

Judicature Amendment Act 1990

Public Act 1990 No 44
Date of assent 29 June 1990

Contents

		Page
	Title	2
1	Short Title and commencement	2
2	Power to make rules	2
3	New Part inserted	2
“PART Ia		
“Special Provisions Applying to Certain Proceedings in the High Court and the Federal Court of Australia		
“56d	Interpretation	2
“56e	High Court may order New Zealand proceedings to be heard in Australia	3
“56f	Australian counsel entitled to practise in High Court	3
“56g	High Court may set aside subpoena issued in New Zealand proceeding	4
“56h	Injunctions and orders in New Zealand proceedings	5
“56i	Issue of subpoenas in New Zealand proceedings	5
“56j	Powers of Federal Court of Australia	5
“56k	Issue of subpoenas in Australian proceedings	6
“56l	Failure of witness to comply with subpoena issued in Australian proceeding	6
“56m	Federal Court of Australia may administer oaths in New Zealand	7
“56n	Orders made by Federal Court of Australia not subject to review	7
“56o	Contempt of Federal Court of Australia	8

“56p	Arrangements to facilitate sittings	8
“56q	Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings	8
“56r	High Court may take evidence at request of Federal Court	9
“56s	Power to make rules for purposes of this Part	9

An Act to amend the Judicature Act 1908

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

- (1) This Act may be cited as the Judicature Amendment Act 1990 and shall be read together with and deemed part of the Judicature Act 1908 (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of July 1990.

2 Power to make rules

Section 51c(2) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph:

“(cc) Add to the High Court Rules any rules made for the purposes of Part Ia of this Act:”.

3 New Part inserted

The principal Act is hereby amended by inserting, after Part I, the following Part:

**“PART Ia
“Special Provisions Applying to Certain Proceedings in the
High Court and the Federal Court of Australia**

“56d Interpretation

In this Part of this Act, unless the context otherwise requires,—

“‘Australian proceeding’ means a proceeding in which a matter for determination arises under—

“(a) Any of sections 46a, 155a, or 155b of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or

“(b) A provision of Part VI or Part XII of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46a, 155a, or 155b of that Act,—

whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceeding and an application for the

issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding:

“Federal Court’ means the Federal Court of Australia:

“New Zealand proceeding’ means a proceeding in which a matter for determination arises under—

“(a) Any of sections 36a, 98h, or 99a of the Commerce Act 1986; or

“(b) A provision of Part VI or Part VII of the Commerce Act 1986 in so far as it relates to any of sections 36a, 98h, or 99a of that Act,—

whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceeding and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding.

“56e High Court may order New Zealand proceedings to be heard in Australia

“(1) The High Court may, if it is satisfied that a New Zealand proceeding could more conveniently or fairly be tried or heard by the High Court in Australia or that the evidence in a New Zealand proceeding could more conveniently be given in Australia, as the case may be, order that the proceeding be tried or heard in Australia, or that the evidence be taken in Australia, and may sit in Australia for that purpose.

“(2) The order shall specify—

“(a) The place in Australia where the proceeding will be tried or heard or the evidence taken, as the case may be:

“(b) The date or dates of the trial or hearing or on which the evidence will be taken, as the case may be:

“(c) Such other matters relating to the trial or the hearing or the taking of the evidence, as the case may be, as the Court thinks fit.

“(3) Without limiting the powers of the High Court in relation to the proceeding, the High Court may give judgment in, or make any determination for the purposes of, a New Zealand proceeding in Australia.

“56f Australian counsel entitled to practise in High Court

A person who is entitled to practise as a barrister, or solicitor, or both, in the Federal Court is entitled to practise as a barrister, or solicitor, or both in relation to—

“(a) A New Zealand proceeding before the High Court sitting in Australia:

“(b) The examination, cross-examination, or re-examination of a witness in Australia whose evidence is being taken by video link or telephone conference in a New Zealand proceeding before the High Court in New Zealand:

“(c) The making of submissions by video link or telephone conference to the High Court in New Zealand in a New Zealand proceeding.

“56g High Court may set aside subpoena issued in New Zealand proceeding

“(1) The High Court may set aside an order of subpoena issued by the High Court requiring the attendance of a person in Australia to testify or to produce documents to the High Court for the purposes of a New Zealand proceeding.

“(2) An application under subsection (1) of this section shall be made by the person served with the order of subpoena and may be made *ex parte*.

“(3) Without limiting the grounds on which the order of subpoena may be set aside, the High Court may set the order aside on any of the following grounds:

“(a) That the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:

“(b) That the witness is liable to be detained for the purpose of serving a sentence:

“(c) That the witness is liable to prosecution for an offence:

“(d) That the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 or section 83 of the Commerce Act 1986:

“(e) That the evidence of the witness could be obtained without significantly greater expense by other means:

“(f) That compliance with the order of subpoena would cause hardship or serious inconvenience to the witness:

“(g) In the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the Court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means.

“(4) Every application to set aside an order of subpoena under subsection (1) of this section shall be made by affidavit.

“(5) The affidavit shall—

“(a) Be sworn by the applicant; and

“(b) Set out the facts on which the applicant relies; and

“(c) Be filed in the office of the Court that issued the order of subpoena.

“(6) The Registrar of the Court shall cause a copy of the affidavit to be served on the solicitor on the record for the party to the proceedings who obtained the order of subpoena, or if there is no solicitor on the record, on that party.

“56h Injunctions and orders in New Zealand proceedings

Notwithstanding any rule of law, the High Court may, in a New Zealand proceeding, make an order or grant an injunction that the Court is empowered to make or grant that requires a person to do an act, or refrain from engaging in conduct, in Australia.

“56i Issue of subpoenas in New Zealand proceedings

“(1) An order of subpoena may, with the leave of a Judge, be obtained in a New Zealand proceeding requiring a person in Australia to testify, or produce documents or things, or both, to the High Court at a sitting of that Court in New Zealand or in Australia.

“(2) An order of subpoena issued for the purposes of a New Zealand proceeding that requires a witness in Australia to produce documents or things, but does not require the witness to testify, must permit the witness to comply with the order of subpoena by producing the documents or things to a specified registry of the Federal Court.

“56j Powers of Federal Court of Australia

“(1) The Federal Court of Australia may exercise all the powers of that Court—

“(a) At a sitting of that Court in New Zealand held for the purposes of an Australian proceeding:

“(b) At a sitting of that Court in Australia held for the purposes of an Australian proceeding at which the evidence of a witness in New Zealand is taken by video link or telephone conference or at which submissions are made in New Zealand by a barrister, or solicitor, or both or a party to the proceedings by video link or telephone conference.

“(2) Without limiting subsection (1) of this section, the Federal Court of Australia Act 1976 and the Rules of Court made under that Act that are applicable in relation to Australian proceedings generally shall apply to the practice and procedure of the Federal Court at any sitting of that Court of the kind referred to in that subsection.

“(3) Without limiting subsection (1) of this section, the Federal Court may, at any such sitting of the Court in New Zealand or in Australia, by order—

“(a) Direct that the hearing or any part of the hearing be held in private:

“(b) Require any person to leave the Court:

“(c) Prohibit or restrict the publication of evidence or the name of any party or any witness.

“(4) Nothing in subsection (1) or subsection (2) of this section applies in relation to—

“(a) The power of the Court to punish any person for contempt; or

“(b) The prosecution of any person for an offence committed as a witness; or

“(c) The enforcement or execution of any judgment, order, injunction, writ, or declaration given, made, or granted by the Court.

“(5) An order made under subsection (3) of this section may be enforced by a Judge of the High Court who, for that purpose, shall have and may exercise the powers, including the power to punish for contempt, that would be available to enforce the order if it had been made by that Judge.

“56k Issue of subpoenas in Australian proceedings

“(1) An order of subpoena that is issued by the Federal Court with the leave of a Judge of that Court requiring the attendance of a person in New Zealand to testify or to produce documents for the purposes of an Australian proceeding may be served on that person in New Zealand by leaving a sealed copy of the subpoena with that person personally together with a statement setting out the rights and obligations of that person, including information as to the manner in which application may be made to that Court to have the subpoena set aside.

“(2) A person who has been served with an order of subpoena under subsection (1) of this section is not compellable to comply with the order unless, at the time of service of the order or at some other reasonable time before the hearing, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

“56l Failure of witness to comply with subpoena issued in Australian proceeding

“(1) The Court may, on receiving a certificate under the seal of the Federal Court stating that a person named in the certificate has failed to comply with an order of subpoena requiring that person to attend as a witness for the purposes of an Australian proceeding, issue a warrant requiring any constable to arrest that person and bring that person before the Court.

“(2) The Court may, on the appearance of that person before the Court, impose a fine not exceeding \$1,000 unless the Court is satisfied, the onus of proof of which shall lie with that person, that the failure to comply with the order of subpoena should be excused.

“(3) In determining whether the failure to comply with the order of subpoena should be excused, the High Court may have regard to—

“(a) Any matters that were not brought to the attention of the Federal Court, if the High Court is satisfied that—

“(i) The Federal Court would have been likely to have set aside the order of subpoena if those matters had been brought to the attention of that Court; and

“(ii) The failure to bring those matters to the attention of the Federal Court was not due to any fault on the part of the person alleged to

have failed to comply with the order of subpoena or was due to an omission by that person that should be excused; and

“(b) Any matters to which the High Court would have regard if the order of subpoena had been issued by the High Court.

“(4) For the purposes of this section, but subject to subsection (3) of this section, a certificate under the seal of the Federal Court stating—

“(a) That the order of subpoena was issued by that Court:

“(b) That the witness failed to comply with the order of subpoena:

“(c) In relation to any application made to that Court to have the order of subpoena set aside, the decision of that Court or any orders or findings of fact made by that Court—

shall be conclusive evidence of the matters stated in it.

“(5) Subject to subsection (3) of this section, no findings of fact made by the Federal Court on an application to that Court to have the order of subpoena set aside may be challenged by any person alleged to have failed to comply with the order unless the Court was deliberately misled in making those findings of fact.

“56m Federal Court of Australia may administer oaths in New Zealand

“(1) The Federal Court may—

“(a) At any sitting of that Court in New Zealand held for the purposes of an Australian proceeding; or

“(b) For the purposes of obtaining the testimony of a person in New Zealand by video link or telephone conference at a sitting of that Court in Australia—

administer an oath or affirmation in accordance with the practice and procedure of that Court.

“(2) Evidence given by a person on oath or affirmation administered by the Federal Court under subsection (1) of this section shall, for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury), be deemed to have been given as evidence in a judicial proceeding on oath.

“56n Orders made by Federal Court of Australia not subject to review

No application for review under Part I of the Judicature Amendment Act 1972 and no application for an order of mandamus or prohibition or certiorari or for a declaration or injunction may be brought in respect of any judgment or order or determination of the Federal Court made or given at a sitting of that Court in New Zealand in an Australian proceeding.

“56o Contempt of Federal Court of Australia

- “(1) Every person commits an offence who, at any sitting of the Federal Court in New Zealand,—
- “(a) Assaults, threatens, intimidates, or wilfully insults—
 - “(i) A Judge of that Court; or
 - “(ii) A registrar or officer of that Court; or
 - “(iii) A person appearing as a barrister, or solicitor, or both, before that Court; or
 - “(iv) A witness in proceedings before that Court; or
 - “(b) Wilfully interrupts or obstructs the proceedings; or
 - “(c) Wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the proceedings.
- “(2) Every person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000.

“56p Arrangements to facilitate sittings

- “(1) The Chief Justice of New Zealand may make arrangements with the Chief Justice of the Federal Court for the purposes of giving effect to this Part of this Act.
- “(2) Without limiting subsection (1) of this section arrangements may be made—
- “(a) To enable the High Court to sit in Australia in New Zealand proceedings in the courtrooms of the Federal Court or in other places in Australia:
 - “(b) To enable the Federal Court to sit in New Zealand in the courtrooms of the High Court or in other places in New Zealand:
 - “(c) To enable evidence to be given and the submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by video link or telephone conference:
 - “(d) For the provision of registry facilities and Court staff.

“56q Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings

- “(1) A Judge of the Federal Court sitting as a Judge of that Court in New Zealand in an Australian proceeding has all the protections, privileges, and immunities of a Judge of the High Court.
- “(2) Every witness who gives evidence in an Australian proceeding—
- “(a) At a sitting in New Zealand of the Federal Court; or

“(b) By video link or telephone conference at a sitting in Australia of the Federal Court—

has all the privileges and immunities of a witness in the High Court.

“(3) A person appearing as a barrister, or solicitor, or both, in an Australian proceeding—

“(a) At a sitting in New Zealand of the Federal Court; or

“(b) By video link or telephone conference at a sitting in Australia of the Federal Court—

has all the privileges and immunities of counsel in the High Court.

“56r High Court may take evidence at request of Federal Court

“(1) The High Court may, at the request of the Federal Court, take evidence in New Zealand for the Federal Court for the purposes of an Australian proceeding and may, by order, make any provision it considers appropriate for the purpose of taking that evidence.

“(2) An order may require a specified person to take such steps the High Court considers appropriate for taking the evidence.

“(3) Without limiting subsections (2) and (3) of this section, an order may, in particular, make provision—

“(a) For the examination of witnesses, either orally or in writing; or

“(b) For the production of documents or things; or

“(c) For the inspection, photographing, preservation, custody, or detention of any property; or

“(d) For taking samples of property and carrying out experiments on or with property.

“(4) The High Court may make an order requiring a person to give evidence either orally or by tendering a written document otherwise than on oath or affirmation if the Federal Court requests it to do so.

“(5) A person who has been served with an order made under this section is not compellable to comply with the order unless, at the time of service of the order or at some other reasonable time before that person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person.

“(6) A person is not compellable to give evidence pursuant to an order under this section that he or she is not compellable to give in the Australian proceeding to which the request relates.

“56s Power to make rules for purposes of this Part

“(1) Rules may be made under section 51c of this Act, for or in relation to, Australian proceedings and New Zealand proceedings.

- “(2) Without limiting subsection (1) of this section, rules may be made that make provision for, or in relation to,—
- “(a) The giving of evidence and the making of submissions in New Zealand proceedings by video link or telephone conference:
 - “(b) Receiving, for the purposes of the Evidence Amendment Act 1990, facsimiles as evidence of documents or things:
 - “(c) The issuing of subpoenas for service in Australia for the purposes of New Zealand proceedings and the service of those subpoenas:
 - “(d) The payment of witnesses required to comply with orders of subpoena served in Australia for the purposes of New Zealand proceedings of amounts in respect of expenses and loss of income occasioned by compliance with those orders:
 - “(e) The lodging of documents or things with the Federal Court in compliance with orders of subpoena issued in New Zealand proceedings that require only the production of documents or things by witnesses:
 - “(f) The transmission of documents or things lodged with the High Court in Australian proceedings in compliance with orders of subpoena issued by the Federal Court or certified copies of such documents to the Federal Court:
 - “(g) The hearing of applications for orders under section 56g of this Act:
 - “(h) Sittings of the High Court in Australia:
 - “(i) Giving effect to arrangements made under section 56p of this Act:
 - “(j) The form of certification of judgments, orders, and injunctions in New Zealand proceedings:
 - “(k) The taking of evidence under section 56r of this Act:
 - “(l) Such other matters as are contemplated by or necessary for giving effect to this Part of this Act.”

This Act is administered in the Department of Justice.