**EXPLANATORY STATEMENT**

**Select Legislative Instrument No. 20, 2015**

Issued by Authority of the Attorney-General

*Trans-Tasman Proceedings Amendment (Administrative Appeals Tribunal) Regulation 2015*

*The Trans-Tasman Proceedings Amendment (Administrative Appeals Tribunal) Regulation 2015* (the Regulation) is made under Subsection 110(a) of the *Trans-Tasman Proceedings Act 2010* (Cth) (the Act) providing that the Governor-General may make regulations prescribing matters required or permitted by this Acts to be prescribed. Paragraphs 29(1)(c), 47(1)(b), 49(1)(c) and 63(2)(d) of the Act permit the prescription of Australian tribunals to perform certain functions as set out in the Act.

The Regulation amends the *Trans-Tasman Proceedings Regulation 2012* to prescribe the Administrative Appeals Tribunal to perform certain functions as set out in the Act.

In order for tribunals to enjoy the same expedited procedures as courts under the Act, they must be prescribed under the *Trans-Tasman Proceedings Regulations 2012*. As the leading merits review tribunal at the Commonwealth level, the Administrative Appeals Tribunal is not yet prescribed.

Prescription under section 9 of the *Trans-Tasman Proceedings Regulations 2012* allows the Administrative Appeals Tribunal to issue subpoenas to be served in New Zealand under Part 5, Division 2 of the Act.

Prescription under sections 12 and 13 of the *Trans-Tasman Proceedings Regulations 2012* allows the Administrative Appeals Tribunal to give leave to appear remotely from New Zealand under Part 6, Division 2 of the Act.

Prescription under subsection 14(2) of the *Trans-Tasman Proceedings Regulations 2012* allows the Administrative Appeals Tribunal to give assistance to New Zealand courts and tribunals in relation to remote appearance from Australia under Part 6, Division 3 of the Act.

The Administrative Appeals Tribunal was consulted on the content of the Regulation and indicated the willingness to be prescribed under sections 9, 12, 13 and 14(2) of the *Trans‑Tasman Proceedings Regulation 2012*. Consultation involved the exchange of correspondence and discussions.

The New Zealand Ministry of Justice was consulted to ensure simultaneous commencement of the amendment in Australia and New Zealand.

The Act specifies no conditions that need to be satisfied before the power to make the Regulation may be exercised.

The Regulation does not incorporate any document by reference.

A Statement of Compatibility with Human Rights prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny Act) 2011* is set out in Attachment A.

The Office of Best Practice Regulation was consulted on this Regulation and advised that no Regulation Impact Statement was required.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on 31 March 2015.

**ATTACHMENT A**

**Statement of Compatibility with Human Rights**

*Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011*

**Trans-Tasman Proceedings Amendment (Administrative Appeals Tribunal) Regulation 2015**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The *Trans-Tasman Proceedings Act 2010* (Cth) (the Act) provides a procedural framework for managing litigation with a trans-Tasman element. Subsection 110(a) of that Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed.

*The Trans-Tasman Proceedings Amendment (Administrative Appeals Tribunal) Regulation 2015* (the Regulation) amends the *Trans-Tasman Proceedings Regulation 2012* and prescribes the Administrative Appeals Tribunal for the purposes of issuing subpoenas to be served in New Zealand; remote appearances from New Zealand in proceedings before the Tribunal and assistance with remote appearance from Australia in New Zealand proceedings.

**Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

**Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**George Brandis QC**

**Attorney-General**