) A request under this rule must be made in accordance with rule 8B.

8A. Setting aside subpoena to produce and directions as to things to be produced

(1) This rule applies if a subpoena to produce has been issued in a proceeding.

(2) On a request by the addressee, a party or any other person with a sufficient interest, the Court may, by order —

(a) set aside the subpoena or part of it; or

(b) make or vary directions in relation to removing from and returning to the Court, and the inspection, copying and disposal, of any document or thing that has been or is to be produced under it; or

(c) grant other relief in respect of it.

(3) A request under this rule may be made before the date and time for production specified in the subpoena.

(4) Subrule (3) does not limit when a request under this rule may be made.

(5) A request under this rule must be made in accordance with rule 8B.

(6) While a request made under this rule is pending, the Registry must not permit any, or any further inspection, copying, removal or disposal of any document or thing to which the request relates.

8B. How requests under r. 8 and 8A to be made

(1) A request under rule 8 or 8A must be made by way of a letter to the Principal Registrar unless —

(a) the request is made orally during a case management conference held under Order 4A, or during a hearing, by a party to the proceeding in which the subpoena has been issued; or

(b) a motion or summons is justified by the circumstances of the particular case or the nature of the request, in which case the request may be made by way of motion or summons; or

(c) the *Supreme Court (Corporations) (WA) Rules 2004* apply to the proceeding in which the subpoena has been issued, in which case the request must be made under those rules.

(2) A request under rule 8 or 8A made by letter must state —

(a) the grounds of the request; and

(b) the order, direction or relief sought.

(3) The person making a request under rule 8 or 8A by letter must —

(a) file it; and

(b) serve a copy of it on the issuing party.

(4) Even if a person has made a request under rule 8 or 8A by letter in accordance with this rule, the Principal Registrar or a case manager (as defined in Order 4A rule 1) may direct the person to make the request in some other manner.

(11) Delete Order 36B rule 9 and insert:

9. Inspecting and dealing with documents and things produced otherwise than at a trial

(1) This rule applies if, under a subpoena to produce, the addressee produces a document or thing to the Court otherwise than at a trial.

(2) After the date and time for production specified in the subpoena, a registrar, subject to —

(a) any direction made or relief granted under rule 8A; and

(b) rule 8A(6) and this rule,

may permit any party to the proceeding to inspect, copy or remove any document or thing produced under the subpoena.

(3) A document or thing produced cannot be removed from the Registry except on a written application that is signed by the solicitor for a party and approved by —

(a) a registrar; or

(b) a Court officer authorised in writing for the purposes of this subrule by the Chief Justice.

(4) An application made under subrule (3) may be approved with or without conditions, or refused.

(5) A solicitor who signs an application under subrule (3) and removes a document or thing from the Registry, undertakes to the Court by force of this rule that —

(a) the document or thing will be kept in the personal custody of the solicitor or a barrister briefed by the solicitor in the proceeding; and

(b) the document or thing will be returned to the Registry in the same condition, order and packaging in which it was removed, as and when directed by a registrar.

(12) In Order 36B rule 10(2) delete "the registrar" (1st occurrence) and insert:

a registrar

(13) In Order 36B rule 10(6) delete "The registrar" and insert:

A registrar

(14) In Order 36B rule 13(3) delete "the registrar" (1st occurrence) and insert:

a registrar

(15) In the provisions listed in the Table delete "registrar" and insert:

Registry

Table

Order 36B rule 6(4)(b)	Order 36B rule 7(2)
Order 36B rule 7(5)	

(16) In the provisions listed in the Table delete "the registrar" and insert:

a registrar

Table

Order 36B rule 9(2)	Order 36B rule 9(7)
Order 36B rule 10(1)	Order 36B rule 10(5)
Order 36B rule 13(1)	Order 36B rule 13(2)

5. Order 39A amended

At the beginning of Order 39A Division 2 insert:

2A. Form of subpoenas

If it is to be served in New Zealand —

(a) a subpoena to attend to give evidence must be in the form of Form 23;

(b) a subpoena to produce the subpoena and a document or thing must be in the form of Form 23A;

(c) a subpoena both to attend to give evidence and to produce the subpoena and a document or thing must be in the form of Form 23B.

6. Order 73 amended

In Order 73 rule 20(2) delete "by a master".

7. Schedule 2 amended

(1) After Schedule 2 Form 20 insert:

21. Subpoena to give oral evidence (O. 36B r. 3(1))

<table>
<tr><td colspan="2">Supreme Court of Western Australia
*General Division/Court of Appeal</td><td colspan="2">No.:
Subpoena to give oral evidence</td></tr>
<tr><td>Parties[1]</td><td colspan="3">Plaintiff
Defendant</td></tr>
<tr><td>To</td><td colspan="3">[Name and address]</td></tr>
<tr><td>Order</td><td colspan="3">You are ordered to attend the Supreme Court to give oral evidence. See details below.
Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.
Please read Notes 1 to 8 at the end of this subpoena.</td></tr>
<tr><td>Last date for service
[see Note 1]</td><td colspan="3">The last date for service of this subpoena is [date].</td></tr>
<tr><td rowspan="2">Issuing details</td><td colspan="3">Issued at the request of: [Name of party]
Address for service: [see Order 71A rule 3]
Email:</td></tr>
<tr><td colspan="2">Date of issue:</td><td>[Seal or stamp of the Court]</td></tr>
<tr><td>Details of subpoena</td><td colspan="3">Date, time and place at which you must attend to give oral evidence, unless you receive a 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.</td></tr>
<tr><td colspan="4">Notes</td></tr>
<tr><td>Last day for service</td><td colspan="3">1. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.</td></tr>
</table>

Informal service	2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.
Conduct money	4. You need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.
Applications in relation to subpoena	5. You have the right to apply to the Court for an order setting aside this subpoena or for other relief in respect of it.
Loss or expense of compliance	6. 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 this subpoena.
Contempt of court—arrest	7. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly. 8. Note 7 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.

Footnotes to Form 21 —
* Delete the inapplicable.
1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

21A. Subpoena to produce documents (O. 36B r. 3(1))

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Subpoena to produce documents**
Parties[1]	Plaintiff Defendant
To	[*Name and address*]

<table>
<tr><td>Order</td><td colspan="2">You are ordered to attend the Supreme Court and produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See details below.
Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.
Please read Notes 1 to 12 at the end of this subpoena.</td></tr>
<tr><td>Last date for service
[see Note 1]</td><td colspan="2">The last date for service of this subpoena is [date].</td></tr>
<tr><td rowspan="2">Issuing details</td><td colspan="2">Issued at the request of: [Name of party]
Address for service: [see Order 71A rule 3]
Email:</td></tr>
<tr><td>Date of issue:</td><td>[Seal or stamp of the Court]</td></tr>
<tr><td>Details of subpoena</td><td colspan="2">You must comply with this subpoena —
(a) by attending the Court and producing 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 below; or
(b) by delivering or posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to the Court at the address below, so that they are received not less than 2 clear days before the date specified below. (See Notes 5-8)
Date, time and place at which you must attend and produce this subpoena or a copy of it and the documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted —
Date:
Time:
Place:
Address to which this subpoena (or copy) and documents or things may be delivered or posted:
* Supreme Court of Western Australia
David Malcolm Justice Centre
Level 11, 28 Barrack Street
Perth WA 6000
* Supreme Court of Western Australia
Court of Appeal Office
Stirling Gardens, Barrack Street
Perth WA 6000</td></tr>
</table>

Supreme Court Amendment (Subpoenas) Rules 2017
Part 2 Amendments about subpoenas

r. 7

Schedule of documents	
The documents and things you must produce are as follows: [*List the documents or things and state whether the original of any document is required. If insufficient space, attach list.*]	
Notes	
Last day for service	1. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.
Informal service	2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	3. If this subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.
Conduct money	4. You need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.
Production of subpoena or copy of it and documents or things by delivery or post	5. Instead of attending the Court and producing this subpoena (or a copy of it) and the documents or things, you may comply with this subpoena by delivering or posting the subpoena (or a copy of it) and the documents or things to the Court at the address specified in the subpoena so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date or time from the issuing party, before the later date or time.
Production of a number of documents or things	6. If you produce more than one document or thing, you must include with them a list of them.
Production of copy instead of original	7. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead.

	8. The copy of a document may be — (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device 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
Applications in relation to subpoena	9. You have the right to apply (before or after complying with this subpoena) to the Court for an order — (a) setting aside this subpoena (or a part of it); (b) giving directions in relation to removing from and returning to the Court, and the inspection, copying and disposal, of any document or thing that you produce or are required to produce by this subpoena; (c) giving other relief in respect of it. Unless the Court has made such an order, a registrar may permit the parties to the proceeding to inspect, copy, or remove and return any document or thing you produce under this subpoena.
Loss or expense of compliance	10. 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 this subpoena.
Contempt of court—arrest	11. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly. 12. Note 11 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.

Footnotes to Form 21A —

* Delete the inapplicable.

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

21B. Subpoena to give oral evidence and produce documents (O. 36B r. 3(1))

<table>
<tr><td colspan="2">Supreme Court of Western Australia
*General Division/Court of Appeal</td><td>No.:
Subpoena to give oral evidence and produce documents</td></tr>
<tr><td>Parties[1]</td><td colspan="2">Plaintiff
Defendant</td></tr>
<tr><td>To</td><td colspan="2">[Name and address]</td></tr>
<tr><td>Order</td><td colspan="2">You are ordered to attend the Supreme Court to give oral evidence and to produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See details below.
Failure to comply with this subpoena without lawful excuse is a contempt of court and may result in your arrest.
Please read Notes 1 to 12 at the end of this subpoena.</td></tr>
<tr><td>Last date for service
[see Note 1]</td><td colspan="2">The last date for service of this subpoena is [date].</td></tr>
<tr><td rowspan="2">Issuing details</td><td colspan="2">Issued at the request of: [Name of party]
Address for service: [see Order 71A rule 3]
Email:</td></tr>
<tr><td>Date of issue:</td><td>[Seal or stamp of the Court]</td></tr>
<tr><td>Details of subpoena</td><td colspan="2">In so far as this subpoena requires you to attend to give oral 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.</td></tr>
</table>

	Insofar as this subpoena requires you to attend to produce the subpoena or a copy of it and documents or things, you must comply with that requirement — (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 posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to the Court at the address below so that they are received not less than 2 clear days before the date specified for attendance and production. (*See Notes 5–8*) Date, time and place at which you must attend to produce the subpoena or a copy of it and the documents or things, unless you receive a notice of a later date or time from the issuing party, in which case the later date or time is substituted — Date: Time: Place: Address to which this subpoena (or copy) and documents or things may be delivered: * Supreme Court of Western Australia David Malcolm Justice Centre Level 11, 28 Barrack Street Perth WA 6000 * Supreme Court of Western Australia Court of Appeal Office Stirling Gardens, Barrack Street Perth WA 6000

Schedule of documents	
The documents and things you must produce are as follows: *[List the documents or things and whether the original of any document is required. If insufficient space, attach list.]*	
Notes	
Last day for service	1. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.

Informal service	2. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	3. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.
Conduct money	4. You need not comply with this subpoena unless conduct money sufficient to meet your reasonable expenses of attending as required by the subpoena is handed or tendered to you a reasonable time before the date your attendance is required.
Production of subpoena or copy of it and documents or things by delivery or post	5. Insofar as this subpoena requires you to attend and produce the subpoena (or a copy of it) and documents or things, you may, instead of attending, comply with that requirement by delivering or posting the subpoena (or a copy of it) and the documents or things to the Court at the address specified in the subpoena so that they are received not less than 2 clear days before the date specified in the subpoena for attendance and production, or if you receive notice of a later date or time from the issuing party, before the later date or time.
Production of a number of documents or things	6. If you produce more than one document or thing, you must include with them a list of them.
Production of copy instead of original	7. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead. 8. The copy of a document may be — (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device 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

Applications in relation to subpoena	9. You have the right to apply (before or after complying with this subpoena) to the Court for an order — (a) setting aside this subpoena (or a part of it); (b) giving directions in relation to removing from and returning to the Court, and the inspection, copying and disposal, of any document or thing that you produce or are required to produce by this subpoena; (c) giving other relief in respect of it. Unless the Court has made such an order, a registrar may permit the parties to the proceeding to inspect, copy, or remove and return any document or thing you produce under this subpoena.
Loss or expense of compliance	10. 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 this subpoena.
Contempt of court—arrest	11. Failure to comply with a subpoena without lawful excuse is a contempt of court and may be dealt with accordingly. 12. Note 11 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.

Footnotes to Form 21B —
* Delete the inapplicable.
1. If there is more than 1 of any party, include the additional parties' names and types of party in a schedule to the subpoena.

(2) Delete Schedule 2 Form 22.

(3) In Schedule 2 Form 22A delete paragraph (b) and insert:

(b) in an electronic form on a CD-ROM, DVD or USB device 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

(4) Delete Schedule 2 Form 23 and insert:

23. Subpoena to give evidence to WA Supreme Court (to be served in NZ) (O. 39A r. 2A)

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Notice attached to subpoena to give evidence to the Supreme Court of Western Australia (to be served in New Zealand)**
Parties[1]	Plaintiff Defendant
Notice to witness	*Trans-Tasman Proceedings Act 2010* (Commonwealth) **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 requiring you to attend to give evidence to the Supreme Court of Western Australia. The subpoena has been issued by that court. The subpoena may be served in New Zealand under New Zealand law (see *Evidence Act 2006* (New Zealand) section 163). 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 Supreme Court that you be paid the additional amount you incurred. 4. You may apply to the Supreme Court 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 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	6. Unless the subpoena is set aside, you must comply with it 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 of the Supreme Court 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.
Failure to comply with subpoena	7. 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	8. The Supreme 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 *Competition and Consumer Act 2010* (Commonwealth)); or (e) 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). 9. The grounds on which the Supreme 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. **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	10. Application must be made to the Supreme Court of Western Australia. 11. You may fax your application to that Court on fax number [*fax number of the court*].

	12. 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. 13. A registrar of the Supreme Court will arrange for service of your application and of any affidavit you lodge with the Court with your application. 14. The Supreme Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing. 15. If there is a hearing, the Supreme 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. 16. 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 Supreme 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.

Supreme Court of Western Australia *General Division/Court of Appeal	No.:
	Subpoena to give evidence to the Supreme Court of Western Australia (to be served in New Zealand)
Parties[1]	Plaintiff Defendant
To	[*Name and address*]
Order	**You are ordered to attend the Supreme Court of Western Australia to give evidence.** See details below. **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 the *Evidence Act 2006* (New Zealand) section 165.** Please read Notes 1 to 7 at the end of this subpoena.
Last date for service [see Note 2]	The last date for service of this subpoena is [*date*].

Supreme Court Amendment (Subpoenas) Rules 2017
Part 2 Amendments about subpoenas

r. 7

<table>
<tr><td>Issuing details</td><td colspan="2">Issued at the request of: [Name of party]
Address for service: [see Order 71A rule 3]
Email:</td></tr>
<tr><td></td><td>Date of issue:</td><td>[Seal or stamp of the Court]</td></tr>
<tr><td>Details of subpoena</td><td colspan="2">Date, time and place at which you must attend the Supreme Court of Western Australia to give evidence, unless you receive a 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.</td></tr>
<tr><td colspan="3">Notes</td></tr>
<tr><td>Leave to serve subpoena</td><td colspan="2">1. You need not comply with this subpoena unless it is accompanied by —
(a) a copy of the order of a judge of the Supreme Court 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.</td></tr>
<tr><td>Last day for service</td><td colspan="2">2. You need not comply with this subpoena unless it is served on you on or before the date specified in it as the last date for service of the subpoena.</td></tr>
<tr><td>Informal service</td><td colspan="2">3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.</td></tr>
<tr><td>Addressee a corporation</td><td colspan="2">4. If the subpoena is addressed to a corporation, the corporation must comply with the subpoena by its appropriate or proper officer.</td></tr>
<tr><td>Loss or expense of compliance</td><td colspan="2">5. If you are not a party to the proceeding, you may apply to the Supreme 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.</td></tr>
</table>

Contempt of court—arrest	6. Failure to comply with this subpoena without lawful excuse may result in your arrest and the imposition of a fine under the *Evidence Act 2006* (New Zealand) section 165. 7. Note 6 is without prejudice to any other power to enforce compliance with a subpoena.

Footnotes to Form 23 —
* Delete the inapplicable.
1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

23A. Subpoena to produce documents to WA Supreme Court (to be served in NZ) (O. 39A r. 2A)

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Notice attached to subpoena to produce documents to the Supreme Court of Western Australia (to be served in New Zealand)**
Parties[1]	Plaintiff Defendant
Notice to witness	*Trans-Tasman Proceedings Act 2010* (Commonwealth) **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 requiring you to produce documents to the Supreme Court of Western Australia. The subpoena has been issued by that court. The subpoena may be served in New Zealand under New Zealand law (see *Evidence Act 2006* (New Zealand) section 163). 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 Supreme Court of Western Australia that you be paid the additional amount you incurred. 4. You may apply to the Supreme Court 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 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	6. Unless the subpoena is set aside, you must comply with it 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 of the Supreme Court 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. 7. The subpoena must specify the date on which you must attend the Supreme Court and produce the documents or things. But instead of attending you may comply with the subpoena by delivering or posting the subpoena (or a copy of it) and the documents or things to either — (a) the Supreme Court so that they are received not less than 2 clear days before that date; or (b) the High Court of New Zealand so that they are received at least 10 days before that date. If you deliver or post them to the High Court of New Zealand you will be required to pay the cost of sending them to the Supreme Court. 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 subpoena	8. 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	9. The Supreme 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 *Competition and Consumer Act 2010* (Commonwealth)); or (e) 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).

	10. The grounds on which the Supreme Court may set aside the subpoena include — (a) compliance with the subpoena would cause you hardship or serious inconvenience; (b) that, in respect of a document or thing that the subpoena requires you to produce — (i) the 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	11. Application must be made to the Supreme Court of Western Australia. 12. You may fax your application to that Court on fax number [*fax number of the Court*]. 13. 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. 14. A registrar of the Supreme Court will arrange for service of your application and of any affidavit you lodge with the Court with your application. 15. The Supreme Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing. 16. If there is a hearing, the Supreme 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. 17. 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 Supreme 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.

<table>
<tr><td colspan="2">Supreme Court of Western Australia
*General Division/Court of Appeal</td><td>No.:
Subpoena to produce documents to the Supreme Court of Western Australia (to be served in New Zealand)</td></tr>
<tr><td>Parties[1]</td><td colspan="2">Plaintiff
Defendant</td></tr>
<tr><td>To</td><td colspan="2">[Name and address]</td></tr>
<tr><td>Order</td><td colspan="2">You are ordered to attend the Supreme Court of Western Australia and produce this subpoena or a copy of it and the documents or things specified in the Schedule of documents. See details below.
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 the Evidence Act 2006 (New Zealand) section 165.
Please read Notes 1 to 16 at the end of this subpoena.</td></tr>
<tr><td>Last date for service
[see Note 2]</td><td colspan="2">The last date for service of this subpoena is [date].</td></tr>
<tr><td rowspan="2">Issuing details</td><td colspan="2">Issued at the request of: [Name of party]
Address for service: [see Order 71A rule 3]
Email:</td></tr>
<tr><td>Date of issue:</td><td>[Seal or stamp of the Court]</td></tr>
<tr><td>Details of subpoena
[See Notes 5–13]</td><td colspan="2">You must comply with this subpoena —
(a) by attending the Supreme Court and producing 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 posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to —
(i) the Supreme Court at the address specified below so that they are received not less than 2 clear 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 below, 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.</td></tr>
</table>

	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 to which the subpoena (or copy) and documents or things may be delivered: * Supreme Court of Western Australia David Malcolm Justice Centre Level 11, 28 Barrack Street Perth WA 6000 * Supreme Court of Western Australia Court of Appeal Stirling Gardens, Barrack Street Perth WA 6000 Address(es) of the High Court of New Zealand to which the subpoena (or copy) and documents or things may be delivered or posted: [*Address(es)*]
Schedule of documents	
The documents and things you must produce are as follows: [*List the documents or things and whether the original of any document is required. If insufficient space, attach list.*]	
Notes	
Leave to serve subpoena	1. You need not comply with this subpoena unless it is accompanied by — (a) a copy of the order of a judge of the Supreme Court 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 this subpoena unless it is served on you on or before the date specified in it 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 it if you have, by the last date for service of the subpoena, actual knowledge of it 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. Instead of attending the Supreme Court and producing this subpoena or a copy of it and the document or thing, you may comply with this subpoena by delivering or posting the subpoena or a copy of it and the document or thing to — (a) the Supreme Court at the address specified in the subpoena, so that they are received not less than 2 clear 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 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. 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, include a written notice to the Supreme Court of your objection and of the grounds of your objection. 7. Unless the Supreme 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 Supreme 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 include with them a list of them.
Production of copy instead of original	9. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead. 10. The copy of a document may be — (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device 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	11. You may, at the time of production, include a written notice to the Supreme Court that any document or copy of a document produced need not be returned and may be destroyed. 12. If you have so informed the Court, a registrar of the Supreme Court may destroy the document or copy instead of returning it to you.
Applications in relation to subpoena	13. You have the right to apply to the Supreme 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 this subpoena.
Loss or expense of compliance	14. If you are not a party to the proceeding, you may apply to the Supreme 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.
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 the *Evidence Act 2006* (New Zealand) section 165. 16. Note 15 is without prejudice to any other power to enforce compliance with a subpoena.

Footnotes to Form 23A —

* Delete the inapplicable.

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

23B. Subpoena to give evidence and produce documents to WA Supreme Court (to be served in NZ) (O. 39A r. 2A)

<table>
<tr><td colspan="2">Supreme Court of Western Australia
*General Division/Court of Appeal</td><td>No.:
Notice attached to subpoena to give evidence and produce documents to the Supreme Court of Western Australia (to be served in New Zealand)</td></tr>
<tr><td>Parties[1]</td><td colspan="2">Plaintiff
Defendant</td></tr>
<tr><td>Notice to witness</td><td colspan="2">*Trans-Tasman Proceedings Act 2010* (Commonwealth)
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 requiring you to attend the Supreme Court of Western Australia to give evidence and produce documents. The subpoena has been issued by that court.
The subpoena may be served in New Zealand under New Zealand law (see *Evidence Act 2006* (New Zealand) section 163).
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.</td></tr>
<tr><td>Your rights</td><td colspan="2">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 Supreme Court that you be paid the additional amount you incurred.
4. You may apply to the Supreme Court to have the subpoena wholly or partly set aside. If you wish to</td></tr>
</table>

	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 the Supreme 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	6. 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 of the Supreme Court 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. 7. In so far as the subpoena requires you to produce documents or things to the Supreme Court, it must specify the date on which you must attend the Court and produce the documents or things. But instead of attending you may comply with that requirement by delivering or posting the subpoena (or a copy of it) and the documents or things to either — (a) the Supreme Court so that they are received not less than 2 clear days before that date; or (b) the High Court of New Zealand so that they are received at least 10 days before that date. If you deliver or post them to the High Court of New Zealand you will be required to pay the cost of sending

	them to the Supreme Court. 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 subpoena	8. 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	9. The Supreme 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 *Competition and Consumer Act 2010* (Commonwealth)); or (e) 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). 10. The grounds on which the Supreme 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) insofar as the subpoena requires you to produce a document or thing, that — (i) the 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	11. Application must be made to the Supreme Court of Western Australia. 12. You may fax your application to that court on fax number [*fax number of the court*]. 13. 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. 14. A registrar of the Supreme Court will arrange for service of your application and of any affidavit you lodge with the court with your application. 15. The Supreme Court may determine your application without a hearing unless you, or the person who requested that the subpoena be issued, asks for a hearing. 16. If there is a hearing, the Supreme 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. 17. 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 Supreme 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.

Supreme Court of Western Australia *General Division/Court of Appeal	No.: **Subpoena to give evidence and produce documents to the Supreme Court of Western Australia (to be served in New Zealand)**
Parties[1]	Plaintiff Defendant
To	[*Name and address*]
Order	**You are ordered to attend the Supreme Court of Western Australia 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 details below. **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 the *Evidence Act 2006* (New Zealand) section 165.** Please read Notes 1 to 16 at the end of this subpoena.	
Last date for service [see Note 2]	The last date for service of this subpoena is [*date*].	
Issuing details	Issued at the request of: [*Name of party*] Address for service: [*see Order 71A rule 3*] Email:	
	Date of issue:	[*Seal or stamp of the Court*]
Details of subpoena to give evidence	Insofar as this subpoena requires you to attend the Supreme Court of Western Australia 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 [See Notes 5–13]	Insofar as this subpoena requires you to attend the Supreme Court of Western Australia to produce the subpoena or a copy of it and documents or things, you must comply with that requirement — (a) by attending at the Supreme Court 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 below for attendance and production; or (b) by delivering or posting this subpoena or a copy of it and the documents or things specified in the Schedule of documents below to — (i) the Supreme Court at the address specified below so that they are received not less than 2 clear days before the date specified below for attendance and production; or (ii) the Registrar of the High Court of New Zealand at the address specified below, 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 below for attendance and production. Date, time and place at which you must attend and produce the subpoena or a copy of it and documents or things — Date: Time: Place: Address of the Supreme Court to which the subpoena (or copy) and documents or things may be delivered or posted: * Supreme Court of Western Australia David Malcolm Justice Centre Level 11, 28 Barrack Street Perth WA 6000 * Supreme Court of Western Australia Court of Appeal Stirling Gardens, Barrack Street Perth WA 6000 Address(es) of the High Court of New Zealand to which the subpoena (or copy) and documents or things may be delivered or posted: [*Address(es)*]
Schedule of documents	
The documents and things you must produce are as follows — [*List the documents or things and whether the original of any document is required. If insufficient space, attach list.*]	
Notes	
Leave to serve subpoena	1. You need not comply with this subpoena unless it is accompanied by — (a) a copy of the order of a judge of the Supreme Court 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 this subpoena unless it is served on you on or before the date specified in it as the last date for service of this subpoena.

Informal service	3. Even if this subpoena has not been served personally on you, you must, nevertheless, comply with it if you have, by the last date for service of the subpoena, actual knowledge of it and of its requirements.
Addressee a corporation	4. If this 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. Insofar as this subpoena requires you to attend and produce this subpoena or a copy of it and a document or thing, you may, instead of attending to produce the subpoena or a copy of it and the document or thing, comply with that requirement by delivering or posting the subpoena or a copy of it and the document or thing to — (a) the Supreme Court at the address specified in the subpoena so that they are received not less than 2 clear 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 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. 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, include a written notice to the Supreme Court of your objection and of the grounds of your objection. 7. Unless the Supreme 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 Supreme 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 include with them a list of them.
Production of copy instead of original	9. Unless the Schedule of documents says the original of a document listed in the Schedule is required, you may produce a copy of it instead.

	10. The copy of a document may be: (a) a photocopy; or (b) in an electronic form on a CD-ROM, DVD or USB device 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	11. You may, at the time of production, include a written notice to the Supreme Court that any document or copy of a document produced need not be returned and may be destroyed. 12. If you have so notified the Court, a registrar of the Supreme Court may destroy the document or copy instead of returning it to you.
Applications in relation to subpoena	13. You have the right to apply to the Supreme 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 this subpoena.
Loss or expense of compliance	14. If you are not a party to the proceeding, you may apply to the Supreme 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 this subpoena.
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 the *Evidence Act 2006* (New Zealand) section 165. 16. Note 15 is without prejudice to any other power to enforce compliance with a subpoena.

Footnotes to Form 23B —

* Delete the inapplicable.

1. If there is more than one of any party, include the additional parties' names and types of party in a schedule to the subpoena.

Part 3 — Miscellaneous amendments

8. Order 17 amended

In Order 17 rule 2(3) delete "Subject to subrule (4) a summons" and insert:

A summons

9. Order 20 amended

In Order 20 rule 19(3) delete "Subject to subrule (4) an application" and insert:

An application

10. Order 69 amended

In Order 69 rule 2(1)(h) before "have" insert:

unless the document is in a prescribed form,

The Hon. Chief Justice WAYNE MARTIN AC,
Chief Justice of Western Australia,
Supreme Court of Western Australia.