



Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010

No. 36, 2010

**An Act to deal with transitional and consequential
matters in connection with the *Trans-Tasman
Proceedings Act 2010*, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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No. 36, 2010

An Act to deal with transitional and consequential matters in connection with the *Trans-Tasman Proceedings Act 2010*, and for related purposes

[Assented to 13 April 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010*.

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2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 April 2010
2. Schedule 1	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> commences.	11 October 2013
3. Schedule 2, items 1 to 23	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> commences.	11 October 2013
4. Schedule 2, item 24	Immediately after the commencement of item 22 of Schedule 2 to the <i>Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2010</i> . However, the provision(s) do not commence at all if item 22 of Schedule 2 to the <i>Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2010</i> commences before the commencement of the provision(s) covered by table item 3.	Does not commence
5. Schedule 2, items 25 and 26	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> commences.	11 October 2013
6. Schedule 2, items 27 and 28	The later of: (a) immediately after the commencement of the provision(s) covered by table item 3; and (b) immediately after the commencement of item 22 of Schedule 2 to the <i>Law and</i>	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
	<i>Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2010.</i> However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this Act as originally passed by both Houses of the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Definitions

- (1) In this Act:

commencement means the day on which section 3 of the *Trans-Tasman Proceedings Act 2010* commences.

Trans-Tasman Act means the *Trans-Tasman Proceedings Act 2010*.

- (2) In this Act, expressions that are defined in the *Trans-Tasman Act* have the same meanings as they have in that Act.

Schedule 1—Application of the Trans-Tasman Act

1 Application of Part 2 of the Trans-Tasman Act

Part 2 of the Trans-Tasman Act (which deals with service in New Zealand of initiating documents issued by Australian courts and tribunals) applies to:

- (a) a civil proceeding commenced on or after commencement; or
- (b) a civil proceeding commenced before commencement, but only if not all of the initiating documents for the proceeding have been served before commencement.

2 Application of Part 3 of the Trans-Tasman Act

Part 3 of the Trans-Tasman Act (which deals with Australian courts declining jurisdiction on the grounds that a New Zealand court is the more appropriate forum) applies to a civil proceeding commenced in an Australian court on or after commencement.

3 Application of Part 4 of the Trans-Tasman Act

Part 4 of the Trans-Tasman Act (which deals with Australian courts granting interim relief in support of civil proceedings in New Zealand courts) applies to a civil proceeding commenced, or to be commenced, in a New Zealand court on or after commencement.

4 Application of Part 5 of the Trans-Tasman Act

- (1) Part 5 of the Trans-Tasman Act (which deals with subpoenas) applies to a subpoena issued before, on or after commencement.
- (2) Despite subitem (1), Division 2 of Part 5 of the Trans-Tasman Act (which deals with Australian subpoenas) does not apply to a subpoena if, before commencement, the court gave leave under section 9 of the *Evidence and Procedure (New Zealand) Act 1994* for the subpoena to be served in New Zealand.

Note: The *Evidence and Procedure (New Zealand) Act 1994* continues to apply to the subpoena: see item 2 of Schedule 2 to this Act.

5 Application of Part 6 of the Trans-Tasman Act

⁴ *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010* No. 36, 2010

- (1) Part 6 of the Trans-Tasman Act (which deals with remote appearances) applies to a remote appearance that is made on or after commencement. It does not matter whether the proceeding in which the remote appearance is made commenced before, on or after commencement.
- (2) Despite subitem (1), Division 2 of Part 6 of the Trans-Tasman Act (which deals with remote appearances from New Zealand in Australian proceedings) does not apply to a remote appearance if:
 - (a) the remote appearance is to give evidence or make submissions; and
 - (b) before commencement, the court directed under section 25 of the *Evidence and Procedure (New Zealand) Act 1994* that the evidence be given or submissions be made, by video link or telephone, from New Zealand.

Note: The *Evidence and Procedure (New Zealand) Act 1994* continues to apply to these remote appearances: see item 2 of Schedule 2 to this Act.

6 Application of Part 7 of the Trans-Tasman Act

Part 7 of the Trans-Tasman Act (which deals with the recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals) applies to judgments given on or after commencement. It does not matter whether the proceeding in which the judgment is given commenced before, on or after commencement.

7 Application of Part 8 of the Trans-Tasman Act

Part 8 of the Trans-Tasman Act (which deals with trans-Tasman market proceedings) applies to proceedings commenced on or after commencement.

8 Application of Part 9 of the Trans-Tasman Act

Part 9 of the Trans-Tasman Act (which deals with evidence of certain New Zealand matters) applies to proceedings commenced before, on or after commencement.

Schedule 2—Consequential repeals and amendments

Part 1—Repeal of the Evidence and Procedure (New Zealand) Act 1994

Evidence and Procedure (New Zealand) Act 1994

1 The whole of the Act

Repeal the Act.

2 Saving

- (1) This item applies despite the repeal of the *Evidence and Procedure (New Zealand) Act 1994* (the *EPNZA*) made by this Schedule.
- (2) If, before commencement, a court gave leave under section 9 of the EPNZA for a subpoena to be served in New Zealand, then the EPNZA, as in force immediately before commencement, continues to apply on and after commencement in relation to the subpoena.
- (3) If, before commencement, a court directed under section 25 of the EPNZA that:
 - (a) evidence be taken; or
 - (b) submissions be made;by video link or telephone from New Zealand, then the EPNZA, as in force immediately before commencement, continues to apply on and after commencement in relation to the taking of that evidence or the making of those submissions.
- (4) Section 47 of the EPNZA (which deals with the application of the *Foreign Judgments Act 1991*), as in force immediately before commencement, continues to apply on and after commencement in relation to a judgment given before commencement.
- (5) Regulations made under section 49 of the EPNZA, as in force immediately before commencement, continue to apply on and after commencement in relation to:
 - (a) a subpoena to which subitem (2) applies; or

- (b) the taking of evidence, or making of submissions, to which subitem (3) applies.

Part 2—Amendment of the Federal Court of Australia Act 1976

Federal Court of Australia Act 1976

3 Paragraph 32A(4)(b)

Omit “Australian proceeding within the meaning of Part IIIA”, substitute “Australian market proceeding within the meaning of the *Trans-Tasman Proceedings Act 2010*”.

4 Part IIIA

Repeal the Part.

5 Subsection 47A(5) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

6 Subsection 47B(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

7 Section 47G

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

8 Paragraphs 59(2)(y), (za), (zb), (zc), (zd) and (ze)

Repeal the paragraphs, substitute:

- (y) the Court’s sittings in New Zealand under Part 8 of the *Trans-Tasman Proceedings Act 2010*; and
- (za) the enforcement of orders under subsection 85(5) of the *Trans-Tasman Proceedings Act 2010*; and
- (zb) the registration and enforcement, and the setting aside of the registration, of judgments under Part 7 of the *Trans-Tasman Proceedings Act 2010*; and
- (zc) the transmission of documents to the High Court of New Zealand; and

- (zd) taking evidence under section 89 of the *Trans-Tasman Proceedings Act 2010*; and
- (ze) the exercise in Chambers of the Court's jurisdiction under Part 8 of the *Trans-Tasman Proceedings Act 2010*; and

9 Saving

- (1) Despite the repeal of Part IIIA of the *Federal Court of Australia Act 1976* made by this Schedule, Part IIIA of that Act, as in force immediately before commencement, continues to apply on and after commencement in relation to a proceeding commenced before commencement.
- (2) Despite subitem (1), Division 5 of Part IIIA of the *Federal Court of Australia Act 1976* does not apply on and after commencement in relation to a judgment given on or after commencement.
- (3) Despite the amendments made to paragraphs 59(2)(y), (za), (zb), (zc), (zd) and (ze) of the *Federal Court of Australia Act 1976* by this Schedule, Rules of Court made for the purposes of those paragraphs continue to apply on and after commencement in relation to a proceeding commenced before commencement.
- (4) Regulations made under section 60 of the *Federal Court of Australia Act 1976* for the purposes of Part IIIA of that Act continue to apply on and after commencement in relation to a proceeding commenced before commencement.

Part 3—Other amendments

Defence Force Discipline Act 1982

10 Subsection 148A(5) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

11 Subsection 148B(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

12 Section 148F

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

Family Law Act 1975

13 Subsection 102C(5) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

14 Subsection 102D(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

15 Subsection 102E(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

16 Section 102L

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

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Federal Magistrates Act 1999

17 Subsection 66(5) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

18 Subsection 67(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

19 Subsection 68(3) (note)

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

20 Section 73

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

Foreign Judgments Act 1991

21 Paragraph 5(8)(d)

Omit “New Zealand or”.

22 Subsection 5(10)

Repeal the subsection, substitute:

(10) This Part does not apply to a judgment given by a court of New Zealand.

Note: For the enforcement in Australia of judgments given by courts of New Zealand, see Part 7 of the *Trans-Tasman Proceedings Act 2010*.

23 Saving

Despite the amendments made to paragraph 5(8)(d) and subsection 5(10) of the *Foreign Judgments Act 1991* by this Schedule, those provisions, as in force immediately before commencement, continue to apply on and after commencement in relation to a judgment given before commencement.

***Law and Justice Legislation Amendment (Identity Crimes
and Other Measures) Act 2010***

24 Item 22 of Schedule 2

Repeal the item.

Service and Execution of Process Act 1992

**25 Subsection 3(1) (paragraph (e) of the definition of
judgment)**

After “the *Foreign Judgments Act 1991*”, insert “or the *Trans-Tasman Proceedings Act 2010*”.

**26 Subsection 3(1) (paragraph (f) of the definition of
judgment)**

After “the *Foreign Judgments Act 1991*”, insert “or the *Trans-Tasman Proceedings Act 2010*”.

Trans-Tasman Proceedings Act 2010

27 Subsection 62(2)

Before “judicial proceeding”, insert “federal”.

28 Subsection 87(2)

Before “judicial proceeding”, insert “federal”.

[*Minister’s second reading speech made in—
House of Representatives on 25 November 2009
Senate on 16 March 2010*]