

2008-2009

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Trans-Tasman Proceedings (Transitional
and Consequential Provisions) Bill 2009**

No. , 2009

(Attorney-General)

**A Bill for an Act to deal with transitional and
consequential matters in connection with the
Trans-Tasman Proceedings Act 2009, and for
related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedule(s).....	3
4	Definitions.....	3
	Schedule 1—Application of the Trans-Tasman Act	4
	Schedule 2—Consequential repeals and amendments	6
	Part 1—Repeal of the Evidence and Procedure (New Zealand) Act 1994	6
	<i>Evidence and Procedure (New Zealand) Act 1994</i>	6
	Part 2—Amendment of the Federal Court of Australia Act 1976	8
	<i>Federal Court of Australia Act 1976</i>	8
	Part 3—Other amendments	10
	<i>Defence Force Discipline Act 1982</i>	10
	<i>Family Law Act 1975</i>	10
	<i>Federal Magistrates Act 1999</i>	11
	<i>Foreign Judgments Act 1991</i>	11
	<i>Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2009</i>	12
	<i>Service and Execution of Process Act 1992</i>	12
	<i>Trans-Tasman Proceedings Act 2009</i>	12

1 **A Bill for an Act to deal with transitional and**
2 **consequential matters in connection with the**
3 ***Trans-Tasman Proceedings Act 2009*, and for**
4 **related purposes**

5 The Parliament of Australia enacts:

6 **1 Short title**

7 This Act may be cited as the *Trans-Tasman Proceedings*
8 (*Transitional and Consequential Provisions*) Act 2009.

9 **2 Commencement**

10 (1) Each provision of this Act specified in column 1 of the table
11 commences, or is taken to have commenced, in accordance with
12 column 2 of the table. Any other statement in column 2 has effect
13 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.	
2. Schedule 1	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2009</i> commences.	
3. Schedule 2, items 1 to 23	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2009</i> commences.	
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 2009</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 2009</i> commences before the commencement of the provision(s) covered by table item 3.	
5. Schedule 2, items 25 and 26	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2009</i> commences.	
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 Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2009</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	

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

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

7 **3 Schedule(s)**

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

12 **4 Definitions**

13 (1) In this Act:

14 *commencement* means the day on which section 3 of the
15 *Trans-Tasman Proceedings Act 2009* commences.

16 *Trans-Tasman Act* means the *Trans-Tasman Proceedings Act*
17 *2009*.

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

1
2 **Schedule 1—Application of the Trans-Tasman**
3 **Act**
4

5 **1 Application of Part 2 of the Trans-Tasman Act**

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

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

13 **2 Application of Part 3 of the Trans-Tasman Act**

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

18 **3 Application of Part 4 of the Trans-Tasman Act**

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

23 **4 Application of Part 5 of the Trans-Tasman Act**

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

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

33 **5 Application of Part 6 of the Trans-Tasman Act**

1 (1) Part 6 of the Trans-Tasman Act (which deals with remote appearances)
2 applies to a remote appearance that is made on or after commencement.
3 It does not matter whether the proceeding in which the remote
4 appearance is made commenced before, on or after commencement.

5 (2) Despite subitem (1), Division 2 of Part 6 of the Trans-Tasman Act
6 (which deals with remote appearances from New Zealand in Australian
7 proceedings) does not apply to a remote appearance if:

8 (a) the remote appearance is to give evidence or make
9 submissions; and

10 (b) before commencement, the court directed under section 25 of
11 the *Evidence and Procedure (New Zealand) Act 1994* that the
12 evidence be given or submissions be made, by video link or
13 telephone, from New Zealand.

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

16 **6 Application of Part 7 of the Trans-Tasman Act**

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

22 **7 Application of Part 8 of the Trans-Tasman Act**

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

26 **8 Application of Part 9 of the Trans-Tasman Act**

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

1
2

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

1

2

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

3

4

Federal Court of Australia Act 1976

5

3 Paragraph 32A(4)(b)

6

Omit “Australian proceeding within the meaning of Part IIIA”,
substitute “Australian market proceeding within the meaning of the
Trans-Tasman Proceedings Act 2009”.

7

8

9

4 Part IIIA

10

Repeal the Part.

11

5 Subsection 47A(5) (note)

12

Repeal the note, substitute:

13

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

14

6 Subsection 47B(3) (note)

15

Repeal the note, substitute:

16

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

17

7 Section 47G

18

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute
“the *Trans-Tasman Proceedings Act 2009*”.

19

20

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

21

Repeal the paragraphs, substitute:

22

(y) the Court’s sittings in New Zealand under Part 8 of the
Trans-Tasman Proceedings Act 2009; and

23

24

(za) the enforcement of orders under subsection 85(5) of the
Trans-Tasman Proceedings Act 2009; and

25

26

(zb) the registration and enforcement, and the setting aside of the
registration, of judgments under Part 7 of the *Trans-Tasman
Proceedings Act 2009*; and

27

28

29

(zc) the transmission of documents to the High Court of New
Zealand; and

30

- 1 (zd) taking evidence under section 89 of the *Trans-Tasman*
2 *Proceedings Act 2009*; and
3 (ze) the exercise in Chambers of the Court's jurisdiction under
4 Part 8 of the *Trans-Tasman Proceedings Act 2009*; and

5 **9 Saving**

- 6 (1) Despite the repeal of Part IIIA of the *Federal Court of Australia Act*
7 *1976* made by this Schedule, Part IIIA of that Act, as in force
8 immediately before commencement, continues to apply on and after
9 commencement in relation to a proceeding commenced before
10 commencement.
- 11 (2) Despite subitem (1), Division 5 of Part IIIA of the *Federal Court of*
12 *Australia Act 1976* does not apply on and after commencement in
13 relation to a judgment given on or after commencement.
- 14 (3) Despite the amendments made to paragraphs 59(2)(y), (za), (zb), (zc),
15 (zd) and (ze) of the *Federal Court of Australia Act 1976* by this
16 Schedule, Rules of Court made for the purposes of those paragraphs
17 continue to apply on and after commencement in relation to a
18 proceeding commenced before commencement.
- 19 (4) Regulations made under section 60 of the *Federal Court of Australia*
20 *Act 1976* for the purposes of Part IIIA of that Act continue to apply on
21 and after commencement in relation to a proceeding commenced before
22 commencement.

1

2 **Part 3—Other amendments**

3 ***Defence Force Discipline Act 1982***

4 **10 Subsection 148A(5) (note)**

5 Repeal the note, substitute:

6 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

7 **11 Subsection 148B(3) (note)**

8 Repeal the note, substitute:

9 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

10 **12 Section 148F**

11 Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute
12 “the *Trans-Tasman Proceedings Act 2009*”.

13 ***Family Law Act 1975***

14 **13 Subsection 102C(5) (note)**

15 Repeal the note, substitute:

16 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

17 **14 Subsection 102D(3) (note)**

18 Repeal the note, substitute:

19 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

20 **15 Subsection 102E(3) (note)**

21 Repeal the note, substitute:

22 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

23 **16 Section 102L**

24 Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute
25 “the *Trans-Tasman Proceedings Act 2009*”.

1 ***Federal Magistrates Act 1999***

2 **17 Subsection 66(5) (note)**

3 Repeal the note, substitute:

4 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

5 **18 Subsection 67(3) (note)**

6 Repeal the note, substitute:

7 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

8 **19 Subsection 68(3) (note)**

9 Repeal the note, substitute:

10 Note: See Part 6 of the *Trans-Tasman Proceedings Act 2009*.

11 **20 Section 73**

12 Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute
13 “the *Trans-Tasman Proceedings Act 2009*”.

14 ***Foreign Judgments Act 1991***

15 **21 Paragraph 5(8)(d)**

16 Omit “New Zealand or”.

17 **22 Subsection 5(10)**

18 Repeal the subsection, substitute:

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

21 Note: For the enforcement in Australia of judgments given by courts of New
22 Zealand, see Part 7 of the *Trans-Tasman Proceedings Act 2009*.

23 **23 Saving**

24 Despite the amendments made to paragraph 5(8)(d) and subsection
25 5(10) of the *Foreign Judgments Act 1991* by this Schedule, those
26 provisions, as in force immediately before commencement, continue to
27 apply on and after commencement in relation to a judgment given
28 before commencement.

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

3 **24 Item 22 of Schedule 2**

4 Repeal the item.

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

6 **25 Subsection 3(1) (paragraph (e) of the definition of**
7 ***judgment*)**

8 After “the *Foreign Judgments Act 1991*”, insert “or the *Trans-Tasman*
9 *Proceedings Act 2009*”.

10 **26 Subsection 3(1) (paragraph (f) of the definition of**
11 ***judgment*)**

12 After “the *Foreign Judgments Act 1991*”, insert “or the *Trans-Tasman*
13 *Proceedings Act 2009*”.

14 ***Trans-Tasman Proceedings Act 2009***

15 **27 Subsection 62(2)**

16 Before “judicial proceeding”, insert “federal”.

17 **28 Subsection 87(2)**

18 Before “judicial proceeding”, insert “federal”.