



Effective 11 October 2013 the *Trans-Tasman Proceedings Act 2010* is now in force and brings the legal systems of Australia and New Zealand closer, specifically in civil litigation. The laws have been a long time coming. Australian States and Territories agreed to implement a more streamlined approach to trans-tasman litigation in April 2009. Under the changes, litigation between parties located in Australia and New Zealand will become more like litigation between parties in the same country.

In the past, contracts without an arbitration clause have required any claimant to find a way first to serve process upon the foreign party to commence proceedings. Throughout the proceedings, the claimant faced problems forcing the foreign defendant to comply with court orders. If judgment was entered in its favour, the claimant often further found it difficult to enforce it against the foreign party when assets were located outside the jurisdiction. The changes provide another step towards a single economic market. The changes are:-

- Proceedings will be able to be served on defendants in Australia as if they were resident in New Zealand, and vice versa, without seeking judicial leave or having to demonstrate a domestic connection;
- Defendants will be able to seek a stay of proceedings if they consider the case could be tried more appropriately in the other country, subject to a standardised test (e.g. considering where the relevant events took place or witnesses are located). A tactical home advantage can nonetheless be gained by filing first, putting the onus on the defendant to persuade the 'away' court to decline jurisdiction;
- Counsel may participate remotely in proceedings in the other country. If you are served with New Zealand proceedings in Australia or vice versa, you can instruct an Australian lawyer to represent you (including by filing documents and appearing by video-link) to seek a stay;
- Where parties have contractually agreed to have their disputes resolved by the courts of either New Zealand or Australia, that choice of court must be respected;
- The courts of each country have express powers to grant certain interim measures (e.g. injunctions or freezing orders) in support of civil proceedings commenced in the other country;
- Most civil judgments from either country may be enforced in the other country by a simple registration procedure. Procedures are also specified for the trans-Tasman enforcement of competition law judgments.

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