

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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*(As read a third time)*

**EVIDENCE AND PROCEDURE (NEW ZEALAND)  
BILL 1994**

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THIS Bill originated in the House of Representatives;  
and, having this day passed, is now ready for  
presentation to the Senate for its concurrence.

L. M. BARLIN  
*Clerk of the House of Representatives*

House of Representatives,  
Canberra, 30 June 1994

# A BILL

FOR

## **An Act about certain matters relating to evidence and procedure in Australia and New Zealand, and for related purposes**

The Parliament of Australia enacts:

### **PART 1—PRELIMINARY**

#### **Short title**

5     **1.** This Act may be cited as the *Evidence and Procedure (New Zealand)*  
*Act 1994*.

#### **Commencement**

**2.(1)** Sections 1 and 2 commence on the day on which this Act receives  
the Royal Assent.

10     **(2)** The remaining provisions of this Act commence on a day to be fixed  
by Proclamation.

**Definitions**

3.(1) In this Act, unless the contrary intention appears:

“**court**” includes the extended meaning given in section 4;

“**document**” means any record of information, and includes:

- (a) anything on which there is writing; or 5
- (b) anything on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them; or
- (c) anything from which sounds, images or writings can be reproduced with or without the aid of anything else; or
- (d) a map, plan, drawing or photograph; 10

“**expenses**”, in relation to a subpoena, include the reasonable costs of:

- (a) necessary travel to and from, and accommodation at, the place where complying with the subpoena is required; or
- (b) finding, collating and producing a document or thing;

for the purposes of complying with the subpoena; 15

“**family proceeding**” means a proceeding relating to:

- (a) guardianship of a child; or
- (b) custody of a child; or
- (c) access to a child; or
- (d) marriage or divorce; or 20
- (e) maintenance of a child; or
- (f) maintenance of a spouse or former spouse; or
- (g) property arising out of a marital relationship or a de facto relationship (including a former marital relationship or a former de facto relationship), being property owned by one of the spouses or both of them; or 25
- (h) paternity; or
- (i) adoption; or
- (j) protection of persons from domestic violence or domestic molestation; or 30
- (k) the status or property of a person who is not fully able to manage his or her own affairs;

“**fax**”, in relation to a document, means a copy of the document that has been reproduced by facsimile telegraphy;

“**federal court**” includes the extended meaning given in section 4; 35

“**inferior court**” means a court that is not a superior court;

“**New Zealand Act**” means an Act of the Parliament of New Zealand;

“**New Zealand Minister**” means a Minister of the Crown of New Zealand;

“**official instrument**” includes a proclamation, commission, appointment, warrant or order; 40

“**person named**”, in relation to a subpoena, means the person to whom the subpoena is addressed;

“**public document**” includes:

- 5 (a) a record required by New Zealand law to be kept of a public document or proceeding; or
- (b) an entry in a public register or book; or
- (c) a certificate issued by a New Zealand officer under New Zealand law;

“**spouse**” includes de facto spouse;

10 “**subpoena**” means a subpoena to give evidence, a subpoena for production or a subpoena that is both a subpoena to give evidence and a subpoena for production, but does not include a process that requires a person to produce a document in connection with discovery and inspection of documents;

15 “**subpoena for production**” means a process that requires the person named to attend as directed by the order and produce a document or thing for the purpose of evidence;

“**subpoena to give evidence**” means a process that requires the person named to attend as directed by the order for the purpose of giving evidence;

“**superior court**” means:

- 20 (a) the High Court; or
- (b) the Federal Court of Australia or the Family Court of Australia; or
- (c) the Supreme Court of a State or Territory.

(2) A reference in this Act to a subpoena issued by a court is a reference to a subpoena issued by or out of the court.

**Extended definitions of “court” etc.**

25 **4.(1)** A tribunal is taken for the purposes of a Part of this Act to be a court if the regulations so provide.

(2) Regulations made for the purposes of subsection (1) may specify, in relation to a particular tribunal, any one or more Parts of this Act other than this Part or Part 6.

30 (3) A member of a tribunal that, under this section, is taken to be a court for the purposes of a Part of this Act is, for the purposes of that Part, taken to be a judge of such a court.

35 (4) If the tribunal is established under a law of the Commonwealth, any reference in this Act to a federal court, in addition to the meaning given by paragraph 26(b) of the *Acts Interpretation Act 1901*, includes a reference to that tribunal.

(5) In this section:

40 “**tribunal**” means a person or body authorised by or under a law of the Commonwealth, a State, a Territory or New Zealand to take evidence on oath or affirmation, but does not include:

- (a) a court; or
- (b) a person exercising a power conferred on the person as a judge, magistrate, coroner or officer of a court.

**External Territories**

5. This Act extends to each external Territory. 5

**Act to bind Crown**

6. This Act binds the Crown in all its capacities.

**PART 2—AUSTRALIAN SUBPOENAS**

**Application of this Part**

7. This Part applies to a subpoena that is issued in a proceeding in: 10
- (a) a federal court; or
  - (b) a court of a State or Territory that is a court specified in regulations made for the purposes of this paragraph;
- other than a criminal proceeding or family proceeding.

**Service of subpoenas in New Zealand 15**

8.(1) Subject to the regulations and any applicable Rules of Court, the subpoena may be served in New Zealand if leave is given under section 9.

(2) The subpoena may require the person named to attend to give evidence or produce documents at a place in Australia or a place in New Zealand. 20

**Subpoenas not to be served without leave**

9.(1) If the proceeding is in a superior court, the subpoena must not be served in New Zealand without the leave of a judge of the court.

(2) If the proceeding is in an inferior court, the subpoena must not be served in New Zealand without the leave of a judge of: 25

- (a) in any case—the Federal Court of Australia; or
- (b) if the inferior court is a court of a particular State or Territory—the Supreme Court of that State or Territory.

(3) Without limiting the matters that the judge may take into account in deciding whether to give leave, the judge is to take into account: 30

- (a) the significance of the evidence to be given, or the document or thing to be produced, by the person named; and
- (b) whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience to the person named. 35

(4) In giving leave, the judge:

(a) is to impose a condition that the subpoena not be served after a specified day; and

(b) may impose other conditions.

5 (5) The judge must not give leave if the person named is less than 18 years old.

### **How subpoenas are to be served in New Zealand**

10 **10.(1)** Subject to subsections (2) and (3), service may only be effected in New Zealand in the same way in which the subpoena would be served in the State or Territory in which it was issued.

(2) Service must be in accordance with the directions (if any) given by the judge in giving leave.

15 (3) Service of the subpoena is effective only if it is accompanied by a copy of the order giving leave to serve the subpoena in New Zealand and by a notice in the prescribed form that:

(a) sets out the rights and obligations of the person named in relation to the subpoena; and

(b) includes information about the way in which an application to have the subpoena set aside may be made.

20 (4) If there is no prescribed form for notices accompanying subpoenas issued by a particular court, notices accompanying those subpoenas must be in the corresponding form under the Federal Court Rules, with such modifications as are necessary.

(5) In this section:

25 “**prescribed**” means prescribed by the regulations or by the Rules of Court of the court a judge of which gave leave for the subpoena to be issued.

### **Expenses**

30 **11.(1)** Service of the subpoena is effective only if, at the time of service or at some other reasonable time before the person named is required to comply with it, allowances and travelling expenses sufficient to meet the person’s reasonable expenses of complying with the subpoena are paid or tendered to the person.

35 (2) The reference in subsection (1) to allowances and travelling expenses includes a reference to vouchers tendered in substitution for the whole or part of those allowances and travelling expenses.

**Subpoenas not requiring attendance**

12. If the subpoena only requires production of a document or thing, it must permit the person named to comply by producing the document or thing at any registry of the High Court of New Zealand not later than 10 days before the date specified in the subpoena as the date on which the document or thing is required for production in the court by which the subpoena was issued. 5

**Applications to set subpoenas aside**

13.(1) The person named in the subpoena may apply for the subpoena to be set aside.

(2) The application must be made to the court a judge of which gave leave for the subpoena to be served. 10

(3) The application must contain an address in Australia or New Zealand that is the applicant’s address for service.

- (4) Any document in the proceedings may be served on the applicant by:
  - (a) leaving it at that address; or 15
  - (b) faxing it to the applicant at that address; or
  - (c) sending it by post to the applicant at that address.

(5) The Registrar of the court must cause a copy of the application, and any affidavit setting out facts on which the applicant wishes to rely in support of the application, to be served on: 20

- (a) the solicitor on the record for the person who obtained leave to serve the subpoena in New Zealand; or
- (b) if there is no solicitor on the record—that person.

(6) Without limiting the ways in which the application may be made under the law and rules applicable to the court to which the application is made, it may be made by transmitting the application to the court by fax. 25

(7) This section is in addition to, and not in derogation of, any Rules of Court.

**Setting aside subpoenas**

14.(1) The court may set aside the subpoena in whole or in part. 30

(2) The court must set the subpoena aside if:

- (a) the subpoena requires the person named to attend at a place in Australia and the court is satisfied that:
  - (i) the person does not have the necessary travel documents and cannot by the exercise of reasonable diligence obtain them within the time permitted for compliance with the subpoena; or 35
  - (ii) were the person to comply with the subpoena, he or she would be liable to be detained for the purpose of serving a sentence; or 40



(iii) the person is liable to a prosecution, or is being prosecuted for an offence, in Australia; or

(iv) the person is liable to the imposition of a penalty in civil proceedings in Australia (other than proceedings under the *Trade Practices Act 1974*); or

(b) the court is satisfied that the person is subject to a restriction on his or her movements, imposed by law or by order of a court, that is inconsistent with the person complying with the subpoena.

(3) Without limiting the grounds on which the subpoena may be set aside, the court may set it aside if the court is satisfied that:

(a) the evidence to be given by the person named could be obtained satisfactorily by other means without significantly greater expense; or

(b) compliance with the subpoena would cause the person hardship or serious inconvenience; or

(c) in the case of a subpoena for production:

(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.

(4) The court may determine the application without a hearing unless the applicant, or the person (if any) at whose request the subpoena was issued, objects.

(5) For the purposes of determining the application, the court may hold a hearing by video link or telephone, as the court directs.

(6) The court must hold a hearing in accordance with subsection (5) if the applicant requests, in the application or within a reasonable time after lodging the application, that the court exercise its powers under that subsection.

### 30 **Entitlement to expenses**

15. (1) The person named is entitled to payment of an amount equal to the reasonable expenses incurred by the person in complying with the subpoena.

(2) If the subpoena was issued at the request of a person, the amount must be paid by that person.

(3) If the subpoena was not issued at the request of a person, the amount must be paid:

(a) if the subpoena was issued by a federal court—by the Commonwealth; or

(b) in any other case—by the State or Territory in which the subpoena was issued.

(4) The court out of which the subpoena was issued may make orders to ensure that the person complying with the subpoena receives the amount of the person’s reasonable expenses in so complying.

**Non-compliance with subpoenas**

16. If the person named in the subpoena fails to comply with it, the court out of which it was issued may issue a certificate under the seal of the court stating that: 5

- (a) leave to serve the subpoena was given by:
  - (i) if the court is a superior court—a judge of the court; or
  - (ii) if the court is an inferior court—a judge of the Federal Court of Australia, or a judge of the Supreme Court in the State or Territory in which the application for leave to issue the subpoena was made, as the case requires; and 10
- (b) the person named failed to comply with the subpoena. 15

**Courts’ other powers unaffected**

17. This Part does not limit any powers of a court conferred otherwise than under this Part. 15

**PART 3—NEW ZEALAND SUBPOENAS**

**Application of this Part**

- 18. This Part (other than section 23) applies to a subpoena: 20
  - (a) that was issued in a proceeding in a New Zealand court, other than a criminal proceeding or a family proceeding; and
  - (b) in relation to which a Judge of the High Court of New Zealand has given leave for its service in Australia.

**Service of subpoenas in Australia**

19. The subpoena may be served on a person in Australia by serving it on the person together with: 25

- (a) a copy of the order of the judge of the High Court of New Zealand granting leave to serve the subpoena in Australia; and
- (b) a notice that: 30
  - (i) sets out the rights and obligations of the person named in relation to the subpoena; and
  - (ii) includes information about the way in which an application may be made to the High Court of New Zealand to have the subpoena set aside. 35

**Obligation to comply with subpoenas**

20.(1) A person served in Australia with the subpoena must comply with it if:

- (a) the subpoena was served in accordance with section 19; and
- (b) the subpoena was served in accordance with the law of New Zealand; and
- (c) the person is at least 18 years of age; and
- 5 (d) at the time of service or at some other reasonable time before the person is required to comply, allowances and travelling expenses sufficient to meet the person's reasonable expenses of complying with the subpoena are paid or tendered to the person.

10 (2) This section does not affect any right a person has under the law of New Zealand to apply to have the subpoena set aside.

(3) The reference in paragraph (1)(d) to allowances and travelling expenses includes a reference to vouchers tendered in substitution for the whole or part of those allowances and travelling expenses.

#### **Non-compliance with subpoenas**

15 **21.(1)** A person who contravenes section 20:

- (a) is taken to be in contempt of the Federal Court of Australia; and
- (b) is punishable accordingly;

unless the person establishes that the contravention should be excused.

20 (2) In determining whether the contravention should be excused, the Federal Court of Australia may have regard to:

- (a) any matters that have not been brought to the attention of the High Court of New Zealand, if the Federal Court of Australia is satisfied that:

25 (i) the High Court of New Zealand would have been likely to have set aside the subpoena if the matters had been brought to its attention; and

- (ii) the failure to bring the matters to the attention of the High Court of New Zealand was not the person's fault, or was the result of an omission by the person that should be excused; and

30 (b) any other matters to which the Federal Court of Australia would have had regard if it had issued the subpoena.

(3) A certificate under a seal of the New Zealand court out of which the subpoena was issued stating that:

35 (a) a judge of the High Court of New Zealand granted leave to serve the subpoena in Australia ; and

- (b) the person named failed to comply with the subpoena;

is evidence of the person's contravention of section 20 unless the person establishes to the satisfaction of the Federal Court of Australia that the person did not in fact contravene that section.

(4) Findings of fact made by the High Court of New Zealand on an application to that court to set aside the subpoena cannot be challenged by a person alleged to have contravened section 20 unless that court was deliberately misled in making those findings of fact.

**Documents etc. for transmission to a New Zealand court** 5

22.(1) Subject to subsection (2), the Federal Court of Australia, and any court of a State or Territory that is a court specified in regulations made for the purposes of this subsection, are authorised to receive a document or thing that is required by a subpoena to be produced.

(2) If, in relation to such a court, the regulations so provide, this section 10 only applies in relation to specified locations of the court's registry.

(3) If a document or thing is lodged at the registry of such a court in compliance with a subpoena, the Registrar of the court must, as soon as practicable after lodgment, cause:

- (a) the Registrar of the court that issued the subpoena to be informed, by 15 fax or electronic mail, that the document or thing has been so lodged; and
- (b) the document or thing to be transmitted to that court.

**Other powers to serve subpoenas unaffected**

23. This Part does not affect any right or power, conferred by or under 20 a law of New Zealand, to serve a subpoena in Australia on a citizen of New Zealand.

**PART 4—USE OF VIDEO LINKS OR TELEPHONES IN AUSTRALIAN PROCEEDINGS**

**Application of this Part** 25

24. This Part applies to a proceeding in:

- (a) a federal court; or
- (b) a court of a State or Territory that is a court specified in regulations made for the purposes of this paragraph.

**Australian courts may take evidence etc. from New Zealand** 30

25.(1) The court may, on the application of a party to a proceeding, direct that evidence be taken or submissions made, by video link or telephone, from New Zealand.

- (2) The court must not make such a direction unless it is satisfied that:
  - (a) the necessary facilities are available or can reasonably be made 35 available; and
  - (b) the evidence or submission can more conveniently be given or made from New Zealand.

(3) The court may exercise in New Zealand, in connection with taking evidence or receiving submissions by video link or telephone, any of its powers that the court is permitted, under New Zealand law, to exercise in New Zealand.

5 **Taking evidence by video link**

26. Evidence must not be given, and a submission must not be made, by video link unless the courtroom or other place where the court is sitting, and the place where the evidence would be given or the submission would be made, are equipped with video facilities that enable:

- 10 (a) persons who are at the courtroom or other place to see and hear the person giving the evidence or making the submission; and  
(b) persons who are at the place where the evidence is given or the submission is made to see and hear persons at the courtroom or other place.

15 **Taking evidence by telephone**

27. Evidence must not be given, and a submission must not be made, by telephone unless the courtroom or other place where the court is sitting, and the place where the evidence would be given or the submission would be made, are equipped with telephone conference facilities that enable:

- 20 (a) persons who are at the courtroom or other place to hear the person giving the evidence or the submission; and  
(b) persons who are at the place where the evidence is given or the submission is made to hear persons at the courtroom or other place.

**Expenses**

25 28.(1) If the court directs evidence to be taken, or submissions to be received, by video link or telephone from a person in New Zealand, the court may make such orders as are just for payment of expenses incurred in connection with taking the evidence or making the submissions.

30 (2) Regulations made for the purposes of subsection 4(1) that provide that a particular tribunal (within the meaning of section 4) established by a law of the Commonwealth is a court for the purposes of this Part may also provide that the tribunal cannot make an order under this section against a person other than the Commonwealth.

35 **New Zealand counsel entitled to practise in Australia during video links etc.**

29. A person who is entitled to practise as a barrister, solicitor or both before the High Court of New Zealand is entitled to practise as a barrister, solicitor or both:

- (a) in relation to the examination-in-chief, cross-examination or re-examination of a witness in New Zealand whose evidence is being given by video link or telephone in a proceeding before a court sitting in Australia; or
- (b) in relation to the making of submissions by video link or telephone from New Zealand in a proceeding before a court sitting in Australia. 5

## **PART 5—USE OF VIDEO LINKS OR TELEPHONES IN NEW ZEALAND PROCEEDINGS**

### **New Zealand courts may take evidence etc. from Australia**

**30.** A New Zealand court may, for the purposes of a proceeding in New Zealand, take evidence or receive submissions, by video link or telephone, from a person in Australia. 10

### **Powers of New Zealand courts**

**31.(1)** The court may, for the purposes of the proceeding, exercise in Australia, in connection with taking evidence or receiving submissions by video link or telephone, any of its powers except its powers: 15

- (a) to punish for contempt; and
- (b) to enforce or execute its judgments or process.

**(2)** The laws of New Zealand (including the Rules of Court) that apply to the proceeding in New Zealand also apply, by force of this subsection, to the practice and procedure of the court in taking evidence or receiving submissions, by video link or telephone, from a person in Australia. 20

**(3)** For the purposes of the court exercising its powers, the place in Australia where the evidence is given or submissions are made is taken to be part of the court. 25

### **Orders made by New Zealand courts**

**32.** Without limiting section 31, the court may, by order:

- (a) direct that the proceeding, or a part of the proceeding, be conducted in private; or
- (b) require a person to leave the place in Australia where the giving of evidence or the making of submissions is taking place or is going to take place; or 30
- (c) prohibit or restrict the publication of evidence given in the proceeding or of the name of a party to, or a witness in, the proceeding. 35

### **Enforcement of orders**

**33.(1)** An order under section 32 must be complied with.

(2) Subject to the Federal Court Rules, the order may be enforced by a Judge of the Federal Court of Australia as if the order were an order of the Federal Court of Australia.

(3) Without limiting subsection (2), a person who contravenes the order:

- 5 (a) is taken to be in contempt of the Federal Court of Australia; and  
(b) is punishable accordingly;

unless the person establishes that the contravention should be excused.

**Privileges, protection and immunity of participants in  
New Zealand proceedings**

10 34.(1) A judge or master presiding at or otherwise taking part in the proceeding has, in connection with evidence being taken or submissions being received by video link or telephone from a person in Australia, the same privileges, protection and immunity as a Judge of the Federal Court of Australia.

15 (2) A person appearing as a barrister, solicitor or both in the proceeding has, in connection with evidence being taken or submissions being received by video link or telephone from a person in Australia, the same protection and immunity as a barrister has in appearing for a party in a proceeding before the Federal Court of Australia.

20 (3) A person appearing as a witness in the proceeding by video link or telephone from Australia has the same protection as a witness in a proceeding in the Federal Court of Australia.

**New Zealand courts may administer oath in Australia**

25 35.(1) The court may, for the purpose of obtaining in the proceeding, by video link or telephone, the testimony of a person in Australia, administer an oath or affirmation in accordance with the practice and procedure of the court.

30 (2) Evidence given by a person on oath or affirmation so administered is, for the purposes of section 35 of the *Crimes Act 1914*, testimony given in a judicial proceeding.

**Assistance to New Zealand courts**

36.(1) An officer of an Australian court to which this section applies may, at the request of the New Zealand court:

- 35 (a) attend at the place in Australia where evidence is to be or is being taken, or submissions are to be or are being made, in the proceeding; and  
(b) take such action as the New Zealand court directs to facilitate the proceeding; and  
40 (c) assist with the administering by the New Zealand court of an oath or affirmation.

(2) This section applies to:

- (a) the Federal Court of Australia or the Family Court of Australia; or
- (b) a court of a State or Territory that is a court specified in regulations made for the purposes of this paragraph.

**Contempt of New Zealand courts**

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37. A person must not, while evidence is being given or a submission is being made in Australia, by video link or telephone, in the proceeding:

(a) assault in Australia:

(i) a person appearing in the proceeding as a barrister, a solicitor or both; or

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(ii) a witness in the proceeding; or

(iii) an officer of an Australian court giving assistance under section 36; or

(b) threaten, intimidate or wilfully insult:

(i) a judge of the New Zealand court who is taking part in the proceeding; or

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(ii) a Master, Registrar, Deputy Registrar or other officer of that court who is taking part in or assisting in the proceeding; or

(iii) a person appearing in the proceeding as a barrister, a solicitor or both; or

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(iv) a witness in the proceeding; or

(c) wilfully interrupt or obstruct the proceeding; or

(d) wilfully and without lawful excuse disobey an order or direction of the court.

Penalty: Imprisonment for 3 months.

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**PART 6—EVIDENCE OF CERTAIN NEW ZEALAND MATTERS**

**Application of this Part**

38.(1) This Part applies to all proceedings in a court in Australia, including such proceedings that:

(a) relate to bail; or

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(b) are interlocutory proceedings or proceedings of a similar kind; or

(c) are heard in chambers; or

(d) relate to sentencing.

(2) In this section:

“court” means:

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(a) a federal court; or

(b) a court of a State or Territory; or



- (c) a person or body authorised by:
  - (i) a law of the Commonwealth, a State or Territory; or
  - (ii) consent of parties;to hear, receive or examine evidence.

5 **Faxes**

39. Subject to any Rules of Court, this Part applies to a fax of a document in the same way as it applies to the original of the document (whether or not the original is itself a copy or an extract of a document).

**Matters of law**

10 40.(1) Proof is not required about the provisions and coming into operation (in whole or in part) of:

- (a) a New Zealand Act or an Imperial Act in force in New Zealand; or
- (b) a regulation, rule or by-law made, or purporting to be made, under such an Act; or
- 15 (c) a Proclamation or order made, or purporting to be made, by the Governor-General of New Zealand under such an Act; or
- (d) an instrument of a legislative character (for example, a rule of court) made, or purporting to be made, under such an Act, being an instrument that is required by or under a law to be published, or the
- 20 making of which is required by or under a law to be notified, in the New Zealand Gazette.

(2) A judge, or such other person as is presiding in the proceeding, may inform himself or herself about those matters in any way that he or she thinks fit.

25 **Evidence of New Zealand official instruments**

41. Evidence of an official instrument issued by the Governor-General of New Zealand, or by or under the authority of a New Zealand Minister, may be adduced by producing:

- 30 (a) if the instrument was made by the Governor-General in Council of New Zealand—a copy of, or an extract from, the instrument purporting to have been certified as a true copy or extract by the Clerk of the Executive Council of New Zealand; or
- (b) a copy of, or an extract from, the instrument purporting to have been certified as a true copy or extract by a New Zealand Minister.

35 **Evidence of New Zealand acts of state**

42. Evidence of a treaty or other act of state of New Zealand may be adduced by producing:

- (a) a copy of it that purports to be sealed with the seal of New Zealand;
- or

- (b) a book or pamphlet, containing the treaty or act of state, that purports to have been printed by authority of the New Zealand Government; or
- (c) a book or other publication, containing the treaty or act of state, that appears to the court to be a reliable source of information; or 5
- (d) a book or pamphlet that would be admissible in the courts of New Zealand as evidence of the treaties or acts of state of New Zealand that are contained in the book or pamphlet; or
- (e) a copy of the treaty or act of state that is proved to be an examined copy; or 10
- (f) a document that:
  - (i) purports to be a copy of the treaty or act of state; and
  - (ii) on which is endorsed, or to which is attached, a certificate by the person who has custody of the original, stating that the document is a true copy of the original. 15

### **Evidence of public documents admissible in New Zealand under New Zealand Acts**

43.(1) If, under a New Zealand Act, a public document is admissible in evidence, to any extent or for any purpose, the document is, without further proof, admissible in evidence to the same extent and for the same purpose if it purports to be sealed, stamped, signed, signed and sealed or signed and stamped in accordance with the New Zealand Act. 20

(2) If a document is admissible in evidence under subsection (1), a certified copy of it, or a certified extract from it, is also admissible in evidence. 25

### **Evidence of other New Zealand public documents**

44. If, under New Zealand law, a public document is admissible in evidence, to any extent or for any purpose, without proof of:

- (a) the seal, stamp or signature that authenticates it; or
- (b) the judicial or official character of the person who appears to have signed it; 30

the document is admissible in evidence to the same extent and for the same purpose without such proof.

### **Evidence of New Zealand documents of a public nature**

45. If a document in New Zealand is of such a public nature as to be admissible in evidence in New Zealand on its mere production from proper custody, a copy of, or extract from, it is admissible in evidence if the copy or extract: 35

- (a) is proved to be an examined copy or extract; or
- (b) purports to be signed and certified as a true copy or extract by a New Zealand officer who certifies that he or she has custody of it.

**Part not to derogate from existing Australian laws**

5       **46.** This Part is in addition to, and not in derogation of, the provisions of any other law in force in Australia.

**PART 7—MISCELLANEOUS**

**Application of the *Foreign Judgments Act 1991***

10       **47.(1)** This section applies to an order made by a New Zealand court under the Evidence Amendment Act 1994 of New Zealand for the payment of expenses incurred:

- (a) by a witness in complying with a subpoena served on the witness in Australia under Part 3 of this Act; or
- (b) in connection with taking evidence or receiving submissions by video link or telephone under Part 5 of this Act.

15       **(2)** The *Foreign Judgments Act 1991* applies to such an order as if it were an enforceable money judgment within the meaning of that Act.

**(3)** For the purposes of the application of that Act to such an order:

- (a) Part 2 of that Act is taken to apply to the order; and
- 20       (b) unless the order was made by the High Court of New Zealand—the court that made the order is taken to have been an inferior court (within the meaning of that Act) to which that Part applies; and
- (c) the court is taken to have had jurisdiction to make the order; and
- 25       (d) subparagraphs 7(2)(a)(iv) and (v), paragraph 7(2)(b) and subsections 7(3) and (4) of that Act do not apply in respect of the order.

**Rules of Court**

**48.(1)** The power to make rules regulating the practice and procedure of a court extends to making any rules prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

30       **(2)** Rules so made must not be inconsistent with this Act or with regulations made under section 49.

**(3)** Subject to any direction that a court makes in a proceeding, if:

- (a) in the proceeding, a matter arises in relation to which the court has not made rules under this section prescribing practice and procedure; and
- 35       (b) the Federal Court Rules prescribe practice and procedure in relation to the matter but the regulations do not so prescribe;

the Federal Court Rules apply in relation to the matter with such modifications as are necessary.

(4) This section does not affect any power to make rules under any other law.

**Regulations**

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49.(1) The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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(2) The Governor-General must not make regulations for the purposes of subsection 22(1) or paragraph 36(2)(b) specifying a court of a State unless the Governor of the State has requested in writing that the court be so specified.

(3) The Governor-General must not make regulations for the purposes of subsection 22(1) or paragraph 36(2)(b) specifying a court of the Australian Capital Territory unless the Chief Minister of the Australian Capital Territory has requested in writing that the court be so specified.

(4) The Governor-General must not make regulations for the purposes of subsection 22(1) or paragraph 36(2)(b) specifying a court of any other Territory unless the Administrator of the Territory has requested in writing that the court be so specified.

