

EXPLANATORY STATEMENT

Trans-Tasman Proceedings Amendment (2016 Measure No. 1) Regulation 2016

Issued by the authority of the Attorney-General

Trans-Tasman Proceedings Act 2010

Trans-Tasman Proceedings Regulation 2012

The *Trans-Tasman Proceedings Act 2010* (the Act) gives effect to the 2008 *Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement*. The purpose of the Act is to reduce the costs associated with litigation, improve efficiency and minimise barriers to enforcing judgments and regulatory sanctions between Australia and New Zealand.

Section 110 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or matters which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Trans-Tasman Proceedings Regulation 2012* (the Principal Regulation) prescribes various matters relating to the operation of the Act.

The purpose of the *Trans-Tasman Proceedings Amendment (2016 Measure No. 1) Regulation 2016* (the Amending Regulation) is to amend the Principal Regulation to:

- reflect changes to New Zealand's financial markets laws; and
- give effect to a 2013 Arrangement relating to Trans-Tasman Regulations of Patent Attorneys between Australia and New Zealand.

The Amending Regulation allows for the enforcement of a broader range of New Zealand criminal fines under regulation 15, by including five additional New Zealand laws in the Trans-Tasman scheme. The Amending Regulation also prescribes the Trans-Tasman IP Attorneys Disciplinary Tribunal (Commonwealth) (the Disciplinary Tribunal) under the Act. This amendment ensures that a summons of the President of the Disciplinary Tribunal can be served in New Zealand as a subpoena. The Amending Regulation also prescribes the Disciplinary Tribunal to allow persons in New Zealand to appear remotely before the Tribunal, pursuant to the relevant provisions of the Act.

The Office of Best Practice Regulation was consulted and advised that a Regulation Impact Statement was not required. The New Zealand Ministry of Business, Innovation & Employment was consulted on the amendments to regulation 15 and was supportive of these amendments. IP Australia was consulted on, and was supportive of, the remaining amendments related to the Disciplinary Tribunal. Given the minor nature of the amendments, no further consultation was necessary.

Details of the Amending Regulation are set out in [Attachment A](#).

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

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

The Amending Regulation is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amending Regulation commences in two parts. The amendments relating to the Disciplinary Tribunal commence immediately after the commencement of Schedule 4 to the *Intellectual Property Laws Amendment Act 2015*. The amendments relating to regulation 15 commenced on the day after the instrument was registered.

Details of the Trans-Tasman Proceedings Amendment (2016 Measures No. 1)
Regulation 2016

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the *Trans-Tasman Proceedings Amendment (2016 Measures No. 1) Regulation 2016*.

Section 2 – Commencement

This section provides that Schedule 1, items 1 to 3 of the legislative instrument will commence immediately after the commencement of Schedule 4 to the *Intellectual Property Laws Amendment Act 2015*. This section also provides that Schedule 1, items 4 to 7 of the legislative instrument will commence on 1 December 2016.

Section 3 – Authority

This section provides that the instrument is made under the *Trans-Tasman Proceedings Act 2010*.

Section 4 – Schedules

This section provides that each instrument that is specified in the schedule to the proposed Regulation is amended or repealed as set out in the applicable items of the schedule, and any other item in a schedule to the proposed Regulation has effect according to its terms.

Schedule 1 - Amendments

Trans-Tasman Proceedings Regulation 2012

Item [1] – Subregulation 9(2)

Amends the subregulation to include the Trans-Tasman IP Attorneys Disciplinary Tribunal (Commonwealth) as a tribunal that can issue subpoenas that are capable of being served in New Zealand under the Act.

Items [2] and [3] – Paragraph 12(aa) and Subregulation 13(2)

Include the Trans-Tasman IP Attorneys Disciplinary Tribunal as a tribunal that can accept remote appearances from New Zealand under the Act.

Items [4] to [7] – Subparagraphs 15(1)(a)(i), 15(1)(a)(iv), 15(1)(a)(v) and 15(1)(a)(vii)

Include the *Auditor Regulation Act 2011* (NZ), the *Financial Advisers Act 2008* (NZ), the *Financial Markets Conduct Act 2013* (NZ), the *Financial Reporting Act 2013* (NZ), and the *Food Act 2014* (NZ) as Acts which impose ‘regulatory regime criminal fines’ which can be enforced in Australia under the Act.

Statement of Compatibility with Human Rights

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

Trans-Tasman Proceedings Amendment (2016 Measures No. 1) Regulation 2016

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* (the Act) provides a procedural framework for managing litigation with a trans-Tasman element.

Section 110 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Trans-Tasman Proceedings Regulation 2012* (the Principal Regulation) prescribes various matters relating to the operation of the Act. The *Trans-Tasman Proceedings Amendment (2016 Measures No. 1) Regulation 2016* (the Amending Regulation) makes minor, technical amendments to the Principal Regulation.

The Amending Regulation allows the enforcement of a broader range of New Zealand criminal fines in Australia under regulation 15, by including five additional New Zealand laws in the Trans-Tasman scheme.

The Amending Regulation also prescribes the Trans-Tasman IP Attorneys Disciplinary Tribunal (Commonwealth) (the Disciplinary Tribunal) under the Act. This amendment ensures that a summons of the President of the Disciplinary Tribunal can be served in New Zealand as a subpoena. The Amending Regulation also prescribes the Disciplinary Tribunal to allow persons in New Zealand to appear remotely before the Tribunal, pursuant to relevant provisions of the Act. These amendments were designed to assist in the administrative handling of disciplinary matters which might arise under the 2013 Arrangement relating to Trans-Tasman Regulations of Patent Attorneys between Australia and New Zealand.

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.

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Attorney-General