Version
as at 28 October 2021

Trans-Tasman Proceedings Act 2010

Public Act	2010 No 108
Date of assent	31 August 2010
Commencement	see section 2

Contents

		Page
1	Title	5
2	Commencement	5
	Part 1 **Preliminary and general provisions**	
3	Purpose of, and guides to, this Act	6
4	Interpretation	7
5	References to repealed Australian enactments	12
6	Trans-Tasman market proceedings provisions not affected	12
	[Repealed]	
7	Act binds the Crown	12
8	Regulations	12
9	Procedural rules	13
10	Amendments to, and revocations of, other enactments	13

Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

This Act is administered by the Ministry of Justice.

Part 2
Trans-Tasman proceedings

Subpart 1—Service in Australia of initiating documents for civil proceedings commenced in New Zealand courts and tribunals

11 Guide to this subpart 13
12 Application of this subpart 14
13 Service of initiating documents in Australia 14
14 Effect of service under section 13 15
15 Information for defendant that must be in or with documents served under section 13 15
16 Consequences of failing to provide information 15
17 Time for filing appearance or response document 16
18 Defendant's address for service 17
19 Defendant may appear remotely in hearing of application for stay 17
20 Security for costs 17

Subpart 2—New Zealand courts declining jurisdiction on grounds that Australian court is more appropriate forum

21 Guide to this subpart 18
22 Application for stay of New Zealand civil proceeding on grounds that Australian court is more appropriate forum 18
23 Hearing on, or other determination of, application 19
24 Order of stay of proceeding 20
25 Exclusive choice of court agreements 21
26 Power to make stay subject to conditions 22
27 How this subpart affects New Zealand court's powers to stay proceedings 22
28 No restraint of proceedings 22
29 Suspension of limitation periods for claims made earlier in stayed proceedings in Australian courts 22

Subpart 3—New Zealand courts giving interim relief in support of civil proceedings in Australian courts

30 Guide to this subpart 23
31 Application to New Zealand court for interim relief in support of Australian proceeding 23
32 Giving of interim relief in support of Australian proceeding 24
33 Application of New Zealand court procedural rules to interim relief proceeding 24

Subpart 4—Remote appearances unrelated to remote evidence

Introduction

34 Guide to this subpart 24

How subpart relates to other Acts

35 Evidence Act 2006 trans-Tasman evidence regime governs remote appearances related to remote evidence 25
36 Courts (Remote Participation) Act 2010 does not apply to appearances under this subpart 25

Remote appearances from Australia in New Zealand proceedings

37 Application of sections 38 to 43 26
38 New Zealand courts or tribunals may give parties in Australia leave to appear remotely in civil proceedings 26
39 Appearing remotely without leave in hearing of application for stay 27
40 Remote appearances from Australia by audiovisual link 28
41 Remote appearances from Australia by audio link 28
42 Costs of remote appearances from Australia 28
43 Powers of New Zealand court or tribunal in Australia 29

Remote appearances from New Zealand in Australian proceedings

44 People in New Zealand appearing remotely in Australian proceedings 29
45 Powers of Australian courts or tribunals in New Zealand 29
46 Orders of Australian courts and tribunals 29
47 Enforcement of orders of Australian courts and tribunals 29
48 Place from which remote appearance made part of Australian court or tribunal 30
49 Privileges, protections, and immunities of participants in Australian proceedings 30
50 Contempt of Australian courts or tribunals 30
51 Assistance to Australian courts and tribunals 31

Subpart 5—Recognition and enforcement in New Zealand of specified judgments of Australian courts and tribunals

52 Guide to this subpart 32
53 When registrable Australian judgments are enforceable in New Zealand 32
54 Registrable Australian judgment defined 32
55 Orders applying subpart to Australian tribunals and their orders 34
56 Application to register Australian judgment 35
57 Registration of registrable Australian judgments 36
58 Currency 36
59 Money judgments partly satisfied when entitled person applies for registration 37
60 Judgments only some provisions of which are registrable 37
61 Setting aside registration 37
62 Notice to liable person 38

63 Effect of registration and notification 39
64 Restriction on enforcing registered Australian judgments 39
65 Stay of enforcement of registered judgment so that liable person can challenge it in Australian court or tribunal 39
66 Costs and expenses of enforcement of registered Australian judgments 40
67 Interest on registered Australian judgments 41
68 Enforcement of registered Australian judgment unaffected by certain rules of private international law 41

Subpart 6—Recognition and enforcement in New Zealand of judgments given in Australian trans-Tasman market proceedings

69 Guide to this subpart 41
70 When judgments given in Australian trans-Tasman market proceedings are registrable under subpart 5 41
71 Registrable judgments include interim injunctions and other interlocutory orders 42
72 Registration applications may be made only to High Court 42

Subpart 7—Recognition and enforcement in New Zealand of Australian judgments imposing civil pecuniary penalties

73 Guide to this subpart 42
74 When judgments imposing civil pecuniary penalties are registrable under subpart 5 42
75 Registration applications may be made only to specified courts 43

Subpart 8—Recognition and enforcement in New Zealand of Australian judgments imposing regulatory regime criminal fines

76 Guide to this subpart 44
77 When judgments imposing regulatory regime criminal fines are registrable under subpart 5 44
78 Registration applications may be made only to High Court 45

Part 3
Special provisions applying to certain proceedings in High Court of New Zealand and Federal Court of Australia

79 Part not limited by Part 1 or 2 45
80 Courts (Remote Participation) Act 2010 does not apply to remote appearances under this Part 45
81 Interpretation 45
82 High Court may order New Zealand proceedings to be heard in Australia 46
83 Australian counsel entitled to practise in High Court 46
84 High Court may set aside subpoena issued in New Zealand proceeding 47
85 Injunctions and orders in New Zealand proceedings 48

86 Issue of subpoenas in New Zealand proceedings 48
87 Powers of Federal Court of Australia 48
88 Issue of subpoenas in Australian proceedings 49
89 Failure of witness to comply with subpoena issued in Australian proceeding 50
90 Federal Court of Australia may administer oaths in New Zealand 51
91 Orders made by Federal Court of Australia not subject to review 51
92 Contempt of Federal Court of Australia 51
93 Arrangements to facilitate sittings 52
94 Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings 52
95 High Court may take evidence at request of Federal Court 53
96 Power to make rules for purposes of this Part 53
97 Transitional provision for certain proceedings commenced before commencement of this Part 54

Schedule 1 55
Trans-Tasman Agreement

Schedule 2 63
Amendments to, and revocations of, other enactments

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Trans-Tasman Proceedings Act 2010.

2 Commencement

(1) Parts 1 and 2 and Schedules 1 and 2 come into force on a date appointed by the Governor-General by Order in Council.

(2) The rest of this Act comes into force on the day after the date on which this Act receives the Royal assent.

(3) An order under this section is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 2(1): Parts 1 and 2 and Schedules 1 and 2 brought into force, on 11 October 2013, by clause 2 of the Trans-Tasman Proceedings Act Commencement Order 2013 (SR 2013/342).

Section 2(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Part 1
Preliminary and general provisions

3 Purpose of, and guides to, this Act

(1) The purpose of this Act is to—

(a) streamline the process for resolving civil proceedings with a trans-Tasman element in order to reduce costs and improve efficiency; and

(b) minimise existing impediments to enforcing certain Australian judgments and regulatory sanctions; and

(c) implement the Trans-Tasman Agreement in New Zealand law.

(2) Provisions to implement the Trans-Tasman Agreement in Australian law are in the Trans-Tasman Proceedings Act 2010 (Aust) (the **Australian Act**).

(3) This Act provides for the following matters:

(a) service in Australia of initiating documents for civil proceedings commenced in New Zealand courts and tribunals:

(b) New Zealand courts declining jurisdiction and, by order, staying proceedings in New Zealand on the grounds that an Australian court is the more appropriate forum to determine the proceedings:

(c) New Zealand courts giving interim relief in support of civil proceedings commenced in Australian courts:

(d) people in Australia appearing remotely (other than to give, examine a person giving, or make submissions in relation to, remote evidence, under sections 168 to 172 of the Evidence Act 2006) in civil proceedings in New Zealand courts and tribunals:

(e) people in New Zealand appearing remotely (other than to give, examine a person giving, or make submissions in relation to, remote evidence, under sections 173 to 180 of the Evidence Act 2006) in civil proceedings in Australian courts and tribunals:

(f) recognition and enforcement in New Zealand of specified judgments of Australian courts and tribunals:

(g) recognition and enforcement in New Zealand of judgments (other than those imposing civil pecuniary penalties) given in Australian trans-Tasman market proceedings:

(h) recognition and enforcement in New Zealand of Australian judgments (including those given in an Australian trans-Tasman market proceeding) imposing civil pecuniary penalties:

(i) recognition and enforcement in New Zealand of Australian judgments imposing regulatory regime criminal fines.

(4) This Act also amends sections 150 to 162 of the Evidence Act 2006, which relate to subpoenas issued in civil proceedings in New Zealand courts being served and complied with in Australia, so that they also provide for—

(a) leave to serve a New Zealand subpoena on a witness in Australia to be given by a New Zealand court that is not a superior New Zealand court if the subpoena is one issued by that court or is one issued by a tribunal declared to be a New Zealand court under section 152 of the Evidence Act 2006; and

(b) subpoenas issued in criminal proceedings in New Zealand courts to be served and complied with in Australia.

(5) **New Zealand court** and **New Zealand subpoena** have, in subsection (4), the meanings given to them by section 150 of the Evidence Act 2006.

(6) Subsections (3) to (5), and the guides to subparts 1 to 8 of Part 2, are by way of explanation only. They do not affect any section specified in them.

(7) Part 3 of this Act, which stands apart from Parts 1 and 2, sets out special provisions applying to certain proceedings in the High Court of New Zealand and the Federal Court of Australia.

Section 3(7): inserted, on 1 March 2017, by section 4 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

4 Interpretation

(1) In Parts 1 and 2, unless the context otherwise requires,—

adjudicative function, in relation to a tribunal, means a function of the tribunal of determining the rights or liabilities of a person in a proceeding in which there are 2 or more parties (including determining that those rights or liabilities are altered)

appear remotely, in relation to a person and a hearing in or related to a proceeding in a court or tribunal in the territory of a party to the Trans-Tasman Agreement, means that the person participates in the hearing, from the territory of the other party to the Trans-Tasman Agreement, by remote appearance medium

appearance or response document has the meaning given to it by section 17(2)

audio link means facilities (for example, telephone facilities) that enable audio communication between people in different places

audiovisual link means facilities that enable audio and visual communication between people in different places

Australian Act has the meaning given to it by section 3(2)

Australian law means a law of the Commonwealth, a State, or a Territory, of Australia

Australian trans-Tasman market proceeding means a proceeding in the Federal Court of Australia in which—

(a) the matters for determination are or include a matter or matters arising under—

(i) any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 (Aust); or

(ii) a provision of Part VI or XII of the Trade Practices Act 1974 (Aust) in so far as it relates to any of sections 46A, 155A, or 155B of that Act; or

(b) any other kind of relief specified in an order under subsection (2)(a) is sought; or

(c) an interlocutory order is sought in relation to a proceeding of the kind mentioned in paragraph (a) or (b); or

(d) the enforcement is sought of a judgment given in a proceeding of the kind mentioned in paragraph (a) or (b)

civil pecuniary penalty means a pecuniary penalty imposed in a civil proceeding in relation to a contravention of legislation

civil proceeding means a proceeding that is not a criminal proceeding

commencement New Zealand court or tribunal, in relation to an initiating document, means the New Zealand court or tribunal in which the civil proceeding to which the initiating document relates was commenced

court includes a Judge, or Associate Judge, of the court

criminal proceeding means a proceeding that is not a proceeding in respect of a claim for compensation or under proceeds of crime legislation, but is—

(a) a prosecution for an offence; or

(b) a procedure, other than a prosecution, that, under a law of a country, State, or Territory, may be used to do either or both of the following:

(i) determine liability for an offence:

(ii) impose a penalty for an offence; or

(c) related to or associated with a prosecution or procedure in paragraph (a) or (b)

defendant, in relation to a proceeding or application, means a person served or intended to be served with the initiating document for the proceeding

enforcement of a judgment means the enforcement or execution of the judgment

entitled person, in relation to a judgment, means a person—

(a) in whose favour the judgment was given; or

(b) in whom rights under the judgment have (by assignment, succession, or otherwise) become vested

examination of a person giving evidence means the examination-in-chief, cross-examination, or re-examination of the person

excluded interim relief has the meaning given to it by section 31(2)

excluded matter means all or any of the following:

(a) the dissolution of a marriage:

(b) the enforcement of—

(i) an obligation under Australian law to maintain a spouse or a de facto partner (within the meaning of the Acts Interpretation Act 1901 (Aust)):

(ii) an obligation under New Zealand law to maintain a spouse, civil union partner, or de facto partner:

(c) the enforcement of a child support obligation:

(d) an arrangement or matter declared by an order under subsection (2)(b) to be an arrangement or matter excluded from the operation of subpart 1 or 5, or subparts 1 and 5, of Part 2

exclusive choice of court agreement has the meaning given to it by section 25(4)

given, in relation to a judgment, includes entered, granted, or made

High Court means the High Court of New Zealand

initiating document means a document—

(a) by which a civil proceeding is commenced in a New Zealand court or tribunal; or

(b) by reference to which a person becomes a party to a civil proceeding in a New Zealand court or tribunal

judgment of a court or tribunal means a judgment, award, decree, or order of the court or tribunal, whether or not it—

(a) is given in a primary proceeding or in an interlocutory proceeding; or

(b) is a money judgment or a non-money judgment

liable person, in relation to a judgment, means a person against whom the judgment—

(a) was given; or

(b) is enforceable under a law of the original jurisdiction

money judgment means a judgment under which a sum of money is payable

non-money judgment means a judgment that is not a money judgment (including, without limitation, a judgment that does not involve the payment of money but requires a person to do, or refrain from doing, other things)

original court or tribunal, in relation to a judgment, means the court or tribunal that gave the judgment

original jurisdiction, in relation to a judgment, means the Commonwealth of Australia, or State or Territory of Australia, as the case may be, in which the original court or tribunal is established

party, in relation to a proceeding, means a plaintiff or defendant

plaintiff, in relation to a proceeding, means the person by whom or on whose behalf the proceeding is brought

procedural rules, in relation to a court or tribunal, means rules, or any other laws (other than Parts 1 and 2 or any regulations made under those Parts),—

(a) defining or governing the exercise of the court's or tribunal's jurisdiction; or

(b) regulating the court's or tribunal's practice and procedure

proceeding, in a court or tribunal, includes—

(a) an interlocutory proceeding in the court or tribunal; and

(b) a proceeding that relates to an application made to the court or tribunal (including an application for interim relief under subpart 3 of Part 2)

proceeds of crime legislation means the following:

(a) the Proceeds of Crime Act 1987 (Aust):

(b) the Proceeds of Crime Act 2002 (Aust):

(c) a law of a State or Territory of Australia that is a corresponding law (within the meaning of the Proceeds of Crime Act 2002 (Aust)):

(d) any other Australian law that is specified for the purposes of this paragraph by an order under subsection (2)(c):

(e) the Proceeds of Crime Act 1991, and sections 142A to 142Q of the Sentencing Act 2002:

(f) the Criminal Proceeds (Recovery) Act 2009

registered, in relation to an Australian judgment, means registered in a New Zealand court under section 57

registrable Australian judgment has the meaning given to it by section 54

Registrar, in relation to a court or tribunal,—

(a) means a Registrar of the court or tribunal; and

(b) includes a Deputy Registrar of the court or tribunal

regulatory regime criminal fine means a fine—

(a) for a criminal offence under a provision of Australian legislation; and

(b) that is declared by an order under section 77 to be a regulatory regime criminal fine for the purposes of subparts 5 and 8 of Part 2

remote appearance medium means—

(a) an audio link; or

(b) an audiovisual link

remote evidence means evidence given or to be given under section 168 or 173 of the Evidence Act 2006

submissions in relation to remote evidence means—

(a) submissions on whether, and if so in what way or ways, remote evidence may or must be given; and

(b) submissions on whether remote evidence is admitted or admissible; and

(c) other submissions in relation to remote evidence

superior New Zealand court means a New Zealand court that is—

(a) the Supreme Court of New Zealand; or

(b) the Court of Appeal of New Zealand; or

(c) the High Court

Trans-Tasman Agreement means the Agreement between the Government of New Zealand and the Government of Australia on Trans-Tasman Court Proceedings and Regulatory Enforcement done at Christchurch on 24 July 2008, the text of which is set out in Schedule 1

working day, of a New Zealand court or tribunal in relation to a proceeding in the court or tribunal, has the same meaning—

(a) as in the court's or tribunal's procedural rules; or

(b) if those rules do not define the term, as in section 13 of the Legislation Act 2019.

(2) The Governor-General may, by Order in Council,—

(a) specify other kinds of relief the seeking of which in a proceeding in the Federal Court of Australia makes it an Australian trans-Tasman market proceeding for the purposes of Parts 1 and 2 and under paragraph (b) of the definition of that term in subsection (1):

(b) declare an arrangement or matter to be excluded from the operation of subpart 1 or 5, or subparts 1 and 5, of Part 2 for the purposes of paragraph (d) of the definition of excluded matter in subsection (1):

(c) specify any other Australian law for the purposes of paragraph (d) of the definition of proceeds of crime legislation in subsection (1).

(3) An order under subsection (2) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 4(1): amended, on 1 March 2017, by section 5(1) of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

Section 4(1) **procedural rules**: amended, on 1 March 2017, by section 5(2) of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

Section 4(1) **working day** paragraph (b): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 4(2)(a): amended, on 1 March 2017, by section 5(3) of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

Section 4(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

5 References to repealed Australian enactments

A reference in, or in any regulations made under, this Act to a repealed Australian enactment is a reference to an Australian enactment that, with or without modification, replaces, or that corresponds to, the Australian enactment repealed.

Compare: 1999 No 85 s 22(2)

6 Trans-Tasman market proceedings provisions not affected

[Repealed]

Section 6: repealed, on 1 March 2017, by section 6 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

7 Act binds the Crown

This Act binds the Crown.

8 Regulations

(1) The Governor-General may, by Order in Council, make regulations—

(a) prescribing applications, forms, notices, and other documents for the purposes of this Act, and requiring their use:

(b) providing for any other matters contemplated by this Act or necessary for its administration or necessary for giving it full effect.

(2) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 8(2): replaced, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

9 Procedural rules

(1) Rules may be made, under any powers given by any Act to make procedural rules of a court or tribunal, prescribing anything that is required to be prescribed or necessary for carrying this Act into effect.

(2) Subsection (1) does not limit any of those powers.

10 Amendments to, and revocations of, other enactments

(1) The enactments listed in Parts 1 and 2 of Schedule 2 are amended in the manner specified in those Parts.

(2) The orders listed in Part 3 of Schedule 2 are revoked.

Part 2
Trans-Tasman proceedings

Subpart 1—Service in Australia of initiating documents for civil proceedings commenced in New Zealand courts and tribunals

11 Guide to this subpart

(1) This subpart is about serving defendants in Australia with initiating documents for certain civil proceedings in New Zealand courts or tribunals.

(2) This subpart allows defendants to be served with the initiating document in Australia and provides for how that service must be done.

(3) Defendants must be given certain information when served with the initiating document. The New Zealand court or tribunal may set aside the proceeding or any step taken in it if defendants are not given that information.

(4) Defendants must file an appearance or response document in the New Zealand court or tribunal within a particular period after being served with the initiating document in Australia. In the appearance or response document defendants must state an address for service in New Zealand or Australia for the proceeding.

12 Application of this subpart

(1) This subpart applies to a civil proceeding commenced after the commencement of this subpart, or a civil proceeding commenced before that commencement but only if, and insofar as, the initiating documents for the proceeding have not been served before that commencement, and that is—

(a) a civil proceeding commenced in a New Zealand court; or

(b) a civil proceeding commenced in a New Zealand tribunal, but only if—

(i) the tribunal's procedural rules permit an initiating document relating to the proceeding to be served outside New Zealand; and

(ii) the tribunal is declared by an order under subsection (3)(a) to be a tribunal to which this subpart applies.

(2) However, this subpart does not apply to—

(a) a civil proceeding that relates wholly or partly to an excluded matter; or

(b) a civil proceeding that relates wholly or partly to an action *in rem*; or

(c) a civil proceeding in a New Zealand tribunal declared by an order under subsection (3)(b) to be a proceeding to which this subpart does not apply.

(3) The Governor-General may, by Order in Council,—

(a) declare a New Zealand tribunal to be a tribunal to which this subpart applies:

(b) declare a civil proceeding in a New Zealand tribunal to be a proceeding to which this subpart does not apply.

(4) An order under subsection (3)(a) must not declare a tribunal to be one to which this subpart applies unless, when the order is made, the tribunal is prescribed for the purposes of section 66(1)(b)(i) (which relates to enforcement in Australia of New Zealand judgments) of the Australian Act.

(5) An order under subsection (3) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: 1908 No 89 Schedule 2 r 25.8(4), (5)

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 12(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

13 Service of initiating documents in Australia

(1) An initiating document for the proceeding may be served in Australia under this subpart.

(2) However, the initiating document must be served in Australia in the same way that the document is required or permitted, under the procedural rules of the New Zealand court or tribunal, to be served in New Zealand.

(3) By way of explanation, it is not necessary for the New Zealand court or tribunal—

(a) to give leave to serve the initiating document in Australia; or

(b) to be satisfied that there is a connection between the proceeding and New Zealand.

Compare: 1908 No 89 Schedule 2 rr 6.27, 6.28

14 Effect of service under section 13

Service in Australia under section 13 of an initiating document has the same effect (for example, it gives rise to the same proceeding, or status as a party to a proceeding) as if the initiating document had been served in New Zealand.

15 Information for defendant that must be in or with documents served under section 13

(1) An initiating document served in Australia under section 13 must contain or be accompanied by the prescribed information for the defendant.

(2) The prescribed information for the defendant must be or include general information about—

(a) steps that the defendant must or may take in relation to the proceeding; and

(b) consequences of the document being served on the defendant in Australia under section 13.

(3) The Governor-General may, by Order in Council, make regulations prescribing information for the defendant for the purposes of, and under, this section.

(4) Regulations under this section are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 15(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

16 Consequences of failing to provide information

(1) Failure to comply with section 15(1) does not invalidate—

(a) the proceeding; or

(b) any step taken in, or in respect of, the proceeding.

(2) However, the commencement New Zealand court or tribunal may, on an application by the defendant under subsection (3), make an order setting aside (wholly or in part, and on any terms as to costs or otherwise that it considers appropriate)—

(a) the proceeding; or

(b) any step taken in, or in respect of, the proceeding.

(3) The defendant's application can only be made—

(a) within a reasonable time after the defendant becomes aware of the failure; and

(b) before the defendant has taken any fresh step after the defendant becomes aware of the failure.

Compare: 1908 No 89 Schedule 2 r 1.5

17 Time for filing appearance or response document

(1) A defendant who is served with an initiating document in Australia under section 13 and who wishes to file an appearance or response document must do so—

(a) within the period (the **default period**) that is the longer of the following periods:

(i) 30 working days of the commencement New Zealand court or tribunal after the day on which the initiating document was served on the defendant:

(ii) the period within which the procedural rules of the commencement New Zealand court or tribunal would have required or permitted the defendant to file an appearance or response document if the initiating document had been served in New Zealand; or

(b) if, before or after the end of the default period, the plaintiff or defendant applies to the commencement New Zealand court or tribunal for a shorter or longer period—within any shorter or longer period the court or tribunal considers appropriate.

(2) **Appearance or response document** means a document that—

(a) a defendant who has been served under section 13 with an initiating document files in the commencement New Zealand court or tribunal in response to the initiating document; and

(b) states an address for service in New Zealand or Australia; and

(c) either—

(i) complies with all requirements (other than requirements that are overridden by the time for filing and addresses for service permitted by this section) with which the document must comply under

the procedural rules of the commencement New Zealand court or tribunal; or

(ii) the commencement New Zealand court or tribunal determines to be acceptable despite any non-compliance with such requirements.

18 Defendant's address for service

(1) The address for service stated by the defendant in the appearance or response document for a proceeding is to be treated as the defendant's address for service for the proceeding.

(2) That address may be changed, to an address in New Zealand or Australia, under the procedural rules of the commencement New Zealand court or tribunal.

19 Defendant may appear remotely in hearing of application for stay

(1) This section applies to a defendant who—

(a) was served, or purportedly served, in Australia under section 13 with an initiating document for a proceeding; and

(b) applies under section 22 to a New Zealand court for an order staying the proceeding on the grounds that an Australian court is the more appropriate court for the proceeding.

(2) Under section 23(4) the defendant, the defendant's counsel, or both may, despite section 38 (but subject to the rest of subpart 4), appear remotely in the hearing by the New Zealand court of the application for a stay of the proceeding if—

(a) the defendant makes to the court under section 23(4)(c) a request to appear remotely in the hearing; and

(b) a remote appearance medium is, or can reasonably be made, available.

(3) This section is by way of explanation only. It does not affect section 23(4).

20 Security for costs

(1) A commencement New Zealand court or tribunal that considers it appropriate in all the circumstances to do so may, on an application by a defendant served, or purportedly served, under section 13, order the giving of security for costs.

(2) An order under subsection (1)—

(a) requires the plaintiff or plaintiffs against whom the order is made to give security for costs as directed for a sum that the New Zealand court or tribunal considers sufficient—

(i) by paying that sum into the New Zealand court's or tribunal's registry; or

(ii) by giving, to the satisfaction of the New Zealand court or tribunal or the Registrar, security for that sum; and

(b) may stay the proceeding until the sum is paid or the security is given.

(3) The New Zealand court or tribunal may make an order under subsection (1) even if the defendant has taken a step in the proceeding before applying for security.

(4) A plaintiff's solicitor must not be accepted as surety for a security that the plaintiff is required to give under subsection (1).

Compare: 1908 No 89 Schedule 2 rr 5.45, 5.46

Subpart 2—New Zealand courts declining jurisdiction on grounds that Australian court is more appropriate forum

21 Guide to this subpart

(1) This subpart is about when a New Zealand court may stay a proceeding on the grounds that an Australian court is the more appropriate court to determine the matters in issue.

(2) The New Zealand court may only stay the proceeding if the defendant applies for the proceeding to be stayed. The defendant must make the application within 30 working days after being served with the initiating document for the proceeding, or such shorter or longer period that the court considers appropriate.

(3) The New Zealand court may only stay the proceeding if it is satisfied that an Australian court has jurisdiction to determine the matters in issue and that it is the more appropriate court to determine those matters. In determining whether the Australian court is the more appropriate court, the New Zealand court must take certain matters into account. They are set out in section 24(2).

(4) However, if the parties have made an exclusive choice of court agreement that designates either an Australian court or a New Zealand court as the court to determine the matters in issue, the New Zealand court's order as to whether or not to stay the proceeding must be consistent with that agreement (*see* section 25).

22 Application for stay of New Zealand civil proceeding on grounds that Australian court is more appropriate forum

(1) A defendant in a civil proceeding commenced in a New Zealand court may apply to the court for an order staying the proceeding on the grounds that an Australian court is the more appropriate court for the proceeding.

(2) The proceeding may be one commenced in the New Zealand court before the commencement of this subpart, but only if an initiating document for it was served on the defendant in Australia under subpart 1.

(3) The application must be made—

(a) within 30 working days of the New Zealand court after the day on which the defendant was served with the initiating document for the proceeding; or

(b) if, before or after the end of the period in paragraph (a), the plaintiff or defendant applies to the New Zealand court for a shorter or longer period—within any shorter or longer period the New Zealand court considers appropriate.

Compare: Service and Execution of Process Act 1992 s 20(2) (Aust)

23 Hearing on, or other determination of, application

(1) The New Zealand court may determine the defendant's application under section 22 without a hearing.

(2) However, the New Zealand court must determine the defendant's application under section 22 with a hearing if any of the following requests it to do so:

(a) the plaintiff; and

(b) the defendant; and

(c) any other person who is required or permitted, by regulations under subsection (5)(a), to be served with the defendant's application.

(3) The request must be made—

(a) within 10 working days of the New Zealand court after the day the defendant made the application; or

(b) if, before or after the end of the period in paragraph (a), a person referred to in subsection (2) applies to the New Zealand court for a shorter or longer period—within any shorter or longer period the New Zealand court considers appropriate.

(4) The defendant, the defendant's counsel, or both may, despite section 38 (but subject to the rest of subpart 4), appear remotely in the hearing if—

(a) the defendant was served, or purportedly served, in Australia under section 13 with an initiating document for a proceeding; and

(b) the New Zealand court is determining with a hearing the defendant's application under section 22 for an order to stay the proceeding; and

(c) the defendant has made to the New Zealand court within the period (if any) prescribed for the purposes of this paragraph by regulations under subsection (5)(b) a request to appear remotely in the hearing; and

(d) a remote appearance medium is, or can reasonably be made, available.

(5) The Governor-General may, by Order in Council, make regulations—

(a) requiring or permitting the defendant's application under section 22 for a stay to be served on people other than the plaintiff and the defendant:

(b) prescribing a period for the purposes of subsection (4)(c).

(6) Regulations under subsection (5) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Compare: Service and Execution of Process Act 1992 s 20(6), (7) (Aust)

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 23(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

24 Order of stay of proceeding

(1) On an application under section 22, the New Zealand court may, by order, stay the proceeding if it is satisfied that an Australian court—

(a) has jurisdiction to determine the matters in issue between the parties to the proceeding; and

(b) is the more appropriate court to determine those matters.

(2) In determining whether an Australian court is the more appropriate court to determine the matters in issue between the parties to the proceeding, the New Zealand court must not take into account the fact that the proceeding was commenced in New Zealand, but must take into account the following matters:

(a) the places of residence of the parties or, if a party is not an individual, its principal place of business:

(b) the places of residence of the witnesses likely to be called in the proceeding:

(c) the place where the subject matter of the proceeding is situated:

(d) any agreement between the parties about the court or place in which those matters should be determined or the proceeding should be instituted (other than an exclusive choice of court agreement to which section 25(1) applies):

(e) the law that it would be most appropriate to apply in the proceeding:

(f) whether a related or similar proceeding has been commenced against the defendant or another person in a court in Australia:

(g) the financial circumstances of the parties, so far as the New Zealand court is aware of them:

(h) any other matters that the New Zealand court considers relevant.

Compare: Service and Execution of Process Act 1992 s 20(3), (4) (Aust)

25 Exclusive choice of court agreements

(1) On an application under section 22 (and despite section 24) the New Zealand court—

(a) must, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates an Australian court as the court to determine the matters in issue between the parties to the proceeding; and

(b) must not, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates a New Zealand court as the court to determine those matters.

(2) However, subsection (1)(a) does not apply to an exclusive choice of court agreement if the New Zealand court is satisfied that—

(a) it is null and void under the law (including, without limitation, the rules of private international law) of Australia; or

(b) under New Zealand law, a party to it lacked the capacity to conclude it; or

(c) giving effect to it would lead to a manifest injustice or would be manifestly contrary to New Zealand public policy; or

(d) for exceptional reasons beyond the control of the parties to it, it cannot reasonably be performed; or

(e) the court designated by it as the court to determine the matters in issue between the parties to the proceeding has decided not to determine those matters.

(3) However, subsection (1)(b) does not apply to an exclusive choice of court agreement if the New Zealand court is satisfied that it is null and void under the law (including, without limitation, the rules of private international law) of New Zealand.

(4) **Exclusive choice of court agreement**, in relation to matters in issue between parties to a proceeding, means a written agreement between those parties that—

(a) designates the courts, or a specified court or courts, of a specified country, to the exclusion of any other courts, as the court or courts to determine disputes between those parties that are or include those matters; and

(b) is not an agreement the parties to which are or include 1 or more individuals acting primarily for personal, family, or household purposes; and

(c) is not a contract of employment (including, without limitation, a collective agreement).

26 Power to make stay subject to conditions

An order under section 24 or 25 may be made subject to any conditions the New Zealand court considers are appropriate in order to facilitate, without delay or undue expense, the determination of the matters in issue between the parties to the proceeding.

Compare: 1908 No 89 Schedule 2 r 15.1(3); Service and Execution of Process Act 1992 s 20(5) (Aust)

27 How this subpart affects New Zealand court's powers to stay proceedings

(1) A New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with this subpart.

(2) However, this subpart does not affect any power of the New Zealand court to stay the proceeding on any other grounds.

Compare: Service and Execution of Process Act 1992 s 20(9) (Aust)

28 No restraint of proceedings

(1) A New Zealand court must not restrain a person from commencing a civil proceeding in an Australian court on the grounds that the Australian court is not the appropriate forum for the proceeding.

(2) Also, a New Zealand court must not restrain a party to a civil proceeding before an Australian court from taking a step in that proceeding on the grounds that the Australian court is not the appropriate forum for the proceeding.

Compare: Service and Execution of Process Act 1992 s 21 (Aust)

29 Suspension of limitation periods for claims made earlier in stayed proceedings in Australian courts

(1) This section applies if—

(a) a claim is made in a proceeding commenced in an Australian court (the **Australian proceeding**) that is later stayed by an order of the Australian Court made under the Australian Act on the grounds that a New Zealand court is the more appropriate court to determine the matters in issue between the parties to the proceeding; and

(b) the claim is to be made again in a proceeding commenced in a New Zealand court (the **New Zealand proceeding**) after the staying of (and, if applicable, before any deadline stated in the condition of that order staying) the Australian proceeding.

(2) For the purposes of every applicable limitation period or defence under New Zealand law, the New Zealand proceeding is to be treated as commencing at the time the Australian proceeding commenced.

Subpart 3—New Zealand courts giving interim relief in support of civil proceedings in Australian courts

30 Guide to this subpart

(1) This subpart provides for certain New Zealand courts to give interim relief in support of civil proceedings in Australian courts.

(2) For the New Zealand court to give interim relief, a party to the Australian proceeding must apply for it.

(3) The New Zealand court may give interim relief if it considers it appropriate and, if a similar proceeding had been commenced in the New Zealand court, it would have given interim relief in that similar proceeding.

31 Application to New Zealand court for interim relief in support of Australian proceeding

(1) A party or intended party to a civil proceeding commenced or to be commenced in an Australian court after the commencement of this subpart may apply to the following New Zealand courts for interim relief (other than excluded interim relief) in support of the Australian proceeding:

(a) the High Court:

(b) a New Zealand court (other than the High Court) declared by an order under subsection (3) to be a court to which this paragraph applies.

(2) Interim relief is **excluded interim relief** if it is all or any of the following:

(a) an interim payment:

(b) discovery:

(c) a warrant of arrest of property:

(d) any action, assistance, order, or other relief under subpart 1 or 2 of Part 4 of the Evidence Act 2006.

(3) The Governor-General may, by Order in Council, declare a New Zealand court (other than the High Court) to be a court to which subsection (1)(b) applies.

(4) An order under subsection (3) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 31(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

32 Giving of interim relief in support of Australian proceeding

(1) On an application under section 31(1), the New Zealand court may give interim relief (other than excluded interim relief) in support of the Australian proceeding if—

(a) the court considers it appropriate to give the interim relief in support of the Australian proceeding; and

(b) the court, if a proceeding similar to the Australian proceeding had been commenced in the court,—

(i) would have had power to give the interim relief in the similar proceeding; and

(ii) would have given the interim relief in the similar proceeding.

(2) This subpart does not affect the court's procedural rules, or any other New Zealand laws, under which the court may give interim relief in support of the Australian proceeding.

Compare: 1908 No 89 Schedule 2 r 7.81

33 Application of New Zealand court procedural rules to interim relief proceeding

The procedural rules of the New Zealand court apply to the proceeding for interim relief under section 31(1) as if the Australian proceeding were a similar proceeding commenced in the New Zealand court.

Subpart 4—Remote appearances unrelated to remote evidence

Introduction

34 Guide to this subpart

(1) This subpart is about people appearing remotely from Australia in New Zealand civil proceedings, and people appearing remotely from New Zealand in Australian civil proceedings. However, this subpart applies only to remote appearances unrelated to remote evidence in those proceedings. Trans-Tasman remote appearances related to remote evidence in civil or criminal proceedings are governed by subpart 1 of Part 4 of the Evidence Act 2006 (operating in conjunction with the Australian Act).

(2) Sections 38 to 43 are about remote appearances from Australia—

(a) in a civil proceeding in a New Zealand court or a prescribed New Zealand tribunal; and

(b) by a party or a party's lawyer; and

(c) not related to remote evidence in the proceeding.

(3) Sections 44 to 51 are about remote appearances from New Zealand in a civil proceeding in an Australian court or tribunal, where those remote appearances

are made in accordance with the Australian Act and are not related to remote evidence in the proceeding. Sections 44 to 51—

(a) allow the Australian court or tribunal to exercise certain powers in New Zealand for the purpose of the remote appearances; and

(b) give certain privileges, protections, and immunities to participants in the remote appearances; and

(c) specify offences that apply for particular conduct engaged in (for example, obstructing the proceeding) at the place in New Zealand from where the remote appearances are being made.

How subpart relates to other Acts

35 Evidence Act 2006 trans-Tasman evidence regime governs remote appearances related to remote evidence

(1) This subpart applies only to a remote appearance by or on behalf of a party to a civil proceeding, and that is a remote appearance to do things other than all or any of the following:

(a) give evidence:

(b) examine a person giving remote evidence:

(c) make submissions in relation to remote evidence.

(2) This subpart therefore does not affect, but complements, subpart 1 of Part 4 of the Evidence Act 2006 (operating in conjunction with the Australian Act) and, in particular, the following sections of the Evidence Act 2006:

(a) sections 168 to 172 of that Act (which enable a New Zealand court, as defined in section 150 of that Act, and in any proceeding before it, to receive remote evidence, and examination and submissions in relation to remote evidence, by audio link or audiovisual link from Australia); and

(b) sections 173 to 180 of that Act (which enable an Australian court, as defined in section 150 of that Act, and in any proceeding before it, to take remote evidence, and receive examination and submissions in relation to remote evidence, by audio link or audiovisual link from New Zealand).

36 Courts (Remote Participation) Act 2010 does not apply to appearances under this subpart

Nothing in the Courts (Remote Participation) Act 2010 applies to any remote appearance in accordance with section 23(4) or sections 37 to 43 or 44 to 51.

Compare: 2006 No 69 s 153A

Remote appearances from Australia in New Zealand proceedings

37 Application of sections 38 to 43

(1) Sections 38 to 43 apply only to a civil proceeding commenced before or after the commencement of this subpart in—

(a) a New Zealand court; or

(b) a New Zealand tribunal declared by an order under subsection (3) to be a tribunal to which sections 38 to 43 apply.

(2) By way of explanation, the proceeding may, but need not, relate to enforcement of a judgment registered under subpart 5, or may, but need not, be a proceeding in respect of an application—

(a) made by a defendant served or purportedly served in Australia under section 13 with an initiating document for a proceeding; and

(b) for an order under subpart 2 staying the proceeding; and

(c) to be determined with a hearing in which the defendant is, under section 23(4), to appear remotely from Australia.

(3) The Governor-General may, by Order in Council, declare a New Zealand tribunal to be a tribunal to which sections 38 to 43 apply.

(4) An order under subsection (3) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 37(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

38 New Zealand courts or tribunals may give parties in Australia leave to appear remotely in civil proceedings

(1) The New Zealand court or tribunal may, on an application for the purpose, give a party to the proceeding, the party's counsel, or both leave to appear remotely in 1 or more hearings in or related to the proceeding using—

(a) the remote appearance medium specified by the court or tribunal; or

(b) if the court or tribunal does not specify a remote appearance medium, either remote appearance medium.

(2) The court or tribunal must not give leave to the party or the party's counsel unless it is satisfied that—

(a) the party or the party's counsel can more conveniently participate in the hearing from Australia; and

(b) if the court or tribunal intends to specify a remote appearance medium—that remote appearance medium is, or can reasonably be made, available; and

(c) if the court or tribunal does not intend to specify a remote appearance medium—both remote appearance mediums are, or can reasonably be made, available; and

(d) it is appropriate to give the leave.

(3) If the party's counsel is not entitled to appear before the court or tribunal, the court or tribunal must not give leave to the party's counsel unless satisfied that—

(a) the party ordinarily resides or, if the party is not an individual, has its principal place of business, in a State or Territory of Australia; and

(b) the counsel is entitled to practise as a barrister, a solicitor, or both in the Supreme Court of a State or Territory of Australia.

(4) If the party's counsel is entitled to practise as a barrister, a solicitor, or both in the Supreme Court of a State or Territory of Australia, and is given leave under subsection (3),—

(a) the party's counsel is entitled to practise as a barrister, a solicitor, or both in relation to the remote appearances to which the leave relates; and

(b) each of those appearances is for the purposes of section 27(1)(b)(i) of the Lawyers and Conveyancers Act 2006 an appearance allowed by this Act.

39 Appearing remotely without leave in hearing of application for stay

(1) This section applies to a defendant who—

(a) was served, or purportedly served, in Australia under section 13 with an initiating document for a proceeding; and

(b) applies under section 22 to a New Zealand court for an order staying the proceeding on the grounds that an Australian court is the more appropriate court for the proceeding.

(2) Under section 23(4) the defendant, the defendant's counsel, or both may, despite section 38 (but subject to the rest of this subpart), appear remotely in the hearing by the New Zealand court of the application for a stay of the proceeding if—

(a) the defendant makes to the court under section 23(4)(c) a request to appear remotely in the hearing; and

(b) a remote appearance medium is, or can reasonably be made, available.

(3) This section is by way of explanation only. It does not affect section 23(4).

40 Remote appearances from Australia by audiovisual link

A person must not appear remotely from Australia by audiovisual link unless the courtroom or other place in New Zealand where the court or tribunal is sitting (the **New Zealand place**) and the place in Australia where the remote appearance would be made (the **Australian place**) are equipped with facilities that enable—

(a) people who are at the New Zealand place to see and hear the person appearing remotely from the Australian place; and

(b) people who are at the Australian place to see and hear people at the New Zealand place.

Compare: 1908 No 89 Schedule 2 r 10.25; 2006 No 69 s 170

41 Remote appearances from Australia by audio link

A person must not appear remotely from Australia by audio link unless the courtroom or other place in New Zealand where the court or tribunal is sitting (the **New Zealand place**) and the place in Australia where the remote appearance would be made (the **Australian place**) are equipped with facilities that enable—

(a) people who are at the New Zealand place to hear the person appearing remotely from the Australian place; and

(b) people who are at the Australian place to hear people at the New Zealand place.

Compare: 2006 No 69 s 171

42 Costs of remote appearances from Australia

(1) Unless the New Zealand court or tribunal otherwise orders, the costs involved in the party, the party's counsel, or both participating in hearings by using a remote appearance medium, under section 23(4) or, as the case requires, under leave given under section 38, must be paid by the defendant who made under section 23(4)(c) a request to appear remotely or, as the case requires, the applicant for that leave.

(2) The New Zealand court or tribunal may make an order specifying the amount payable by a party under subsection (1), and requiring the party to pay that amount.

(3) An order made under subsection (2) by a tribunal that does not have the power to enforce its orders—

(a) may be filed in the District Court; and

(b) when so filed, is enforceable as a judgment of the District Court.

Section 42(3)(a): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

Section 42(3)(b): amended, on 1 March 2017, by section 261 of the District Court Act 2016 (2016 No 49).

43 Powers of New Zealand court or tribunal in Australia

For the purposes of a remote appearance from Australia under section 23(4) or leave given under section 38, the New Zealand court or tribunal may exercise in Australia all its powers that it is permitted to exercise in Australia under Australian law.

Remote appearances from New Zealand in Australian proceedings

44 People in New Zealand appearing remotely in Australian proceedings

(1) A remote appearance from New Zealand in a proceeding in an Australian court or tribunal is authorised if it is in accordance with the Australian Act.

(2) However, a defendant on whom an initiating document has been served in New Zealand under the Australian Act and the defendant's counsel may, without leave, appear remotely in any hearing before that court of the defendant's application under that Act for a stay of proceedings if—

(a) they request to do so under section 18(4)(b) of that Act; and

(b) a remote appearance medium is, or can reasonably be made, available.

45 Powers of Australian courts or tribunals in New Zealand

(1) For the purposes of a remote appearance by a person in New Zealand under section 44, an Australian court or tribunal 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) The Australian law that applies to the proceeding in Australia also applies, subject to subsection (1), to the practice and procedure of the Australian court or tribunal in relation to a remote appearance by a person in New Zealand under section 44.

46 Orders of Australian courts and tribunals

(1) The Australian court or tribunal 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 in New Zealand from which the appearance is being or is to be made; or

(c) prohibit or restrict the publication of submissions or the name of any party or of any witness.

(2) This section does not limit section 45.

47 Enforcement of orders of Australian courts and tribunals

(1) An order under section 46—

(a) must be complied with; and

(b) may be enforced by a Judge of the High Court.

(2) The Judge of the High Court 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.

48 Place from which remote appearance made part of Australian court or tribunal

For the purposes of sections 45 and 46, the place in New Zealand from which a remote appearance is made in a hearing in or related to a proceeding before an Australian court or tribunal is deemed to be part of that court or tribunal.

49 Privileges, protections, and immunities of participants in Australian proceedings

(1) A Judge, Associate Judge, Magistrate, or Master of an Australian court or member of an Australian tribunal has, in relation to a remote appearance by a person in New Zealand under section 44, all the privileges, protections, and immunities of a Judge of the High Court.

(2) A person in New Zealand appearing remotely under section 44 as a barrister, a solicitor, or both has, in relation to the remote appearance, all the privileges and immunities of counsel in the High Court.

(3) A person in New Zealand appearing remotely under section 44 as a party has, in relation to the remote appearance, all the privileges and immunities of a party in a proceeding in the High Court.

Compare: 1908 No 89 s 26IB(2)(b); 2006 No 69 s 177

50 Contempt of Australian courts or tribunals

(1) A person commits an offence if the person—

(a) is at a place in New Zealand from which a remote appearance is made in a hearing in or related to a proceeding before an Australian court or tribunal; and

(b) assaults—

(i) a party to the proceeding; or

(ii) a person appearing as a barrister, a solicitor, or both in the proceeding; or

(iii) an officer of a New Zealand court or tribunal giving assistance under section 51.

(2) A person commits an offence if the person—

(a) is at a place in New Zealand from which a remote appearance is made in a hearing in or related to a proceeding before an Australian court or tribunal; and

(b) threatens, intimidates, or wilfully insults—

(i) a Judge, Associate Judge, Magistrate, or Master of the Australian court or member of the Australian tribunal taking part in the proceeding; or

(ii) a Registrar or officer of the Australian court or tribunal taking part in, or assisting with, the proceeding; or

(iii) a party to the proceeding; or

(iv) a person appearing as a barrister, a solicitor, or both in the proceeding; or

(v) a witness in the proceeding.

(3) A person commits an offence if the person—

(a) is at a place in New Zealand from which a remote appearance is made in a hearing in or related to a proceeding before an Australian court or tribunal; and

(b) wilfully interrupts or obstructs the proceeding.

(4) A person commits an offence if the person—

(a) is at a place in New Zealand from which a remote appearance is made in a hearing in or related to a proceeding before an Australian court or tribunal; and

(b) wilfully and without lawful excuse disobeys any order or direction of the Australian court or tribunal in the course of the proceeding.

(5) Every person who commits an offence against this section is liable on conviction to imprisonment for a term not exceeding 3 months, or to a fine not exceeding $1,000, or to both.

Compare: 1908 No 89 s 56C; 1947 No 16 s 112; 2003 No 53 s 35; 2006 No 69 s 179

Section 50(5): amended, on 1 July 2013, by section 413 of the Criminal Procedure Act 2011 (2011 No 81).

51 Assistance to Australian courts and tribunals

An officer of a New Zealand court or tribunal may, at the request of an Australian court or tribunal,—

(a) attend at the place in New Zealand from which a remote appearance is made in a hearing in or related to a proceeding before the Australian court or tribunal; and

(b) take any action that the Australian court or tribunal directs to facilitate the proceeding.

Subpart 5—Recognition and enforcement in New Zealand of specified judgments of Australian courts and tribunals

52 Guide to this subpart

(1) This subpart is about the enforcement in New Zealand of specified judgments of Australian courts and tribunals.

(2) To be enforceable, the judgment has to be registered in a New Zealand court. To be registered, the judgment must be a registrable Australian judgment (which is defined in section 54) and an application for its registration must be made.

(3) Once registered in a New Zealand court, the judgment has the same force, and may be enforced in the New Zealand court, as if the judgment had been given by the New Zealand court. There are some exceptions to this—*see*, for example, the following sections:

(a) section 63(2) (which provides that the judgment cannot be enforced during a particular period if notice of the registration has not been given to each liable person); and

(b) section 64 (which provides that the judgment cannot be enforced if the judgment could not be enforced in Australia); and

(c) section 65 (which provides grounds for when the New Zealand court may stay a proceeding to enforce the judgment).

53 When registrable Australian judgments are enforceable in New Zealand

(1) A registrable Australian judgment cannot be enforced in New Zealand if it is not registered in a New Zealand court under section 57.

(2) By way of explanation, the judgment therefore cannot be enforced by way of—

(a) a registration or other enforcement process under Part 1 of the Reciprocal Enforcement of Judgments Act 1934, section 172 of the Senior Courts Act 2016, or any other enactment in force in New Zealand; or

(b) any common law, or other non-legislative, action or claim to enforce the judgment.

Section 53(2)(a): amended, on 1 March 2017, by section 7 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

54 Registrable Australian judgment defined

(1) A judgment is a **registrable Australian judgment** if—

(a) the judgment is a final and conclusive judgment that is given in a civil proceeding by an Australian court; or

(b) both of the following are satisfied:

(i) the judgment is a final and conclusive judgment that is given in a civil proceeding by an Australian tribunal declared under section 55(1)(a) to be a tribunal to which this subpart applies; and

(ii) the judgment is an order declared under section 55(1)(b) to be an order to which this subpart applies; or

(c) both of the following are satisfied:

(i) the judgment is a final and conclusive judgment that is given in a criminal proceeding by an Australian court; and

(ii) the judgment is a requirement to pay an injured party a sum of money by way of compensation, damages, or reparation; or

(d) both of the following are satisfied:

(i) the judgment is a final and conclusive judgment that is given in a civil proceeding or a criminal proceeding by an Australian court; and

(ii) the judgment is an order made under the Australian Act by an Australian court (as defined in section 150 of the Evidence Act 2006) for the payment of expenses (as so defined)—

(A) incurred by a witness (as so defined) in complying with an Australian subpoena (as so defined) served on the witness in New Zealand; or

(B) incurred by a person in connection with the taking of remote evidence, or the receipt of examination or submissions (as so defined) in relation to remote evidence, from New Zealand by audio link or audiovisual link, as the case may be; or

(e) the judgment is a final and conclusive judgment that is registered in an Australian court under the Foreign Judgments Act 1991 (Aust).

(2) However, a judgment is not a **registrable Australian judgment** by virtue of subsection (1) if it wholly or partly—

(a) relates to an excluded matter; or

(b) is a non-money judgment of a kind that is declared by an order under subsection (3) to be excluded from recognition or enforcement under this subpart; or

(c) is a judgment (other than one imposing a civil pecuniary penalty) given in an Australian trans-Tasman market proceeding (but a judgment of that kind is a registrable Australian judgment for the purposes of this subpart by virtue of subpart 6); or

(d) is a judgment (including one given in an Australian trans-Tasman market proceeding) imposing a civil pecuniary penalty (but a judgment of that

kind is a registrable Australian judgment for the purposes of this subpart by virtue of subpart 7); or

(e) is an order under proceeds of crime legislation; or

(f) is an order relating to the granting of probate or letters of administration or the administration of the estate of a deceased person; or

(g) is an order relating to the guardianship or care of a person who is incapable of managing his or her personal affairs; or

(h) is an order relating to the management of the property of a person who is incapable of managing that property; or

(i) is an order relating to the care, control, or welfare of a child; or

(j) is an order that, if contravened by a person to whom it is directed, will make the person liable to conviction for an offence in the place where it was made; or

(k) is a judgment given before the commencement of this subpart (even if the judgment is, at any time, registered in an Australian court under the Foreign Judgments Act 1991 (Aust)).

(3) For the purposes of subsection (2)(b), the Governor-General may, by Order in Council, declare a kind of non-money judgment to be excluded from recognition and enforcement under this subpart.

(4) For the purposes of subsection (1), a judgment must be treated as final and conclusive even if—

(a) a person may appeal against it in an Australian court; or

(b) an appeal against it in an Australian court has not been finally determined.

(5) An order under subsection (3) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 54(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

55 Orders applying subpart to Australian tribunals and their orders

(1) The Governor-General may, by Order in Council,—

(a) declare any tribunal of a State or a Territory of Australia to be a tribunal to which this subpart applies:

(b) declare all orders, or 1 or more specified classes or kinds of orders, of an Australian tribunal declared to be a tribunal to which this subpart applies to be orders to which this subpart applies.

(2) Orders of an Australian tribunal must not be declared under subsection (1)(b) to be orders to which this subpart applies unless those orders are—

(a) made by the Australian tribunal in or in connection with the performance of an adjudicative function; and

(b) enforceable (with or without being filed or registered in a court) without an order of a court.

(3) An order under subsection (1) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 55(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

56 Application to register Australian judgment

(1) An entitled person may apply to the Registrar of a New Zealand court to register in that court an Australian judgment if that court is—

(a) the High Court; or

(b) a New Zealand court that is not a superior New Zealand court but that has power to give the relief that is in the judgment.

(2) The application must be—

(a) made in the form (if any) prescribed by regulations under subsection (3); and

(b) made in accordance with the requirements (if any) prescribed by regulations under subsection (3); and

(c) made—

(i) within 6 years after the day on which the judgment is given; or

(ii) if there have been proceedings by way of appeal against the judgment—within 6 years after the day of the last judgment in those proceedings; or

(iii) if, before or after the period in subparagraph (i) or (ii), the entitled person applies to the New Zealand court for a longer period—within any longer period the New Zealand court considers appropriate.

(3) The Governor-General may, by Order in Council, make regulations prescribing the form of, and requirements for, an application under this section.

(4) Requirements prescribed under subsection (3) may be or include requirements that specified documents be lodged or filed in a specified way, and with, or within a specified time after the lodging or filing of, the application.

(5) Subsection (4) does not limit subsection (3).

(6) Regulations under subsection (3) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 56(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

57 Registration of registrable Australian judgments

(1) A Registrar of a New Zealand court must, on application under section 56, register in that court under this subpart a registrable Australian judgment.

(2) Once registered, the judgment remains registered unless the registration is set aside under section 61.

58 Currency

(1) If a sum of money payable under a registrable Australian judgment is expressed in a currency other than New Zealand currency, the judgment must be registered in the New Zealand court under section 57,—

(a) if an entitled person has requested in the application for registration that the judgment be registered in a particular currency, in that currency; and

(b) in any other case, as if it were for an equivalent amount in New Zealand currency, calculated using the rate of exchange on the working day (the **conversion day**) before the day on which the entitled person made the application for registration.

(2) **Working day**, in subsection (1)(b), has the same meaning as in section 13 of the Legislation Act 2019.

(3) The rate of exchange on the conversion day is that determined in the prescribed manner.

(4) The Governor-General may, by Order in Council, make regulations prescribing the manner of determining the rate of exchange on the conversion day.

(5) This section is subject to section 59 (money judgments partly satisfied).

(6) Regulations under subsection (4) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 58(2): amended, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

Section 58(6): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

59 Money judgments partly satisfied when entitled person applies for registration

A money judgment that has been partly satisfied at the time at which an entitled person applies for registration of that judgment may be registered under section 57 only in respect of the balance remaining payable under that judgment at that time.

60 Judgments only some provisions of which are registrable

(1) This section applies to a judgment if a Registrar of a New Zealand court to whom an application for registration of the judgment is made under section 56 considers that—

(a) the judgment is one in respect of different matters (for example, because it is one in respect of different subject matters, or one giving different kinds of relief); and

(b) some of the provisions of the judgment (the **registrable provisions**) would, if contained in a separate judgment, make that separate judgment a registrable Australian judgment.

(2) The judgment may be registered in the New Zealand court under section 57 in respect of the registrable provisions, but no other provisions.

Compare: 1934 No 11 s 4(5); Foreign Judgments Act 1991 s 6(13) (Aust)

61 Setting aside registration

(1) This section specifies the only situations in which a New Zealand court in which an Australian judgment has been registered under section 57 may set aside the registration of the judgment.

(2) The New Zealand court must, on application by a liable person within the applicable period under subsection (3), set aside the registration of the judgment if satisfied that—

(a) the judgment was registered in contravention of this Act; or

(b) enforcement of the judgment would be contrary to public policy in New Zealand; or

(c) both of the following subparagraphs apply:

(i) the judgment was given in a proceeding the subject matter of which was immovable property, or was given in a proceeding *in rem* the subject matter of which was movable property; and

(ii) that property was, at the time of the proceeding in the original court or tribunal, not situated in Australia.

(3) An application under subsection (2) must be made—

(a) within 30 working days of the New Zealand court after the day on which the liable person was given notice of registration under section 62; or

(b) if the liable person, before or after the end of the period in paragraph (a), applies to the New Zealand court for a longer period—within any longer period the New Zealand court considers appropriate.

Compare: 1934 No 11 s 6

62 Notice to liable person

(1) If a New Zealand court registers an Australian judgment under section 57, the entitled person must give a notice of the registration to every liable person.

(2) The notice must—

(a) be in the form (if any) prescribed by regulations under subsection (4)(a); and

(b) be given in the manner (if any) prescribed by regulations under subsection (4)(b).

(3) The notice must be given—

(a) within 15 working days of the New Zealand court after the day of registration; or

(b) if, before or after the end of the period in paragraph (a), the entitled person applies to the New Zealand court for a longer period—within any longer period the New Zealand court considers appropriate.

(4) The Governor-General may, by Order in Council, make regulations prescribing—

(a) the form of notice to be given under subsection (1):

(b) the manner of giving notice under subsection (1).

(5) Regulations under subsection (4) are secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section

Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)

Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 62(5): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

63 Effect of registration and notification

(1) A registered Australian judgment has the same force and effect, and may give rise to the same proceedings for enforcement, as if it were a judgment given by the New Zealand court in which it is registered.

(2) However, if notice of the registration of the judgment has not been given to every liable person under section 62, then subsection (1) applies to the judgment only after 45 working days of the New Zealand court after the day of registration.

(3) Subsection (1) is subject to—

(a) section 64 (which prevents enforcement of the judgment if it is not capable of being enforced in or by the original court or tribunal or in or by another Australian court or tribunal); and

(b) any order under section 65(1)(a) or (b) (delaying or staying enforcement of the registered judgment so that a liable person can challenge it in an Australian court or tribunal), or any other order of a New Zealand court, delaying or staying enforcement of the judgment; and

(c) section 67 (which relates to interest on a sum of money payable under a registered Australian judgment).

64 Restriction on enforcing registered Australian judgments

A registered Australian judgment is capable of being enforced only if, and to the extent that, at the time it is being or is to be enforced, the judgment is capable of being enforced in the original court or tribunal or in another Australian court or tribunal.

65 Stay of enforcement of registered judgment so that liable person can challenge it in Australian court or tribunal

(1) A New Zealand court in which an Australian judgment has been registered under section 57 may, on an application under subsection (3) by a liable person, order that a proceeding in that court for enforcement of the judgment—

(a) not be commenced until a specified time or event; or

(b) be stayed for a specified period.

(2) The order—

(a) must be made subject to the following conditions:

(i) that the liable person make, by the end of a period specified in the order, and to an Australian court or tribunal that has power to grant the relief sought by the application, an application to set aside, vary, or appeal against the registered Australian judgment:

(ii) that the liable person prosecute that application expeditiously; and

(b) may be made subject to any other conditions, including conditions as to the giving of security, that the New Zealand court considers appropriate.

(3) An application under subsection (1) must be made—

(a) within 30 working days of the New Zealand court after the day on which the liable person was given the notice of registration required by section 62; or

(b) if the liable person, before or after the end of the period in paragraph (a), applies to the New Zealand court for a longer period—within any longer period the New Zealand court considers appropriate.

(4) If a registered Australian judgment has for enforcement been transferred to a New Zealand court other than the one in which it is registered under section 57, an application under subsection (1) may be made to, and heard and determined by, only that other New Zealand court.

(5) This section does not affect any other powers of the New Zealand court to delay or stay the enforcement of the registered Australian judgment on any grounds on which the court could delay or stay the enforcement of a judgment of a New Zealand court or tribunal.

66 Costs and expenses of enforcement of registered Australian judgments

(1) If a proceeding for enforcement of a registered Australian judgment is commenced in a New Zealand court, the following costs and expenses are recoverable in the proceeding:

(a) costs and expenses reasonably incurred by or on behalf of the entitled person in, or incidental to, registration of the judgment:

(b) costs and expenses reasonably incurred by or on behalf of the entitled person in attempting to enforce the judgment in the original court or tribunal.

(2) However, an entitled person's entitlement to recover, and a liable person's liability to pay, the costs and expenses specified in subsection (1)(b) are the same as they would be in a proceeding in that New Zealand court for enforcement of—

(a) a judgment given by the New Zealand court that is similar to the registered Australian judgment; or

(b) if there is no such similar judgment, a judgment given by the New Zealand court and of a kind that is most analogous to the registered Australian judgment.

67 Interest on registered Australian judgments

Interest on a sum of money payable under a registered Australian judgment—

(a) is payable at the same rate or rates and in respect of the same period or periods as would be applicable in the original court or tribunal; and

(b) is recoverable to the extent that an entitled person satisfies the Registrar of the New Zealand court of the amount of interest that is payable under paragraph (a).

68 Enforcement of registered Australian judgment unaffected by certain rules of private international law

(1) Enforcement in New Zealand of a registered Australian judgment is not affected by the operation of any rule of private international law (other than any rule in this subpart) in operation in New Zealand.

(2) In particular, no New Zealand court may refuse to enforce a registered Australian judgment, or may delay, limit, or prohibit its enforcement, on all or any of the following grounds:

(a) enforcing the judgment would involve the direct or indirect enforcement in New Zealand of an Australian public law:

(b) Australian tax is payable under the judgment:

(c) the judgment imposes a civil pecuniary penalty or a regulatory regime criminal fine.

(3) Subsection (2) does not limit subsection (1).

Compare: 1978 No 103 s 89

Subpart 6—Recognition and enforcement in New Zealand of judgments given in Australian trans-Tasman market proceedings

69 Guide to this subpart

This subpart makes judgments given in an Australian trans-Tasman market proceeding, and that do not impose a civil pecuniary penalty, registrable Australian judgments for the purposes of recognition and enforcement in New Zealand under subpart 5.

70 When judgments given in Australian trans-Tasman market proceedings are registrable under subpart 5

A judgment must be treated for the purposes of subpart 5 as a registrable Australian judgment if the judgment—

(a) is given in an Australian trans-Tasman market proceeding; and

(b) does not impose a civil pecuniary penalty (but a judgment given in an Australian trans-Tasman market proceeding and that imposes a civil

pecuniary penalty is a registrable Australian judgment for those purposes by virtue of subpart 7).

Compare: 1934 No 11 ss 8A–8D

71 Registrable judgments include interim injunctions and other interlocutory orders

The judgment referred to in section 70 may, but need not, be—

(a) an interlocutory order that is an interim or interlocutory injunction (whether obtained on or without notice); or

(b) any other interlocutory or final order requiring a person to perform an act, make a payment (other than a payment of a civil pecuniary penalty), observe a condition, or refrain from performing an act or from engaging in specified conduct.

Compare: 1934 No 11 s 8A

72 Registration applications may be made only to High Court

(1) An application under section 56 to register in a New Zealand court a registrable Australian judgment may be made only to a Registrar of the High Court if the judgment—

(a) is given in an Australian trans-Tasman market proceeding; and

(b) does not impose a civil pecuniary penalty.

(2) Subsection (1) overrides section 56, which if not overridden would permit the application to be made to a Registrar of a New Zealand court specified or described in section 56(1)(a) or (b).

Compare: 1934 No 11 s 8D(1)

Subpart 7—Recognition and enforcement in New Zealand of Australian judgments imposing civil pecuniary penalties

73 Guide to this subpart

This subpart makes judgments given by Australian courts in civil proceedings, and imposing civil pecuniary penalties (as defined in section 4(1)), registrable Australian judgments for the purposes of recognition and enforcement in New Zealand under subpart 5.

74 When judgments imposing civil pecuniary penalties are registrable under subpart 5

(1) A judgment must be treated for the purposes of subpart 5 as a registrable Australian judgment if the judgment—

(a) is given by an Australian court in a civil proceeding (including an Australian trans-Tasman market proceeding) and imposes a civil pecuniary penalty; and

(b) is not a kind of judgment imposing a civil pecuniary penalty that is declared by an order under subsection (2) to be excluded from recognition or enforcement under subpart 5.

(2) The Governor-General may, by Order in Council, declare a kind of judgment imposing a civil pecuniary penalty to be excluded from recognition or enforcement under subpart 5.

(3) An order under subsection (2) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 74(3): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

75 Registration applications may be made only to specified courts

(1) Subsection (2) applies to an application under section 56 to register in a New Zealand court a registrable Australian judgment if the judgment—

(a) is given otherwise than in an Australian trans-Tasman market proceeding; and

(b) imposes a civil pecuniary penalty.

(2) The application may be made only to a Registrar of a New Zealand court that is—

(a) the High Court; or

(b) a New Zealand court that is not a superior New Zealand court but that has power to impose a civil pecuniary penalty under New Zealand law of the same, or a broadly similar, value.

(3) The civil pecuniary penalty under New Zealand law that is referred to in subsection (2)(b) may, but need not, be one imposed for the same or similar purposes, or in respect of the same or a similar subject matter, as the one imposed by the registrable Australian judgment.

(4) Subsection (5) applies to an application under section 56 to register in a New Zealand court a registrable Australian judgment if the judgment—

(a) is given in an Australian trans-Tasman market proceeding; and

(b) imposes a civil pecuniary penalty.

(5) The application may be made only to a Registrar of the High Court.

(6) Subsections (2) and (5) override section 56, which if not overridden would permit the applications to be made to a Registrar of a New Zealand court specified or described in section 56(1)(a) or (b).

Subpart 8—Recognition and enforcement in New Zealand of Australian judgments imposing regulatory regime criminal fines

76 Guide to this subpart

This subpart makes certain judgments given by Australian courts in criminal proceedings, and that impose regulatory regime criminal fines (as defined in section 4(1)), registrable Australian judgments for the purposes of recognition and enforcement in New Zealand under subpart 5.

77 When judgments imposing regulatory regime criminal fines are registrable under subpart 5

(1) A judgment must be treated for the purposes of subpart 5 as a registrable Australian judgment if the judgment—

(a) is given by an Australian court in a criminal proceeding and imposes a regulatory regime criminal fine; and

(b) complies with any conditions prescribed by an order under subsection (2)(b) as conditions with which a judgment imposing a regulatory regime criminal fine of that kind must comply in order to be recognised and enforced under subpart 5.

(2) The Governor-General may, by Order in Council,—

(a) declare a fine for a criminal offence under a provision of Australian legislation to be a regulatory regime criminal fine for the purposes of subpart 5 and this subpart:

(b) prescribe conditions with which a judgment imposing a fine declared under paragraph (a) to be a regulatory regime criminal fine must comply in order to be recognised and enforced under subpart 5.

(3) Section 5 applies to a reference in an order under subsection (2) to a repealed Australian enactment.

(4) An order under subsection (2) is secondary legislation (*see* Part 3 of the Legislation Act 2019 for publication requirements).

Legislation Act 2019 requirements for secondary legislation made under this section		
Publication	PCO must publish it on the legislation website and notify it in the *Gazette*	LA19 s 69(1)(c)
Presentation	The Minister must present it to the House of Representatives	LA19 s 114, Sch 1 cl 32(1)(a)
Disallowance	It may be disallowed by the House of Representatives	LA19 ss 115, 116

This note is not part of the Act.

Section 77(4): inserted, on 28 October 2021, by section 3 of the Secondary Legislation Act 2021 (2021 No 7).

78 Registration applications may be made only to High Court

(1) An application under section 56 in respect of a registrable Australian judgment that imposes a regulatory regime criminal fine may be made only to a Registrar of the High Court.

(2) Subsection (1) overrides section 56, which if not overridden would permit the application to be made to a Registrar of a New Zealand court specified or described in section 56(1)(a) or (b).

Part 3
Special provisions applying to certain proceedings in High Court of New Zealand and Federal Court of Australia

Part 3: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

79 Part not limited by Part 1 or 2

This Part is not limited or affected by Part 1 or 2.

Section 79: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

80 Courts (Remote Participation) Act 2010 does not apply to remote appearances under this Part

Nothing in the Courts (Remote Participation) Act 2010 applies to any remote appearance in accordance with this Part.

Compare: 2010 No 108 s 36

Section 80: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

81 Interpretation

In this Part, unless the context otherwise requires,—

Australian proceeding—

(a) means a proceeding in which a matter for determination arises, whether or not any other matter arises for determination, under—

(i) any of sections 46A, 155A, and 155B of the Competition and Consumer Act 2010 (Aust); or

(ii) a provision of Part VI or XII of the Competition and Consumer Act 2010 (Aust) in so far as the provision relates to any of sections 46A, 155A, and 155B of that Act; and

(b) includes an interlocutory proceeding related to such a proceeding and an application for the issue, execution, or enforcement of a judgment, an order, or an injunction given, made, or granted in such a proceeding

Federal Court means the Federal Court of Australia

New Zealand proceeding—

(a) means a proceeding in which a matter for determination arises, whether or not any other matter arises for determination, under—

(i) any of sections 36A, 98H, and 99A of the Commerce Act 1986; or

(ii) a provision of Part 6 or 7 of the Commerce Act 1986 in so far as the provision relates to any of sections 36A, 98H, and 99A of that Act; and

(b) includes an interlocutory proceeding related to such a proceeding and an application for the issue, execution, or enforcement of a judgment, an order, or an injunction given, made, or granted in such a proceeding.

Compare: 1908 No 89 s 56D

Section 81: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

82 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 must 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) any 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.

Compare: 1908 No 89 s 56E

Section 82: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

83 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 audio link or audiovisual link in a New Zealand proceeding before the High Court in New Zealand:

(c) the making of submissions by audio link or audiovisual link to the High Court in New Zealand in a New Zealand proceeding.

Compare: 1908 No 89 s 56F

Section 83: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

84 High Court may set aside subpoena issued in New Zealand proceeding

(1) On application, the High Court may set aside an order of subpoena issued by the High Court requiring the attendance of a person in Australia to give evidence or to produce documents to the High Court for the purposes of a New Zealand proceeding.

(2) An application under subsection (1) must 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 cannot 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 83 of the Commerce Act 1986:

(e) that the evidence of the witness can 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 give evidence, 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) must be made by affidavit.

(5) The affidavit must—

(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 must ensure that a copy of the affidavit is 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.

Compare: 1908 No 89 s 56G

Section 84: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

85 Injunctions and orders in New Zealand proceedings

Despite 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.

Compare: 1908 No 89 s 56H

Section 85: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

86 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 to require a person in Australia to give evidence, or to 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 give evidence, 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.

Compare: 1908 No 89 s 56I

Section 86: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

87 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 audio link or audiovisual link or at which submissions are made in New Zealand by a barrister or solicitor, or both, or by a party to the proceedings by audio link or audiovisual link.

(2) Without limiting subsection (1), the Federal Court of Australia Act 1976 (Aust) and the rules of court made under that Act that are applicable in relation to

Australian proceedings generally 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), 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 (2) 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) 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 be available to enforce the order if it had been made by that Judge.

Compare: 1908 No 89 s 56J

Section 87: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

88 Issue of subpoenas in Australian proceedings

(1) An order of subpoena, issued by the Federal Court with the leave of a Judge of that court, requiring the attendance of a person in New Zealand to give evidence 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 an 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) may not be compelled 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.

Compare: 1908 No 89 s 56K

Section 88: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

89 Failure of witness to comply with subpoena issued in Australian proceeding

(1) The High 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 High Court may, on the appearance of that person before the court, impose a fine not exceeding $1,000, unless the court is satisfied that the failure to comply with the order of subpoena, the onus of proof of which lies with that person, 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 because of any fault on the part of the person alleged to have failed to comply with the order of subpoena or was because of 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), a certificate under the seal of the Federal Court is conclusive evidence of the matters stated in it if the certificate states—

(a) that the order of subpoena was issued by that court:

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

(c) the decision of that court, or any orders or findings of fact made by that court, in relation to any application made to that court to have the order of subpoena set aside.

(5) Subject to subsection (3), 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.

Compare: 1908 No 89 s 56L

Section 89: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

90 Federal Court of Australia may administer oaths in New Zealand

(1) The Federal Court may administer an oath or affirmation in accordance with the practice and procedure of that court—

(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 evidence of a person in New Zealand by audio link or audiovisual link at a sitting of that court in Australia.

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

Compare: 1908 No 89 s 56M

Section 90: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

91 Orders made by Federal Court of Australia not subject to review

No application for review under the Judicial Review Procedure Act 2016 and no application for an order of mandamus, prohibition, or certiorari or for a declaration or injunction may be brought in respect of any judgment, order, or determination of the Federal Court made or given at a sitting of that court in New Zealand in an Australian proceeding.

Compare: 1908 No 89 s 56N

Section 91: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

92 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 an 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 to imprisonment for a term not exceeding 3 months or to a fine not exceeding $1,000.

Compare: 1908 No 89 s 56O

Section 92: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

93 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.

(2) Without limiting subsection (1), 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 Australian proceedings in the courtrooms of the High Court or in other places in New Zealand:

(c) to enable evidence to be given and submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by audio link or audiovisual link:

(d) for the provision of registry facilities and court staff for the purposes of a New Zealand proceeding or an Australian proceeding.

Compare: 1908 No 89 s 56P

Section 93: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

94 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) A witness has all the privileges and immunities of a witness in the High Court when the witness gives evidence in an Australian proceeding—

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

(b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.

(3) A person has all the privileges and immunities of counsel in the High Court when 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 audio link or audiovisual link at a sitting in Australia of the Federal Court.

(4) A person has all the privileges and immunities of a party in the High Court when appearing as a party in an Australian proceeding—

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

(b) by audio link or audiovisual link at a sitting in Australia of the Federal Court.

Compare: 1908 No 89 s 56Q

Section 94: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

95 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 as the High Court considers appropriate for taking the evidence.

(3) Without limiting subsections (1) and (2), an order may, in particular, make provision for—

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

(b) the production of documents or things; or

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

(d) the taking of 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 may not be compelled to comply with the order unless, at the time of service of the order or at some other reasonable time before the person is required to comply with the order, allowances and travelling expenses or vouchers sufficient to enable the person to comply with the order are tendered or paid to the person.

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

Compare: 1908 No 89 s 56R

Section 95: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

96 Power to make rules for purposes of this Part

(1) Rules may be made under section 148 of the Senior Courts Act 2016 for, or in relation to, Australian proceedings and New Zealand proceedings.

(2) Without limiting subsection (1), 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 audio link or audiovisual link:

(b) receiving, for the purposes of subpart 8 of Part 3 of the Evidence Act 2006, 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 to 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 to the Federal Court of documents (or certified copies of those documents) or things lodged with the High Court in Australian proceedings in compliance with orders of subpoena issued by the Federal Court:

(g) the hearing of applications to set aside orders of subpoena under section 84:

(h) sittings of the High Court in Australia:

(i) giving effect to arrangements made under section 93:

(j) the form of certification of judgments, orders, and injunctions in New Zealand proceedings:

(k) the taking of evidence under section 95:

(l) any other matters as are contemplated by or necessary for giving effect to this Part.

Compare: 1908 No 89 s 56S

Section 96: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

97 Transitional provision for certain proceedings commenced before commencement of this Part

(1) This section applies to any proceeding commenced, but not yet determined, under Part 1A of the Judicature Act 1908 before the commencement of this section.

(2) If this section applies, the proceeding must be treated as if it had been commenced under this Part.

Section 97: inserted, on 1 March 2017, by section 8 of the Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70).

Schedule 1
Trans-Tasman Agreement

s 4(1)

Agreement between the Government of New Zealand and the Government of Australia on Trans-Tasman Court Proceedings and Regulatory Enforcement

Preamble

The Government of New Zealand and the Government of Australia (hereinafter "the Parties"):

CONSCIOUS of their long-standing friendship and close historic, political and economic relationship;

RECOGNISING the development of that relationship through the framework established by the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983, and subsequent arrangements and agreements developed within that framework of which this Agreement forms a part;

ACKNOWLEDGING each Party's confidence in the judicial and regulatory institutions of the other Party;

AFFIRMING their shared commitment to appropriate and effective resolution of trans-Tasman civil disputes and increased regulatory cooperation;

DESIRING therefore to establish a new trans-Tasman regime, building on the existing cooperative regime covering the taking of evidence and associated court procedures, to further streamline aspects of civil court proceedings and regulatory enforcement and reduce unnecessary procedural and regulatory barriers to the conduct of litigation;

HAVE agreed as follows:

Part 1
Definitions and Objective

Article 1—Definitions

Adjudicative function means, in relation to tribunals, the function of determining the rights or liabilities of a person in a proceeding in which there are two (2) or more parties.

Appear remotely means where a person physically located in the territory of one Party is heard, or seen and heard, using technology including video or telephone link, by a court within the territory of the other Party.

Court within the territory of a Party for Australia means any federal court (including the High Court of Australia), or any court of a State or Territory.

Defendant includes a judgment debtor.

Judge for Australia includes a magistrate.

Inferior court means a court that is not a superior court.

Local registration means an entitlement to practice as a legal practitioner before a court by having fulfilled the necessary local requirements.

Money judgment means a judgment under which money is payable.

Non-money judgment means a judgment which does not involve the payment of money, including but not limited to, a judgment requiring a person to do or refrain from doing something.

Plaintiff includes a judgment creditor.

Superior court means:

1. In the case of Australia:
   a) the High Court of Australia;
   b) the Federal Court of Australia;
   c) the Family Court of Australia; or
   d) the Supreme Court of a State or Territory.
2. In the case of New Zealand:
   a) the High Court;
   b) the Court of Appeal; or
   c) the Supreme Court.

The territory of a Party means the land areas, internal waters and territorial sea under the sovereignty or jurisdiction of a Party, but with respect to New Zealand does not include Tokelau.

Article 2—Objective

1. The objective of this Agreement is to streamline the process for resolving civil proceedings with a trans-Tasman element in order to reduce costs, improve efficiency, and minimise existing impediments to enforcing certain judgments and regulatory sanctions.

Part 2
Service of Process and Recognition and Enforcement of Judgments in Civil Proceedings

Article 3—Application

1. This Part shall apply to civil proceedings before courts within the territory of either Party, except civil proceedings in relation to the following matters:
   a) dissolution of marriage;

b) enforcement of maintenance obligations; and

c) enforcement of child support obligations.

2. The Parties may, by mutual arrangement, exclude statutory cooperative arrangements and matters covered by existing or proposed bilateral or multilateral arrangements and agreements from the operation of this Part.

3. Actions in rem shall be excluded from the operation of Article 4.

4. The following judgments shall be capable of recognition and enforcement under Article 5:

a) final money judgments, and

b) final non-money judgments, except for the following:

i) orders about probate, letters of administration or the administration of an estate;

ii) orders about the guardianship or management of property of someone who is incapable of managing their personal affairs or property;

iii) orders about the care, control or welfare of a child; and

iv) orders that, if not complied with, may lead to conviction for an offence in the place where the order was made.

5. The Parties may, by mutual arrangement, exclude other non-money judgments from recognition and enforcement under Article 5.

6. A judgment shall be deemed to be final even though an appeal may be pending against it, or it may still be subject to appeal.

Article 4—Service of Process

1. Initiating process in civil proceedings in a court within the territory of one Party may be served, without leave of a court, in the territory of the other Party.

2. Service rendered in accordance with this Article shall have the same effect as if it had occurred in the jurisdiction of the court in which the initiating process was issued.

3. A plaintiff to a proceeding in the court in which the initiating process is issued shall not be required to establish any particular connection between the proceedings and the forum in order to render service under this Article.

4. Once service has been rendered under this Article, the defendant may apply for a stay of the proceedings on the basis that a court within the territory of the other Party is the more appropriate court.

5. When responding to initiating process served under this Article, the defendant may nominate an address for service in the territory of either Party.

Article 5—Recognition and Enforcement of Judgments

1. On application by the plaintiff, a judgment to which this Article applies issued by a court within the territory of one Party shall be registered by a court within the territory of the other Party (hereinafter "the registering court").
2. A judgment registered under this Article shall have the same force and effect, and may be enforced, as if the judgment had been issued by the registering court.
3. The defendant shall receive notice where a judgment is registered under this Article.
4. Subject to paragraph 6 and 8 of this Article, a judgment registered under this Article shall only be varied or set aside by the court in which it was issued, and shall only be the subject of appeal before the courts within the territory of the Party in which it was issued.
5. The registering court may grant a stay of enforcement proceedings in order for an application for variation or setting aside to be made in the court in which the judgment was issued, or in order for an appeal against the judgment to be lodged in the courts within the territory of the Party in which the judgment was issued.
6. The registration of a judgment pursuant to this Article may only be set aside in the registering court, and the judgment refused recognition and enforcement in the country of registration, if registration of the judgment would be contrary to the public policy of that country.
7. Judgments registered under this Article shall not be refused recognition and enforcement on the grounds that to do so would involve the direct or indirect enforcement of a foreign public or revenue law.
8. Registration of the following judgments may be set aside in the registering court on the basis that the property in question was not, at the time of the proceedings before the court which issued the judgment, situated within the territory of the Party in which the court which issued the judgment is located:
   a) judgments given in an action where the subject matter is immovable property; and
   b) judgments in an action in rem where the subject matter is movable property.
9. For the purposes of this Article, registering court means:
   a) In the case of Australia:
      i) the Federal Court of Australia;
      ii) the Family Court of Australia; or
      iii) the Supreme Court of a State or Territory.
   b) In the case of New Zealand:

i) the High Court.

c) In addition, any other court within the territory of either Party that could have granted the relief contained in the judgment.

Article 6—Tribunals

1. The Parties may mutually determine a list of specified tribunals, the decisions, or classes of decisions, of which may be capable of recognition and enforcement pursuant to Article 5 in the courts within the territory of the other Party.
2. In order to be specified under paragraph 1 of this Article, a tribunal must exercise an adjudicative function and its decisions must be capable of enforcement without an order of a court.
3. The Parties may mutually determine the tribunals specified under paragraph 1 of this Article the initiating process of which may be served pursuant to Article 4.
4. In order to be specified under paragraph 3, initiating process in proceedings before that tribunal must be able to be served overseas.

Article 7—Interim relief in support of proceedings in the territory of the other Party

1. Each Party shall nominate courts within its territory to grant interim relief in support of proceedings commenced in the courts within the territory of the other Party.
2. Courts nominated under paragraph 1 shall have the ability to grant the same types of interim relief in support of proceedings initiated in the courts within the territory of the other Party as they are able to grant in domestic proceedings.

Article 8—Declining jurisdiction

1. Where the appropriateness of the forum is in issue in a proceeding, courts within the territory of each Party shall be able to grant a stay of proceedings on the ground that a court within the territory of the other Party is the more appropriate forum to determine the proceedings.
2. The courts within the territory of each Party shall determine the more appropriate forum for the proceeding having regard to the following factors:
   a) where the parties and witnesses live;
   b) which jurisdiction's law is to be applied; and
   c) whether there is agreement between the parties to the proceeding about the court or place where proceedings should be heard.
3. Any additional factors to which the courts within the territory of each Party must have regard shall be determined by mutual arrangement between the Parties.

4. The preceding paragraphs are not intended to:

   a) limit the discretion of the courts to have regard to factors other than those listed in paragraph 2 or mutually determined under paragraph 3; or

   b) affect the power of the courts to stay a proceeding on a ground other than the ground mentioned in paragraph 1.

5. Courts within the territory of each Party shall not:

   a) restrain a party from commencing proceedings in a court within the territory of the other Party on the ground that the court is not the appropriate forum for the proceeding; or

   b) restrain a party in a proceeding before a court within the territory of the other Party from taking a step in the proceeding on the ground that the court is not the appropriate forum for the proceeding.

Part 3
Regulatory Enforcement

Article 9—Enforcing civil pecuniary penalty orders

1. Civil pecuniary penalties imposed by the courts within the territory of one Party shall be enforceable in the courts within the territory of the other Party as a civil judgment debt, under Article 5.

2. The Parties may, by mutual arrangement, exclude civil pecuniary penalty regimes from enforcement under this Article on the basis that a regime is inconsistent with the public policy of the Party seeking to exclude it.

Article 10—Enforcing fines for certain regulatory offences

1. The Parties shall mutually determine a list of statutes (or parts or provisions of statutes) under which fines are imposed for criminal offences under regulatory regimes that affect the effectiveness, integrity and efficiency of trans-Tasman markets and in which both Parties have a strong mutual interest.

2. Fines imposed by the courts within the territory of one Party under a statutory provision covered by paragraph 1 shall be enforceable in the courts within the territory of the other Party in the same way as a civil judgment debt under Article 5, but must be registered in a superior court of the country registering the judgment.

Part 4
Remote Appearances and Subpoenas

Article 11—Appearing remotely in civil proceedings

1. A party or their legal representative, residing in the territory of one Party, may appear remotely in civil proceedings in the territory of the other Party, with leave of the court.
2. Legal representatives may only appear remotely in that capacity if they have the right to appear before that court, or the court permits an appearance without local registration.
3. Legal representatives may seek leave to appear without local registration if they are registered where their client resides and they will be appearing remotely from that place.
4. Notwithstanding the preceding paragraphs, a party or their legal representative seeking a stay of civil proceedings in accordance with Article 4(4) and Article 8 has the right to appear remotely without applying for leave of the court.
5. This Article is not intended to restrict the circumstances in which legal representatives may appear in accordance with other arrangements between the Parties.

Article 12—Issue and service of subpoenas

1. Each Party shall ensure that it builds on the existing cooperative regime between the Parties covering the taking of evidence and associated court procedures by providing for:
   a) subpoenas to be issued in criminal proceedings and served in the territory of the other Party; and
   b) inferior courts to issue subpoenas in proceedings before that court, or before a prescribed tribunal, without leave being sought from a superior court.

Part 5
Final Provisions

Article 13—Consultation

1. Any disputes between the Parties arising out of or in connection with this Agreement shall be resolved amicably and expeditiously by consultation or negotiation between the Parties.

Article 14—Amendment

1. Any amendments to this Agreement agreed by the Parties shall enter into force 30 days after the date of the later notification by which the Parties notify each

other that their domestic requirements for the entry into force of the amendments have been fulfilled.

Article 15—Termination and Transitional Provision

1. Either Party may at any time give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement.
2. Upon such notice being given, the Agreement shall terminate on a date to be agreed by the Parties in writing. In the absence of such agreement, this Agreement shall terminate on the later of:
   a) any date specified in the notice as the date on which the termination is to be effective; or
   b) the date 1 year after the date on which the notice was received.
3. The termination of this Agreement shall be without prejudice to the completion of any proceedings commenced by persons in reliance on this Agreement before and up to the date of termination.

Article 16—Entry into Force

1. Each of the Parties shall notify the other, through diplomatic channels, of the completion of their respective domestic procedures for the entry into force of this Agreement.
2. This Agreement shall enter into force 30 days after the date of the later of these notifications.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Christchurch on this 24th day of July, 2008.

Lianne Dalziel
For the Government of New Zealand

Robert McClelland
For the Government of Australia

Schedule 2
Amendments to, and revocations of, other enactments

s 10

Part 1
Amendments to Acts

Evidence Act 2006 (2006 No 69)

Paragraph (b) of the definition of **expenses** in section 150: omit "thing—" and substitute "thing".

Definition of **expenses** in section 150: omit "necessary for the purposes of complying with the subpoena" in the second place where it appears.

Section 150: insert in their appropriate alphabetical order:

> **audio link** means facilities (for example, telephone facilities) that enable audio communication between people in different places
>
> **audiovisual link** means facilities that enable audio and visual communication between people in different places
>
> **examination** of a person giving evidence means the examination-in-chief, cross-examination, or re-examination of the person
>
> **relevant court**, in relation to leave to serve a New Zealand subpoena on a witness in Australia, or an application under section 154 for leave of that kind, means—
>
> (a) a District Court, if the New Zealand subpoena is issued by a tribunal declared by the Minister of Justice under section 152 to be a New Zealand court; and
>
> (b) the New Zealand court that issued the subpoena, in every other case
>
> **remote appearance medium** means—
>
> (a) an audio link; or
>
> (b) an audiovisual link
>
> **remote evidence** means evidence given or to be given under section 168 or 173
>
> **submissions** does not include submissions that are not—
>
> (a) submissions on whether, and if so in what way or ways, remote evidence may or must be given; or
>
> (b) submissions on whether remote evidence is admitted or admissible; or
>
> (c) other submissions in relation to remote evidence

Section 151: repeal and substitute:

Evidence Act 2006 (2006 No 69)—*continued*

151 Meaning of specified proceeding

In this subpart, **specified proceeding** means a proceeding—

(a) in respect of which a person is seeking an order under the Convention on the Civil Aspects of International Child Abduction signed at The Hague on 25 October 1980; or

(b) relating to the guardianship or care of a person who is incapable of managing his or her personal affairs; or

(c) relating to the management of the property of a person who is incapable of managing that property.

New sections 153A and 153B: insert after section 153:

153A Courts (Remote Participation) Act 2010 does not apply to remote appearances under this subpart

Nothing in the Courts (Remote Participation) Act 2010 applies to the giving or taking of evidence, examination of a person giving evidence, or making or receipt of examination or submissions, by audio link or audiovisual link in accordance with sections 168 to 172 or 173 to 180.

Compare: 2010 No 108 s 36

153B Mutual Assistance in Criminal Matters Act 1992 operates in parallel with this subpart

This subpart is not subject to, and does not override, the Mutual Assistance in Criminal Matters Act 1992.

Compare: Trans-Tasman Proceedings Act 2010 s 108 (Aust)

Section 154(1): omit "High Court" and substitute "relevant court".

Section 160: omit "High Court" in each place where it appears and substitute in each case "relevant court".

Section 161(a): omit "High Court" and substitute "relevant court".

Section 163(2)(a): omit "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," and substitute "court of judicature within Australia".

Section 165(4)(a): omit "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 substitute "a court of judicature within Australia".

Section 165(5): omit "Federal Court or by the Family Court of Australia or by a Supreme Court of an Australian State or a territory" and substitute "court of judicature within Australia referred to in subsection (4)(a)".

Heading above section 168: omit "*Video link and telephone conferences*" and substitute "*Audio links and audiovisual links*".

Evidence Act 2006 (2006 No 69)—*continued*

Section 168: repeal and substitute:

168 New Zealand court may receive evidence, and related examination and submissions, by audio link and audiovisual link from Australia

(1) A New Zealand court may, on application by a party to a proceeding before it, direct that all or any of the following be done by remote appearance medium from Australia:

(a) the giving of evidence:

(b) the examination of a person giving evidence under paragraph (a):

(c) the making of submissions.

(2) The remote appearance medium used must be—

(a) the remote appearance medium specified by the court; or

(b) if the court does not specify a remote appearance medium—either remote appearance medium.

(3) The court must not give the direction unless it is satisfied that—

(a) the evidence, examination, or submission can more conveniently be given or made from Australia; and

(b) if the court intends to specify a remote appearance medium—that remote appearance medium is, or can reasonably be made, available; and

(c) if the court does not intend to specify a remote appearance medium—both remote appearance mediums are, or can reasonably be made, available; and

(d) it is appropriate to give the direction.

Compare: 1994 No 31 s 19(1)

168A Costs of giving evidence, and making examination and submissions, from Australia

(1) Unless the New Zealand court otherwise orders, the costs incurred in giving evidence, or making an examination or submissions, by audio link or audiovisual link, and transmitting the evidence, examination, or submissions, under a direction under section 168(1), must be paid by the applicant.

(2) The New Zealand court may make an order specifying the amount payable by a party under subsection (1), and requiring the party to pay that amount.

(3) An order made under subsection (2) by a New Zealand court that does not have the power to enforce its orders—

(a) may be filed in any District Court; and

(b) when so filed, is enforceable as a judgment of that District Court.

Compare: 1994 No 31 s 19(2)–(4)

Evidence Act 2006 (2006 No 69)—*continued*

Section 169: omit "submissions by video link or telephone conference" and substitute "examination or submissions by audio link or audiovisual link".

Heading to section 170: omit "**and submissions by video link**" and substitute "**, examination, and submissions by audiovisual link**".

Section 170: omit "or submissions made by video link" and substitute ", or examination or submissions made, by audiovisual link".

Section 170: omit "or the submissions are to be made" and substitute ", or the examination is to be made, or the submissions are to be made,".

Section 170: omit "video facilities" and substitute "facilities".

Section 170(a): insert "examination or" before "submissions in Australia".

Section 170(b): omit "or the submissions are made" and substitute ", the examination is made, or the submissions are made,".

Heading to section 171: omit "**and submissions by telephone**" and substitute "**, examination, and submissions by audio link**".

Section 171: omit "or submissions made by telephone conference" and substitute ", or examination or submissions made, by audio link".

Section 171: omit "or the submissions are to be made" and substitute ", or the examination is to be made, or the submissions are to be made,".

Section 171: omit "telephone conference facilities" and substitute "facilities".

Section 171(a): insert "examination or" before "submissions in Australia".

Section 171(b): omit "or the submissions are made" and substitute ", the examination is made, or the submissions are made,".

Section 172: repeal and substitute:

172 Rights of Australian counsel

(1) This section applies to a person who—

(a) 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 examination or submissions made under a direction under section 168; but

(b) is not entitled otherwise than under this section to appear before the New Zealand court to examine a person giving evidence, or to make submissions, under that direction.

(2) The person is entitled to practise as a barrister, a solicitor, or both in relation to each appearance for the examination or submissions to which the direction relates, and each appearance of that kind is for the purposes of sec-

Evidence Act 2006 (2006 No 69)—*continued*

tion 27(1)(b)(i) of the Lawyers and Conveyancers Act 2006 an appearance allowed by this Act.

Compare: 1994 No 31 s 23

Heading above section 173: omit "*Video link and telephone conferences*" and substitute "*Audio links and audiovisual links*".

Section 173: repeal and substitute:

173 Australian court may take evidence, and receive related examination and submissions, by audio link or audiovisual link from New Zealand

The taking of evidence, or receipt of an examination or submissions, from New Zealand in a proceeding in an Australian court is authorised if it is in accordance with the Trans-Tasman Proceedings Act 2010 (Aust).

Compare: 1994 No 31 s 24

Section 174: insert "examination or" before "submissions" in both places where it appears.

Section 175(1)(b): insert ", the examination is or is to be made," before "or the submissions are or are to be made".

Heading to section 176: insert "**or examination or submissions made**" after "**evidence given**".

Section 176: insert ", the examination is made," after "the evidence is given".

Section 177(1): insert "an examination or" before "submissions".

Section 177(2): insert "examination or" before "submissions".

Section 177: omit "video link or telephone conference" in each place where it appears and substitute in each case "audio link or audiovisual link".

Section 178(1): omit "video link or telephone conference" and substitute "audio link or audiovisual link".

Section 179(1): insert ", an examination is being made," after "evidence is being given".

Section 179(1): omit "video link or telephone conference" and substitute "audio link or audiovisual link".

Section 180(a): insert ", an examination is being or will be made," after "evidence is being or will be given".

Section 180(a): omit "video link or telephone conference" and substitute "audio link or audiovisual link".

Section 181 and heading above section 181: repeal.

Section 189(1): omit "subsection" and substitute "section".

Section 199(1)(e): omit "submissions by video link or telephone conference" and substitute "examinations and submissions by audio link or audiovisual link".

Judicature Act 1908 (1908 No 89)

New sections 56DB and 56DC: insert after section 56D:

56DB Trans-Tasman Proceedings Act 2010 does not affect this Part

This Part is not limited or affected by the Trans-Tasman Proceedings Act 2010.

56DC Courts (Remote Participation) Act 2010 does not apply to remote appearances under this Part

Nothing in the Courts (Remote Participation) Act 2010 applies to any appearance by video link or telephone conference in accordance with this Part.

Compare: 2010 No 108 s 36

Section 56Q: add:

(4) A person appearing as a party 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 party in a proceeding in the High Court.

Maritime Transport Act 1994 (1994 No 104)

Section 369: repeal and substitute:

369 Reciprocal enforcement of judgments

(1) Part 1 (except for section 6(3) and (4)) of the Reciprocal Enforcement of Judgments Act 1934 applies to a judgment given by a Court in a country (other than Australia) in respect of which the CLC Convention is in force and to enforce a claim in respect of liability incurred under any provision corresponding to section 345 of this Act.

(2) A judgment given by a Court in Australia to enforce a claim in respect of liability incurred under Part II of the Protection of the Sea (Civil Liability) Act 1981 (Aust) (or any later Australian enactments corresponding to section 345 of this Act) must be treated as a registrable Australian judgment for the purposes of subpart 5 of Part 2 of the Trans-Tasman Proceedings Act 2010.

Compare: 1974 No 14 s 44

Reciprocal Enforcement of Judgments Act 1934 (1934 No 11)

Definition of **Australian tax** in section 2(1): repeal.

Section 3: insert after subsection (1):

(1A) Nothing in this Part applies or extends to a judgment that is given in or by a superior court or an inferior court of Australia.

Reciprocal Enforcement of Judgments Act 1934 (1934 No 11)—*continued*

(1B) Subsection (1A) does not, however, prevent a judgment given in or by a superior court or an inferior court of Australia from being a registrable Australian judgment under subpart 5 of Part 2 of the Trans-Tasman Proceedings Act 2010.

(1C) Subsection (1A), and the amendments to, and revocations of orders under, this Part effected by Schedule 2 of the Trans-Tasman Proceedings Act 2010, do not, however, affect the application of this Part to a judgment given in or by a superior court or an inferior court of Australia before the commencement of subpart 5 of Part 2 of that Act.

Section 3(3A): repeal.

Section 3A(3) and (4): repeal.

Section 3B(4): omit ", not being a judgment of a superior Court or an inferior Court of Australia,".

Section 3B(5): repeal.

Section 6(1)(e): omit ", not being a judgment of a superior Court or an inferior Court of Australia under which Australian tax is payable,".

Section 6(3)(a)(vi): repeal.

Part 1A: repeal.

Part 2
Amendment to order

Reciprocal Enforcement of Judgments Order 1940 (SR 1940/88)

Heading and items relating to Australia in Schedule: omit.

Part 3
Orders revoked

Reciprocal Enforcement of Judgments (Australian Inferior Courts) Order 1992 (SR 1992/265)

Reciprocal Enforcement of Judgments (Commonwealth of Australia) Order 1987 (SR 1987/22)

Reciprocal Enforcement of Judgments (Northern Territory of Australia) Order 1957 (SR 1957/264)

Reciprocal Enforcement of Judgments Order 1940, Amendment No 2 (SR 1962/156)

Reciprocal Enforcement of Judgments Order 1940 (No 2) (SR 1940/306)

Reciprocal Enforcement of Judgments Order 1955 (SR 1955/108)

Notes

1 General

This is a consolidation of the Trans-Tasman Proceedings Act 2010 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

2 Legal status

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

3 Editorial and format changes

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

4 Amendments incorporated in this consolidation

Secondary Legislation Act 2021 (2021 No 7): section 3

Trans-Tasman Proceedings Amendment Act 2016 (2016 No 70)

District Court Act 2016 (2016 No 49): section 261

Trans-Tasman Proceedings Act Commencement Order 2013 (SR 2013/342)

Criminal Procedure Act 2011 (2011 No 81): section 413

Wellington, New Zealand:
Published under the authority of the New Zealand Government—2022