



**Response to the questionnaire concerning the
Treatment of Foreign Law**

FEBRUARY 2008

NEW ZEALAND

Identification

Name of the Member State: New Zealand

For follow-up purposes

Name of contact person: Julie Nind

Telephone number: 0064 4 4949741

E-mail address: julie.nind@justice.govt.nz

Part I – General Questions

Please answer the following general questions with regard to the *European Convention of 7 June 1968 on Information on Foreign Law* (the "London Convention"), the *Inter-American Convention of 8 May 1979 on Proof of and Information on Foreign Law* (the "Montevideo Convention"), the *Convention of 22 January 1993 on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters* (the "Minsk Convention") and any bilateral treaty on proof of and / or information on foreign law ("bilateral treaty").

In this Questionnaire, the term "foreign law" encompasses both foreign internal (substantive) law and foreign private international law.

1) Is your State Party to:

- a) The London Convention [] **NO**
- b) The Montevideo Convention [] **NO**
- c) The Minsk Convention [] **NO**
- d) Any bilateral treaty [] **NO**

(Please indicate the number of bilateral treaties concluded: ____)

2) If not, does your State intend to become in the near future a Party to:

- a) The London Convention [] **NO**
- b) The Montevideo Convention [] **NO**
- c) The Minsk Convention [] **NO**
- d) Or conclude any bilateral treaty [] **NO**

3) Please indicate (if applicable) the number of requests received in 2006 and the average number of weeks taken to respond to the requests under:

- a) The London Convention No of requests: ____ No of weeks: ____
- b) The Montevideo Convention No of requests: ____ No of weeks: ____
- c) The Minsk Convention No of requests: ____ No of weeks: ____
- d) Any bilateral treaty No of requests: ____ No of weeks: ____

Not applicable.

4) Please indicate (if applicable) the number of requests that emanated from the judicial authorities in your State in 2006 and the average number of weeks taken to respond to these requests under:

- a) The London Convention No of requests: ____ No of weeks: ____
- b) The Montevideo Convention No of requests: ____ No of weeks: ____
- c) The Minsk Convention No of requests: ____ No of weeks: ____
- d) Any bilateral treaty No of requests: ____ No of weeks: ____

Not applicable.

5) Do you foresee an increase in the number of requests referred to in:

- a) Question No 3 (incoming requests)
- [] YES
- [] NO

Not applicable.

b) Question No 4 (outgoing requests)?

YES

NO

Not applicable.

6) If so, in which areas of the law? Please specify for each of the sub-questions:

a)

b)

Not applicable.

7) Please indicate, if applicable, in bullet form to what extent you are satisfied with the instruments referred to in Question No 1:

Not applicable

8) Please indicate, if applicable, in bullet form any shortcomings of these instruments:

Not applicable.

Part II – Free public access to information on the content of the law

9) Does your State and / or Regional Economic Integration Organisation (“REIO”) provide online access to its legislation through an official (governmental) website?

YES. Please specify whether this information is also provided in a non-official language and, if so, in which language(s):

New Zealand legislation is available online at www.legislation.govt.nz. This is an official government website operated by the New Zealand Parliamentary Counsel Office. However, at this time, the actual legislation on the website has no official status.

Over the next three years, there is an “officialisation” programme where all the online legislation will be checked for accuracy and completeness. When this work is complete, the intention is to enact legislation that will change the website’s status to the official source of legislation, providing both online HTML versions and down-loadable PDF versions.

NO. Does another, non-governmental body or organisation provide this information online (please specify which organisation or body)?

10) Does your State and / or REIO respond to written or oral requests for information on the content and / or application of its law?

YES. Please specify for which areas of the law:

Government agencies will usually provide general information on the content of New Zealand’s law, but do not provide advice on the application of particular laws. This information is provided in response to requests and is not a particular service that is offered by Government agencies.

NO. Does another, non-governmental body or organisation provide this service (please specify which organisation or body)?

11) Are the services in Question No 10 available to people in other States?

YES. Is this service offered in any non-official language and, if so, in which?

Responses to questions or letters are provided in English.

NO

12) If yes, do people in other States have access to this service at the same costs as residents?

YES

As noted above in question 10, this is not a particular service offered by Government agencies. However, agencies do not distinguish between requests from people in New Zealand or other States. Information is usually provided at no cost.

NO

13) Do you foresee the proportion of people in other States using these services increase in the future?

YES

As noted above in question 10, there are no specific services offered by Government agencies. However, the number of requests for information about New Zealand's laws is likely to increase as a result of increased cross-border dealings (personal and business).

NO

Please specify:

Part III – Access to information on the content of foreign law at the litigation stage

14) Please indicate, where possible, a rough estimate of the percentage of civil and commercial law cases heard by the judicial authorities of your State in 2006 which required the application of foreign law and whether this percentage is likely to increase. If no estimate can be obtained for 2006, please refer to another year. Percentage: ____% (year: ____). Likely to increase: [] YES [] NO

This information is not collected in New Zealand.

15) Please indicate, if possible, the most common areas of foreign law applied by or invoked before the judicial authorities of your State.

- [] Marriage and nullity of marriage
- [] Divorce and legal separations
- [] Parental responsibility
- [] Parent-child relationship
- [] International child protection including child abduction and child adoption
- [] Protection of adults
- [] Maintenance (child support and other forms of family support)
- [] Traffic accidents
- [] Products liability
- [] Other types of tort
- [] Consumer protection
- [] Commercial contracts
- [] Sale of goods
- [] Securities transactions
- [] Property
- [] Inheritance
- [] Bankruptcy
- [] Choice of court agreements
- [] Other, please specify:

This information is not collected in New Zealand.

16) Please identify, if possible, the States whose laws are most frequently applied by or invoked before judicial authorities in your State:

This information is not collected in New Zealand.

17) In your State, a judicial authority ascertains foreign law (check more than one box if applicable):¹⁵

- a) [] *ex officio* without the assistance of an expert¹⁶ (e.g. law firm, specialised institute,¹⁷ university, government (i.e. specialised department or embassy), etc.)
- b) [] *ex officio* with the assistance of an expert
- c) [] by submitting, *ex officio*, a request for information under a bilateral or multilateral treaty (where applicable)
- d) [] as the result of an (express) agreement of all parties, without the assistance of an expert
- e) [] as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by the judicial authority

- f) as the result of an (express) agreement of all parties, with the assistance of an expert chosen (appointed) by all parties
- g) by submitting, as the result of an (express) agreement of all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- h) at the request of a party (without the objection of the other or another party) or all parties, without the assistance of an expert
- i) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by the judicial authority
- j) at the request of a party (without the objection of the other or another party) or all parties, with the assistance of an expert chosen (appointed) by one or all parties
- k) by submitting, at the request of a party (without the objection of the other or another party) or all parties, a request for information under a bilateral or multilateral treaty (where applicable)
- l) by any other method (please specify):

The relevant legislative provision is section 144 of the Evidence Act – Evidence of foreign law (attached, Appendix One). This allows evidence of foreign law to be given in a number of ways:

- **Expert evidence. These can be appointed, and paid for, by the parties. There is also provision in the New Zealand High Court Rules for court appointed experts in civil cases (Rules 324-330D, and Schedule 4). Where the court appoints an expert the court can make an order as to who pays the cost of the expert – one party alone, shared cost or the court.**
- **The court may be referred to documents containing a statute or other written law. This could be an official government printed version or an unofficial version.**
- **The court may be referred to judgments and texts setting out the unwritten or common law of a country as well as the interpretation of statute and written law.**

18) Please rank in order of priority (1 being the highest) the sources consulted by judicial authorities in your State to ascertain the content of foreign law under any of the methods described in a), d) and h) of Question No 17:

- Internet (official legislation, case-law and legal publications websites)
- Internet (legislation, case-law and legal publications from private databases (as opposed to official databases))
- Local or personal library (local electronic databases)
- Local or personal library (printed legislation, case-law and legal publications)
- Other:

We regret that this information is not available.

19) Please explain whether and, if so, how the judicial authorities in your State verify the reliability and / or authenticity of these sources and the information provided therein:

We regret that this information is not available.

20) Where these sources and the information provided therein are not available in a language understood by the judicial authority, please describe the mechanisms used to address this difficulty. Description:

We regret that this information is not available.

21) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of your State? In the case of a specialised institute, does it need to meet certain requirements?

YES

NO

Under the Evidence Act 2006 an "expert means a person who has specialised knowledge or skill based on training, study, or experience" (section 4).

The definition is broad enough to cover various types of experts. The area of expertise will have a bearing on what type and/or levels of training, skill or experience are sufficient to be considered an "expert". It is likely that to be considered an expert in foreign law some legal qualification will be required. In a particular case it will be up to the Judge to determine if a person is appropriately qualified to be considered an expert.

22) Where a judicial authority ascertains foreign law with the assistance of an expert (under any of the methods described in b), e) and i) of Question No 17), does this expert need to be a qualified lawyer or jurist in accordance with the law of the State whose laws are being ascertained? In the case of a specialised institute, does it need to meet certain requirements?

YES

NO

See above answer to Question No 21.

23) Please specify which individuals and / or institutions may provide expertise under any of the methods described in b), e) and i) of Question No 17:

a) Local private expert (e.g. law professor, lawyer and / or jurist in private practice)

YES

NO

b) Foreign private expert (e.g. law professor, lawyer and / or jurist in private practice)

YES

NO

c) Local specialised institute

YES

NO

d) Foreign specialised institute

YES

NO

e) Local government (including embassies abroad)

YES

- NO
f) Foreign government (including embassy in your State)
 YES
 NO
g) Member of the local judicial authority
 YES
 NO
h) Member of a foreign judicial authority
 YES
 NO
i) Other(s):
j) Which of the above is most often used?

See above answer to Question No 21.

24) Please indicate who bears the costs of the expertise provided under any of the methods described in b), e) and i) of Question No 17:

- The requesting judicial authority
 The party that raised the application of foreign law
 The party(ies) against whom costs will be awarded
 All parties
 Other:

Where an expert is appointed by a party, that party will bear the cost.

Where an expert is appointed under the High Court Rules (see above Question No 17), the court can make an order as to who pays the cost of the expert – one party alone, shared cost or the court.

25) Would your answers to Questions Nos 21-24 be the same for the expert referred to under f) and j) of Question No 17?

YES

The same rules apply regardless of the expert.

NO, please explain:

26) Please describe, if possible, the common characteristics of requests for information on foreign law submitted under any of the methods described in c), g) and k) of Question No 17: The type of question asked; who most frequently asks questions (*e.g.*, parties with too little or no resources to afford an expert); the reasons why questions are asked (*e.g.*, no material available in a language understood by the judicial authority seized of the matter); etc.

Description:

Not applicable.

27) Please indicate whether judicial authorities in your State can transmit the request for information directly to a receiving agency in the State addressed under any of the methods described in c), g) and k) of Question No 17?

- YES
 NO, please explain:

Not applicable.

28) If so, can the request be transmitted by regular non-secured e-mail?

YES

NO, please explain:

Not applicable.

Part IV – Future development of an instrument and / or mechanisms to access information on the content of foreign law

29) In the light of your answers to this Questionnaire, are you of the view that the Hague Conference should develop a global instrument and / or mechanisms to access information on the content of foreign law?

YES

NO

Please explain:

New Zealand does not consider that the accessibility of foreign law is of sufficient concern to be accorded a high priority by the Hague Conference at this time.

30) If the Hague Conference were to develop a global instrument to access information on the content of foreign law:

a) Would you be in favour of a flexible instrument in particular with respect to:

i) the availability of several channels through which information on foreign law can be sought and in relation to experts from whom information can be obtained?

YES

NO

Please explain:

ii) the use that may be made of each such channel and expert?

YES

NO

Please explain:

iii) the availability of information technologies to ensure a speedy process of the requests and to alleviate language barriers?

YES

NO

Please explain:

b) Should the information received provide an objective and general description of the law in the foreign State, including references to relevant case-law (as opposed to a specific answer as to how the foreign law should be applied to the issue(s) at stake)?

YES

NO, please explain:

c) Should the information received be non-binding (as opposed to binding)?

YES

NO, please explain:

d) Should this instrument and / or these mechanisms be general in order to permit access to different areas of foreign law (as opposed to being limited to certain area(s) of the law)?

YES

NO, please explain:

e) Should this instrument and / or these mechanisms contain provisions on legal assistance to accommodate individuals with little or no resources?

YES

NO, please explain:

Legal assistance is more appropriately dealt with in a specific instrument.

f) Should this instrument and / or these mechanisms be extended to notaries and other professionals who need to have access to the content of foreign law in contexts other than litigation (*e.g.* in relation to successions)?

YES

NO, please explain:

A particular standard of proof for foreign law is necessary for court proceedings in New Zealand. This is not the case for other users. It might be less problematic if such an extension were optional rather than part of the core obligations of any instrument that might be concluded.

31) If this is not yet the case for your State / REIO, are you of the opinion that it would be useful to make information on the content of the law of your State / REIO available online in a central database?

YES

NO

Please explain.

New Zealand legislation is already available online. Some other legal information such as court judgments

(<http://jdo.justice.govt.nz/jdo/Introduction.jsp>) and law journals

(www.nzlii.org) is also available online.

We do not consider that the additional benefits to be gained from placing such information on a central database would justify the costs. However, it might be helpful to provide guidance on where to locate information on New Zealand's laws on the internet.

32) Are you of the opinion that it would be useful to have information on the content of the law of your State / REIO available online in a standard electronic format (*e.g.* in the form of country profiles that are based on a pre-established, harmonised structure) available in English and French (or other language(s)) in addition to its language of origin?

YES

NO

Please explain.

Establishing and maintaining such a database would require a disproportionate investment of resources compared with the benefit to be obtained. Of necessity, it would be generic in nature and could not be a substitute for specific legal advice in individual cases.

However, as noted above, it could be helpful to provide guidance on where to locate information on New Zealand's laws on the internet.

33) If information on the content of the law of your State were to be made available worldwide in either of the forms mentioned in Questions Nos 31 and 32, please identify for which of the following subjects it would be most valuable?

- Legal order in general
- Organisation of the courts of justice system
- Organisation of the administrative tribunals system
- Legal professions
- Access to justice including legal aid
- Jurisdiction of the courts / administrative tribunals
- Bringing a case to a court / an administrative tribunal
- Alternative dispute resolutions
- Procedural time limits
- Applicable law
- Service of documents
- Taking of evidence and modes of proof
- Interim measures and precautionary measures
- Enforcement of judgments
- Simplified and accelerated procedures
- Marriage and nullity of marriage
- Divorce and legal separations
- Parental responsibility
- Parent-child relationship
- International child protection including child abduction and child adoption
- Protection of adults
- Maintenance (child support and other forms of family support)
- Traffic accidents
- Products liability
- Other types of tort
- Consumer protection
- Commercial contracts
- Sale of goods
- Securities transactions
- Property
- Secured interests
- Inheritance
- Bankruptcy
- Legalisation and / or certification of documents
- Notarial acts or certificates
- Other, please specify:

Please see answer to question 32.

34) Are you of the opinion that the instrument identified under Question No 29 should be developed in combination with either of the instruments described under Questions Nos 31 and 32?

- YES
- NO

Please explain.

Please see answer to question 32.

35) Other comments on the models proposed in Preliminary Document No 21 A, any other model, or on a possible future instrument in this field:

Evidence Act 2006 – section 144 Evidence of foreign law

- (1) A party may offer as evidence of a statute or other written law, proclamation, treaty, or act of State, of a foreign country—
 - (a) evidence given by an expert; or
 - (b) a copy of the statute or other written law, proclamation, treaty, or act of State that is certified as a true copy by a person who might reasonably be supposed to have the custody of the statute or other written law, proclamation, treaty, or act of State; or
 - (c) any document containing the statute or other written law, proclamation, treaty, or act of State that purports to have been issued by the government or official printer of the country or by authority of the government or administration of the country; or
 - (d) any document containing the statute or other written law, proclamation, treaty, or act of State that appears to the Judge to be a reliable source of information.
- (2) In addition, or as an alternative, to the evidence of an expert, a party may offer as evidence of the unwritten or common law of a foreign country, or as evidence of the interpretation of a statute or other written law or a proclamation of a foreign country, a document—
 - (a) containing reports of judgments of the courts of the country; and
 - (b) that appears to the Judge to be a reliable source of information about the law of that country.
- (3) A party may offer as evidence of a statute or other written law of a foreign country, or of the unwritten or common law of a foreign country, any publication—
 - (a) that describes or explains the law of that country; and
 - (b) that appears to the Judge to be a reliable source of information about the law of that country.
- (4) A Judge is not bound to accept or act on a statement in any document as evidence of the law of a foreign country.
- (5) A reference in this section to a statute of a foreign country includes a reference to a regulation, rule, bylaw, or other instrument of subordinate legislation of the country.
- (6) Subpart 1 of Part 2 (which relates to hearsay evidence) does not apply to evidence offered under this section.