

## NOTICE TO ACCOMPANY SUBPOENA SERVED IN NEW ZEALAND

[*SUPREME/DISTRICT/MAGISTRATES/YOUTH/ENVIRONMENT RESOURCES AND DEVELOPMENT*] Delete all but one  
COURT OF SOUTH AUSTRALIA  
CRIMINAL JURISDICTION

### NOTICE TO WITNESS

#### THIS NOTICE IS VERY IMPORTANT

**PLEASE READ THIS NOTICE AND THE ATTACHED DOCUMENT(S) VERY CAREFULLY.**

**IF YOU HAVE ANY TROUBLE UNDERSTANDING THEM YOU SHOULD GET LEGAL ADVICE AS SOON AS POSSIBLE.**

Attached to this notice is a Subpoena. The Subpoena has been issued by the [*name of Court*] Court of South Australia.

The Subpoena may be served in New Zealand under section 30 of the *Trans-Tasman Proceedings Act 2010* (Cth).

This notice:

- sets out your rights relating to the Subpoena; and
- sets out your obligations relating to the Subpoena; and
- includes information about how you may apply 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 [*name of Court*] Court of South Australia that you be paid the additional amount you incurred.
4. You may apply to the [*name of Court*] Court of South Australia 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 by that Court without you having to go to Australia, or to retain Australian solicitors. All 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

1. Unless the Subpoena is set aside, you must comply with the 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 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) when the Subpoena was served on you, you were over the age of 18 years.
  
2. If the Subpoena only requires you to produce documents or things, it must specify the date on which the documents or things are required for production in the [*name of Court*]. You may comply with the Subpoena by producing the documents or things at a Registry of the High Court of New Zealand no later than 10 days before the date specified for production in the Subpoena. When you produce the documents or things at the Registry you will be required to produce the Subpoena and to pay the cost of sending the documents or things to the [*name of 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 THE SUBPOENA

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

1. If you apply for the Subpoena to be set aside, the 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) compliance with the Subpoena would make you 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 the imposition of a penalty in a civil proceeding in Australia (other than a proceeding under the *Competition and Consumer Act 2010* (Cth)); or
  - (e) the Court is satisfied that 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).
  
2. The Court may set aside the Subpoena on other grounds, including:
  - (a) the evidence you would give in the proceeding can be obtained satisfactorily by other means without significantly greater expense; or
  - (b) compliance with the Subpoena would cause you hardship or serious inconvenience; or
  - (c) if the Subpoena requires you to produce a document or thing:
    - (i) that 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**

1. Your Application must be made to the [*name of Court*] Court of South Australia.
2. You may fax your Application to that Court on [*fax no*].
3. 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.
4. The Registrar of the [*name of Court*] Court of South Australia will arrange for service of your Application and any Affidavit you lodge with your Application.
5. The Court may determine your Application without a hearing unless you, or the person who requested that the Subpoena be issued, asks for a hearing.
6. If there is a hearing, the Court can direct that it be held by audio link or audiovisual link. In that case, you or your lawyer can take part in the hearing by audio link or by audiovisual link from a place in New Zealand.
7. If, in your Application or within a reasonable time after lodging your Application, you request that the hearing be held by audio link or audiovisual link, the Court must hold the hearing by audio link or audiovisual link. However, in such a case, the Court will determine which of audio link or audiovisual link will be used.