

# Evidence Amendment Act 1994

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This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

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**An Act to amend the Evidence 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 Evidence Amendment Act 1994, and shall be read together with and deemed part of the Evidence Act 1908 (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council, and one or more Orders in Council may be made bringing different provisions into force on different dates.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**2 Interpretation**

In this Act, unless the context otherwise requires,—

**Australian Court** includes a tribunal declared by the Minister of Justice pursuant to section 3 of this Act to be an Australian Court

**Australian subpoena** means a subpoena issued by an Australian Court in a proceeding other than a criminal or a family proceeding

**Document** has the meaning given to it by section 2 of the Evidence Amendment Act (No 2) 1980

**Expenses**, in relation to a subpoena, includes the reasonable costs of—

- (a) Travel to and from, and accommodation at, the place at which compliance with the subpoena is required; and
- (b) Finding, collating, and producing a document or thing—

necessary for the purposes of complying with the subpoena

**Family proceeding** includes a proceeding relating to—

- (a) Guardianship of a child; or
- (b) the role of providing day-to-day care for a child; or
- (c) contact with a child; or

- (d) A marriage or the dissolution of a marriage; or
- (e) Maintenance of a child or of a spouse or former spouse or of a de facto spouse or former de facto spouse; or
- (f) The property of a spouse or former spouse or the property of both spouses or former spouses in relation to the marital relationship; or
- (g) The property of a de facto spouse or former de facto spouse or the property of both de facto spouses or former de facto spouses in relation to the relationship between them; or
- (h) Paternity; or
- (i) Adoption; or
- (j) The protection of a person from domestic violence or molestation; or
- (k) The status or property of a person under a disability:

Family proceeding: paragraphs (b) and (c) of this definition were substituted, as from 1 July 2005, by section 151 Care of Children Act 2004 (2004 No 90).

**Federal Court** means the Federal Court of Australia

**High Court** means the High Court of New Zealand

**Judge**, in relation to an Australian Court, includes a Judicial Registrar, Magistrate, Master, and a member of a tribunal

**New Zealand Court** includes a tribunal declared by the Minister of Justice pursuant to section 3 of this Act to be a New Zealand Court

**New Zealand subpoena** means a subpoena issued by a New Zealand Court in a proceeding other than a criminal or a family proceeding

**Prescribed** means prescribed by rules made pursuant to section 33 of this Act

**specified proceeding**

**Subpoena** means a process that requires a person to do one or both of the following

- (a) Give evidence; or
- (b) Produce a document or thing;—

but does not include a process that requires a person to produce a document in connection with discovery and inspection of documents

**Tribunal** means a person or body authorised under New Zealand law or a law of the Commonwealth of Australia or a State or Territory of Australia, as the case may be, to take evidence on oath or affirmation; but does not include a Court or a person exercising a power conferred on the person as a Judge, Magistrate, or officer of a Court

**Witness**, in relation to a subpoena, means the person to whom the subpoena is addressed.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

### **3 Power of Minister of Justice in relation to certain tribunals**

For the purposes of this Act, the Minister of Justice may from time to time, by notice in the *Gazette*, declare—

- (a) Any New Zealand tribunal to be a New Zealand Court;
- (b) Any tribunal of the Commonwealth of Australia or of a State or a Territory of Australia to be an Australian Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

### **4 Act not to apply to certain proceedings in the High Court of New Zealand and the Federal Court of Australia**

Nothing in this Act applies in relation to any proceedings to which Part 1A of the Judicature Act 1908 applies.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **Service of New Zealand subpoenas in Australia**

### **5 Service of New Zealand subpoenas in Australia**

- (1) Subject to any applicable Rules of Court, a New Zealand subpoena may, with the leave of a Judge of the High Court, be served on a witness in Australia.

- (2) In determining whether to grant leave the Judge must, in addition to any other matter that the Judge considers relevant, have regard to—
  - (a) The significance of the oral evidence to be given, or the document or thing to be produced, or both; and
  - (b) Whether the oral evidence to be given, the document or thing to be produced, or both could be obtained without significantly greater expense by other means and with less inconvenience to the witness.
- (3) The Judge may grant leave subject to such conditions as the Judge thinks fit, and must impose a condition that the New Zealand subpoena is not to be served after a specified date.
- (4) The Judge must not grant leave if the subpoena is addressed to a witness who has not attained the age of 18 years.
- (5) The Judge may give directions as to service.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **6 New Zealand subpoena may require evidence to be given in New Zealand or Australia**

A New Zealand subpoena served on a witness in Australia may require the witness to give evidence or produce a document or thing or both at a place in New Zealand or Australia.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **7 Service of subpoena**

- (1) Subject to any directions as to service, a New Zealand subpoena served on a witness in Australia must be served in accordance with New Zealand law.
- (2) The subpoena must not be served in Australia unless it is accompanied by—
  - (a) A copy of the order granting leave to serve the subpoena; and
  - (b) A statement in the prescribed form that—
    - (i) Sets out the rights and obligations of the witness in relation to the subpoena; and

- (ii) Includes information about the way in which an application may be made to have the subpoena set aside.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **8 Expenses**

- (1) A witness on whom a New Zealand subpoena has been served in Australia is not required to comply with the subpoena unless, at the time of service or at some other reasonable time before the witness is required to comply, allowances and travelling expenses or vouchers in substitution for allowances and travelling expenses sufficient to meet the witness's reasonable expenses of complying with the subpoena are paid or tendered to the witness.
- (2) A witness on whom a New Zealand subpoena has been served in Australia that requires the witness to produce documents or things, but does not require the witness to give oral evidence, and who elects to comply by producing the documents or things at an Australian Court, is not required to comply with the subpoena unless, at the time of service or at some other reasonable time before the witness is required to comply, expenses sufficient to meet the witness's reasonable expenses of producing the documents or things to an Australian Court and the expenses of transmitting the documents or things to the New Zealand Court that issued the subpoena are paid or tendered to the witness.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (2) was inserted, as from 1 April 1995, by section 2(1) Evidence Amendment Act 1995 (1995 No 6). *See* clause 2 Evidence Amendment Act Commencement Order (No 2) 1995 (SR 1995/62).

## **9 Payment of additional amounts to witness**

- (1) A witness who has complied with a New Zealand subpoena that was served on the witness in Australia is entitled to be paid any reasonable expenses incurred by the witness in complying

with the subpoena in addition to any expenses tendered or paid to the witness under section 8 of this Act.

- (2) The expenses must be paid by the person who obtained the subpoena or, if the subpoena was issued pursuant to a direction of a New Zealand Court, by the Crown.
- (3) Any money required to be paid by the Crown under subsection (2) of this section must be paid out of the Crown Bank Account.
- (4) The Court which issued the subpoena may, on the application of the person by whom the subpoena was obtained or the witness, make an order specifying the amount to which the witness is entitled under this section and requiring the person who obtained the subpoena or the Crown, as the case may be, to pay the amount to the witness.
- (5) An order made pursuant to subsection (4) of this section by a Court which does not have the power to enforce its orders may be filed in any District Court and shall thereupon be enforceable as a judgment of the District Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## 10 Subpoenas for production

- (1) A New Zealand subpoena that requires a witness in Australia to produce documents or things, but does not require the witness to give oral evidence, must state that the witness may comply with the subpoena by producing the documents or things at any registry of an Australian Court not later than 10 days before the date specified in the subpoena as the date on which the documents or things are required for production in the New Zealand Court.
- (2) For the purposes of subsection (1) of this section, **registry**, in relation to an Australian Court, means a registry of an Australian Court authorised by a law of the Commonwealth of Australia to receive such documents or things.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**11 Setting aside of subpoena served in Australia**

- (1) A witness on whom a New Zealand subpoena is served in Australia may apply to the High Court to set the subpoena aside.
- (2) The High Court must set the subpoena aside if—
  - (a) The subpoena requires the witness to attend at a sitting of a New Zealand Court and the High Court is satisfied that—
    - (i) The witness does not have, and cannot by the exercise of reasonable diligence within the time required for compliance obtain, the necessary travel documents; or
    - (ii) The witness is liable to be detained in New Zealand for the purpose of serving a sentence; or
    - (iii) The witness is liable to prosecution for an offence, or is being prosecuted for an offence, in New Zealand; or
    - (iv) The witness is liable to the imposition of a civil penalty in civil proceedings in New Zealand, not being proceedings for a pecuniary penalty under the Commerce Act 1986; or
  - (b) The witness is subject to a restriction on his or her movements, imposed by law or by order of a court, that would prevent the witness complying with the subpoena.
- (3) Without limiting subsection (1) of this section, the High Court may set the subpoena aside if it is satisfied that—
  - (a) The evidence of the witness could be obtained satisfactorily without significantly greater expense by other means; or
  - (b) Compliance with the subpoena would cause hardship or serious inconvenience to the witness; or
  - (c) In the case of a subpoena that requires a witness to produce documents or things, whether or not it also requires the witness to give oral evidence, the documents or things should not be taken out of Australia and that satisfactory evidence of the contents of the documents or evidence of the things can be given by other means.
- (4) An application to set aside a subpoena under subsection (1) of this section must be filed in the office of the High Court in

which leave to serve the subpoena was given, together with any affidavit setting out facts on which the applicant relies.

- (5) The Registrar of the High Court in which the application is filed must cause a copy of the application and any affidavit setting out facts on which the applicant relies to be served on the solicitor on the record for the person who obtained leave to serve the subpoena, or if there is no solicitor on the record, on that person.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **12 Failure to comply with subpoena**

If a witness fails to comply with a New Zealand subpoena served in Australia, the Court which issued the subpoena may, on the application of a party to the proceedings in which the subpoena was obtained, or of its own motion, give a certificate in the prescribed form stating that—

- (a) A Judge of the High Court has given leave to serve the subpoena issued by the Court giving the certificate; and  
(b) The witness failed to comply with the subpoena.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **13 Other powers not affected**

Nothing in sections 5 to 12 of this Act limits or affects any other powers of a New Zealand Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **Service of Australian subpoenas in New Zealand**

### **14 Service of Australian subpoenas in New Zealand**

- (1) An Australian subpoena may be served on a witness in New Zealand.  
(2) The subpoena must be accompanied by—

- (a) A copy of the order of the Judge of the Federal Court, or of the order of the Judge of the Family Court of Australia, or the order of the Judge of a Supreme Court of a State or a Territory of Australia, as the case may be, by whom leave was granted to serve the subpoena in New Zealand; and
- (b) A statement setting out the rights and obligations of the witness, including information about the way in which an application may be made to the appropriate Australian Court to have the subpoena set aside.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

#### **15 Compliance with Australian subpoena**

- (1) Subject to subsection (2) of this section, a witness served with an Australian subpoena must comply with the subpoena.
- (2) A witness served with an Australian subpoena is not required to comply with the subpoena if—
  - (a) The subpoena is not served on the witness in accordance with section 14(2) of this Act and the law and rules that apply to the issue and service of the subpoena in the Australian Court that issued it; or
  - (b) At the time of service of the subpoena or at some other reasonable time before the witness is required to comply with the subpoena, allowances and travelling expenses or vouchers in substitution for allowances and travelling expenses sufficient to meet the witness's reasonable expenses of complying with the subpoena are not tendered or paid to the witness; or
  - (c) The witness is under the age of 18 years.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

#### **16 Failure of witness to comply with Australian subpoena**

- (1) The High Court may, on receiving from the Australian Court which issued the Australian subpoena a certificate stating that the witness has failed to comply with the subpoena, issue a

warrant requiring any constable to arrest the witness and to bring him or her before the High Court.

- (2) The High Court may, on the appearance of the witness before the Court, impose a fine not exceeding \$10,000 unless the Court is satisfied that the failure to comply with the subpoena should be excused.
- (3) In determining whether the failure to comply with the subpoena should be excused, the High Court may have regard to—
  - (a) Any matters that were not brought to the attention of the Australian Court which granted leave to serve the subpoena, if the High Court is satisfied that—
    - (i) The Australian Court would have been likely to have set aside the 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 Australian Court was not due to any fault on the part of the witness or was due to an omission of the witness that should be excused; and
  - (b) Any matters to which the High Court would have regard if the subpoena had been issued by the High Court.
- (4) For the purposes of this section, a certificate under the seal of an Australian Court stating—
  - (a) That leave to serve the subpoena was granted by a Judge of the Federal Court or a Judge of the Family Court of Australia or a Judge of a Supreme Court of an Australian State or a Territory; and
  - (b) That the witness failed to comply with the subpoena—shall be sufficient evidence of the matters stated in it unless the witness establishes to the satisfaction of the High Court that the witness did in fact comply with the subpoena.
- (5) Without limiting subsection (3) of this section, no finding of fact made by the Federal Court or by the Family Court of Australia or by a Supreme Court of an Australian State or a Territory on an application to have the subpoena set aside may be challenged by any person alleged to have failed to comply with the subpoena unless the Court was deliberately misled in making those findings of fact.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**17 Transmission of documents or things to Australian Court**

The Registrar holding office at the registry of the High Court at which a document or thing is produced in compliance with an Australian subpoena must, on payment of a sum that is sufficient to send the document or thing to the Australian Court that issued the subpoena by a means that will ensure it is received by that Court before the date on which it is required to be produced, accept the document or thing, and—

- (a) As soon as practicable, inform the Registrar of the Australian Court that issued the subpoena, by facsimile or similar means of communication, that the document or thing has been produced; and
- (b) Send the document or thing, without delay, to the Australian Court before the date on which it is required to be produced to that Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

This section was amended, as from 1 April 1995, by section 2(1) Evidence Amendment Act 1995 (1995 No 6) by inserting the words “on payment of a sum that is sufficient to send the document or thing to the Australian Court that issued the subpoena by a means that will ensure it is received by that Court before the date on which it is required to be produced, accept the document or thing, and”. *See* clause 2 Evidence Amendment Act Commencement Order (No 2) 1995 (SR 1995/62).

**18 Other powers to serve subpoenas not affected**

Nothing in this Act limits or affects any right or power conferred by or under a law of the Commonwealth or a State or a Territory of Australia to serve a subpoena in New Zealand on an Australian citizen.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

### **Video links and telephone conferences in New Zealand proceedings**

#### **19 New Zealand Court may receive evidence and submissions by video link and telephone conference from Australia**

- (1) On the application of a party to a proceeding before a New Zealand Court, the Court may, if it is satisfied that the necessary facilities and equipment are available, or can reasonably be made available, and that evidence or submissions in the proceeding could more conveniently be given or made from Australia, direct that evidence be given from Australia, or submissions be made from Australia, by video link or telephone conference.
- (2) Unless the New Zealand Court otherwise orders, the costs incurred in giving evidence or making submissions by video link or telephone conference and transmitting the evidence or submissions, in accordance with a direction given under subsection (1) of this section, must be paid by the applicant.
- (3) The New Zealand Court may make an order specifying the amount payable by a party under subsection (2) of this section, and requiring the party to pay that amount.
- (4) An order made pursuant to subsection (3) of this section by a Court which does not have the power to enforce its orders may be filed in any District Court and shall thereupon be enforceable as a judgment of the District Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

#### **20 Powers of New Zealand Court in Australia**

For the purposes of the taking of evidence or the receiving of submissions by video link or telephone conference from Australia under section 19 of this Act, the New Zealand Court may exercise in Australia all its powers which it is permitted to exercise in Australia under Australian law.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **21 Evidence and submissions by video link**

Evidence must not be given or submissions made by video link from Australia unless the courtroom or other place where the New Zealand Court is sitting in New Zealand and the place where the evidence is to be given or the submissions are to be made in Australia are equipped with video facilities that—

- (a) Enable persons present at the place where the Court is sitting in New Zealand to see and hear the person giving evidence or making the submissions in Australia; and
- (b) Enable persons present at the place where the evidence is given or the submissions are made in Australia to see and hear persons at the place where the Court is sitting in New Zealand.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **22 Evidence and submissions by telephone**

Evidence must not be given or submissions made by telephone conference from Australia unless the courtroom or other place where the New Zealand Court is sitting in New Zealand and the place where the evidence is to be given or the submissions are to be made in Australia are equipped with telephone conference facilities that—

- (a) Enable persons present at the place where the Court is sitting in New Zealand to hear the person giving evidence or making the submissions in Australia; and
- (b) Enable persons present at the place where the evidence is given or the submissions are made in Australia to hear persons at the place where the Court is sitting in New Zealand.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**23 Rights of Australian counsel**

A person who is entitled to practise as a barrister, or a solicitor, or both in a Supreme Court of a State or a Territory of Australia from which evidence is to be given or submissions made by video link or telephone conference to a New Zealand Court, is entitled to practise as a barrister, or solicitor, or both in relation to—

- (a) The examination, cross-examination, or re-examination of a witness in Australia whose evidence is being given by video link or telephone conference in the proceeding before the New Zealand Court; and
- (b) The making of submissions by video link or telephone conference from Australia in the proceeding before the New Zealand Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**Video links and telephone conferences in Australian proceedings****24 Australian Court may take evidence and receive submissions by video link or telephone conference in New Zealand**

An Australian Court may take evidence or receive submissions from a person in New Zealand by video link or telephone conference for the purposes of a proceeding before that Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**25 Powers of Australian Court**

- (1) For the purposes of taking evidence from a witness in New Zealand or hearing submissions from a person in New Zealand, an Australian Court may exercise in New Zealand any of its powers, except its powers to—
  - (a) Punish for contempt; and
  - (b) Enforce or execute its judgments or process.

- (2) Subject to subsection (1) of this section, the Australian law that applies to the proceeding in Australia also applies to the practice and procedure of the Australian Court in taking evidence or receiving submissions from a person in New Zealand.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **26 Orders of Australian Courts**

- (1) Without limiting section 25 of this Act, the Australian Court may, by order,—
- (a) Direct that the hearing or any part of the hearing be held in private; or
  - (b) Require any person to leave the place where the evidence is or is to be given or the submissions are or are to be made; or
  - (c) Prohibit or restrict the publication of evidence or the name of any party or of any witness.

- (2) An order made under subsection (1) of this section may be enforced by a Judge of the High Court who, for that purpose, has and may exercise the powers, including the power to punish for contempt, that would have been available to enforce the order if it had been made by that Judge.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **27 Place where evidence given part of Australian Court**

For the purposes of sections 25 and 26 of this Act, the place in New Zealand where the evidence is given or the submissions are made in a proceeding before an Australian Court shall be deemed to be part of that Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **28 Privileges, protections, and immunities of Judges, counsel, and witnesses in Australian proceedings**

- (1) A Judge of an Australian Court has, in relation to the taking of evidence or the making of submissions by video link or

telephone conference from a person in New Zealand, all the privileges, protections, and immunities of a Judge of the High Court.

- (2) A person appearing as a barrister, a solicitor, or both has, in relation to the taking of the evidence or the making of the submissions, all the privileges and immunities of counsel in the High Court.
- (3) Every witness who gives evidence in a proceeding before an Australian Court by video link or telephone conference from New Zealand has all the privileges and immunities of a witness in the High Court.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **29 Power of Australian Courts to administer oaths in New Zealand**

- (1) An Australian Court may, for the purpose of obtaining the evidence of a person in New Zealand by video link or telephone conference, 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 Australian 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.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **30 Contempt of Australian Court**

- (1) Every person commits an offence who, in New Zealand, at a place where evidence is being given or submissions are being made by video link or telephone conference in a proceeding before an Australian court,—
  - (a) Assaults—
    - (i) A person appearing as a barrister, or solicitor, or both in the proceeding; or
    - (ii) A witness in the proceeding; or

- (iii) An officer of a New Zealand Court giving assistance under section 31 of this Act; or
  - (b) Threatens or intimidates or wilfully insults—
    - (i) A Judge of the Australian Court taking part in the proceeding; or
    - (ii) A Registrar or officer of the Australian Court taking part in, or assisting with, the proceeding; or
    - (iii) A person appearing as a barrister, or solicitor, or both in the proceeding; or
    - (iv) A witness in the proceeding; or
  - (c) Wilfully interrupts or obstructs the proceeding; or
  - (d) Wilfully and without lawful excuse, disobeys any order or direction of the Australian Court in the course of the proceeding.
- (2) Every person who commits an offence against this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

### **31 Assistance to Australian Court**

An officer of a New Zealand Court may, at the request of an Australian Court,—

- (a) Attend at the place in New Zealand where evidence is being or will be given or submissions are being or will be made by video link or telephone conference in a proceeding before the Australian Court; and
- (b) Take such action as the Australian Court directs to facilitate the proceeding; and
- (c) Assist with the administering by the Australian Court of an oath or affirmation.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

### Miscellaneous provisions

#### **32 Enforcement of certain orders made by Australian Courts**

- (1) For the purposes of the Reciprocal Enforcement of Judgments Act 1934, an order made by an Australian Court under the Evidence and Procedure (New Zealand) Act 1994 of the Commonwealth of Australia for the payment of expenses incurred by a witness in complying with an Australian subpoena served on the witness in New Zealand or for the payment of expenses incurred by a person in connection with the taking of evidence or the making of submissions from New Zealand by video link or telephone, as the case may be, shall be deemed,—
- (a) If the order was made by an Australian Court that is a superior Court, to be a money judgment of a superior Court that had jurisdiction to make the order; or
  - (b) If the order was made by an Australian Court that is not a superior Court, to be a money judgment of a specified inferior Court that had jurisdiction to make the order.
- (2) Nothing in section 6 (except paragraphs (a), and (d) to (f) of subsection (1) of the Reciprocal Enforcement of Judgments Act 1934 applies to an order referred to in subsection (1) of this section.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

#### **33 Rules**

- (1) In the case of the High Court and the Court of Appeal, rules may be made for the purposes of this Act under section 51C of the Judicature Act 1908 that make provision for or relate to—
- (a) The issuing of New Zealand subpoenas and the service of those subpoenas;
  - (b) The hearing or disposal of applications for orders under section 11 of this Act:

- (c) The lodging of documents or things with an Australian Court in compliance with a New Zealand subpoena that requires only the production of documents or things by a witness:
  - (d) The transmission of documents or things lodged with a New Zealand Court in compliance with an Australian subpoena to the Australian Court that issued the subpoena:
  - (e) The giving of evidence and the making of submissions by video link or telephone conference in connection with proceedings before a New Zealand Court or an Australian Court:
  - (f) Receiving, for the purposes of the Evidence Amendment Act 1990, facsimiles of documents or things:
  - (g) The form of New Zealand subpoenas and other documents:
  - (h) Such other matters as are contemplated by or necessary for giving full effect to this Act.
- (2) In the case of any other New Zealand Court, rules or, as the case may be, regulations may be made under the authority of any enactment that provides for the making of rules or regulations governing the practice and procedure of the Court, that make provision for or relate to any of the matters referred to in paragraphs (a), (c), and (e) to (h) of subsection (1) of this section.

(3)

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

Subsection (3) was substituted, as from 1 April 1995, by section 2(1) Evidence Amendment Act 1995 (1995 No 6). *See* clause 2 Evidence Amendment Act Commencement Order (No 2) 1995 (SR 1995/62).

Subsection (3) was repealed, as from 1 April 1995, by section 2(1) Evidence Amendment Act 1995 (1995 No 6). *See* clause 2 Evidence Amendment Act Commencement Order (No 2) 1995 (SR 1995/62).

### 34 Regulations

Notwithstanding the provisions of this Act or any other Act, the Governor-General may from time to time, by Order in

Council, make regulations for either or both of the following purposes:

- (a) Prescribing the matters in respect of which fees are payable under this Act and the amounts of such fees:
- (b) The payment of amounts of money to witnesses in respect of expenses incurred in complying with New Zealand subpoenas.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

## **Amendments to Evidence Amendment Act 1990**

### **35 Interpretation**

The Evidence Amendment Act 1990 is hereby amended by repealing section 2, and substituting the following section:

#### **“2 Interpretation**

In this Act, unless the context otherwise requires,—

“**Australian Act** means—

- “(a) An Act of the Commonwealth of Australia:
- “(b) An Act of a State of the Commonwealth of Australia:
- “(c) An Act or an Ordinance of a Territory of the Commonwealth of Australia:

“**Australian regulation** means a regulation, order, notice, proclamation, or instrument made, given, or issued under an Australian Act.”

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

### **36 Section 3 repealed**

The Evidence Amendment Act 1990 is hereby amended by repealing section 3.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). *See* clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**37 Facsimiles**

Section 5 of the Evidence Amendment Act 1990 is hereby amended by omitting the words “Rules of Court made under section 51C of the Judicature Act 1908”, and substituting the words “rules made under the authority of any other Act”.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**38 Judicial notice of certain signatures, seals, and stamps**

The Evidence Amendment Act 1990 is hereby amended by repealing section 6, and substituting the following section:

“6

Judicial notice shall be taken of—

- “(a) The impression of the seal or stamp of an Australian Court; and
- “(b) The signature of a Judge, a Master, a Judicial Registrar, a Magistrate, a Registrar, a District Registrar, a Deputy Registrar or a Deputy District Registrar of an Australian Court; or
- “(c) The official signature or seal of a person who holds, or who has held, office in Australia pursuant to or under an Australian Act; or
- “(d) The impression of the official seal or stamp of a person referred to in paragraph (b) or paragraph (c) of this section; and
- “(e) If judicial notice is taken of a signature or the impression of a stamp or seal under paragraph (b) or paragraph (c) or paragraph (d) of this section, the fact that a person referred to in paragraph (b) or paragraph (c) holds, or has held, the office concerned—

if the signature or the impression appears on an official or judicial document.”

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**39 Copies of Australian Acts and regulations to be evidence**

Section 7 of the Evidence Amendment Act 1990 is hereby amended by inserting, after the word “State”, the words “or Territory”.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**40 Evidence of official Australian documents**

(1) Section 8(2) of the Evidence Amendment Act 1990 is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) A copy of an Australian Government Gazette or a Gazette of a State or Territory of Australia, as the case may be, that contains a copy of the document; or.”

(2) Section 8(2)(c) of the Evidence Amendment Act 1990 is hereby amended by inserting, after the word “State”, the words “or Territory”.

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).

**41 Evidence of certain acts under Australian law**

The Evidence Amendment Act 1990 is hereby amended by inserting, after section 10, the following section:

**“10A Evidence of certain acts under Australian law**

If, under an Australian Act or an Australian regulation, the Governor-General of Australia or a Minister of the Commonwealth of Australia, or the Governor, Administrator, or a Minister of a State or a Territory of Australia, as the case may be, is authorised or empowered to do, exercise, or perform any act, power, function, or duty, production of an Australian Government Gazette or a Gazette of a State or Territory of Australia, as the case may be, purporting to contain a notice of the doing, exercise, or performance of the act, power, function, or duty is evidence that it was lawfully done, exercised, or performed.”

This Act was repealed, as from 1 August 2007, pursuant to section 215 Evidence Act 2006 (2006 No 69). See clause 2(2) Evidence Act 2006 Commencement Order 2007 (SR 2007/190).