



New South Wales

# Uniform Civil Procedure Rules (Amendment No 51) 2011

under the

Civil Procedure Act 2005

The Uniform Rules Committee has made the following rules of court under the *Civil Procedure Act 2005*.

Steven Jupp  
Secretary of the Uniform Rules Committee

## Explanatory note

The *Trans-Tasman Proceedings Act 2010* of the Commonwealth (the *new Commonwealth Act*) makes provision for matters such as the service of Australian initiating documents in New Zealand, the granting of interim relief by Australian courts in support of civil proceedings in New Zealand courts, the issue and service of New Zealand and Australian subpoenas, remote appearances in Australian and New Zealand courts and tribunals and the recognition and enforcement of New Zealand judgments in Australia.

The new Commonwealth Act will replace the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth when its substantive provisions commence. The substantive provisions of the new Commonwealth Act are due to commence in 2012.

The object of these Rules is to amend the *Uniform Civil Procedure Rules 2005*:

- (a) to make provision for the practice and procedure to be followed in New South Wales courts with respect to matters arising under the new Commonwealth Act, and
- (b) to omit provisions relating to the *Evidence and Procedure (New Zealand) Act 1994* of the Commonwealth consequent on the repeal of that Act.

The provisions to be inserted by these Rules are largely based on rules included in the *Federal Court Rules 2011* (see, in particular, Division 34.4 of those Rules). These Rules will commence when the substantive provisions of the new Commonwealth Act commence.

## **2011 No 632**

Rule 1 Uniform Civil Procedure Rules (Amendment No 51) 2011

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## **Uniform Civil Procedure Rules (Amendment No 51) 2011**

under the

Civil Procedure Act 2005

### **1 Name of Rules**

These Rules are the *Uniform Civil Procedure Rules (Amendment No 51) 2011*.

### **2 Commencement**

These Rules commence on:

- (a) the day on which section 3 of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth commences, or
- (b) if these Rules are published on the NSW legislation website after that day, the day on which these Rules are published on the website.

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## Schedule 1      Amendment of Uniform Civil Procedure Rules 2005

### [1]    Rule 4.5 Address for service

Omit “section 13 of the *Evidence and Procedure (New Zealand) Act 1994*” from rule 4.5 (3) (c).

Insert instead “section 35 of the *Trans-Tasman Proceedings Act 2010*”.

### [2]    Rule 31.3 Evidence by telephone, video link or other communication

Omit rule 31.3 (2). Insert instead:

- (2) This rule does not apply in circumstances in which leave for remote appearances from New Zealand in Australian proceedings within the meaning of the *Trans-Tasman Proceedings Act 2010* of the Commonwealth could be granted under that Act.

### [3]    Part 32

Omit the Part. Insert instead:

## Part 32 Trans-Tasman Proceedings Act 2010 (Commonwealth)

### Division 1      Preliminary

#### 32.1 Interpretation (cf Federal Court Rules 2011, rule 34.61)

- (1) In this Part:  
*Trans-Tasman Proceedings Act* means the *Trans-Tasman Proceedings Act 2010* of the Commonwealth.
- (2) Expressions used in this Part and the Trans-Tasman Proceedings Act have the same meanings in this Part as they have in that Act, except where the subject-matter or context otherwise indicates.

**Note.** The following expressions used in this Part are defined in the Trans-Tasman Proceedings Act:

- audio link
- audiovisual link
- civil proceeding
- defendant
- document
- enforcement
- entitled person

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- given
- liable person
- party
- person named
- plaintiff

### 32.2 Application of Part

This Part applies in relation to any civil proceeding under the Trans-Tasman Proceedings Act.

**Note.** The Trans-Tasman Proceedings Act also makes provision in relation to certain criminal proceedings and judgments.

## Division 2 Commencement of proceeding

### 32.3 Commencement of civil proceeding for order under Trans-Tasman Proceedings Act (cf Federal Court Rules 2011, rules 34.63 and 34.65)

- (1) Except as otherwise provided by this Part, a civil proceeding for an order under the Trans-Tasman Proceedings Act must be commenced by filing a summons.
- (2) The summons must be supported by an affidavit that states the material facts on which the plaintiff relies that are necessary to give the defendant fair notice of the case to be made against the defendant at the hearing of the proceeding.
- (3) Without limiting subrule (2), an affidavit in support of a summons seeking an order for interim relief under section 25 of the Trans-Tasman Proceedings Act must state the following:
  - (a) if the plaintiff has commenced a civil proceeding in a New Zealand court:
    - (i) that the person has commenced 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 plaintiff intends to commence a civil proceeding in a New Zealand court:
    - (i) when the intended proceeding will be commenced, and
    - (ii) the court in which the intended proceeding is to be commenced, and
    - (iii) the relief to be sought in the intended proceeding,

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- (c) the interim relief sought,
  - (d) why the interim relief should be given.
- (4) A copy of the originating process filed (or proposed to be filed) in the New Zealand court concerned should, if available, be annexed to an affidavit referred to in subrule (3).

**32.4 Interlocutory proceeding under Trans-Tasman Proceedings Act**

(cf Federal Court Rules 2011, rule 34.64)

- (1) Once a proceeding (the *original proceeding*) is commenced under the Trans-Tasman Proceedings Act in relation to any person, any further proceeding for an order under that Act in relation to the same person (whether or not the further proceeding forms part of, or relates to, the original proceeding) is to be commenced by notice of motion filed in the original proceeding.
- (2) The notice of motion must be supported by an affidavit that states the material facts on which the plaintiff relies that are necessary to give the defendant fair notice of the case to be made against the defendant at the hearing of the further proceeding.

**Division 3 Subpoenas**

**32.5 Application for leave to serve subpoena in New Zealand** (cf Federal Court Rules 2011, rules 34.66 and 34.67)

- (1) An application under the Trans-Tasman Proceeding Act for leave to serve a subpoena in New Zealand must be made by filing a notice of motion.
- (2) The notice of motion 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,
    - (ii) whether the person named is over 18 years old,
    - (iii) the nature and significance of the evidence to be given, or the document or thing to be produced, by the person named,
    - (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 named,

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

**Note.** Before granting leave under the Trans-Tasman Proceedings Act to serve the subpoena, a court may require the person making the application to undertake to meet the expenses reasonably incurred by the person named in complying with the subpoena if those expenses exceed the allowances and travelling expenses to be provided to the person named at the time of service of the subpoena.

### **32.6 Application to set aside subpoena** (cf Federal Court Rules 2011, rule 34.68)

- (1) An application to set aside a subpoena issued under the Trans-Tasman Proceeding Act to be served in New Zealand must be made by filing a notice of motion in the proceeding in which the subpoena was issued.
- (2) The notice of motion must be accompanied by:
  - (a) a copy of the subpoena, and
  - (b) an affidavit stating:
    - (i) the material facts on which the application is based, and
    - (ii) whether the person making the application requests that any hearing be held by audio link or audiovisual link.

### **32.7 Application for issue of certificate of non-compliance with subpoena** (cf Federal Court Rules 2011, rule 34.69)

- (1) A party may apply to the court that issued a subpoena to be served in New Zealand for the issue of a certificate of non-compliance with the subpoena.

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- (2) The application may be made:
    - (a) if the proceeding in which the subpoena was issued is before the court—orally to the court, or
    - (b) by filing a notice of motion in the proceeding in which the subpoena was issued.
  - (3) An application must be accompanied by:
    - (a) a copy of the subpoena, and
    - (b) a copy of the order giving rise to 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 any application in subparagraph (i),
      - (iii) any order that disposed of the application in subparagraph (i),
      - (iv) the material facts relied on for the issue of a certificate of non-compliance.

#### **Division 4      Enforcement of New Zealand orders and judgments**

##### **32.8      Notice of registration of NZ judgment** (cf Federal Court Rules 2011, rule 34.72)

- (1) A plaintiff must not take any step to enforce a registered NZ judgment in the period mentioned in section 74 (2) of the Trans-Tasman Proceedings Act unless the plaintiff has filed an affidavit in the proceeding in which the judgment was registered that states that notice of the registration of the NZ judgment has been given in accordance with section 73 of the Trans-Tasman Proceedings Act and any regulations made under that Act.
- (2) If a defendant against whom the registered judgment is enforceable is out of Australia, the documents mentioned in subrule (1) may be served without leave of the court.

**Note.** Parts 11 and 11A otherwise provide for service of documents outside Australia.
- (3) A plaintiff must file an affidavit in the court that registered the judgment proving service of the documents in subrule (1) before any step is taken to enforce the registered judgment.

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### **32.9 Application for extension of time to give notice of registration of NZ judgment** (cf Federal Court Rules 2011, rule 34.73)

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

### **32.10 Application to set aside registration of NZ judgment** (cf Federal Court Rules 2011, rule 34.74)

- (1) An application by a liable person to set aside the registration of a NZ judgment under section 72 (1) of the Trans-Tasman Proceedings Act must be made by filing a notice of motion in the proceeding in which the judgment was registered.

**Note.** An application to set aside the registration of a NZ judgment must be made within 30 working days of the court after the day on which the liable person was served with notice of the registration, or within any shorter or longer period that the court considers appropriate—see section 72 (2) of the Trans-Tasman Proceedings Act.
- (2) The notice of motion must be accompanied by an affidavit stating:
  - (a) briefly but specifically, the grounds on which the registration of the judgment should be set aside, and
  - (b) the material facts relied on in support of the application.

### **32.11 Application for stay of enforcement of registered NZ judgment to enable liable person to appeal judgment** (cf Federal Court Rules 2011, rule 34.75)

- (1) An application by a liable person for a stay of the enforcement of a registered NZ judgment under section 76 (1) of the Trans-Tasman Proceedings Act to enable the person to appeal the judgment must be made by filing a notice of motion in the proceeding in which the judgment was registered.



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- (2) The notice of motion must be accompanied by an affidavit stating:
- (a) the order sought, and
  - (b) briefly but specifically, the grounds relied on in support of the order sought, and
  - (c) the material facts relied on in support of the application.

**32.12 Application for extension of time to apply for stay of enforcement of registered NZ judgment to enable liable person to appeal judgment** (cf Federal Court Rules 2011, rule 34.76)

- (1) An application by a liable person for an extension of the time within which to apply for the stay of enforcement of a registered NZ judgment under section 76 (3) of the Trans-Tasman Proceedings Act to enable the person to appeal the judgment must be made by filing a notice of motion in the proceeding in which the judgment was registered.
- (2) The notice of motion must be accompanied by an affidavit stating:
- (a) the order sought, and
  - (b) briefly but specifically, the grounds relied on in support of the application, and
  - (c) the material facts relied on in support of the application, and
  - (d) why the application was not made within time.

**Division 5 Miscellaneous**

**32.13 Application for order for use of audio link or audiovisual link** (cf Federal Court Rules 2011, rule 34.77)

- (1) An application by a party for an order that evidence be taken, or submissions be made, by audio link or audiovisual link from New Zealand must be made by filing a notice of motion.
- (2) Subrule (1) does not apply to a request mentioned in rule 32.6 (2) (b) (ii).