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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**TRANS-TASMAN PROCEEDINGS (TRANSITIONAL AND  
CONSEQUENTIAL PROVISIONS) BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
the Honourable Robert McClelland MP)

# **TRANS-TASMAN PROCEEDINGS (TRANSITIONAL AND CONSEQUENTIAL PROVISIONS) BILL 2009**

## **OUTLINE**

The Trans-Tasman Proceedings (Transitional and Consequential Provisions) Bill 2009 deals with transitional and consequential matters in connection with the Trans-Tasman Proceedings Bill 2009.

The Bill repeals the *Evidence and Procedure (New Zealand) Act 1994* (EPNZ Act). The provisions of that Act have been moved into the Trans-Tasman Proceedings Bill.

It also amends the *Foreign Judgments Act 1991* (FJA) to remove New Zealand from its operation. The recognition and enforcement of eligible NZ judgments in Australia is provided for in Part 7 of the Trans-Tasman Proceedings Bill.

Finally, the Bill amends Part IIIA of the *Federal Court of Australia Act 1976* (FCA). Part IIIA deals with the conduct of trans-Tasman market proceedings brought under the *Trade Practices Act 1974*, and has been moved into Part 8 of the Trans-Tasman Proceedings Bill.

## **FINANCIAL IMPACT STATEMENT**

The proposed Bill will not have any significant financial impact.

## NOTES ON CLAUSES

### Clause 1: Short title

1. This is a formal provision specifying the short title of the Bill.

### Clause 2: Commencement

2. This clause specifies when the various provisions of the Bill are to commence.

### Clause 3: Schedule(s)

3. This clause provides that each Act referred to in the Schedule to the Bill is amended or repealed as set out in that Schedule concerned.

### Clause 4: Definitions

4. Clause 4 defines *commencement* in the Act to mean the day on which section 3 of the Trans-Tasman Proceedings Act commences. *Trans-Tasman Act* means the *Trans-Tasman Proceedings Act 2009*.
5. Any expressions used in the Bill which 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**

### **Item 1: Application of Part 2 of the Trans-Tasman Act**

6. This item provides that Part 2 of the Act applies to all civil proceedings whether commenced before, on, or after commencement. However, Part 2 will only apply to proceedings commenced before commencement if not all of the initiating documents for the proceeding have been served.

### **Item 2: Application of Part 3 of the Trans-Tasman Act**

7. This item provides that Part 3 of the Act applies only to civil proceedings commenced on or after commencement. It will not apply to proceedings commenced before commencement.

### **Item 3: Application of Part 4 of the Trans-Tasman Act**

8. This item provides that Part 4 of the Act applies to civil proceedings commenced, or to be commenced, in a New Zealand court, on or after commencement. It will not apply to proceedings commenced before commencement.

### **Item 4: Application of Part 5 of the Trans-Tasman Act**

9. This item provides that Part 5 of the Act applies to a subpoena issued before, on, or after commencement. However, if leave was given to serve a subpoena under section 9 of the EPNZ Act before commencement, the EPNZ Act continues to apply.

### **Item 5: Application of Part 6 of the Trans-Tasman Act**

10. This item provides that Part 6 of the Act applies to remote appearances made on or after commencement, regardless of when the proceedings commenced. However, if the court directed that evidence be given or submissions be made by video link or telephone from New Zealand under section 25 of the EPNZ Act before commencement, the EPNZ Act continues to apply.

### **Item 6: Application of Part 7 of the Trans-Tasman Act**

11. This item provides that Part 7 of the Act applies to judgments given after commencement, regardless of when the proceedings commenced. It will not apply to eligible New Zealand judgments given before commencement.

### **Item 7: Application of Part 8 of the Trans-Tasman Act 2009**

12. This item provides that Part 8 of the Act applies to trans-Tasman market proceedings commenced on or after commencement. The Part will not apply to proceedings commenced before commencement.

### **Item 8: Application of Part 9 of the Trans-Tasman Act 2009**

13. This item provides that Part 9 of the Act applies to all proceedings whether 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*

##### **Item 1: The whole of the Act**

14. This item repeals the EPNZ Act.

##### **Item 2: Saving**

15. This item provides that certain elements of the EPNZ Act continue to apply despite the repeal of the Act.
16. The EPNZ Act continues to apply to a subpoena if, before commencement, a court gave leave under section 9 for it to be served in New Zealand.
17. The EPNZ Act continues to apply to the giving of evidence or the making of submissions if, before commencement, a court directed under section 25 that evidence be given or submissions be made by video link or telephone from New Zealand.
18. Section 47 of the EPNZ Act continues to apply in relation to a judgment given before commencement.
19. Regulations made under section 49 of the EPNZ Act continue to apply in relation to subpoenas and the giving of evidence or the making of submissions to which the EPNZ Act still applies by virtue of this Bill.

### **Part 2-Amendment of the Federal Court of Australia Act 1976**

#### *Federal Court of Australia Act 1976*

##### **Item 3: Subsection 32A(4)**

20. This item replaces the reference to Part IIIA of the FCA to the Trans-Tasman Act in relation to Australian market proceedings.

##### **Item 4: Part IIIA**

21. This item repeals Part IIIA of the FCA. Provisions regulating trans-Tasman market proceedings will be moved to Part 8 of the Trans-Tasman Act.

##### **Items 5 and 6: Subsection 47A(5) (note) and 47B(3) (note)**

22. These items replace references to the EPNZ Act with references to Part 6 of the Trans-Tasman Act.

**Item 7: Subsection 47G**

23. This item replaces the reference to the EPNZ Act with a reference to the Trans-Tasman Act.

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

24. This item replaces various references to Part IIIA of the FCA with the equivalent provisions in the Trans-Tasman Act.

**Item 9: Saving**

25. This item provides that certain elements of Part IIIA of the FCA continue to apply despite the repeal of the Part.

26. Part IIIA of the FCA continues to apply in relation to a proceeding commenced before commencement, but does not apply to a judgment given on or after commencement.

27. Rules of Court made for the purposes of paragraphs 59(2)(y), (za), (zb), (zc), (zd) and (ze) of the FCA continue to apply to a proceeding commenced before commencement.

28. Regulations made under section 60 of the FCA for the purposes of Part IIIA continue to apply on and after commencement in relation to a proceeding commenced before commencement.

**Part 3-Other amendments**

***Defence Force Discipline Act 1982***

**Items 10 and 11: Subsection 148A(5) (note) and 148B(3) (note)**

29. These items replace references to the EPNZ Act with references to Part 6 of the Trans-Tasman Act.

**Item 12: Section 148F**

30. This item replaces the reference to the EPNZ Act with a reference to the Trans-Tasman Act.

***Family Law Act 1975***

**Items 13, 14 and 15: Subsection 102C(5) (note), 102D(3) (note) and 102E(3) (note)**

31. These items replace references to the EPNZ Act with references to Part 6 of the Trans-Tasman Act.

**Item 16: Section 102L**

32. This item replaces the reference to the EPNZ Act with a reference to the Trans-Tasman Act.

***Federal Magistrates Act 1999***

**Items 17, 18 and 19: Subsection 66(5) (note), 67(3) (note) and 68(3) (note)**

33. These items replace references to the EPNZ Act with references to Part 6 of the Trans-Tasman Act.

**Item 20: Section 73**

34. This item replaces the reference to the EPNZ Act with a reference to the Trans-Tasman Act.

***Foreign Judgments Act 1991***

**Item 21: Paragraph 5(8)(d)**

35. This item removes New Zealand judgments from the exception in this paragraph to the non-retrospective operation of Part 2 of the *Foreign Judgments Act 1991*.

**Item 22: Subsection 5(10)**

36. This item removes New Zealand judgments from the recognition and enforcement of judgments regime of the *Foreign Judgments Act 1991*. The recognition and enforcement in Australia of eligible New Zealand judgments is dealt with in Part 7 of the Trans-Tasman Act.

**Item 23: Saving**

37. This item provides that the provisions of the *Foreign Judgments Act 1991* amended by this Schedule continue to apply to judgments given before commencement.

***Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2009***

**Item 24: Item 22 of Schedule 2**

38. This item repeals an amendment in item 22 of Schedule 2 to the *Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Bill 2009* (the Identity Crimes Bill) that will be a misdescribed amendment if it commences after item 4 of Schedule 2 to this Bill commences. This item will only commence if the amendment in item 22 of Schedule 2 to the Identity Crimes Bill has not commenced before item 4 of Schedule 2 to this Bill commences.

39. Item 22 of Schedule 2 to the Identity Crimes Bill amends s32P(2) of the FCA to insert the word ‘federal’ before ‘judicial proceeding’. This is a consequential amendment relating to amendments to the administration of justice offences in the *Crimes Act 1914* to be made by the Identity Crimes Bill.

40. Section 32P(2) is currently in Part IIIA of the FCA. Part IIIA is repealed by item 4 of Schedule 2 to this Bill.

#### ***Service and Execution of Process Act 1992***

#### **Items 25 and 26: Subsection 3(1) (paragraph (e) and (f) of the definition of judgment)**

41. These items amend paragraphs (e) and (f) of the definition of ‘judgment’ to include an order, decree or judgment registered under the Trans-Tasman Act.

#### ***Trans-Tasman Proceedings Act 2009***

#### **Items 27 and 28 – Subsections 62(2) and 87(2)**

42. These items are related to item 24.

43. Subsections 62(2) and 87(2) of the Act refer to ‘judicial proceedings’ for the purposes of the *Crimes Act 1914*. These items update these references to ‘federal judicial proceedings’ for consistency with the amendments to the administration of justice offences in the *Crimes Act 1914* to be made by the Identity Crimes Bill.

44. Clause 2 of this Bill provides that these items will commence either immediately after commencement of the relevant parts of the Trans-Tasman Act or immediately after the commencement of item 22 of Schedule 2 to the *Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2009*, whichever is later. However, the items do not commence at all if item 22 of Schedule 2 to the Identity Crimes Bill does not commence.