

This document provides a summary of certain provisions of the *Trans-Tasman Proceedings Act 2010* (the Act). This document is for information only and does not constitute legal advice or additional treaty or legislative material. It should not be relied on as an accurate statement of the law. We recommend that you read the Act in its entirety and seek legal advice where appropriate.

Summary of key provisions of the Trans-Tasman Proceedings Act 2010 (Cth)

Service in NZ of initiating documents issued by Australian courts and tribunals (Part 2)

Part 2 is about serving defendants in NZ with initiating documents for certain civil proceedings in Australian courts or tribunals. It provides the process for how the service must be done. Australian courts and tribunals have certain obligations to ensure that service is properly effected.

Relevant Sections under Part 2		Corresponding Trans-Tasman Proceedings Regulations
Section 9–Service of initiating documents in NZ	Documents for service in NZ must be served in the same way that the documents are required or permitted, under the procedural rules of the Australian court or tribunal, to be served in the place of issue.	
Section 13–When the defendant must file an appearance	A defendant, who is served with an initiating document in NZ and wishes to file an appearance in the issuing Australian court or tribunal, must do so within a specified timeframe.	
Section 15–Security for costs	An issuing Australian court or tribunal may order that the plaintiff in the proceeding provide a security for the defendant’s costs of the proceeding. This does not affect the power of the court to make an order requiring security for costs.	

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Australian courts declining jurisdiction on the grounds that a NZ court is a more appropriate forum (Part 3)

Part 3 relates to when an Australian court may stay a proceeding on the grounds that a NZ court is the more appropriate court to determine the matters in dispute. The Australian court may only stay the proceeding if the defendant applies for the proceeding to be stayed within a certain timeframe. The Australian court may only stay the proceeding if it is satisfied that a NZ court has jurisdiction to determine all the matters in dispute and that it is the more appropriate court to determine those matters. In determining whether the NZ court is the more appropriate court, the Australian court must take certain matters into account. However, if the parties have made an exclusive choice of court agreement that designates either an Australian court or NZ court as the court to determine the matters in dispute, the Australian court's order as to whether to stay the proceeding must be consistent with that agreement.

Relevant Sections under Part 3		Corresponding Trans-Tasman Proceedings Regulations
Section 17- Application to stay Australian proceeding	A defendant in a civil proceeding in an Australian court may apply to the court for an order staying the proceeding on the grounds that a NZ court is the more appropriate court to determine the matters in dispute. The application must be made within a specified timeframe.	
Section 19-Order of stay of proceeding	On application, the Australian court may, by order, stay the proceeding if it is satisfied that a NZ court has the necessary jurisdiction to hear the matters and that it is the more appropriate court to determine those matters.	
Section 20-Exclusive choice of court agreements	Application to stay Australian proceeding on forum grounds (and despite section 19 above), the Australian court: <ul style="list-style-type: none"> • must, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates a NZ court as the court to determine the matters in dispute, and • must not, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates an Australian court as the court to determine those matters. However the above does not apply to an exclusive choice of court agreement if the Australian court is satisfied that: <ul style="list-style-type: none"> • it is null and void under NZ law; or • a party to the proceeding lacked the capacity to conclude it under Australian law; or • giving effect to it would be unjust or contrary to Australian public policy; or • for exceptional reasons beyond the control of the parties, it cannot be reasonably performed; or • the court designated to hear the matter has decided not to hear those matters. 	

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Relevant Sections under Part 3		Corresponding Trans-Tasman Proceedings Regulations
Section 22-No restraint of proceedings	The Australian court must not restrain someone from commencing a proceeding in a NZ court or restrain a party to that proceeding on the grounds that that NZ court is not the appropriate forum for the proceeding.	

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Australian courts granting interim relief in support of civil proceedings in NZ courts (Part 4)

Part 4 provides for certain Australian courts to give interim relief in support of civil proceedings in NZ courts. For the Australian court to give interim relief, a party to the NZ proceeding must apply for it. The Australian court may give interim relief if it considers it appropriate and, if a similar proceeding had been commenced in the Australian court, it would have given interim relief in that similar proceeding.

Relevant Sections under Part 4		Corresponding Trans-Tasman Proceedings Regulations
Section 25- Application to an Australian court for interim relief	A party or an intended party to a proceeding in a NZ court may apply to certain Australian courts and tribunals for interim relief (other than a warrant for the arrest of property) in support of the NZ proceeding.	<p>The following Australian courts are prescribed under the Regulations to receive applications for interim relief:</p> <ul style="list-style-type: none"> • Federal Magistrates Court • County Court (Victoria) • Magistrates' Court (Victoria) • District Court (QLD) • Magistrates Court (QLD) • District Court of WA • Magistrates Court (WA) • Family Court of WA • Magistrates Court (ACT) • Local Court (NT) <p>(Regulation 8)</p>
Section 26-Interim relief in support of a NZ proceeding	On application to the Australian court, the court may give interim relief (other than a warrant for the arrest of property) if it considers appropriate.	

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Subpoenas (Part 5)

Part 5 is about subpoenas issued by certain Australian and NZ courts and tribunals. It allows for subpoenas issued by Australian courts and tribunals to be served on a person in NZ with leave of an Australian court. It also allows for subpoenas issued by NZ courts and tribunals to be served on a person in Australia in accordance with the NZ Evidence Act.

Relevant Sections under Part 5		Corresponding Trans-Tasman Proceedings Regulations
<i>Division 2 - Australian subpoenas</i>		
Section 29– Application of this Division	This applies to a subpoena that is issued in a proceeding (other than an excluded family proceeding) in a federal court or a state/territory court prescribed by the regulations or an Australian tribunal prescribed by the regulations	<p>The following Australian courts are prescribed under the Regulations to issue subpoenas:</p> <p><u>NSW</u></p> <ul style="list-style-type: none"> • Supreme Court of NSW • District Court of NSW • Local Court of NSW • Children’s Court of NSW • Dust Diseases Tribunal of NSW <p><u>VIC</u></p> <ul style="list-style-type: none"> • Supreme Court of Victoria • County Court (VIC) • Magistrates’ Court of VIC <p><u>QLD</u></p> <ul style="list-style-type: none"> • Supreme Court of QLD • District Court of QLD • Magistrates Courts (QLD) • Planning and Environment Court (QLD) • Land Court (QLD) • Children’s Court of QLD • Industrial Court of QLD
Section 31– Subpoenas must be served in NZ	If the proceeding is in an Australian court, the subpoena must not be served in NZ without the leave of the court. If the proceedings are in an Australian tribunal, the subpoena must not be served in NZ without the leave of an inferior Australian court.	
Section 32–How subpoenas must be served in NZ	The subpoenas must be served in NZ in the same way that subpoena is required or permitted, under the issuing Australian court’s/tribunal’s procedural rules, to be served in the place of issue, and in accordance with any directions given by the Australian court that gave leave.	
Section 34– Subpoenas that require production	If the subpoena only requires production of a document or thing, it must permit the person to comply by producing the document or thing at any registry of the High Court of NZ no later than 10 days before the date specified for production in the subpoena.	
Section 35– Applications to set Australian subpoenas aside	The person named in the subpoena may seek to have the subpoena set aside by making an application to the Australian court that gave leave for the subpoena to be served. The Registrar of the Australian court must serve the application, along with supporting evidence, on the lawyer for the person who obtained leave to serve the subpoena in NZ, or that person.	
Section 36–Setting aside Australian subpoenas	On application, the Australian court may set aside the subpoena if it is satisfied that: <ul style="list-style-type: none"> • the subpoena requires the person named to attend at a place in Australia and that he/she is unable to do so due to reasons such as not having travel documentation, being detained for the purpose of serving a sentence etc.; or • the person is subject to a restriction on his or her movements, either by law or a court order, which makes it impossible to comply with the subpoena; or • evidence to be obtained from the person being subpoenaed can be obtained in other ways 	

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Relevant Sections under Part 5		Corresponding Trans-Tasman Proceedings Regulations
	<p>without incurring extra cost; or</p> <ul style="list-style-type: none"> • compliance with the subpoena would cause hardship or serious inconvenience; or • if the subpoena is for the production of documents or thing: <ul style="list-style-type: none"> ○ this document or thing should not be taken out of NZ; and ○ satisfactory evidence of the contents can be given by other means. 	<p><u>WA</u></p> <ul style="list-style-type: none"> • Supreme Court of WA • The District Court of WA • Magistrates Court of WA • Family Court of WA
Section 37– Payment for expenses for complying with Australian subpoenas	If the subpoena was issued at the request of a person, that person will be liable for payment of reasonable expenses to the person who has been subpoenaed. But if the subpoena was not issued by a person, then reasonable expenses will be paid by the Commonwealth (if issued by a federal court) or by the state/territory in which the subpoena was issued. The Australian court /tribunal that issued the subpoena may make orders to ensure that the person who has been subpoenaed receives monetary compensation for reasonable expenses incurred in complying with the subpoena.	<p><u>SA</u></p> <ul style="list-style-type: none"> • Supreme Court of SA • District Court of SA • Magistrates Court of SA <p><u>TAS</u></p> <ul style="list-style-type: none"> • Supreme Court of Tasmania • (Magistrates Court (Civil Division) (Tasmania)
Section 38– Contravening Australian subpoenas	If the person fails to comply with the subpoena, the Australian court/tribunal that issued the subpoena may issue a certificate under its seal stating that leave to serve the subpoena was given by an Australian court; and the person subpoenaed failed to comply with it.	<p><u>ACT</u></p> <ul style="list-style-type: none"> • Supreme Court of the ACT • Magistrates Court (ACT) <p><u>NT</u></p> <ul style="list-style-type: none"> • Supreme Court of the NT • Local Court (NT) • Court of Summary Jurisdiction (NT) • Youth Justice Court (NT) • Work Health Court (NT) <p>(Regulation 9)</p>
<p>Division 3 – NZ subpoenas</p> <p>NZ subpoenas may be served in Australia in accordance with the NZ Evidence Act.</p>		
Section 43– Contravening NZ subpoenas	If the person fails to comply with the subpoena, he or she is in contempt of the Federal Court unless the person establishes that the contravention should be excused. The Federal Court may take into account a number of issues in determining whether the contravention should be	The following State/Territory courts and their registries are prescribed under the Regulations to receive

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Relevant Sections under Part 5	Corresponding Trans-Tasman Proceedings Regulations
<p>excluded.</p>	<p>documents and things required by subpoenas:</p> <p><u>Courts:</u></p> <ul style="list-style-type: none"> • Supreme Court of NSW • Local Court of NSW • Children’s Court of NSW • Dust Diseases Tribunal of NSW • Supreme Court of the State of Victoria • Country Court (Victoria) • Supreme Court of QLD • Supreme Court of WA • The District Court of WA • Magistrates Court of WA • Family Court of WA • Supreme Court of SA <p><u>Registries:</u></p> <ul style="list-style-type: none"> • Launceston and Burnie registries of the Supreme Court of Tasmania • Darwin and Alice Springs registries of the Supreme Court of the Northern Territory of Australia • Darwin, Alice Springs, Katherine, Tennant Creek and Nhulunbuy registries of the Local Court (NT) • Darwin, Alice Springs,

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Relevant Sections under Part 5		Corresponding Trans-Tasman Proceedings Regulations
		Katherine, Tennant Creek and Nhulunbuy registries of the Court of Summary Jurisdiction (NT). (Regulation 11)
Section 44– Documents etc. for transmission to a NZ court	Certain Australian courts such as the Federal Court and prescribed tribunals are authorised to receive a document or thing that is required by a subpoena to be produced. However, the regulations allow for certain registries to be excluded from accepting documents or other evidence specified in the subpoena.	

Remote appearances (Part 6)

Part 6 is about people appearing remotely from NZ in Australian proceedings and people appearing remotely from Australia in NZ proceedings.

Relevant Sections under Part 6		Corresponding Trans-Tasman Proceedings Regulations
<i>Division 2–Remote appearances from NZ in Australian proceedings</i>		
<i>Subdivision A–Remote appearances unrelated to remote evidence</i>		
Section 47– Application of this Subdivision	This subdivision applies to a civil proceeding in: <ul style="list-style-type: none"> • an Australian court; or • an Australian tribunal prescribed by the regulations 	The following Australian tribunals are prescribed under the Regulations to facilitate remote appearances by a party or party’s lawyer from NZ in Australian proceedings : <ul style="list-style-type: none"> • Victorian Civil and Administrative Tribunal • QLD Civil and Administrative Tribunal • State Administrative Tribunal in
Section 48– Remote appearances unrelated to remote evidence	The Australian court, may, on application by a party, give the party and/or party’s lawyer leave to appear remotely from NZ in an Australian proceeding. The Australian court must not give leave to the party/party’s lawyer unless it is satisfied that: <ul style="list-style-type: none"> • they are able to conveniently participate in the hearing remotely, and • if the court specifies a remote appearance medium, that this medium is reasonably available, and • if the court does not specify a remote appearance medium, options for remote facilities are 	

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Relevant Sections under Part 6		Corresponding Trans-Tasman Proceedings Regulations
	<p>made available, and</p> <ul style="list-style-type: none"> • whether it is appropriate to give leave. 	<p>WA</p> <ul style="list-style-type: none"> • ACT Civil and Administrative Tribunal <p>(Regulation 12)</p>
<i>Subdivision B—Remote appearances related to remote evidence</i>		
Section 49—Application of this Subdivision	<p>This Subdivision applies to a civil or criminal proceeding in:</p> <ul style="list-style-type: none"> • a federal court; or • a state/territory court prescribed by the regulations; or • an Australian tribunal prescribed by the regulations. 	<p>The following Australian state/territory courts are prescribed under the Regulations to facilitate remote appearances by a party or party’s lawyer from NZ in Australian proceedings:</p> <p><u>NSW</u></p> <ul style="list-style-type: none"> • Supreme Court of NSW • District Court of NSW • Local Court of NSW • Children’s Court of NSW • Dust Diseases Tribunal of NSW <p><u>VIC</u></p> <ul style="list-style-type: none"> • Supreme Court of Victoria • County Court (Victoria) • Magistrates’ Court of Victoria <p><u>QLD</u></p> <ul style="list-style-type: none"> • Supreme Court of QLD • District Court of QLD • Magistrates Courts (QLD) • Planning and Environment Court (QLD) • Land Court (QLD)
Section 50—Remote appearances unrelated to remote evidence	<p>The Australian court/tribunal, may, on application by a party give leave for evidence giving, examination of witnesses or for making of submissions in relation to this evidence from NZ in an Australian proceeding. The Australian court/tribunal must not give leave unless it is satisfied that:</p> <ul style="list-style-type: none"> • the evidence, examination or submission can be more conveniently provided from NZ; and • if the court/tribunal specifies a remote appearance medium, that this medium is reasonable available; and • if the court/tribunal does not specify a remote appearance medium, options for other facilities are made available; and • whether it is appropriate to give leave. 	
<i>Subdivision C—General provisions about remote appearances</i>		
Section 54—Powers of Australian courts in NZ	<p>For the purposes of a remote appearance from NZ in accordance with this Act, the Australian court may exercise in NZ all its powers that it is permitted to exercise in NZ under NZ law.</p>	

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Relevant Sections under Part 6		Corresponding Trans-Tasman Proceedings Regulations
		<ul style="list-style-type: none"> • Children’s Court of QLD • Industrial Court of QLD <p><u>WA</u></p> <ul style="list-style-type: none"> • Supreme Court of WA • The District Court of WA • Magistrates Court of WA • Family Court of WA <p><u>SA</u></p> <ul style="list-style-type: none"> • Supreme Court of SA • District Court of SA • Magistrates Court of SA <p><u>TAS</u></p> <ul style="list-style-type: none"> • Supreme Court of Tasmania <p><u>ACT</u></p> <ul style="list-style-type: none"> • Supreme Court of the ACT • Magistrates Court (ACT) <p><u>NT</u></p> <ul style="list-style-type: none"> • Supreme Court of the NT • Local Court (NT) • Court of Summary Jurisdiction (NT) • Youth Justice Court (NT) • Work Health Court (NT) <p>(Regulation 13)</p>
<i>Division 3–Remote appearances from Australia in NZ proceedings</i>		
Section 63– Assistance to NZ courts and	The Act makes provision of the NZ courts and tribunals to seek the assistance of the Australian court or prescribed tribunal in the remote appearance of a person located in Australia in a NZ court proceeding.	The following State/Territory courts and tribunals are prescribed under the Regulations to provide

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Relevant Sections under Part 6		Corresponding Trans-Tasman Proceedings Regulations
tribunals	<p>A relevant officer of the court/tribunal will attend the location where remote appearance is made and take any action that the NZ court/tribunal directs to facilitate the proceeding. The officer will also assist with the administering by the NZ court/tribunal of an oath or affirmation.</p> <p>The Federal Court, the Family Court of Australia, a state/territory court prescribed by the regulations and an Australian tribunal prescribed by the regulations is able to offer assistance to the NZ courts and tribunals when required.</p>	<p>assistance to NZ courts and tribunals in relation to the remote appearance of a person in Australia in a NZ court proceeding:</p> <ul style="list-style-type: none"> • Supreme Court of NSW • Local Court of NSW • Children’s Court of NSW • Dust Diseases Tribunal of NSW • Supreme Court of Victoria • County Court (Victoria) • Magistrates’ Court of Victoria • Supreme Court of QLD • Supreme Court of WA • The District Court of WA • Magistrates Court of WA • Family Court of WA • Supreme Court of SA • Supreme Court of Tasmania • Supreme Court of the ACT • Supreme Court of the NT • Local Court (NT) • Court of Summary Jurisdiction (NT) • Victorian Civil and Administrative Tribunal <p>(Regulation 14)</p>

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Recognition and Enforcement in Australia of New Zealand Judgments (Part 7)

Part 7 is about the enforcement in Australia of specified judgments of New Zealand courts and tribunals. To be enforceable, the judgment has to be registered in an Australian court. To be registered, the judgment must be a registrable NZ judgment and an application for its registration must be made. Once registered in an Australian court, the judgment has the same force, and may be enforced in the Australian court, as if the judgment had been given by the Australian court.

IMPORTANT NOTE: The enforcement of Australian court judgments in New Zealand is regulated by the *Trans-Tasman Proceedings Act 2010* (NZ). To be registered, the judgments must be registrable Australian judgments and applications for registration of these judgments must be made.

Relevant Sections under Part 7		Corresponding Trans-Tasman Proceedings Regulations
Section 65—When registrable NZ judgments are enforceable in Australia	A registrable NZ judgment can be enforced in Australia if it is registered in an Australian court.	
Section 67—Application to register NZ judgments	A person may be required to apply to register certain NZ judgments in certain Australian courts. An application must be made to the Australian court within a certain timeframe. Application to register NZ judgments (other than civil pecuniary penalties, criminal fines or NZ market proceeding judgments) can be made in a superior Australian court or an inferior Australian court that is able to give the relief that is in the judgment. Application to register civil pecuniary penalties (other than NZ market proceeding judgment) can be made in a superior Australian court or an inferior Australian court that has power to impose a civil pecuniary penalty of the same value as the penalty imposed by the judgment. Application to register criminal fines (other than NZ market proceeding judgment) can be made in a superior Australian court if the judgment imposes a regulatory criminal fine. Application to register NZ Market proceedings judgments can be made in the Federal Court.	
Section 72—Setting aside registration	An eligible person may apply to have a NZ judgment registered in an Australian court to be set aside. The Australian court may take into account a number of issues in determining whether registration of the judgment should be set aside. An application to set aside a registered NZ judgment in an Australian court must be made within a certain time frame.	

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Section 76–Stay of enforcement for appeal	An eligible person may apply to appeal a registered NZ judgment. The Australian court may order that enforcement of a NZ judgment be stayed for a certain time period until that appeal has been made. An application to make an appeal must be made within a certain time frame.	
Section 77–Costs and expenses of enforcement	If enforcement of a NZ judgment is made in an Australian court, the eligible person is able to recover reasonable expenses incurred in applying to register the judgment and attempting to enforce the judgment in the original court or tribunal	

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Trans-Tasman market proceedings (Part 8)

Part 8 deals with the jurisdiction of the Federal Court of Australia and the High Court of NZ in trans-Tasman market proceedings.

Relevant Sections under Part 8		Corresponding Trans-Tasman Proceedings Regulations
<i>Division 2—Federal Court exercising jurisdiction in NZ</i>		
Section 81—Federal Court sitting etc in NZ	The Federal Court may order that Australian market proceedings take place in NZ if it is satisfied that the proceedings could be more conveniently or fairly conducted there.	
Section 82—NZ lawyers entitled to practice in the Federal Court sitting in NZ	A qualified NZ lawyer is entitled to practise as a barrister and/or solicitor in an Australian market proceeding before the Federal Court sitting in NZ.	
Section 83—Injunctions in relation to NZ conduct	The Federal Court may order an injunction in relation to an Australian market proceeding in NZ	
Section 84—Service of injunctions and other judgments in NZ	The Federal Court may serve injunction orders or other Australian market proceedings judgments in NZ	
<i>Division 4 – Taking of evidence by the Federal Court for the High Court of NZ</i>		
Section 89—Taking of evidence by the Federal Court	The Federal Court, at the request of the High Court of NZ, may order for evidence to be taken in ways it considers appropriate. A person who is required to provide evidence will be entitled to conduct money and payment of expenses and loss of time in the same way as though the person is a witness before the Federal Court.	
Section 90—Privilege of witnesses	An order to provide evidence must not compel a person to give evidence that is contrary to what he or she would be required to provide under a NZ market proceeding.	