



Queensland

# Uniform Civil Procedure Amendment Rule (No. 1) 2013

## Subordinate Legislation 2013 No. 100

made under the

*Supreme Court of Queensland Act 1991*

## Contents

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		Page
1	Short title .....	3
2	Rules amended .....	3
3	Amendment of ch 4, pt 7, div 1, hdg (Ordinary service outside Australia) .....	3
4	Insertion of new ch 14, pt 6 .....	3
	Part 6            Trans-Tasman proceedings	
	Division 1       Preliminary	
	595A      Definition for pt 6 .....	3
	595B      Interpretation .....	4
	595C      Application of pt 6 .....	4
	Division 2       Starting proceedings and applications in proceedings	
	595D      Starting proceeding for order under Trans-Tasman Proceedings Act .....	5
	595E      Applications in proceeding under Trans-Tasman Proceedings Act .....	6
	Division 3       Subpoenas	
	595F      Application for leave to serve subpoena in New Zealand	6
	595G      Application to set aside subpoena .....	8
	595H      Application for issue of certificate of noncompliance with subpoena .....	8

Contents

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	Division 4	Registration and enforcement of NZ judgments	
	595I	Notice of registration of NZ judgment . . . . .	9
	595J	Application for extension of time to give notice of registration of NZ judgment . . . . .	10
	595K	Enforcement of registered NZ judgment. . . . .	10
	595L	Application to set aside registration of NZ judgment . . . . .	11
	595M	Applications relating to a stay of enforcement of registered NZ judgment . . . . .	12
	Division 5	Remote appearances	
	595N	Application for order for use of audio link or audiovisual link . . . . .	13
5		Amendment of r 947M (Enforcement of judgment) . . . . .	13

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**1 Short title**

This rule may be cited as the *Uniform Civil Procedure Amendment Rule (No. 1) 2013*.

**2 Rules amended**

This rule amends the *Uniform Civil Procedure Rules 1999*.

**3 Amendment of ch 4, pt 7, div 1, hdg (Ordinary service outside Australia)**

Chapter 4, part 7, division 1, heading—

*insert—*

*Note—*

The *Trans-Tasman Proceedings Act 2010* (Cwlth) provides for service in New Zealand of initiating documents for certain civil proceedings started in Australian courts. See the *Trans-Tasman Proceedings Act 2010* (Cwlth) part 2, division 2 which provides for service of initiating documents. See also the *Trans-Tasman Proceedings Act 2010* (Cwlth), section 4 for the definitions *initiating document* and *Australian court*.

**4 Insertion of new ch 14, pt 6**

Chapter 14—

*insert—*

**Part 6 Trans-Tasman proceedings**

**Division 1 Preliminary**

**595A Definition for pt 6**

In this part—

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

### **595B Interpretation**

Words and expressions used in this part and the *Trans-Tasman Proceedings Act* have the same meaning in this part 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
- enforcement
- entitled person
- given
- liable person
- NZ judgment
- party
- proceeding
- registered NZ judgment.

### **595C Application of pt 6**

This part applies to civil proceedings to which the *Trans-Tasman Proceedings Act* applies.

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## **Division 2      Starting proceedings and applications in proceedings**

### **595D Starting proceeding for order under Trans-Tasman Proceedings Act**

- (1) A person who wants to start a proceeding for an order under the Trans-Tasman Proceedings Act must start the proceeding by application.
- (2) The application must be supported by an affidavit that states the material facts on which the applicant relies that are necessary to give the respondent fair notice of the case to be made against the respondent at the hearing of the proceeding.
- (3) Without limiting subrule (2), an affidavit in support of an application for an order for interim relief under the Trans-Tasman Proceedings Act, section 25 must state the following—
  - (a) if the person has started a civil proceeding in a New Zealand court—
    - (i) that the person has started the proceeding in a New Zealand court; and
    - (ii) the relief sought in the New Zealand proceeding; and
    - (iii) the steps taken in the New Zealand proceeding;
  - (b) if the person intends to start a proceeding in a New Zealand court—
    - (i) when the intended proceeding will be started; and
    - (ii) the court in which the intended proceeding is to be started; and

[s 4]

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- (iii) the relief to be sought in the intended proceeding;
- (c) the interim relief sought;
- (d) why the interim relief should be given.

### **595E 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.

## **Division 3 Subpoenas**

### **595F 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;
- (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 980 and 981, 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.

### **595G 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.

### **595H 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.

## **Division 4                      Registration and enforcement of NZ judgments**

### **595I Notice of registration of NZ judgment**

- (1) An entitled person must not take any step to enforce a registered NZ judgment, in the period mentioned in the Trans-Tasman Proceedings Act, section 74(2), unless the entitled person has filed an affidavit stating that notice of the registration of the NZ judgment has been given in accordance with the Trans-Tasman Proceedings Act, section 73.

[s 4]

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- (2) If a liable person against whom the registered NZ judgment is enforceable is not in Australia, the affidavit may be served without leave of the court.

*Note—*

Chapter 4, part 7, divisions 1 to 3 otherwise provide for service of documents outside Australia.

- (3) An entitled person must file a further affidavit proving service of the affidavit mentioned in subrule (1) before any step is taken to enforce the registered NZ judgment.

#### **595J Application for extension of time to give notice of registration of NZ judgment**

- (1) An entitled person applying for an extension of the time within which to give notice of the registration of an NZ judgment under the Trans-Tasman Proceedings Act, section 73(3) must make the application in the proceeding in which the NZ judgment was registered.
- (2) The application must be supported by an affidavit stating the following—
  - (a) briefly but specifically, the grounds relied on in support of the application;
  - (b) the material facts relied on in support of the application;
  - (c) why notice will not be, or was not, given within time.

#### **595K Enforcement of registered NZ judgment**

- (1) The form of enforcement warrant used in relation to the enforcement of a registered NZ judgment must be amended, in a way approved by the registrar, by—

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- (a) stating that the judgment is a registered NZ judgment; and
  - (b) specifying the date of, and the amount payable under, the registered NZ judgment; and
  - (c) specifying the amount of interest that is payable under the Trans-Tasman Proceedings Act, section 78(a) in relation to the registered NZ judgment.
- (2) For subrule (1)(b), if the registered NZ judgment is registered in a currency other than Australian currency, the specified amount payable must be the amount payable under the registered NZ judgment as if it were for an equivalent amount in Australian currency based on the Trans-Tasman Proceedings Act rate of exchange.
  - (3) In this rule—  
*Trans-Tasman Proceedings Act rate of exchange* means the rate of exchange mentioned in the Trans-Tasman Proceedings Act, section 69(2), as if the conversion day mentioned in that section were a reference to the day an application for an enforcement warrant for the amount payable under a registered NZ judgment is filed.

*Note—*

See the Trans-Tasman Proceedings Act, section 74 for the effect of registration of an NZ judgment.

### **595L Application to set aside registration of NZ judgment**

- (1) A liable person applying to set aside the registration of an NZ judgment under the Trans-Tasman Proceedings Act, section 72(1) must make the application in the proceeding in which the NZ judgment was registered.

[s 4]

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- (2) The application must be accompanied by an affidavit stating the following—
  - (a) briefly but specifically, the grounds on which the registration of the NZ judgment should be set aside;
  - (b) the material facts relied on in support of the application.

*Note—*

See the Trans-Tasman Proceedings Act, section 72(2) for when an application to set aside the registration of an NZ judgment may be made.

### **595M Applications relating to a stay of enforcement of registered NZ judgment**

- (1) This rule applies to an application for an order under the Trans-Tasman Proceedings Act, section 76.

*Note—*

See the Trans-Tasman Proceedings Act, section 76(1) and (3)(b).

- (2) The application must—
  - (a) be made in the proceeding in which the NZ judgment was registered; and
  - (b) be accompanied by an affidavit stating the following—
    - (i) the order sought;
    - (ii) briefly but specifically, the grounds relied on in support of the order;
    - (iii) the material facts relied on in support of the application;
    - (iv) if the application is for an order under the Trans-Tasman Proceedings Act, section 76(3)(b)—why the application will not be, or was not, made within time.

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## Division 5 Remote appearances

### 595N 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 48 or 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 595G(2)(b)(ii).

## 5 Amendment of r 947M (Enforcement of judgment)

- (1) Rule 947M(3)—  
*renumber* as rule 947M(4).
- (2) Rule 947M—  
*insert*—
  - (3) For subrule (2)(b), if the registered judgment is registered in a currency other than Australian currency, the specified amount payable must be the amount payable under the registered judgment as if it were for an equivalent amount in Australian currency based on the Commonwealth Act rate of exchange.
  - (5) In this rule—  
***Commonwealth Act rate of exchange*** means the rate of exchange mentioned in the Commonwealth Act, section 6(11A), as if the conversion day mentioned in that section were a reference to the day an application for an enforcement warrant for the amount payable under the registered judgment is filed.

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*Note—*

See the Commonwealth Act, section 6(7) for the effect of registration of a judgment.

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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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