

NEW ZEALAND

New Zealand is answering Part One of the questionnaire, as it is not a party to the Convention. It is also providing some information in response to question 16 of Part Two of the questionnaire, regarding the use of fax and electronic mail.

Question 1 - Are there any particular reasons why your State has not ratified the 1965 Convention?

New Zealand has only recently become a member of the Hague Conference on Private International Law. For this reason, it has had to prioritise which Conventions it will work towards ratifying. Thus far, the 1965 Convention on Service Abroad has not been identified as a sufficiently high priority for work to commence.

Question 2 - Do you envisage becoming a Party to the 1965 Convention? If yes, why?

New Zealand does envisage working towards ratifying the 1965 Convention, as other priorities allow. This is because of the likely benefits of the Convention given the increasing incidence of cross-border litigation.

Question 16 - Fax and electronic mail

We have included some information about the circumstances in which service by fax and email is currently permitted in New Zealand, as this may be of interest.

New Zealand allows service by fax for proceedings within New Zealand. There are rules about when documents may be served by fax and about the time at which the document is regarded as having been served. These rules are set out in rules 44, 192 and 206A of the High Court Rules, in the attached word document.

In very specific circumstances, service of documents by fax is permitted between New Zealand and Australia. The rules are set out in rules 446X, 502E and 502F of the High Court Rules, in the attached word document.

In recent years, some new legislation has specifically allowed service by email in certain types of New Zealand proceedings. An example of this are provisions in the Construction Contracts Regulations 2003, which allow service by email or other electronic communication if certain requirements are met. One of the requirements is that the person to whom the information is required to be served consents to it being given in electronic form and by means of an electronic communication. These provisions are in the attached word document.

ANNEX

Construction Contracts Regulations 2003

Service of notices

9. Additional modes of service

- (1) In addition to the modes of service specified in section 80 of the Act, any notice or any other document required to be served on, or given to, any person under the Act or these regulations is sufficiently served if-
 - (a) it is sent by fax; or
 - (b) it is sent by email or other means of electronic communication and the requirements of regulation 10 are met.
- (2) A notice or document sent by fax under subclause (1)(a) is, in the absence of proof to the contrary, served or given if the fax machine generated a record of the transmission of the notice or document to the fax machine of the recipient, and the date of the record is taken to be the date of receipt of that notice or document.
- (3) A notice or document sent by email or other means of electronic communication under subclause (1)(b) is, in the absence of proof to the contrary, regarded as having been served or given,-
 - (a) in the case of an addressee who has designated an information system for the purpose of receiving emails or other electronic communications, at the time the email or communication enters that information system; or
 - (b) in any other case, at the time the email or communication comes to the attention of the addressee.
- (3) For the purposes of subclause (3), information system means a system for producing, sending, receiving, storing, displaying, or otherwise processing emails or other electronic communications.

10. Requirements for service by email or other means of electronic communication

- (1) A notice or document may be sent by email or other means of electronic communication under regulation 9(1)(b) only if-
 - (a) the information in the notice or document is readily accessible so as to be usable for subsequent reference; and
 - (b) the person to whom the information is required to be served or given consents to the information being given in electronic form and by means of an electronic communication, if applicable.
- (2) For the purposes of subclause (1),-
 - (a) a person may consent to use, provide, or accept information in an electronic form subject to conditions regarding the form of the information or the means by which the information is produced, sent, received, processed, stored, or displayed:
 - (b) consent may be inferred from a person's conduct.

High Court Rules

44. Memorandum to be subscribed to first document filed by party—

- (1) At the end of the first document filed by a party there shall be a memorandum stating—
 - (a) That the document is filed by the party in person, or by the party's solicitor, as the case may be; and
 - (b) Where it is filed by a solicitor,—
 - (i) The name of the solicitor; and
 - (ii) If the solicitor is a member of a firm or practises under a firm name, the name of the firm; and
 - (c) Where it is filed by a solicitor who has another solicitor acting as the solicitor's agent in the proceeding,—
 - (i) The name of the agent or of the agent's firm (if any); and
 - (ii) The postal address of the party's solicitor; and
 - (d) An address for service; and
 - (e) Where it is filed by a solicitor, any Post Office box address, document exchange box number, or facsimile number by which the solicitor will accept service of documents in the course of the proceeding.
- (2) The memorandum may be in one of the paragraphs of form 3.

Service

192. Modes of service

- (1) Except where an Act or these rules prescribes a particular and exclusive mode of service, service of a document that is required by these rules to be served may be effected in any of the following modes:
 - (a) Personal service:
 - (b) Service at an address for service given in accordance with these rules:
 - (c) Service at an address directed by the Court as the address for service for the party or person:
 - (d) Where the solicitor for the party or person has, under rule 44(1)(e), specified a Post Office box address, document exchange box number, or facsimile number,—
 - (i) By posting the document to that Post Office box address; or
 - (ii) By leaving the document at a document exchange for direction to that document exchange box number; or
 - (iii) By transmitting the document to that facsimile number.
- (2) In any case not provided for by these rules, service shall be effected in such manner and at such place as the Court directs.

206A. Service by means of Post Office box, document exchange, or facsimile number

- (1) Where a document is served on a party or person in accordance with rule 192(1)(d), that document shall,—

- (a) If posted to a Post Office box address, be deemed to have been duly served on the earlier of—
 - (i) The fifth working day after the day on which it was so posted; or
 - (ii) The day on which it was received; and
 - (b) If left at a document exchange, be deemed to have been duly served on the earlier of—
 - (i) The second working day after the day on which it was so left; or
 - (ii) The day on which it was received; and
 - (c) If transmitted to a facsimile number, be deemed, subject to subclauses (2) and (3), to have been duly served on the day on which it was so transmitted.
- (2) Where a document is transmitted to a facsimile number after 5pm on any day, that document shall, subject to subclause (3), be deemed to have been duly served on the first working day after the day on which the document was received in a complete and legible condition.
- (3) A document transmitted to a facsimile number shall be deemed to have been received in a complete and legible condition unless—
- (a) The contrary is shown; and
 - (b) As soon as practicable after the transmission is concluded, the solicitor to whom the document was transmitted notifies the person who transmitted the document that the document was incomplete or illegible or both when it was received.
- (3) Where a document is served under rule 192(1)(d), the solicitor to whom the document was sent or transmitted shall, on receiving the document, immediately give to the person by whom the document was served an acknowledgment, in writing or by facsimile transmission, that the document has been received and shall include in that acknowledgment a statement of the date of service.

Part 3B — Special Provisions Applying To Certain Proceedings Under Commerce Act 1986 And To Certain Proceedings In Federal Court Of Australia Under Trade Practices Act 1974 Of The Commonwealth Of Australia

446X. Setting aside subpoena issued in New Zealand proceeding

- (1) An application to set aside an order of subpoena issued in a New Zealand proceeding and served on a person in Australia under section 56G of the Act may be filed by facsimile.
- (2) The Registrar shall send to the applicant by facsimile an acknowledgment of an application that has been filed by facsimile.
- (3) The Court shall give such directions for the conduct of the hearing of the application as it thinks fit.
- (4) Without limiting subclause (3), the Court may give directions requiring—
 - (a) The applicant to give evidence or make submissions by video link or telephone conference; or
 - (b) Further evidence by the applicant be taken in Australia; or
 - (c) The application to be heard in Australia.

Part 5 — Disposal Of Proceedings

502E. Application to set aside New Zealand subpoena—

- (1) An application to set aside a New Zealand subpoena served on a witness in Australia may be filed by—
 - (a) A person who is entitled to file documents under these rules; or
 - (b) A person who is entitled to practise as a solicitor of a Supreme Court of a State or Territory of Australia and who is in practice on his or her own account or as a principal in a firm of solicitors.
- (2) The application may be filed by sending it by facsimile to the office of the High Court in which leave to serve the subpoena was given.
- (3) Every application shall be made by way of interlocutory application.
- (4) The heading on the application may be the same as the heading on the order granting leave to serve the subpoena.
- (5) Every application—
 - (a) Shall state an address in New Zealand or Australia that is the applicant's address for service:
 - (b) May state a facsimile number in New Zealand or Australia to which documents relating to the application may be sent to the applicant.
- (6) Where the application is filed by facsimile, the Registrar—
 - (a) Shall send by facsimile to the applicant or the applicant's solicitor, as the case may be, an acknowledgment that the application has been received:
 - (b) May, if the application is not clear or legible, require the applicant or the applicant's solicitor, as the case may be, to transmit the application by facsimile again.

502F. Service of documents on applicant

- (1) A document relating to an application to set aside a New Zealand subpoena may be served on the applicant by:
 - (a) Leaving it at the address for service of the applicant stated in the application; or
 - (b) If a facsimile number is stated in the application, sending it by facsimile to that number.
- (2) Where a document relating to the application is served on the applicant by facsimile, the document shall, subject to subclauses (3) and (4), be deemed to have been served on the day on which it was sent.
- (3) Where a document is sent by facsimile to a facsimile number in a State or Territory of Australia at a time later than 5 pm in that State or Territory, the document shall, subject to subclause (4), be deemed to have been served on the first working day after the day on which it was sent.
- (4) A document sent to a facsimile number in Australia shall, unless the contrary is proved, be deemed to have been received in a complete and legible condition.