



# **Employment Court (Trans-Tasman Proceedings Act 2010) Amendment Regulations 2013**

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 2nd day of September 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 237 of the Employment Relations Act 2000, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

### **Contents**

		Page
1	Title	2
2	Commencement	2
3	Principal regulations	2
4	Regulation 3 amended (Interpretation)	2
5	Regulation 6 amended (Procedure)	2
6	Regulation 27 amended (Address for service)	3
7	New regulation 29B inserted (Service in Australia on corporations)	3
	29B Service in Australia on corporations	3
8	New regulation 31AA inserted (Service in Australia on partnerships and attorneys)	5

	31AA Service in Australia on partnerships and attorneys	5
9	Regulation 31A amended (Leave to serve statement of claim on overseas party)	5
10	Regulation 31D amended (Overseas party may file objection to jurisdiction)	6
11	Regulation 31E amended (Time within which overseas party to file objection to jurisdiction or statement of defence)	6
12	Regulation 31G amended (Court may decline jurisdiction)	6

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## **Regulations**

### **1 Title**

These regulations are the Employment Court (Trans-Tasman Proceedings Act 2010) Amendment Regulations 2013.

### **2 Commencement**

These regulations come into force on 11 October 2013.

### **3 Principal regulations**

These regulations amend the Employment Court Regulations 2000 (the **principal regulations**).

### **4 Regulation 3 amended (Interpretation)**

In regulation 3(1), definition of **address for service**, after “regulation 27”, insert “or, if the party is a defendant as defined in section 4(1) of the Trans-Tasman Proceedings Act 2010 who is served in Australia under section 13 of that Act with an initiating document for a proceeding, the address of a place in New Zealand or Australia that, under section 18 of that Act, is or is to be treated as the defendant’s address for service for the proceeding”.

### **5 Regulation 6 amended (Procedure)**

After regulation 6(2)(a)(ii), insert:

“(iii) the provisions of the rules (other than those on registrable Australian judgments) in the Trans-Tasman Proceedings Regulations and Rules 2013, but only insofar as the case is or

involves a proceeding in which an initiating document is to be or has been served on a defendant in Australia under section 13 of the Trans-Tasman Proceedings Act 2010; or”.

**6 Regulation 27 amended (Address for service)**

After regulation 27(4), insert:

“(4A) Subclause (4) is subject to section 18 of the Trans-Tasman Proceedings Act 2010 in the case of a defendant as defined in section 4(1) of that Act who is served in Australia under section 13 of that Act with an initiating document for the proceeding.”

**7 New regulation 29B inserted (Service in Australia on corporations)**

After regulation 29A, insert:

**“29B Service in Australia on corporations**

“(1) A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—

“(a) on a company registered in Australia under the Corporations Act 2001 (Aust), by sending the document by registered post to—

“(i) the registered office of that company; or

“(ii) a postal box held in Australia by that company and provided by an Australian postal operator (as defined in subclause (2));

“(b) on a corporation incorporated in Australia (other than a company specified in paragraph (a)) in the same way as if it were a corporation to which regulation 29 applies:

“(c) on a foreign company registered under section 601CE of the Corporations Act 2001 (Aust) as follows:

“(i) by delivery to a person named in the register kept for the purposes of Division 2 of Part 5B.2 of that Act as a director of the foreign company and who is resident in Australia; or

- “(ii) by delivery to a person named in that register as being authorised to accept service in Australia of documents on behalf of the foreign company; or
  - “(iii) by delivery to an employee of the foreign company at the foreign company’s place of business in Australia or, if the foreign company has more than 1 place of business in Australia, at the foreign company’s principal place of business in Australia; or
  - “(iv) by serving it in accordance with any directions as to service given by the court having jurisdiction in the proceeding; or
  - “(v) in accordance with an agreement made with the foreign company:
- “(d) on a foreign corporation of the kind specified in subclause (3) by serving it in accordance with regulation 28(2)(a)(i)—
- “(i) on a person appearing to have control of the business of that corporation; and
  - “(ii) at the principal or only place of business of that corporation in Australia.
- “(2) **Australian postal operator**, in subclause (1)(a)(ii), means—
- “(a) a corporation that is, or is a successor to, the corporation that on 11 October 2013 was the Australian Postal Corporation (and was also known as Australia Post) continued in existence by the Australian Postal Corporation Act 1989 (Aust); or
  - “(b) a PPO (that is to say, a private postal operator) that is a registered PPO as defined in section 3(1) of the Ombudsman Act 1976 (Aust).
- “(3) Subclause (1)(d) applies to a foreign corporation that—
- “(a) is not a foreign company registered under section 601CE of the Corporations Act 2001 (Aust); and
  - “(b) is incorporated but not in Australia and not in New Zealand; and
  - “(c) has a place of business in Australia; and
  - “(d) does not have a place of business in New Zealand.

“(4) Subclause (1) does not affect service on a party in accordance with regulation 28(2)(b) if the party has given, or is to be treated as having given, an address for service.”

**8 New regulation 31AA inserted (Service in Australia on partnerships and attorneys)**

After regulation 31, insert:

**“31AA Service in Australia on partnerships and attorneys**

“(1) A document in a proceeding in which an initiating document is to be or has been served on a defendant under section 13 of the Trans-Tasman Proceedings Act 2010 may be served in Australia—

“(a) on a partnership, or on a person carrying on business in the name of a firm apparently consisting of more than 1 person, by serving it in accordance with regulation 28(2)(a)(i)—

“(i) on any partner or on that person; or

“(ii) at the principal place in Australia of the business of the partnership or apparent partnership, on any person appearing to have control of the business there:

“(b) on a person who is out of Australia and New Zealand by serving, in accordance with regulation 28(2)(a)(i), an attorney or agent of that person in Australia if the attorney or agent is authorised—

“(i) to transact that person’s affairs generally and to defend proceedings; or

“(ii) to transact the person’s affairs in respect of the subject matter of the proceeding and to defend the particular proceeding.

“(2) Subclause (1) does not affect service on a party in accordance with regulation 28(2)(b) if the party has given, or is to be treated as having given, an address for service.”

**9 Regulation 31A amended (Leave to serve statement of claim on overseas party)**

In regulation 31A(1), after “an overseas party”, insert “(because that party is not a defendant in Australia on whom, or on which, the statement of claim may under section 13 of the

Trans-Tasman Proceedings Act 2010 be served without the court's leave)".

**10 Regulation 31D amended (Overseas party may file objection to jurisdiction)**

After regulation 31D(2), insert:

- “(3) This regulation is subject to section 27(1) of the Trans-Tasman Proceedings Act 2010, which provides that a New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act.”

**11 Regulation 31E amended (Time within which overseas party to file objection to jurisdiction or statement of defence)**

In regulation 31E(2)(a), after “service on the party”, insert “or, if the party is served under section 13 of the Trans-Tasman Proceedings Act 2010, the applicable period specified in section 17(1)(a) or (b) of that Act”.

**12 Regulation 31G amended (Court may decline jurisdiction)**

In regulation 31G(2), after “does not limit any rule of law”, insert “, but is subject to section 27(1) of the Trans-Tasman Proceedings Act 2010 (under which a New Zealand court is prevented from staying a proceeding before it on forum grounds connected with Australia otherwise than in accordance with subpart 2 of Part 2 of that Act)”.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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## **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 11 October 2013, amend the Employment Court Regulations 2000 in the light of the Trans-Tasman Proceedings Act 2010 (the **Act**) (most of which also comes into force on 11 October 2013). The amendments relate, in particular, to the following matters:

- whether leave of the court is required to serve an initiating document for a proceeding on a defendant in Australia:
- service in Australia on corporations, partnerships, and attorneys:
- the address for service of a defendant on whom or on which an initiating document for a proceeding is served under the Act:
- the time within which such a defendant may file an objection to the court's jurisdiction or a statement of defence:
- New Zealand civil proceedings being stayed on the grounds that an Australian court is the more appropriate forum:
- if a case arises for which no procedure is otherwise prescribed, the court disposing of the case under the rules (other than those on registrable Australian judgments) in the Trans-Tasman Proceedings Regulations and Rules 2013.

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Issued under the authority of the Legislation Act 2012.

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These regulations are administered by the Ministry of Business, Innovation, and Employment.

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