



Queensland

Criminal Practice Amendment Rule (No. 1) 2013

Subordinate Legislation 2013 No. 97

made under the

Supreme Court of Queensland Act 1991

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[s 1]

1 Short title

This rule may be cited as the *Criminal Practice Amendment Rule (No. 1) 2013*.

2 Rule amended

This rule amends the *Criminal Practice Rules 1999*.

3 Amendment of r 5 (Application of rules to Magistrates Courts)

Rule 5, first dot point, ‘and 12’—

omit, insert—

, 12 and 13A

4 Insertion of new ch 13A

After chapter 13—

insert—

Chapter 13A Trans-Tasman proceedings

Part 1 Preliminary

58A Definition for ch 13A

In this chapter—

Trans-Tasman Proceedings Act means the *Trans-Tasman Proceedings Act 2010* (Cwlth).

58B Interpretation

Words and expressions used in this chapter and the *Trans-Tasman Proceedings Act* have the same meaning in this chapter as they have in that Act except

so far as the context or subject matter otherwise indicates or requires.

Note—

The following words and expressions are defined in the Trans-Tasman Proceedings Act, section 4—

- audio link
- audiovisual link
- document
- given
- party
- proceeding.

58C Application of ch 13A

This chapter applies to criminal proceedings to which the Trans-Tasman Proceedings Act applies.

Part 2 Applications

58D Applications in proceeding under Trans-Tasman Proceedings Act

- (1) This rule applies to a proceeding that has already started.
- (2) A party to the proceeding who wants to apply for an order under the Trans-Tasman Proceedings Act must make an application in the proceeding.
- (3) The application must be supported by an affidavit that states the material facts on which the applicant relies that are necessary to give the other party fair notice of the case to be made against the other party at the hearing of the application.

Part 3 Subpoenas

58E Application for leave to serve subpoena in New Zealand

- (1) A party to a proceeding who requires the leave of the court to serve a subpoena in New Zealand under the Trans-Tasman Proceedings Act, section 31 must make an application for leave in the proceeding in which the subpoena was issued.
- (2) The application must be accompanied by—
 - (a) a copy of the subpoena in relation to which leave is sought; and
 - (b) an affidavit stating, briefly but specifically, the following—
 - (i) the name, occupation and address of the person named in the subpoena;
 - (ii) whether the person is over 18 years;
 - (iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the person;
 - (iv) details of the steps taken to ascertain whether the evidence, document or thing could be obtained by other means without significantly greater expense, and with less inconvenience, to the person;
 - (v) the date by which it is intended to serve the subpoena in New Zealand;
 - (vi) details of the amounts to be tendered to the person to meet the person's reasonable expenses of complying with the subpoena;
 - (vii) details of the way in which the amounts mentioned in subparagraph (vi) are to be given to the person;

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- (viii) if the subpoena requires the person to give evidence—an estimate of the time that the person will be required to attend to give evidence;
 - (ix) any facts or matters known to the party making the application that may be grounds for an application by the person to have the subpoena set aside under the Trans-Tasman Proceedings Act, section 36(2) or (3).

Notes—

- 1 See the Trans-Tasman Proceedings Act, section 31 which allows the court to impose conditions when giving leave to serve a subpoena in New Zealand.
 - 2 See also the Trans-Tasman Proceedings Act, sections 33 and 37 which make provision in relation to the payment of expenses in complying with a subpoena.
- (3) Despite rules 57 and 98, a person must not, without the leave of the court, search for, inspect or copy a document in an application under this rule filed in the court.

58F Application to set aside subpoena

- (1) A person applying under the Trans-Tasman Proceedings Act, section 35 to set aside a subpoena served in New Zealand must make the application in the proceeding in which the subpoena was issued.
- (2) The application must be accompanied by—
 - (a) a copy of the subpoena; and
 - (b) an affidavit stating the following—
 - (i) the material facts on which the application is based;
 - (ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

58G Application for issue of certificate of noncompliance with subpoena

- (1) A party to a proceeding may apply to the court that issued a subpoena for a certificate mentioned in the Trans-Tasman Proceedings Act, section 38 (a *certificate of noncompliance*).
- (2) The application may be made—
 - (a) if the proceeding in which the subpoena is issued is before the court—orally to the court; or
 - (b) by filing the application.
- (3) The application must be accompanied by—
 - (a) a copy of the subpoena; and
 - (b) a copy of the order giving leave to serve the subpoena; and
 - (c) an affidavit of service of the subpoena; and
 - (d) a further affidavit stating the following—
 - (i) whether any application was made to set aside the subpoena;
 - (ii) the material in support of an application mentioned in subparagraph (i);
 - (iii) any order that disposed of an application mentioned in subparagraph (i);
 - (iv) the material facts relied on for the issue of the certificate of noncompliance.

Note—

A certificate of noncompliance is to be stamped by the registrar with the seal of the court.

Part 4 Remote appearances

58H Application for order for use of audio link or audiovisual link

- (1) A party to a proceeding applying for leave for an order that an appearance be made, evidence be taken, or submissions be made, by audio link or audiovisual link from New Zealand under the Trans-Tasman Proceedings Act, section 50, must make the application in the proceeding to which the appearance, evidence or submissions relate.
- (2) Subrule (1) does not apply to a request mentioned in rule 58F(2)(b)(ii).

ENDNOTES

- 1 Made by the Governor in Council on 20 June 2013.
- 2 Notified in the gazette on 21 June 2013.
- 3 Laid before the Legislative Assembly on . . .
- 4 The administering agency is the Department of Justice and Attorney-General.

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