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Commonwealth of Australia

HOUSE OF REPRESENTATIVES

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Trans-Tasman Proceedings Bill 2009

No. , 2009

(Attorney-General)

**A Bill for an Act relating to proceedings in
Australian and New Zealand courts and tribunals,
and for related purposes**

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1 **A Bill for an Act relating to proceedings in**
2 **Australian and New Zealand courts and tribunals,**
3 **and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Trans-Tasman Proceedings Act 2009*.

Section 2

1 **2 Commencement**

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

6

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details

1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
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2. Sections 3 to 110	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the day the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement, done at Christchurch on 24 July 2008, enters into force for Australia.</p> <p>However, if the provision(s) do not commence within the period of 6 months beginning on the day the Agreement enters into force for Australia, they commence on the first day after the end of that period. If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day the provision(s) commenced.</p> <p>The notice is not a legislative instrument.</p>	
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7 Note: This table relates only to the provisions of this Act as originally
8 passed by both Houses of the Parliament and assented to. It will not be
9 expanded to deal with provisions inserted in this Act after assent.

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

4 **3 Purpose of, and guide to, this Act**

5 The purpose of this Act is to:

- 6 (a) streamline the process for resolving civil proceedings with a
7 trans-Tasman element in order to reduce costs and improve
8 efficiency; and
9 (b) minimise existing impediments to enforcing certain NZ
10 judgments and regulatory sanctions; and
11 (c) implement the Trans-Tasman Agreement in Australian law.

12 Note: Provisions to implement the Trans-Tasman Agreement in
13 New Zealand law are in the NZ Act.

14 This Part has a list of the terms that are defined in this Act (see
15 section 4). The terms are either defined in section 4 or in another
16 provision of this Act. If another provision defines the term,
17 section 4 will have a signpost to that definition.

18 Part 2 is about serving defendants in New Zealand with initiating
19 documents for certain civil proceedings in Australian courts or
20 tribunals.

21 Part 3 is about when an Australian court may stay a proceeding on
22 the grounds that a New Zealand court is the more appropriate
23 forum to determine the matters in dispute.

24 Part 4 provides for certain Australian courts to give interim relief
25 in support of civil proceedings in New Zealand courts.

26 Part 5 is about subpoenas issued by certain Australian and New
27 Zealand courts and tribunals. It allows for those subpoenas to be
28 served in the other country and provides for how that service must
29 be done.

Section 4

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Part 6 is about people appearing remotely from New Zealand in Australian proceedings and people appearing remotely from Australia in New Zealand proceedings.

Part 7 is about the enforcement in Australia of specified judgments of New Zealand courts and tribunals.

Part 8 has some special rules about particular Australian and New Zealand proceedings that relate to the trans-Tasman market.

Part 9 has a number of evidential rules relating to New Zealand that apply in proceedings in Australian courts and certain other bodies.

Part 10 deals with miscellaneous matters.

12 **4 Definitions**

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In this Act:

adjudicative function, in relation to a tribunal, means the function of determining the rights or liabilities of a person in a proceeding in which there are 2 or more parties (including determining that those rights or liabilities are altered).

appearance: see subsection 13(2).

appears remotely: a person **appears remotely** in a hearing related to a proceeding in a court or tribunal in the territory of a party to the Trans-Tasman Agreement if the person participates in the hearing, from the territory of the other party to the Agreement, by remote appearance medium.

audio link means facilities (for example, telephone facilities) that enable audio communication between persons in different places.

audiovisual link means facilities that enable audio and visual communication between persons in different places.

Australian court means:

- (a) a federal court; or

1 (b) a court of a State or Territory.

2 **Australian law** means a law of the Commonwealth, a State or a
3 Territory.

4 **Australian market proceeding**: see subsection 81(2).

5 **Australian market proceeding judgment** means a judgment given
6 in an Australian market proceeding.

7 **civil pecuniary penalty** means a pecuniary penalty imposed by a
8 court or tribunal in a civil proceeding in relation to a contravention
9 of legislation.

10 **civil proceeding** means a proceeding that is not a criminal
11 proceeding.

12 **criminal proceeding** means:

- 13 (a) a prosecution for an offence; or
14 (b) a procedure, other than a prosecution, that, under an
15 Australian law or a New Zealand law, may be used:
16 (i) to determine liability for an offence; or
17 (ii) to impose a penalty for an offence; or
18 (c) a proceeding that is related to or associated with a
19 prosecution for an offence or a procedure mentioned in
20 paragraph (b);

21 but does not include:

- 22 (d) a proceeding for compensation; or
23 (e) a proceeding under proceeds of crime legislation.

24 **defendant**, in relation to a proceeding, means a person served or
25 intended to be served with an initiating document for the
26 proceeding.

27 **document** means any record of information, and includes:

- 28 (a) anything on which there is writing; or
29 (b) anything on which there are marks, figures, symbols or
30 perforations having a meaning for persons qualified to
31 interpret them; or

Section 4

- 1 (c) anything from which sounds, images or writings can be
2 reproduced with or without the aid of anything else; or
3 (d) a map, plan, drawing or photograph.

4 **enforcement** of a judgment means the enforcement or execution of
5 the judgment.

6 **entitled person**, in relation to a judgment:

- 7 (a) means a person:
8 (i) in whose favour the judgment was given; or
9 (ii) in whom rights under the judgment have (by
10 assignment, succession, or otherwise) become vested;
11 and
12 (b) for an NZ judgment in a proceeding for compensation
13 relating to an offence against New Zealand law—includes the
14 Crown in right of New Zealand acting on behalf of a person
15 referred to in paragraph (a).

16 **examination** of a person giving evidence means the
17 examination-in-chief, cross-examination or re-examination of the
18 person.

19 **excluded family proceeding** means:

- 20 (a) a proceeding in respect of an application made under the
21 Convention on the Civil Aspects of International Child
22 Abduction signed at The Hague on 25 October 1980; or
23 (b) a proceeding relating to the status or property of a person
24 who is not fully able to manage his or her own affairs.

25 Note: The text of the Convention referred to in paragraph (a) is set out in
26 Australian Treaty Series 1987 No. 2 ([1987] ATS 2). In 2009, the text
27 of a Convention in the Australian Treaty Series was accessible
28 through the Australian Treaties Library on the AustLII website
29 (www.austlii.edu.au).

30 **excluded matter** means:

- 31 (a) the dissolution of a marriage; or
32 (b) the enforcement of:
33 (i) an obligation under Australian law to maintain a spouse
34 or a de facto partner (within the meaning of the *Acts*
35 *Interpretation Act 1901*); or

1 (ii) an obligation under New Zealand law to maintain a
2 spouse, a civil union partner (within the meaning of the
3 *Civil Union Act 2004* of New Zealand) or a de facto
4 partner (within the meaning of the *Interpretation Act*
5 *1999* of New Zealand); or

6 (c) the enforcement of a child support obligation.

7 ***exclusive choice of court agreement***: see subsection 20(3).

8 ***expenses***, in relation to a subpoena, include the reasonable costs of:

9 (a) necessary travel to and from, and accommodation at, the
10 place where complying with the subpoena is required; or

11 (b) finding, collating and producing a document or thing;

12 for the purposes of complying with the subpoena.

13 ***Federal Court*** means the Federal Court of Australia.

14 ***given***, in relation to a judgment, includes entered, made or granted.

15 ***inferior Australian court*** means an Australian court that is not:

16 (a) the High Court of Australia; or

17 (b) a superior Australian court.

18 ***initiating document*** means a document:

19 (a) by which a civil proceeding is commenced in an Australian
20 court or tribunal; or

21 (b) by reference to which a person becomes a party to a civil
22 proceeding in an Australian court or tribunal.

23 ***issuing Australian court or tribunal***, in relation to a document,
24 means the Australian court or tribunal that issued the document.

25 ***judgment*** of a court or tribunal means a judgment, award, decree
26 or order of the court or tribunal, whether or not it:

27 (a) is given in a primary proceeding or an interlocutory
28 proceeding; or

29 (b) is a money judgment or a non-money judgment.

30 ***liable person***, in relation to a judgment, means a person against
31 whom the judgment:

32 (a) was given; or

Section 4

- 1 (b) is enforceable under a New Zealand law.
- 2 **money judgment** means a judgment under which a sum of money
3 is payable.
- 4 **non-money judgment** means a judgment that is not a money
5 judgment (including a judgment that does not involve the payment
6 of money but requires a person do, or refrain from doing, other
7 things).
- 8 **NZ Act** means the *Trans-Tasman Proceedings Act 2009* of New
9 Zealand.
- 10 **NZ Evidence Act** means the *Evidence Act 2006* of New Zealand.
- 11 **NZ judgment** means a judgment given by a New Zealand court or
12 tribunal.
- 13 **NZ market proceeding**: see subsection 85(2).
- 14 **NZ market proceeding judgment** means a judgment given in an
15 NZ market proceeding.
- 16 **original court or tribunal**, in relation to a judgment, means the
17 court or tribunal that gave the judgment.
- 18 **party**, in relation to a proceeding, means a plaintiff or defendant.
- 19 **person named**, in relation to a subpoena, means the person to
20 whom the subpoena is addressed.
- 21 **place of issue**, in relation to an initiating document or subpoena
22 issued by an Australian court or tribunal, means the State or
23 Territory in which the court or tribunal issued the document.
- 24 **plaintiff**, in relation to a proceeding, means the person by whom or
25 on whose behalf the proceeding is brought.
- 26 **procedural rules**, in relation to a court or tribunal, means rules, or
27 any other laws (other than this Act or any regulations made under
28 it) that:
- 29 (a) define or govern the exercise of the jurisdiction of the court
30 or tribunal; or

1 (b) regulate the practice and procedure of the court or tribunal.

2 ***proceeding*** in a court or tribunal includes:

- 3 (a) an interlocutory proceeding in the court or tribunal; and
4 (b) a proceeding that relates to an application made to the court
5 or tribunal (including an application for interim relief under
6 Part 4).

7 ***proceeds of crime legislation*** means:

- 8 (a) the *Proceeds of Crime Act 1987*; or
9 (b) the *Proceeds of Crime Act 2002*; or
10 (c) a law of a State or Territory that is a corresponding law
11 (within the meaning of the *Proceeds of Crime Act 2002*); or
12 (d) the *Criminal Proceeds (Recovery) Act 2009* of New Zealand;
13 or
14 (e) the *Proceeds of Crime Act 1991* of New Zealand; or
15 (f) sections 142A to 142Q of the *Sentencing Act 2002* of New
16 Zealand; or
17 (g) any other law of Australia or New Zealand that is prescribed
18 by the regulations.

19 ***qualified NZ lawyer*** means a lawyer within the meaning of
20 section 6 of the *Lawyers and Conveyancers Act 2006* of New
21 Zealand.

22 ***registered NZ judgment*** means an NZ judgment to the extent that
23 it is registered in an Australian court under section 68.

24 ***regulatory regime criminal fine*** means a fine for a criminal
25 offence under a provision of New Zealand legislation, being a
26 provision of a kind prescribed by the regulations.

27 ***remote appearance***: see *appears remotely*.

28 ***remote appearance medium*** means:

- 29 (a) audio link; or
30 (b) audiovisual link.

31 ***submissions***, in relation to evidence, means:

Section 4

- 1 (a) submissions on whether and, if so, in what way the evidence
2 may or must be given; and
3 (b) submissions on whether the evidence is admitted or
4 admissible; and
5 (c) other submissions in relation to the evidence.

6 **subpoena** means:

- 7 (a) a subpoena to give evidence; or
8 (b) a subpoena for production; or
9 (c) a subpoena that is both a subpoena to give evidence and a
10 subpoena for production;

11 but does not include a process that requires a person to produce a
12 document in connection with discovery and inspection of
13 documents.

14 **subpoena for production** means a process that requires the person
15 named to attend as directed by the order and produce a document
16 or thing for the purpose of evidence.

17 **subpoena to give evidence** means a process that requires the person
18 named to attend as directed by the order for the purpose of giving
19 evidence.

20 **superior Australian court** means:

- 21 (a) the Federal Court; or
22 (b) the Family Court of Australia; or
23 (c) the Supreme Court of:
24 (i) a State; or
25 (ii) the Australian Capital Territory; or
26 (iii) the Northern Territory; or
27 (iv) Norfolk Island.

28 **Trans-Tasman Agreement** means the Agreement between the
29 Government of Australia and the Government of New Zealand on
30 Trans-Tasman Court Proceedings and Regulatory Enforcement
31 done at Christchurch on 24 July 2008.

32 Note: The text of the Agreement is set out in Australian Treaty Series [2008]
33 ATNIF 12. In 2009, the text of an Agreement in the Australian Treaty
34 Series was accessible through the Australian Treaties Library on the
35 AustLII website (www.austlii.edu.au).

1 ***working day***, of an Australian court or tribunal in relation to a
2 proceeding in the court or tribunal, means a day on which
3 documents may be filed in the registry of the court or tribunal for
4 the proceeding.

5 **5 This Act binds the Crown**

- 6 (1) This Act binds the Crown in each of its capacities.
- 7 (2) This Act does not make the Crown liable to be prosecuted for an
8 offence.

9 **6 This Act extends to the external Territories**

10 This Act extends to every external Territory.

Part 2 Service in New Zealand of initiating documents issued by Australian courts and tribunals

Division 1 Introduction

Section 7

1

2 **Part 2—Service in New Zealand of initiating**
3 **documents issued by Australian courts and**
4 **tribunals**

5 **Division 1—Introduction**

6 **7 Guide to this Part**

7

This Part is about serving defendants in New Zealand with initiating documents for certain civil proceedings in Australian courts or tribunals.

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This Part allows defendants to be served with the initiating document in New Zealand and provides for how that service must be done.

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Defendants must be given certain information when served with the initiating document. The Australian court or tribunal may set aside the proceeding or any step taken in it if defendants are not given that information.

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Defendants must file an appearance in the Australian court or tribunal within a particular period after being served with the initiating document in New Zealand. In the appearance defendants must state an address for service in Australia or New Zealand for the proceeding.

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1
2 **Division 2—Service in New Zealand of initiating**
3 **documents issued by Australian courts and**
4 **tribunals**

5 **8 Application of this Part**

6 (1) This Part applies to:

- 7 (a) a civil proceeding commenced in an Australian court; and
8 (b) a civil proceeding commenced in an Australian tribunal, but
9 only if:
10 (i) the tribunal's procedural rules permit an initiating
11 document relating to the proceeding to be served outside
12 Australia; and
13 (ii) the tribunal is prescribed by the regulations.

14 (2) However, this Part does not apply to:

- 15 (a) a civil proceeding that relates wholly or partly to an excluded
16 matter; or
17 (b) a civil proceeding that relates wholly or partly to an action *in*
18 *rem*; or
19 (c) a civil proceeding in an Australian tribunal, being a civil
20 proceeding of a kind prescribed by the regulations; or
21 (d) a civil proceeding that relates to a matter of a kind prescribed
22 by the regulations.

23 (3) For the purposes of subparagraph (1)(b)(ii), the regulations must
24 not prescribe a tribunal unless, at the time of making the
25 regulations, the tribunal is declared under the NZ Act to be an
26 Australian court for the purposes of subpart 5 of Part 2 of that Act.

27 **9 Service of initiating documents in New Zealand**

28 (1) An initiating document issued by an Australian court or tribunal
29 that relates to the proceeding may be served in New Zealand under
30 this Part.

Part 2 Service in New Zealand of initiating documents issued by Australian courts and tribunals

Division 2 Service in New Zealand of initiating documents issued by Australian courts and tribunals

Section 10

- 1 (2) However, the document must be served in New Zealand in the
2 same way that the document is required or permitted, under the
3 procedural rules of the Australian court or tribunal, to be served in
4 the place of issue.

- 5 Note: For service of the initiating document in New Zealand under this Part,
6 it is not necessary for the Australian court or tribunal:
7 (a) to give leave for the service; or
8 (b) to be satisfied that there is a connection between the proceeding
9 and Australia.

10 **10 Effect of service under section 9**

- 11 Service of an initiating document in New Zealand under section 9:
12 (a) has the same effect; and
13 (b) gives rise to the same proceeding;
14 as if the initiating document had been served in the place of issue.

- 15 Note: For initiating documents issued by an Australian court, the defendant
16 may apply to the Australian court to stay the proceeding on the
17 grounds that a New Zealand court is the more appropriate court: see
18 Part 3. In some cases, the defendant and the defendant's lawyer may
19 appear remotely in that stay proceeding without the court's leave: see
20 subsection 18(4).

21 **11 Information that must be given to the defendant**

- 22 (1) An initiating document served under section 9 must contain or be
23 accompanied by information for the defendant that is prescribed by
24 the regulations.
25 (2) For the purposes of subsection (1), the regulations must prescribe
26 general information for the defendant about:
27 (a) the steps that the defendant must or may take in relation to
28 the proceeding; and
29 (b) the consequences of the document being served on the
30 defendant in New Zealand under section 9.

31 **12 Consequences of not giving the information to the defendant**

- 32 (1) Failure to comply with section 11 does not invalidate:
33 (a) the proceeding; or
-

- 1 (b) any step taken in relation to the proceeding.
- 2 (2) However, the issuing Australian court or tribunal may, on
3 application by the defendant under subsection (3), make an order in
4 the terms it considers appropriate setting aside:
5 (a) the proceeding; or
6 (b) any step taken in relation to the proceeding.
- 7 (3) The defendant's application can only be made:
8 (a) within a reasonable time; and
9 (b) before the defendant has commenced taking any step in the
10 proceeding;
11 after the defendant becomes aware of the failure.

12 **13 When the defendant must file an appearance**

13 *Period within which defendant must file appearance*

- 14 (1) A defendant who is served with an initiating document in New
15 Zealand under section 9 and who wishes to file an appearance in
16 the issuing Australian court or tribunal must do so within:
17 (a) the period (the **default period**) which is the longer of the
18 following periods:
19 (i) 30 working days of the issuing Australian court or
20 tribunal after the day on which the initiating document
21 was served on the defendant;
22 (ii) the period within which the procedural rules of the
23 issuing Australian court or tribunal would have required
24 or permitted the defendant to file an appearance if the
25 initiating document had been served in the place of
26 issue; or
27 (b) if, before or after the end of the default period, the plaintiff or
28 defendant applies to the issuing Australian court or tribunal
29 for a shorter or longer period—any shorter or longer period
30 the court or tribunal considers appropriate.

31 *Meaning of appearance*

- 32 (2) **Appearance** means a document that:

Part 2 Service in New Zealand of initiating documents issued by Australian courts and tribunals

Division 2 Service in New Zealand of initiating documents issued by Australian courts and tribunals

Section 14

- 1 (a) a defendant who has been served under section 9 with an
2 initiating document files in the issuing Australian court or
3 tribunal in response to the initiating document; and
4 (b) states an address for service in Australia or New Zealand
5 (despite paragraph (c)); and
6 (c) either:
7 (i) complies with any requirements which the document
8 must comply with under the procedural rules of the
9 issuing Australian court or tribunal; or
10 (ii) the issuing Australian court or tribunal determines to be
11 acceptable despite any non-compliance with such
12 requirements.

13 **14 Defendant's address for service**

14 The defendant's address for service for the proceeding is:

- 15 (a) the address that is stated in the defendant's appearance; or
16 (b) if, on application by the defendant, the court or tribunal
17 directs that another address in Australia or New Zealand is to
18 be the defendant's address for service for the proceeding—
19 that other address.

20 **15 Security for costs**

- 21 (1) An issuing Australian court or tribunal may, on application by a
22 defendant that was served, or purportedly served, under section 9,
23 order that:
24 (a) the plaintiff in the proceeding give such security as the court
25 or tribunal specifies for the defendant's costs of, and
26 incidental to, the proceeding; and
27 (b) the proceeding be stayed until that security is given.
28 (2) Subsection (1) does not affect the power of the court or tribunal to
29 make an order requiring security for costs.

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2 **Part 3—Australian courts declining jurisdiction on**
3 **the grounds that a New Zealand court is a**
4 **more appropriate forum**

4

5 **Division 1—Introduction**

6 **16 Guide to this Part**

7

This Part is about when an Australian court may stay a proceeding on the grounds that a New Zealand court is the more appropriate court to determine the matters in dispute.

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The Australian court may only stay the proceeding if the defendant applies for the proceeding to be stayed. The defendant must make the application within 30 working days after being served with the initiating document for the proceeding, or such shorter or longer period that the court considers appropriate.

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The Australian court may only stay the proceeding if it is satisfied that a New Zealand court has jurisdiction to determine all the matters in dispute and that it is the more appropriate court to determine those matters. In determining whether the New Zealand court is the more appropriate court, the Australian court must take certain matters into account. They are set out in section 19.

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However, if the parties have made an exclusive choice of court agreement that designates either an Australian court or a New Zealand court as the court to determine the matters in dispute, the Australian court's order as to whether or not to stay the proceeding must be consistent with that agreement (see section 20).

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Part 3 Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum

Division 2 Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum

Section 17

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2 **Division 2—Australian courts declining jurisdiction on the** 3 **grounds that a New Zealand court is a more** 4 **appropriate forum**

5 **17 Application to stay Australian proceeding on forum grounds**

6 (1) A defendant in a civil proceeding in an Australian court may apply
7 to the court for an order staying the proceeding on the grounds that
8 a New Zealand court is the more appropriate court to determine the
9 matters in dispute.

10 (2) The application must be made within:

11 (a) 30 working days of the Australian court after the day on
12 which the defendant was served with the initiating document
13 for the proceeding; or

14 (b) if, before or after the end of that period, the plaintiff or
15 defendant applies to the Australian court for a shorter or
16 longer period—any shorter or longer period the Australian
17 court considers appropriate.

18 **18 Hearing on the application**

19 (1) The Australian court may determine the defendant's application
20 under section 17 without a hearing.

21 (2) However, the Australian court must determine the defendant's
22 application with a hearing if any of the following requests the court
23 to do so:

24 (a) the plaintiff;

25 (b) the defendant;

26 (c) any other person who is required or permitted, by the
27 regulations or the Australian court's procedural rules, to be
28 served with the defendant's application.

29 (3) The request must be made within:

Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum **Part 3**
Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum **Division 2**

Section 19

- 1 (a) 10 working days of the Australian court after the day the
2 defendant made the application; or
3 (b) if, before or after the end of that period, a person referred to
4 in subsection (2) applies to the Australian court for a shorter
5 or longer period—any shorter or longer period the Australian
6 court considers appropriate.
- 7 (4) The defendant and the defendant’s lawyer may appear remotely in
8 a hearing in the Australian court about the application for an order
9 to stay the proceeding if:
- 10 (a) the defendant was served, or purportedly served, with the
11 initiating document for the proceeding in New Zealand under
12 section 9; and
13 (b) within the period (if any) prescribed by the regulations, the
14 defendant made a request to the Australian court for that
15 remote appearance; and
16 (c) a remote appearance medium is, or can reasonably be made,
17 available.

18 This subsection applies despite Subdivisions A and B of Part 6, but
19 is subject to the rest of Part 6.

20 Note: Ordinarily, for a person to appear remotely from New Zealand in a
21 proceeding in an Australian court, the person needs the leave of the
22 Australian court (see sections 48 and 50).

23 **19 Order of stay of proceeding**

- 24 (1) On application under section 17, the Australian court may, by
25 order, stay the proceeding if it is satisfied that a New Zealand
26 court:
27 (a) has jurisdiction to determine all the matters in dispute
28 between the parties to the proceeding; and
29 (b) is the more appropriate court to determine those matters.
- 30 (2) In determining whether a New Zealand court is the more
31 appropriate court to determine those matters, the Australian court
32 must take into account the following matters:
33 (a) the places of residence of the parties or, if a party is not an
34 individual, its principal place of business;

Part 3 Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum

Division 2 Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum

Section 20

- 1 (b) the places of residence of the witnesses likely to be called in
2 the proceeding;
- 3 (c) the place where the subject matter of the proceeding is
4 situated;
- 5 (d) any agreement between the parties about the court or place in
6 which those matters should be determined or the proceeding
7 should be commenced (other than an exclusive choice of
8 court agreement to which subsection 20(1) applies);
- 9 (e) the law that it would be most appropriate to apply in the
10 proceeding;
- 11 (f) whether a related or similar proceeding has been commenced
12 against the defendant or another person in a court in New
13 Zealand;
- 14 (g) the financial circumstances of the parties, so far as the
15 Australian court is aware of them;
- 16 (h) any matter that is prescribed by the regulations;
- 17 (i) any other matter that the Australian court considers relevant;
18 and must not take into account the fact that the proceeding was
19 commenced in Australia.
- 20 (3) An order under subsection (1) may be made subject to any
21 conditions the Australian court considers are appropriate in order
22 to facilitate, without delay or undue expense, the determination of
23 all matters in dispute between the parties to the proceeding.

24 **20 Exclusive choice of court agreements**

- 25 (1) On application under section 17 (and despite section 19), the
26 Australian court:
- 27 (a) must, by order, stay the proceeding, if satisfied that an
28 exclusive choice of court agreement designates a New
29 Zealand court as the court to determine the matters in
30 dispute; and
- 31 (b) must not, by order, stay the proceeding, if satisfied that an
32 exclusive choice of court agreement designates an Australian
33 court as the court to determine those matters.

Section 21

- 1 (2) However, subsection (1) does not apply to an exclusive choice of
2 court agreement if the Australian court is satisfied that:
3 (a) it is null and void under New Zealand law (including the
4 rules of private international law); or
5 (b) a party to it lacked the capacity to conclude it under
6 Australian law; or
7 (c) giving effect to it would lead to a manifest injustice or would
8 be manifestly contrary to Australian public policy; or
9 (d) for exceptional reasons beyond the control of the parties to it,
10 it cannot reasonably be performed; or
11 (e) the court designated by it as the court to determine the
12 matters in dispute between the parties to the proceeding has
13 decided not to determine those matters.
- 14 (3) **Exclusive choice of court agreement**, in relation to matters in
15 dispute between parties to a proceeding, means a written agreement
16 between those parties that:
17 (a) designates the courts, or a specified court or courts, of a
18 specified country, to the exclusion of any other courts, as the
19 court or courts to determine disputes between those parties
20 that are or include those matters; and
21 (b) is not an agreement the parties to which are or include an
22 individual acting primarily for personal, family, or household
23 purposes; and
24 (c) is not a contract of employment.

25 **21 How this Part affects powers of the court to stay proceeding**

- 26 (1) An Australian court cannot stay a civil proceeding on forum
27 grounds connected with New Zealand otherwise than in accordance
28 with this Part.
- 29 (2) However, this Part does not affect any power of the Australian
30 court to stay the proceeding on any other grounds.

Part 3 Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum

Division 2 Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum

Section 22

1 **22 No restraint of proceedings**

- 2 (1) An Australian court must not restrain a person from commencing a
3 civil proceeding in a New Zealand court on the grounds that the
4 New Zealand court is not the appropriate forum for the proceeding.
- 5 (2) Also, an Australian court must not restrain a party to a civil
6 proceeding before a New Zealand court from taking a step in that
7 proceeding on the grounds that the New Zealand court is not the
8 appropriate forum for the proceeding.

9 **23 Suspension of limitation periods**

- 10 (1) This section applies if:
- 11 (a) a claim is made in a civil proceeding (the *NZ proceeding*) in
12 a New Zealand court that is later stayed by an order of the
13 New Zealand court made under the NZ Act on the grounds
14 that an Australian court is the more appropriate court; and
15 (b) the claim is to be made again in a civil proceeding (the
16 *Australian proceeding*) in an Australian court after the
17 staying of (and, if applicable, before any deadline stated in
18 the condition of that order staying) the New Zealand
19 proceeding.
- 20 (2) For the purposes of every applicable limitation period or defence
21 under Australian law, the Australian proceeding is to be treated as
22 commencing at the time the New Zealand proceeding commenced.

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2 **Part 4—Australian courts granting interim relief in**
3 **support of civil proceedings in New**
4 **Zealand courts**

5 **Division 1—Introduction**

6 **24 Guide to this Part**

7

This Part provides for certain Australian courts to give interim relief in support of civil proceedings in New Zealand courts.

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For the Australian court to give interim relief, a party to the New Zealand proceeding must apply for it.

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The Australian court may give interim relief if it considers it appropriate and, if a similar proceeding had been commenced in the Australian court, it would have given interim relief in that similar proceeding.

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Part 4 Australian courts granting interim relief in support of civil proceedings in New Zealand courts

Division 2 Australian courts granting interim relief in support of civil proceedings in New Zealand courts

Section 25

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2 **Division 2—Australian courts granting interim relief in**
3 **support of civil proceedings in New Zealand**
4 **courts**

5 **25 Application to an Australian court for interim relief**

6 A party or intended party to a civil proceeding commenced or to be
7 commenced in a New Zealand court may apply to any of the
8 following Australian courts for interim relief (other than a warrant
9 for the arrest of property) in support of the New Zealand
10 proceeding:

- 11 (a) the Federal Court;
12 (b) the Family Court of Australia;
13 (c) the Supreme Court of a State or Territory;
14 (d) another Australian court prescribed by the regulations.

15 **26 Giving of interim relief in support of a New Zealand proceeding**

16 (1) On application under section 25, the Australian court may give
17 interim relief (other than a warrant for the arrest of property) in the
18 terms it considers appropriate if:

- 19 (a) the court considers it appropriate to give the interim relief in
20 support of the New Zealand proceeding; and
21 (b) if a proceeding similar to the New Zealand proceeding had
22 been commenced in the court, the court:
23 (i) would have had power to give the interim relief in that
24 similar proceeding; and
25 (ii) would have given the interim relief in that similar
26 proceeding.

27 (2) Without limiting subsection (1), the Australian court may refuse to
28 give the interim relief if it considers it has no jurisdiction (apart
29 from this section) in relation to the subject matter of the New
30 Zealand proceeding and it is for that reason inexpedient to give the
31 interim relief.

1 (3) This section does not affect any other powers of the Australian
2 court to give interim relief in support of the New Zealand
3 proceeding.

4 **27 Application of Australian court procedural rules in an interim**
5 **relief proceeding**

6 The procedural rules of the Australian court apply to the
7 proceeding for interim relief under this Part as if the New Zealand
8 proceeding were a similar proceeding commenced in the Australian
9 court.

Section 28

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2 **Part 5—Subpoenas**

2

3 **Division 1—Introduction**

3

4 **28 Guide to this Part**

4

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This Part is about subpoenas issued by certain Australian and New Zealand courts and tribunals.

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Division 2 is about subpoenas issued by certain Australian courts and tribunals. It allows for those subpoenas to be served on a person in New Zealand with leave of an Australian court and provides for how the service is to be done. It also allows the person named in the subpoena to apply for the subpoena to be set aside.

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Division 3 is about subpoenas issued by New Zealand courts and tribunals. It allows for those subpoenas to be served on a person in Australia in accordance with the NZ Evidence Act. It requires the person served with the subpoena in Australia to comply with it.

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2 **Division 2—Australian subpoenas**

3 **29 Application of this Division**

- 4 (1) This Division applies to a subpoena that is issued in a proceeding
5 (other than an excluded family proceeding) in:
6 (a) a federal court; or
7 (b) a State or Territory court prescribed by the regulations; or
8 (c) an Australian tribunal prescribed by the regulations.
- 9 (2) Regulations made for the purposes of paragraph (1)(c) must not
10 prescribe a tribunal unless the tribunal is a person or body
11 authorised by or under an Australian law to take evidence on oath
12 or affirmation.

13 **30 Service of Australian subpoenas in New Zealand**

- 14 (1) The subpoena may be served on a person in New Zealand in
15 accordance with this Division.
- 16 (2) The subpoena may require the person named to attend to give
17 evidence or produce documents at a place in Australia or a place in
18 New Zealand.

19 **31 Subpoenas not to be served in New Zealand without leave**

- 20 (1) If the proceeding is in an Australian court, the subpoena must not
21 be served in New Zealand without the leave of the court.
- 22 (2) If the proceeding is in an Australian tribunal, the subpoena must
23 not be served in New Zealand without the leave of an inferior
24 Australian court.
- 25 (3) Without limiting the matters that the court may take into account in
26 deciding whether to give leave under subsection (1) or (2), the
27 court must take into account:
28 (a) the significance of the evidence to be given, or the document
29 or thing to be produced, by the person named; and

Section 32

- 1 (b) whether the evidence, document or thing could be obtained
2 by other means without significantly greater expense, and
3 with less inconvenience to the person named.
- 4 (4) In giving leave, the court:
5 (a) must impose a condition that the subpoena not be served after
6 a specified day; and
7 (b) may impose other conditions.
- 8 (5) The court must not give leave if the person named is less than 18
9 years old.

32 How Australian subpoenas must be served in New Zealand

- 11 (1) The subpoena must be served in New Zealand:
12 (a) in the same way that the subpoena is required or permitted,
13 under the procedural rules of the issuing Australian court or
14 tribunal, to be served in the place of issue; and
15 (b) in accordance with any directions given by the Australian
16 court that gave leave for the subpoena to be served.
- 17 (2) The subpoena must be accompanied by:
18 (a) a copy of the order giving leave for the subpoena to be served
19 in New Zealand; and
20 (b) a notice in the form prescribed by the regulations or the
21 procedural rules of the issuing Australian court or tribunal
22 that:
23 (i) sets out the rights and obligations of the person named
24 in relation to the subpoena; and
25 (ii) includes information about the way in which an
26 application to have the subpoena set aside may be made.
- 27 (3) If there is no form prescribed by the regulations or the procedural
28 rules for the purposes of paragraph (2)(b), the subpoena must be
29 accompanied by the corresponding form under the Federal Court
30 Rules, with such modifications as are necessary.

1 **33 Expenses of complying with Australian subpoenas**

- 2 (1) Allowances and travelling expenses sufficient to meet the person's
3 reasonable expenses of complying with the subpoena must be paid
4 to the person at:
5 (a) the time of service of the subpoena; or
6 (b) some other reasonable time before the person named is
7 required to comply with it.
- 8 (2) The allowances or travelling expenses may be paid by giving a
9 voucher in substitution for the whole or part of those allowances
10 and travelling expenses.

11 **34 Australian subpoenas that require production**

12 If the subpoena only requires production of a document or thing, it
13 must permit the person named to comply by producing the
14 document or thing at any registry of the High Court of New
15 Zealand not later than 10 days before the date specified in the
16 subpoena as the date on which the document or thing is required
17 for production in the court or tribunal that issued the subpoena.

18 **35 Applications to set Australian subpoenas aside**

- 19 (1) The person named in the subpoena may apply for the subpoena to
20 be set aside.
- 21 (2) The application must be made to the Australian court that gave
22 leave for the subpoena to be served.
- 23 (3) The application must contain an address in Australia or New
24 Zealand that is the applicant's address for service. That address is
25 to be treated as the applicant's address for service for the
26 proceeding.
- 27 (4) The Registrar of the Australian court must cause a copy of the
28 application, and any affidavit setting out facts on which the
29 applicant wishes to rely in support of the application, to be served
30 on:
31 (a) the lawyer for the person who obtained leave to serve the
32 subpoena in New Zealand; or

Part 5 Subpoenas

Division 2 Australian subpoenas

Section 36

1 (b) if there is no lawyer for that person—that person.

2 (5) This section does not affect the procedural rules of the Australian
3 court in relation to the application.

4 **36 Setting aside Australian subpoenas**

5 (1) On application under section 35, the Australian court may set aside
6 the subpoena in whole or in part.

7 (2) The court must set the subpoena aside if:

8 (a) the subpoena requires the person named to attend at a place
9 in Australia and the court is satisfied that:

10 (i) the person does not have the necessary travel documents
11 and cannot by the exercise of reasonable diligence
12 obtain them within the time permitted for compliance
13 with the subpoena; or

14 (ii) were the person to comply with the subpoena, he or she
15 would be liable to be detained for the purpose of serving
16 a sentence; or

17 (iii) the person is liable to a prosecution, or is being
18 prosecuted for an offence, in Australia; or

19 (iv) the person is liable to the imposition of a penalty in a
20 civil proceeding in Australia (other than a proceeding
21 under the *Trade Practices Act 1974*); or

22 (b) the court is satisfied that the person is subject to a restriction
23 on his or her movements, imposed by law or by order of a
24 court, that is inconsistent with the person complying with the
25 subpoena.

26 (3) Without limiting the grounds on which the subpoena may be set
27 aside, the court may set it aside if the court is satisfied that:

28 (a) the evidence to be given by the person named could be
29 obtained satisfactorily by other means without significantly
30 greater expense; or

31 (b) compliance with the subpoena would cause the person
32 hardship or serious inconvenience; or

33 (c) in the case of a subpoena for production:

- 1 (i) the document or thing should not be taken out of New
2 Zealand; and
3 (ii) satisfactory evidence of the contents of the document, or
4 satisfactory evidence of the thing, can be given by other
5 means.
- 6 (4) The court may determine the application without a hearing.
- 7 (5) However, the court must determine the application with a hearing
8 if any of the following requests the court to determine it with a
9 hearing:
10 (a) the applicant;
11 (b) any person at whose request the subpoena was issued.
- 12 (6) The applicant and the applicant's lawyer may appear remotely in a
13 hearing to set aside the subpoena if:
14 (a) the applicant was served, or purportedly served, with the
15 subpoena in New Zealand under this Division; and
16 (b) within the period (if any) prescribed by the regulations, the
17 applicant made a request to the Australian court or tribunal
18 for that remote appearance; and
19 (c) a remote appearance medium is, or can reasonably be made,
20 available.

21 This subsection applies despite Subdivisions A and B of Part 6, but
22 is subject to the rest of Part 6.

23 Note: Ordinarily, for a person to appear remotely from New Zealand in a
24 proceeding in an Australian court, the person needs the leave of the
25 Australian court or tribunal (see sections 48 and 50).

26 **37 Payment of expenses for complying with Australian subpoenas**

- 27 (1) The person named is entitled to payment of an amount equal to the
28 reasonable expenses incurred by the person in complying with the
29 subpoena.
- 30 (2) If the subpoena was issued at the request of a person, the amount
31 must be paid by that person.
- 32 (3) If the subpoena was not issued at the request of a person, the
33 amount must be paid:

Part 5 Subpoenas

Division 2 Australian subpoenas

Section 38

- 1 (a) if the subpoena was issued by a federal court—by the
2 Commonwealth; or
3 (b) otherwise—by the State or Territory in which the subpoena
4 was issued.
- 5 (4) The Australian court or tribunal that issued the subpoena may
6 make orders to ensure that the person complying with the subpoena
7 receives the amount of the person's reasonable expenses in so
8 complying.

9 **38 Contravening Australian subpoenas**

- 10 If the person named in the subpoena fails to comply with it, the
11 Australian court or tribunal that issued the subpoena may issue a
12 certificate under the seal of the court or tribunal stating that:
13 (a) leave to serve the subpoena was given by an Australian court;
14 and
15 (b) the person named failed to comply with the subpoena.

16 **39 This Division does not affect other court or tribunal powers**

- 17 This Division does not affect any other powers of an Australian
18 court or tribunal.

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2 **Division 3—New Zealand subpoenas**

3 **40 Application of this Division**

4

This Division applies to a subpoena that:

5

(a) is issued in a proceeding (other than an excluded family proceeding) in a New Zealand court or tribunal; and

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7

(b) may be served in Australia under the NZ Evidence Act.

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41 Service of New Zealand subpoenas in Australia

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The subpoena may be served on a person in Australia in accordance with the NZ Evidence Act.

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11 **42 Obligation to comply with New Zealand subpoenas**

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(1) A person served in Australia with the subpoena must comply with it if:

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(a) the subpoena was served under section 41; and

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(b) the person is at least 18 years of age; and

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(c) at the time of service or at some other reasonable time before the person is required to comply, allowances and travelling expenses sufficient to meet the person's reasonable expenses of complying with the subpoena are paid to the person.

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(2) This section does not affect any right a person has under New Zealand law to apply to have the subpoena set aside.

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(3) For the purposes of paragraph (1)(c), allowances and travelling expenses may be paid by giving a voucher in substitution for the whole or part of those allowances and travelling expenses.

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25 **43 Contravening New Zealand subpoenas**

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(1) A person who contravenes section 42:

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(a) is in contempt of the Federal Court; and

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(b) is punishable accordingly;

Section 44

- 1 unless the person establishes that the contravention should be
2 excused.
- 3 (2) In determining whether the contravention should be excused, the
4 Federal Court may take into account:
- 5 (a) any matters that have not been brought to the attention of the
6 New Zealand court that gave leave for the subpoena to be
7 served in Australia, if the Federal Court is satisfied that:
- 8 (i) the New Zealand court would have been likely to have
9 set aside the subpoena if the matters had been brought to
10 its attention; and
- 11 (ii) the failure to bring the matters to the attention of the
12 New Zealand court was not the person's fault, or was
13 the result of an omission by the person that should be
14 excused; and
- 15 (b) any other matters to which the Federal Court would have had
16 regard if it had issued the subpoena.
- 17 (3) A certificate under a seal of the New Zealand court or tribunal that
18 issued the subpoena stating that:
- 19 (a) a New Zealand court granted leave to serve the subpoena in
20 Australia; and
- 21 (b) the person named failed to comply with the subpoena;
22 is evidence of the person's contravention of section 42 unless the
23 person establishes to the satisfaction of the Federal Court that the
24 person did not in fact contravene that section.
- 25 (4) Findings of fact made by a New Zealand court on an application to
26 that court to set aside the subpoena cannot be challenged by a
27 person alleged to have contravened section 42 unless that court was
28 deliberately misled in making those findings of fact.

29 **44 Documents etc. for transmission to a New Zealand court**

- 30 (1) Subject to subsection (2), the following are authorised to receive a
31 document or thing that is required by a subpoena to be produced:
- 32 (a) the Federal Court;
- 33 (b) a State or Territory court prescribed by the regulations;
- 34 (c) an Australian tribunal prescribed by the regulations.

- 1 (2) If the regulations so provide in relation to such a court or tribunal,
2 this section only applies in relation to specified locations of the
3 registry of the court or tribunal.
- 4 (3) If a document or thing is filed at the registry of such a court or
5 tribunal in compliance with a subpoena, the Registrar of the court
6 or tribunal must, as soon as practicable after filing, cause:
7 (a) the Registrar of the court or tribunal that issued the subpoena
8 to be informed in writing that the document or thing has been
9 so filed; and
10 (b) the document or thing to be transmitted to that court or
11 tribunal.
- 12 (4) Regulations made for the purposes of subsection (1):
13 (a) must not prescribe a court or tribunal of a State unless the
14 Governor of that State has requested in writing that the court
15 or tribunal be so prescribed; and
16 (b) must not prescribe a court or tribunal of the Australian
17 Capital Territory unless the Chief Minister of the Australian
18 Capital Territory has requested in writing that the court or
19 tribunal be so prescribed; and
20 (c) must not prescribe a court or tribunal of any other Territory
21 unless the Administrator of the Territory has requested in
22 writing that the court or tribunal be so prescribed.
- 23 (5) Regulations made for the purposes of subsection (1) must not
24 prescribe a tribunal unless the tribunal is a person or body
25 authorised by or under an Australian law to take evidence on oath
26 or affirmation.

27 **45 This Part does not affect other powers to serve subpoenas**

28 This Part does not affect any right or power, conferred by or under
29 New Zealand law, to serve a subpoena in Australia on a citizen of
30 New Zealand.

Part 6 Remote appearances

Division 1 Introduction

Section 46

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2 **Part 6—Remote appearances**

3 **Division 1—Introduction**

4 **46 Guide to this Part**

5

This Part is about people appearing remotely from New Zealand in Australian proceedings and people appearing remotely from Australia in New Zealand proceedings.

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Division 2 is about remote appearances from New Zealand in a proceeding in an Australian court or a prescribed Australian tribunal. Subdivision A deals with remote appearances by a party or a party's lawyer where the appearance is not related to evidence in the proceeding. Subdivision B deals with remote appearances by any person (including a party or a party's lawyer) where the appearance relates to evidence. Subdivision C has general provisions that relate to all remote appearances from New Zealand.

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Division 3 is about remote appearances from Australia in a proceeding in a New Zealand court or tribunal where those remote appearances are made in accordance with the NZ Act or the NZ Evidence Act. It allows the New Zealand court or tribunal to exercise certain powers in Australia for the purpose of the remote appearances. It also gives certain privileges, protections and immunities to participants in the remote appearances and has offences that apply for particular conduct engaged in (for example, obstructing the proceeding) at the place in Australia from where the remote appearances are being made.

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2 **Division 2—Remote appearances from New Zealand in**
3 **Australian proceedings**

4 **Subdivision A—Remote appearances unrelated to remote**
5 **evidence**

6 **47 Application of this Subdivision**

- 7 (1) This Subdivision applies to a civil proceeding in:
8 (a) an Australian court; or
9 (b) an Australian tribunal prescribed by the regulations.
- 10 (2) This Subdivision does not apply in relation to remote appearances
11 covered by subsection 50(1).

12 Note: Section 50 allows the court to give leave for remote appearances
13 related to the giving of evidence remotely from New Zealand.

14 **48 Remote appearances unrelated to remote evidence**

- 15 (1) The Australian court or tribunal may, on application by a party,
16 give the party, the party's lawyer, or both, leave to appear remotely
17 from New Zealand in one or more hearings related to the
18 proceeding by:
19 (a) the remote appearance medium specified by the court or
20 tribunal; or
21 (b) if the court or tribunal does not specify a remote appearance
22 medium—either remote appearance medium.

23 Note: In some cases, a defendant and a defendant's lawyer may appear
24 remotely without the leave of the court or tribunal: see subsections
25 18(4) and 36(6) (which deal with applications to stay proceedings or
26 set aside subpoenas).

- 27 (2) The Australian court or tribunal must not give leave to the party or
28 the party's lawyer unless it is satisfied that:
29 (a) the party or the party's lawyer can more conveniently
30 participate in the hearing from New Zealand; and

Part 6 Remote appearances

Division 2 Remote appearances from New Zealand in Australian proceedings

Section 49

- 1 (b) if the court or tribunal intends to specify a remote appearance
2 medium—that remote appearance medium is, or can
3 reasonably be made, available; and
4 (c) if the court or tribunal does not intend to specify a remote
5 appearance medium—both remote appearance mediums are,
6 or can reasonably be made, available; and
7 (d) it is appropriate to give the leave.
- 8 (3) If the party’s lawyer is not entitled to appear before the court or
9 tribunal, the court or tribunal must not give leave to the party’s
10 lawyer unless it is satisfied that:
11 (a) the lawyer is a qualified NZ lawyer; and
12 (b) the party ordinarily resides or, if the party is not an
13 individual, has its principal place of business, in New
14 Zealand.
- 15 (4) If the court or tribunal gives leave, then a qualified NZ lawyer who
16 is not otherwise entitled to appear before the court or tribunal is
17 entitled to practise as a barrister, a solicitor, or both, in relation to
18 that leave.

19 **Subdivision B—Remote appearances related to remote**
20 **evidence**

21 **49 Application of this Subdivision**

- 22 (1) This Subdivision applies to a civil or criminal proceeding in:
23 (a) a federal court; or
24 (b) a State or Territory court prescribed by the regulations; or
25 (c) an Australian tribunal prescribed by the regulations.
- 26 (2) Regulations made for the purposes of paragraph (1)(c) must not
27 prescribe a tribunal unless the tribunal is a person or body
28 authorised by or under an Australian law to take evidence on oath
29 or affirmation.

30 **50 Remote appearances related to remote evidence**

- 31 (1) The Australian court or tribunal may, on application by a party,
32 give leave for:
-

- 1 (a) the giving of evidence; or
2 (b) the examination of a person giving evidence under
3 paragraph (a); or
4 (c) the making of submissions relating to the giving of evidence
5 under paragraph (a);
6 from New Zealand in one or more hearings related to the
7 proceeding by:
8 (d) the remote appearance medium specified by the court or
9 tribunal; or
10 (e) if the court or tribunal does not specify a remote appearance
11 medium—either remote appearance medium.
- 12 Note 1: For remote appearances other than those related to giving evidence
13 remotely from New Zealand, see section 48.
- 14 Note 2: In some cases, a defendant and a defendant's lawyer may appear
15 remotely without the leave of the court or tribunal: see subsections
16 18(4) and 36(6) (which deal with applications to stay proceedings or
17 set aside subpoenas).
- 18 (2) The Australian court or tribunal must not give leave unless it is
19 satisfied that:
20 (a) the evidence, examination or submission can more
21 conveniently be given or made from New Zealand; and
22 (b) if the court or tribunal intends to specify a remote appearance
23 medium—that remote appearance medium is, or can
24 reasonably be made, available; and
25 (c) if the court or tribunal does not intend to specify a remote
26 appearance medium—both remote appearance mediums are,
27 or can reasonably be made, available; and
28 (d) it is appropriate to give the leave.
- 29 (3) If the Australian court or tribunal gives leave, then a qualified NZ
30 lawyer who is not otherwise entitled to appear before the court or
31 tribunal is entitled to practise as a barrister, a solicitor, or both, in
32 relation to that leave.

Section 51

1 **Subdivision C—General provisions about remote appearances**

2 **51 Remote appearances by audiovisual link**

3 A person must not appear remotely from New Zealand by
4 audiovisual link, unless the courtroom or other place in Australia
5 where the court or tribunal is sitting (the *Australian place*), and the
6 place in New Zealand where the remote appearance would be made
7 (the *New Zealand place*), are equipped with facilities that enable:

- 8 (a) persons who are at the Australian place to see and hear the
9 person appearing remotely from the New Zealand place; and
10 (b) persons who are at the New Zealand place to see and hear
11 persons at the Australian place.

12 **52 Remote appearances by audio link**

13 A person must not appear remotely from New Zealand by audio
14 link, unless the courtroom or other place in Australia where the
15 court or tribunal is sitting (the *Australian place*), and the place in
16 New Zealand where the remote appearance would be made (the
17 *New Zealand place*), are equipped with facilities that enable:

- 18 (a) persons who are at the Australian place to hear the person
19 appearing remotely from the New Zealand place; and
20 (b) persons who are at the New Zealand place to hear persons at
21 the Australian place.

22 **53 Costs of remote appearances from New Zealand**

23 If a person appears remotely from New Zealand under this Act, the
24 court may make such orders as the court considers appropriate for
25 the payment of expenses incurred in connection with the remote
26 appearance.

27 **54 Powers of Australian courts in New Zealand**

28 For the purposes of a remote appearance from New Zealand in
29 accordance with this Act, the Australian court or tribunal may
30 exercise in New Zealand all its powers that it is permitted to
31 exercise in New Zealand under New Zealand law.

1

2 **Division 3—Remote appearances from Australia in New**
3 **Zealand proceedings**

4 **55 People in Australia appearing remotely in New Zealand**
5 **proceedings**

6 A remote appearance by a person from Australia in a proceeding in
7 a New Zealand court or tribunal is authorised if it is in accordance
8 with the NZ Act or the NZ Evidence Act.

9 **56 Powers of New Zealand courts and tribunals in Australia**

- 10 (1) For the purposes of a remote appearance by a person in Australia
11 under section 55, a New Zealand court or tribunal may exercise in
12 Australia any of its powers, except its powers to:
13 (a) punish for contempt; and
14 (b) enforce or execute its judgments or process.
- 15 (2) The New Zealand law that applies to the proceeding in New
16 Zealand also applies, subject to subsection (1), to the practice and
17 procedure of the New Zealand court or tribunal in allowing a
18 person in Australia to appear remotely under section 55.

19 **57 Orders of New Zealand courts and tribunals**

- 20 Without limiting section 56, the New Zealand court or tribunal
21 may, by order:
22 (a) direct that the hearing or any part of the hearing be held in
23 private; or
24 (b) require any person to leave the place in Australia from which
25 the appearance is being or is to be made; or
26 (c) prohibit or restrict the publication of submissions or the name
27 of any party or of any witness.

28 **58 Enforcement of orders of New Zealand courts and tribunals**

- 29 (1) An order under section 57 must be complied with.

Part 6 Remote appearances

Division 3 Remote appearances from Australia in New Zealand proceedings

Section 59

1 (2) Subject to the Federal Court Rules, the order may be enforced by
2 the Federal Court as if the order were an order of the Federal
3 Court.

4 (3) Without limiting subsection (2), a person who contravenes the
5 order:

6 (a) is in contempt of the Federal Court; and

7 (b) is punishable accordingly;

8 unless the person establishes that the contravention should be
9 excused.

10 **59 Remote appearance place in Australia is part of the New Zealand**
11 **court or tribunal**

12 For the purposes of sections 56 and 57, the place in Australia from
13 which a remote appearance is made in a hearing related to a
14 proceeding before a New Zealand court or tribunal is taken to be
15 part of that court or tribunal.

16 **60 Privileges, protections and immunities of participants in New**
17 **Zealand proceedings**

18 (1) A Judge or an Associate Judge of a New Zealand court or a
19 member of a New Zealand tribunal has, in relation to a remote
20 appearance by a person in Australia under section 55, the same
21 privileges, protections and immunities as a Judge of the Federal
22 Court.

23 (2) A person in Australia appearing remotely under section 55 as a
24 barrister, a solicitor, or both, has, in relation to the remote
25 appearance, the same protections and immunities as a barrister
26 appearing for a party in a proceeding in the Federal Court.

27 (3) A person in Australia appearing remotely under section 55 as a
28 party has, in relation to the remote appearance, the same
29 protections and immunities as a party in a proceeding in the
30 Federal Court.

31 (4) A person in Australia appearing remotely as a witness under
32 section 55 has the same protection as a witness in a proceeding in
33 the Federal Court.

1 **61 Contempt of New Zealand courts or tribunals**

2 (1) A person commits an offence if the person:

3 (a) is at a place in Australia from which a remote appearance is
4 being made in a proceeding in a New Zealand court or
5 tribunal; and

6 (b) assaults:

7 (i) a person appearing in the proceeding as a barrister, a
8 solicitor, or both; or

9 (ii) a witness in the proceeding; or

10 (iii) an officer of an Australian court or tribunal giving
11 assistance under section 63.

12 Penalty: 2 years imprisonment or 120 penalty units, or both.

13 (2) A person commits an offence if the person:

14 (a) is at a place in Australia from which a remote appearance is
15 being made in a proceeding in a New Zealand court or
16 tribunal; and

17 (b) intentionally threatens, intimidates or insults:

18 (i) a Judge, Associate Judge or member of the New
19 Zealand court or tribunal who is taking part in the
20 proceeding; or

21 (ii) a Registrar, Deputy Registrar or other officer of the
22 New Zealand court or tribunal who is taking part in or
23 assisting in the proceeding; or

24 (iii) a person appearing in the proceeding as a barrister, a
25 solicitor, or both; or

26 (iv) a witness in the proceeding.

27 Penalty: 2 years imprisonment or 120 penalty units, or both.

28 (3) A person commits an offence if the person:

29 (a) is at a place in Australia from which a remote appearance is
30 being made in a proceeding in a New Zealand court or
31 tribunal; and

32 (b) intentionally interrupts or obstructs the proceeding.

33 Penalty: 2 years imprisonment or 120 penalty units, or both.

Part 6 Remote appearances

Division 3 Remote appearances from Australia in New Zealand proceedings

Section 62

- 1 (4) A person commits an offence if the person:
2 (a) is at a place in Australia from which a remote appearance is
3 being made in a proceeding in a New Zealand court or
4 tribunal; and
5 (b) intentionally disobeys an order or direction of the New
6 Zealand court or tribunal.

7 Penalty: 2 years imprisonment or 120 penalty units, or both.

8 **62 New Zealand courts and tribunals may administer oath or**
9 **affirmation in Australia**

- 10 (1) A New Zealand court or tribunal may, for the purpose of obtaining
11 the testimony of a person in Australia by remote appearance
12 medium, administer an oath or affirmation in accordance with the
13 practice and procedure of the court or tribunal.
14 (2) Evidence given by a person on oath or affirmation so administered
15 is, for the purposes of section 35 of the *Crimes Act 1914*, testimony
16 given in a judicial proceeding.

17 **63 Assistance to New Zealand courts and tribunals**

- 18 (1) An officer of an Australian court or tribunal to which
19 subsection (2) applies may, at the request of a New Zealand court
20 or tribunal:
21 (a) attend at the place in Australia from which a remote
22 appearance is made in a hearing related to a proceeding
23 before the New Zealand court or tribunal; and
24 (b) take any action that the New Zealand court or tribunal directs
25 to facilitate the proceeding; and
26 (c) assist with the administering by the New Zealand court or
27 tribunal of an oath or affirmation.
28 (2) This subsection applies to the following:
29 (a) the Federal Court;
30 (b) the Family Court of Australia;
31 (c) a State or Territory court prescribed by the regulations;
32 (d) an Australian tribunal prescribed by the regulations.

- 1 (3) Regulations made for the purposes of paragraph (2)(c) or (d):
2 (a) must not prescribe a court or tribunal of a State unless the
3 Governor of that State has requested in writing that the court
4 or tribunal be so prescribed; and
5 (b) must not prescribe a court or tribunal of the Australian
6 Capital Territory unless the Chief Minister of the Australian
7 Capital Territory has requested in writing that the court or
8 tribunal be so prescribed; and
9 (c) must not prescribe a court or tribunal of any other Territory
10 unless the Administrator of the Territory has requested in
11 writing that the court or tribunal be so prescribed.
- 12 (4) Regulations made for the purposes of paragraph (2)(d) must not
13 prescribe a tribunal unless the tribunal is a person or body
14 authorised by or under an Australian law to take evidence on oath
15 or affirmation.

1

2 **Part 7—Recognition and enforcement in Australia**
3 **of specified judgments of New Zealand**
4 **courts and tribunals**

5 **Division 1—Introduction**

6 **64 Guide to this Part**

7

This Part is about the enforcement in Australia of specified judgments of New Zealand courts and tribunals.

8

9

To be enforceable, the judgment has to be registered in an Australian court. To be registered, the judgment must be a registrable NZ judgment (which is defined in section 66) and an application for its registration must be made.

10

11

12

13

Once registered in an Australian court, the judgment has the same force, and may be enforced in the Australian court, as if the judgment had been given by the Australian court. There are some exceptions to this—see, for example:

14

15

16

17

(a) subsection 74(2) (which provides that the judgment cannot be enforced during a particular period if notice of the registration has not been given to each liable person); and

18

19

20

(b) section 75 (which provides that the judgment cannot be enforced if the judgment could not be enforced in New Zealand); and

21

22

23

(c) section 76 (which provides grounds for when the Australian court may stay a proceeding to enforce the judgment).

24

1
2 **Division 2—Recognition and enforcement in Australia of**
3 **specified judgments of New Zealand courts and**
4 **tribunals**

5 **65 When registrable NZ judgments are enforceable in Australia**

- 6 (1) A registrable NZ judgment cannot be enforced in Australia if it is
7 not registered in an Australian court under section 68.

8 Note: A registrable NZ judgment cannot be enforced in Australia otherwise
9 than in accordance with this Part.

- 10 (2) Provisions of an NZ judgment that, because of section 71, could be
11 registered in an Australian court under section 68 cannot be
12 enforced in Australia if they are not so registered.

13 **66 Meaning of *registrable NZ judgment***

- 14 (1) A judgment is a *registrable NZ judgment* if:
15 (a) the judgment is a final and conclusive judgment that is given
16 in a civil proceeding by a New Zealand court; or
17 (b) the judgment is a final and conclusive judgment that:
18 (i) is given in a civil proceeding by a New Zealand tribunal
19 that is prescribed by the regulations; and
20 (ii) is of a kind prescribed by the regulations; or
21 (c) the judgment is a final and conclusive judgment that:
22 (i) is given in a criminal proceeding by a New Zealand
23 court; and
24 (ii) consists wholly of a requirement to pay an injured party
25 a sum of money by way of compensation, damages or
26 reparation; or
27 (d) the judgment is a final and conclusive judgment that:
28 (i) is given in a criminal proceeding by a New Zealand
29 court; and
30 (ii) consists wholly of an imposition of a regulatory regime
31 criminal fine; and

Part 7 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Division 2 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Section 66

- 1 (iii) meets the conditions (if any) of a kind prescribed by the
2 regulations; or
- 3 (e) the judgment is a final and conclusive order made under the
4 NZ Act or the NZ Evidence Act by a New Zealand court or
5 tribunal, being an order for the payment of expenses
6 incurred:
- 7 (i) by a witness in complying with a subpoena served on
8 the witness in Australia under Division 3 of Part 5 of
9 this Act; or
- 10 (ii) in connection with appearing remotely from Australia in
11 a New Zealand proceeding under Division 3 of Part 6 of
12 this Act; or
- 13 (f) the judgment is an NZ market proceeding judgment; or
- 14 (g) the judgment is registered in a New Zealand court under the
15 *Reciprocal Enforcement of Judgments Act 1934* of New
16 Zealand.
- 17 (2) However, a judgment is not a **registrable NZ judgment** if it wholly
18 or partly:
- 19 (a) relates to an excluded matter; or
- 20 (b) is a non-money judgment of a kind prescribed by the
21 regulations; or
- 22 (c) is an order under proceeds of crime legislation; or
- 23 (d) is an order relating to the granting of probate or letters of
24 administration or the administration of the estate of a
25 deceased person; or
- 26 (e) is an order relating to the guardianship or care of a person
27 who is incapable of managing his or her personal affairs; or
- 28 (f) is an order relating to the management of the property of a
29 person who is incapable of managing that property; or
- 30 (g) is an order relating to the care, control, or welfare of a child;
31 or
- 32 (h) imposes a civil pecuniary penalty of a kind prescribed by the
33 regulations; or
- 34 (i) is an order that, if contravened by a person to whom it is
35 directed, will make the person liable to conviction for an
36 offence in the place where it was made; or
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Section 67

- 1 (j) relates to a matter of a kind prescribed by the regulations.
- 2 (3) For the purposes of subsection (1), a judgment is to be treated as
3 final and conclusive even if:
- 4 (a) a person may appeal against it in a New Zealand court or
5 tribunal; or
- 6 (b) an appeal against it in a New Zealand court or tribunal has
7 not been finally determined.
- 8 (4) For the purposes of subparagraph (1)(b)(ii), the regulations must
9 not prescribe a judgment of a New Zealand tribunal prescribed for
10 the purposes of subparagraph (1)(b)(i) unless the judgment:
- 11 (a) is made in connection with the performance of an
12 adjudicative function; and
- 13 (b) is enforceable without an order of a court.

14 **67 Application to register NZ judgments**

15 *Judgments (other than civil pecuniary penalties, criminal fines or*
16 *NZ market proceeding judgments)*

- 17 (1) An entitled person may apply to register an NZ judgment (other
18 than one that imposes a civil pecuniary penalty or a regulatory
19 regime criminal fine, or is an NZ market proceeding judgment) in
20 any of the following courts:
- 21 (a) a superior Australian court;
- 22 (b) an inferior Australian court that has power to give the relief
23 that is in the judgment.

24 *Civil pecuniary penalties*

- 25 (2) An entitled person may apply to register an NZ judgment that
26 imposes a civil pecuniary penalty (other than an NZ market
27 proceeding judgment) in:
- 28 (a) a superior Australian court; or
- 29 (b) an inferior Australian court that has power to impose a civil
30 pecuniary penalty of the same value as the penalty imposed
31 by the judgment.

Part 7 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Division 2 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Section 68

1 *Criminal fines*

- 2 (3) An entitled person may apply to register an NZ judgment (other
3 than an NZ market proceeding judgment) in a superior Australian
4 court if the judgment imposes a regulatory regime criminal fine.

5 *NZ market proceeding judgments*

- 6 (4) An entitled person may apply to register an NZ market proceeding
7 judgment in the Federal Court.

8 *Application requirements*

- 9 (5) An application under this section must be made:
10 (a) in the form (if any) prescribed by the regulations; and
11 (b) in accordance with the requirements (if any) prescribed by
12 the regulations; and
13 (c) within:
14 (i) 6 years after the day on which the judgment is given; or
15 (ii) if there have been proceedings by way of appeal against
16 the judgment—6 years after the day of the last judgment
17 in those proceedings; or
18 (iii) if, before or after the period referred to in
19 subparagraph (i) or (ii), the entitled person applies to the
20 Australian court for a longer period—any longer period
21 the Australian court considers appropriate.
- 22 (6) Without limiting paragraph (5)(b), regulations made for the
23 purposes of that paragraph may prescribe that specified documents
24 be filed:
25 (a) in a specified way; and
26 (b) with, or within a specified time after the filing of, the
27 application.

28 **68 Registration of NZ judgments**

- 29 (1) An Australian court must, on application under section 67, register
30 a registrable NZ judgment in that court in accordance with this
31 Part.

- 1 (2) Once registered, the judgment remains registered unless the
2 registration is set aside under section 72.

3 **69 Currency in which NZ judgments are registered**

- 4 (1) If a sum of money payable under an NZ judgment is expressed in a
5 currency other than Australian currency, the judgment must be
6 registered in the Australian court under section 68:
7 (a) if an entitled person has requested in the application for
8 registration that the judgment be registered in a particular
9 currency—in that currency; and
10 (b) otherwise—as if it were for an equivalent amount in
11 Australian currency, calculated in accordance with the rate of
12 exchange on the working day (the *conversion day*) of the
13 Australian court before the working day of that court on
14 which the entitled person made the application for
15 registration.
16 (2) The rate of exchange on the conversion day is that determined in
17 the manner prescribed by the regulations.
18 (3) This section is subject to section 70 (which deals with money
19 judgments that are partly satisfied).

20 **70 Money judgments partly satisfied when entitled person applies**
21 **for registration**

- 22 If:
23 (a) an entitled person applies for registration of a money
24 judgment; and
25 (b) at the time of application, the judgment has been partly
26 satisfied;
27 then the Australian court may only register the balance remaining
28 payable under that judgment at that time under section 68.

Part 7 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Division 2 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Section 71

1 **71 Judgments only some provisions of which are registrable**

- 2 (1) This section applies to an NZ judgment if an Australian court to
3 which an application for registration of the judgment is made
4 considers that:
- 5 (a) the judgment is one in relation to different matters (for
6 example, because it is a judgment in relation to different
7 subject matters, or granting different kinds of relief); and
 - 8 (b) some of the provisions of the judgment (the **registrable**
9 **provisions**) would, if contained in a separate judgment, make
10 that separate judgment a registrable NZ judgment.
- 11 (2) The judgment may be registered in the Australian court under
12 section 68 in relation to the registrable provisions, but no other
13 provisions, as if the registrable provisions were a separate
14 registrable NZ judgment.

15 **72 Setting aside registration**

- 16 (1) An Australian court in which an NZ judgment is registered must,
17 on application by a liable person under subsection (2), set aside the
18 registration of the judgment if:
- 19 (a) the court is satisfied that enforcement of the judgment would
20 be contrary to public policy in Australia; or
 - 21 (b) the judgment was registered in contravention of this Act; or
 - 22 (c) both of the following subparagraphs apply:
 - 23 (i) the judgment was given in a proceeding the subject
24 matter of which was immovable property, or was given
25 in a proceeding *in rem* the subject matter of which was
26 movable property;
 - 27 (ii) that property was, at the time of the proceeding in the
28 original court or tribunal, not situated in New Zealand.
- 29 (2) The liable person's application must be made within:
- 30 (a) 30 working days of the Australian court after the day the
31 liable person was given notice of registration under
32 section 73; or

- 1 (b) if, before or after that period, the liable person applies to the
2 Australian court for a longer period—any longer period the
3 Australian court considers appropriate.
- 4 (3) The Australian court must not set aside the registration otherwise
5 than in accordance with this section.

6 **73 Notice of registration**

- 7 (1) If an Australian court registers an NZ judgment, the entitled person
8 must give a notice of the registration to every liable person.

9 Note: If the notice is not given, the entitled person will not be able to enforce
10 the NZ judgment for 45 working days of the Australian court after the
11 registration day: see section 74.

- 12 (2) The notice must:
13 (a) be in the form prescribed by the regulations; and
14 (b) be given in the manner prescribed by the regulations.
- 15 (3) The notice must be given within:
16 (a) 15 working days of the Australian court after the day of
17 registration; or
18 (b) if, before or after that period, the entitled person applies to
19 the Australian court for a longer period—any longer period
20 the Australian court considers appropriate.

21 **74 Effect of registration and notice of registration**

- 22 (1) A registered NZ judgment:
23 (a) has the same force and effect; and
24 (b) may give rise to the same proceedings for enforcement;
25 as if the judgment had been given by the Australian court in which
26 it is registered.

27 Note: An NZ judgment can be enforced in Australia as soon as it is
28 registered and notification of it is given. The entitled person does not
29 need to wait until the expiry of the period in which the liable person
30 could make an application to set aside the registration or to stay
31 enforcement of the judgment under section 72 or 76. Nor does the
32 entitled person need to wait until such an application is finally
33 determined.

Part 7 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Division 2 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Section 75

- 1 (2) However, if notice of the registration of the judgment has not been
2 given to every liable person under section 73, then subsection (1)
3 does not apply during the period that is 45 working days of the
4 Australian court after the day of registration.
- 5 (3) Subsection (1) is subject to:
- 6 (a) section 75 (which deals with restrictions on the enforceability
7 of registered NZ judgments); and
- 8 (b) an order of the Australian court staying the enforcement of
9 the judgment (whether the order is made under section 76 or
10 otherwise); and
- 11 (c) section 78 (which deals with interest on registered NZ
12 judgments).

13 **75 Restriction on enforcing registered NZ judgments**

14 A registered NZ judgment is capable of being enforced in Australia
15 only if, and to the extent that, at the time it is being or is to be
16 enforced, the judgment is capable of being enforced in the original
17 court or tribunal or in another New Zealand court or tribunal.

18 **76 Stay of enforcement of registered NZ judgment so that the liable
19 person can appeal it**

- 20 (1) An Australian court in which an NZ judgment has been registered
21 may, on an application by a liable person under subsection (3),
22 order that a proceeding in that court for enforcement of the
23 judgment:
- 24 (a) not be commenced until a specified time or event; or
25 (b) be stayed for a specified period.
- 26 (2) The order:
- 27 (a) must be made subject to the following conditions:
- 28 (i) that the liable person make an application to set aside,
29 vary or appeal against the judgment to a New Zealand
30 court or tribunal that has power to grant the application
31 by the end of a period specified in the order;

Section 77

- 1 (ii) that the liable person prosecute that application
2 expeditiously; and
3 (b) may be made subject to any other conditions that the
4 Australian court considers appropriate (including conditions
5 as to the giving of security).
- 6 (3) The liable person's application must be made within:
7 (a) 30 working days of the Australian court after the day the
8 liable person was given notice of the registration under
9 section 73; or
10 (b) if, before or after that period, the liable person applies to the
11 Australian court for a longer period—any longer period the
12 Australian court considers appropriate.
- 13 (4) This section does not affect any other powers of the Australian
14 court to stay the enforcement of the registered NZ judgment on any
15 grounds on which the court could stay the enforcement of a
16 judgment of an Australian court or tribunal.

17 **77 Costs and expenses of enforcement of registered NZ judgments**

- 18 (1) If a proceeding for enforcement of a registered NZ judgment is
19 commenced in an Australian court, the following are recoverable in
20 that proceeding:
21 (a) costs and expenses reasonably incurred by, or on behalf of,
22 the entitled person in, or incidental to, registration of the
23 judgment;
24 (b) costs and expenses reasonably incurred by, or on behalf of,
25 the entitled person in attempting to enforce the judgment in
26 the original court or tribunal.
- 27 (2) However, an entitled person's entitlement to recover, and a liable
28 person's liability to pay, the costs and expenses specified in
29 paragraph (1)(b) are the same as they would be in a proceeding in
30 that Australian court for enforcement of:
31 (a) a judgment given by the Australian court that is similar to the
32 registered NZ judgment; or

Part 7 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Division 2 Recognition and enforcement in Australia of specified judgments of New Zealand courts and tribunals

Section 78

- 1 (b) if there is no such similar judgment, a judgment given by the
2 Australian court that is most analogous to the registered NZ
3 judgment.

4 **78 Interest on registered NZ judgments**

5 Interest on a sum of money payable under a registered NZ
6 judgment:

- 7 (a) is payable at the same rate or rates and in respect of the same
8 period or periods as would be applicable in the original court
9 or tribunal; and
10 (b) is recoverable to the extent that an entitled person satisfies
11 the Australian court of the amount of interest that is payable
12 under paragraph (a).

13 **79 Private international law does not affect enforcement of**
14 **registered NZ judgments**

- 15 (1) Enforcement in Australia of a registered NZ judgment is not
16 affected by the operation of any rule of private international law
17 (other than any rule in this Part) in operation in Australia.
- 18 (2) Without limiting subsection (1), an Australian court may not refuse
19 to enforce, or delay, limit or prohibit the enforcement of, a
20 registered NZ judgment on any of the following grounds:
- 21 (a) enforcing the judgment would involve the direct or indirect
22 enforcement in Australia of a New Zealand public law;
23 (b) New Zealand tax is payable under the judgment;
24 (c) the judgment imposes a civil pecuniary penalty or a
25 regulatory regime criminal fine.

1

2 **Part 8—Trans-Tasman market proceedings**

3 **Division 1—Introduction**

4 **80 Guide to this Part**

5

This Part has some special rules about particular Australian and New Zealand proceedings that relate to the trans-Tasman market.

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Division 2 is about the Australian proceedings. It allows the Federal Court to conduct or continue the proceedings in New Zealand if it is satisfied that the proceedings could be more conveniently or fairly conducted or continued there.

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Division 3 is about the New Zealand proceedings. It allows the High Court of New Zealand to conduct or continue the proceedings in Australia and exercise certain powers in Australia for those purposes. It also gives participants in the proceedings in Australia certain privileges, protections and immunities.

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Division 4 allows the Federal Court to obtain evidence in Australia for the purposes of the New Zealand proceedings.

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Division 5 deals with miscellaneous matters, such as the jurisdiction of the Federal Court and offences that apply for particular conduct engaged in (for example, obstructing the New Zealand proceedings) at the places in Australia from where the New Zealand proceedings are being conducted.

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Section 81

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2 **Division 2—Federal Court exercising jurisdiction in New**
3 **Zealand**

4 **81 Federal Court sitting etc. in New Zealand**

5 (1) If the Federal Court is satisfied, at any stage of an Australian
6 market proceeding, that the proceeding could be more conveniently
7 or fairly conducted or continued in New Zealand, the Federal Court
8 may order that the proceeding be conducted or continued at a place
9 in New Zealand specified in the order.

10 (2) An *Australian market proceeding* is a proceeding in the Federal
11 Court in which:

12 (a) a matter for determination arises under:

13 (i) section 46A, 155A or 155B of the *Trade Practices Act*
14 *1974*; or

15 (ii) a provision of Part VI or XII of the *Trade Practices Act*
16 *1974* so far as the provision relates to section 46A,
17 155A or 155B of that Act; or

18 (iii) this Part; or

19 (b) any other kind of relief prescribed by the regulations is
20 sought; or

21 (c) an interlocutory order is sought in relation to a proceeding
22 covered by paragraph (a) or (b); or

23 (d) enforcement is sought of a judgment given in a proceeding
24 covered by paragraph (a) or (b).

25 (3) The order may be subject to such conditions (if any) as are
26 specified in the order.

27 (4) Without limiting subsection (1), judgment may be given in New
28 Zealand in an Australian market proceeding.

29 (5) The Federal Court may, for the purposes of an Australian market
30 proceeding, exercise in New Zealand any of the powers that the
31 Federal Court is permitted, under New Zealand law, to exercise in
32 New Zealand.

1 **82 New Zealand lawyers entitled to practise in the Federal Court in**
2 **New Zealand**

3 A qualified NZ lawyer is entitled to practise as a barrister, solicitor,
4 or both, in an Australian market proceeding before the Federal
5 Court sitting in New Zealand.

6 **83 Injunctions in relation to New Zealand conduct**

7 (1) The Federal Court may, in an Australian market proceeding, make
8 an order or grant an injunction (whether final or interlocutory)
9 restraining a person from engaging in conduct, or requiring a
10 person to do an act or thing, in New Zealand.

11 (2) This section does not affect any other power that the Federal Court
12 has to make an order or grant an injunction.

13 **84 Service of injunctions and other judgments in New Zealand**

14 (1) An order or injunction under section 83, or other Australian market
15 proceeding judgment, may be served in New Zealand.

16 (2) Subsection (1) is subject to the procedural rules of the Federal
17 Court.

Section 85

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2 **Division 3—High Court of New Zealand exercising**
3 **jurisdiction in Australia**

4 **85 High Court of New Zealand sitting in Australia etc.**

- 5 (1) The High Court of New Zealand may conduct or continue an NZ
6 market proceeding in Australia.
- 7 (2) An *NZ market proceeding* is a proceeding in the High Court of
8 New Zealand in which:
9 (a) a matter for determination arises under section 36A, 98H or
10 99A of the *Commerce Act 1986* of New Zealand; or
11 (b) any other kind of relief prescribed by the regulations is
12 sought; or
13 (c) an interlocutory order is sought in relation to a proceeding
14 covered by paragraph (a) or (b); or
15 (d) enforcement is sought of a judgment given in a proceeding
16 covered by paragraph (a) or (b).
- 17 (3) Without limiting subsection (1), judgment may be given in
18 Australia in an NZ market proceeding.
- 19 (4) The High Court of New Zealand may, for the purposes of an NZ
20 market proceeding, exercise in Australia all of the powers it has
21 when sitting in New Zealand, except its powers:
22 (a) to punish for contempt; and
23 (b) to enforce or execute its judgments or process.
- 24 (5) Without limiting subsection (4), the High Court of New Zealand
25 may in an NZ market proceeding, by order:
26 (a) direct that the proceeding be conducted or continued in
27 private; or
28 (b) require a person to leave the court; or
29 (c) prohibit or restrict the publication of evidence given in the
30 proceeding or of the name of a party to, or a witness in, the
31 proceeding.
- 32 (6) Without limiting subsections (1) to (5):
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- 1 (a) the *Judicature Act 1908* of New Zealand; and
2 (b) the High Court Rules made by or under that Act that apply to
3 New Zealand proceedings generally;
4 also apply to the practice and procedure of the High Court of New
5 Zealand in a proceeding that is an NZ market proceeding so far as
6 the proceeding is conducted or continued in Australia.
- 7 (7) An order under subsection (5) must be complied with.
- 8 (8) Subject to the procedural rules of the Federal Court, an order under
9 subsection (5) may be enforced by the Federal Court.
- 10 (9) Without limiting subsection (8), a person who contravenes an order
11 under subsection (5):
12 (a) is in contempt of the Federal Court; and
13 (b) is punishable accordingly;
14 unless the person establishes that the contravention should be
15 excused.

16 **86 Privileges, protections and immunities of participants in NZ**
17 **market proceedings**

- 18 (1) A Judge of the High Court of New Zealand has, at a sitting in
19 Australia of the High Court in an NZ market proceeding, the same
20 privileges, protections and immunities as a Judge of the Federal
21 Court.
- 22 (2) A person appearing as a barrister, solicitor, or both, in an NZ
23 market proceeding has, at a sitting in Australia of the High Court
24 of New Zealand, the same protections and immunities as a barrister
25 appearing for a party in a proceeding in the Federal Court.
- 26 (3) A party to an NZ market proceeding has, at a sitting in Australia of
27 the High Court of New Zealand, the same protections and
28 immunities as a party in a proceeding in the Federal Court.
- 29 (4) A person appearing as a witness in an NZ market proceeding has,
30 at a sitting in Australia of the High Court of New Zealand, the
31 same protection as a witness in a proceeding in the Federal Court.

Section 87

1 **87 New Zealand High Court may administer oath etc. in Australia**

2 (1) The High Court of New Zealand may, at a sitting in Australia of
3 the High Court in an NZ market proceeding, administer an oath or
4 affirmation in accordance with the practice and procedure of the
5 High Court of New Zealand.

6 (2) Evidence given by a person on oath or affirmation administered by
7 the High Court of New Zealand under subsection (1) is, for the
8 purposes of section 35 of the *Crimes Act 1914*, testimony given in
9 a judicial proceeding.

10 **88 Service of injunctions and other judgments in Australia**

11 An injunction (whether final or interlocutory) given in an NZ
12 market proceeding, or other NZ market proceeding judgment, may
13 be served in Australia.

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2 **Division 4—Taking of evidence by the Federal Court for**
3 **the High Court of New Zealand**

4 **89 Taking of evidence by the Federal Court**

- 5 (1) The High Court of New Zealand may request the Federal Court to
6 obtain evidence in Australia for the High Court of New Zealand for
7 the purposes of an NZ market proceeding.
- 8 (2) The Federal Court may, by order, make any provision it considers
9 appropriate for the purpose of obtaining the evidence.
- 10 (3) An order may require a specified person to take any steps the
11 Federal Court considers appropriate for that purpose.
- 12 (4) Without limiting subsections (2) and (3), an order may, in
13 particular, make provision:
14 (a) for the examination of witnesses, either orally or in writing;
15 or
16 (b) for the production of documents or things; or
17 (c) for the inspection, photographing, preservation, custody or
18 detention of any property; or
19 (d) for taking samples of any property and carrying out any
20 experiments on or with any property.
- 21 (5) Subsection (4) does not prevent the Federal Court from making an
22 order requiring a person to give testimony (either orally or in
23 writing) otherwise than on oath or affirmation if the High Court of
24 New Zealand requests it to do so.
- 25 (6) A person who is required by an order to attend at any place is
26 entitled to the same amount of conduct money and payment for
27 expenses and loss of time as the person would be entitled on
28 attendance as a witness before the Federal Court.

Part 8 Trans-Tasman market proceedings

Division 4 Taking of evidence by the Federal Court for the High Court of New Zealand

Section 90

1 **90 Privilege of witnesses**

2 An order under section 89 must not compel a person to give
3 evidence (including by answering a question, or producing a
4 document or thing) that the person could not be compelled to give
5 in the NZ market proceeding concerned.

6 **91 This Division does not affect other Australian laws**

7 This Division does not affect any other Australian law.

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2 **Division 5—Miscellaneous**

3 **92 Jurisdiction of the Federal Court under this Part**

- 4 (1) Jurisdiction is conferred on the Federal Court in any matter arising
5 under this Part.
- 6 (2) Without limiting subsection (1), jurisdiction is conferred on the
7 Federal Court to hear and determine prosecutions for offences
8 against this Part.
- 9 (3) The jurisdiction conferred on the Federal Court by this section is
10 exclusive of the jurisdiction of any other court.
- 11 (4) Without limiting subsection (3), prosecutions for offences against
12 this Part may be brought only in the Federal Court.
- 13 (5) This section has effect subject to section 75 of the Constitution.
- 14 (6) This section has effect despite anything in any other
15 Commonwealth law.

16 **93 Contempt of the High Court of New Zealand**

- 17 (1) A person commits an offence if the person:
18 (a) is at a sitting of the High Court of New Zealand in Australia
19 in an NZ market proceeding; and
20 (b) assaults or intentionally threatens, intimidates or insults:
21 (i) a Judge of the High Court of New Zealand; or
22 (ii) a Master, Registrar, Deputy Registrar or another officer
23 of the High Court of the New Zealand; or
24 (iii) a person appearing as a barrister, a solicitor, or both, in
25 the proceeding; or
26 (iv) a witness in the proceeding.
- 27 Penalty: 2 years imprisonment or 120 penalty units, or both.
- 28 (2) A person commits an offence if the person:

Section 94

1 (a) is at a sitting of the High Court of New Zealand in Australia
2 in an NZ market proceeding; and

3 (b) intentionally interrupts or obstructs the proceeding.

4 Penalty: 2 years imprisonment or 120 penalty units, or both.

5 (3) A person commits an offence if the person:

6 (a) is at a sitting of the High Court of New Zealand in Australia
7 in an NZ market proceeding; and

8 (b) intentionally disobeys an order or direction of the High Court
9 of New Zealand.

10 Penalty: 2 years imprisonment or 120 penalty units, or both.

11 **94 Reciprocal arrangements for use of court facilities**

12 (1) The Chief Justice of the Federal Court may make arrangements
13 with the Chief Justice of the High Court of New Zealand for the
14 purposes of giving effect to this Part.

15 (2) Without limiting subsection (1), arrangements may be made:

16 (a) to enable the Federal Court to sit in New Zealand, for the
17 purposes of an Australian market proceeding, in courtrooms
18 of the High Court of New Zealand or in other places in New
19 Zealand; or

20 (b) to enable the High Court of New Zealand to sit in Australia,
21 for the purposes of an NZ market proceeding, in courtrooms
22 of the Federal Court or in other places in Australia; or

23 (c) to provide registry facilities and court staff for the purposes
24 of an Australian market proceedings or an NZ market
25 proceeding.

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2 **Part 9—Evidence of certain New Zealand matters**

3 **Division 1—Introduction**

4 **95 Guide to this Part**

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This Part has a number of evidential rules relating to New Zealand (for example, about how to give evidence of an official instrument issued by the Governor-General of New Zealand) that apply in proceedings in Australian courts and certain other bodies.

Section 96

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2 **Division 2—Evidence of certain New Zealand matters**

3 **96 Application of this Part**

4 This Part applies to a proceeding:

- 5 (a) in an Australian court; or
6 (b) before a person or body authorised by:
7 (i) a law of the Commonwealth, a State or Territory; or
8 (ii) the consent of the parties to the proceeding;
9 to hear, receive or examine evidence.

10 **97 Matters of law**

- 11 (1) Proof is not required about the provisions and coming into
12 operation (in whole or in part) of:
13 (a) a New Zealand Act or an Imperial Act in force in New
14 Zealand; or
15 (b) a regulation, rule or by-law made, or purporting to be made,
16 under such an Act; or
17 (c) a Proclamation or order made, or purporting to be made, by
18 the Governor-General of New Zealand under such an Act; or
19 (d) an instrument of a legislative character (for example, a rule of
20 court) made, or purporting to be made, under such an Act,
21 being an instrument that is required by or under a law to be
22 published, or the making of which is required by or under a
23 law to be notified, in the *New Zealand Gazette*.
24 (2) The Australian court, or the person or body, may inform itself
25 about those matters in any way that it considers appropriate.

26 **98 Evidence of New Zealand official instruments**

27 Evidence of an official instrument issued by the Governor-General
28 of New Zealand, or by or under the authority of a New Zealand
29 Minister, may be adduced by producing:

- 30 (a) if the instrument was made by the Governor-General in
31 Council of New Zealand—a copy of, or an extract from, the

- 1 instrument purporting to have been certified as a true copy or
2 extract by the Clerk of the Executive Council of New
3 Zealand; or
4 (b) otherwise—a copy of, or an extract from, the instrument
5 purporting to have been certified as a true copy or extract by
6 a New Zealand Minister.

7 **99 Evidence of New Zealand acts of state**

- 8 Evidence of a treaty or other act of state of New Zealand may be
9 adduced by producing:
10 (a) a copy of it that purports to be sealed with the seal of New
11 Zealand; or
12 (b) a book or pamphlet, containing the treaty or act of state, that
13 purports to have been printed by authority of the New
14 Zealand Government; or
15 (c) a book or other publication, containing the treaty or act of
16 state, that appears to the court to be a reliable source of
17 information; or
18 (d) a book or pamphlet that would be admissible in the courts of
19 New Zealand as evidence of the treaties or acts of state of
20 New Zealand that are contained in the book or pamphlet; or
21 (e) a copy of the treaty or act of state that is proved to be an
22 examined copy; or
23 (f) a document that:
24 (i) purports to be a copy of the treaty or act of state; and
25 (ii) on which is endorsed, or to which is attached, a
26 certificate by the person who has custody of the
27 original, stating that the document is a true copy of the
28 original.

29 **100 Evidence of public documents admissible in New Zealand under**
30 **New Zealand Acts**

- 31 (1) If, under a New Zealand Act, a public document is admissible in
32 evidence to any extent or for any purpose, then the document is,
33 without further proof, admissible in evidence to the same extent
34 and for the same purpose if it purports to be:

Part 9 Evidence of certain New Zealand matters

Division 2 Evidence of certain New Zealand matters

Section 101

- 1 (a) sealed, signed and stamped; or
2 (b) signed and sealed; or
3 (c) signed and stamped;
4 in accordance with that Act.

- 5 (2) If a document is admissible in evidence under subsection (1), a
6 certified copy of it, or a certified extract from it, is also admissible
7 in evidence.

8 **101 Evidence of other New Zealand public documents**

- 9 If, under New Zealand law, a public document is admissible in
10 evidence to any extent or for any purpose, without proof of:
11 (a) the seal, stamp or signature that authenticates it; or
12 (b) the judicial or official character of the person who appears to
13 have signed it;
14 the document is admissible in evidence to the same extent and for
15 the same purpose without such proof.

16 **102 Evidence of New Zealand documents of a public nature**

- 17 If a document in New Zealand is of such a public nature as to be
18 admissible in evidence in New Zealand on its mere production
19 from proper custody, a copy of, or extract from, it is admissible in
20 evidence if the copy or extract:
21 (a) is proved to be an examined copy or extract; or
22 (b) purports to be signed and certified as a true copy or extract
23 by a New Zealand officer who certifies that he or she has
24 custody of it.

25 **103 This Part does not affect other Australian laws**

- 26 This Part does not affect any other Australian law.

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2 **Part 10—Miscellaneous**

3 **Division 1—Introduction**

4 **104 Guide to this Part**

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This Part deals with miscellaneous matters (such as the conferral of jurisdiction on the federal courts, the making of court rules relating to this Act, the interaction of this Act with some other Acts and the making of regulations under this Act).

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2 **Division 2—Miscellaneous**

3 **105 Jurisdiction of federal courts**

4 (1) Jurisdiction is conferred on a federal court in relation to any matter
5 arising under this Act (other than Part 8).

6 Note: See section 92 for the jurisdiction of the Federal Court in relation to
7 matters arising under Part 8 (which deals with trans-Tasman market
8 proceedings).

9 (2) Without limiting subsection (1), jurisdiction is conferred on a
10 federal court to hear and determine prosecutions for offences
11 against this Act (other than Part 8).

12 **106 References to repealed New Zealand Acts**

13 A reference in this Act or the regulations to a repealed New
14 Zealand Act is a reference to a New Zealand Act that, with or
15 without modification, replaces, or corresponds to, the repealed
16 New Zealand Act.

17 **107 Interaction with the *Foreign States Immunities Act 1985***

18 This Act is subject to the *Foreign States Immunities Act 1985*.

19 **108 Interaction with the *Mutual Assistance in Criminal Matters Act*
20 *1987***

21 This Act is not subject to, and does not override, the *Mutual*
22 *Assistance in Criminal Matters Act 1987*.

23 Note: The *Mutual Assistance in Criminal Matters Act 1987* operates in
24 parallel with this Act.

25 **109 Court rules**

26 (1) The power to make rules regulating the practice and procedure of a
27 federal court extends to making any rules prescribing matters

Section 110

- 1 necessary or convenient to be prescribed for carrying out or giving
2 effect to this Act.
- 3 (2) Rules so made must not be inconsistent with this Act or the
4 regulations.
- 5 (3) If, in a proceeding in the Family Court of Australia or the Federal
6 Magistrates Court:
7 (a) a matter arises in relation to which the court has not made
8 rules under this section prescribing practice and procedure;
9 and
10 (b) the regulations have not prescribed practice and procedure in
11 relation to the matter; and
12 (c) the Federal Court Rules have prescribed practice and
13 procedure in relation to the matter;
14 then, subject to any direction that the court makes in that
15 proceeding, the Federal Court Rules apply in relation to the matter
16 with such modifications as are necessary.
- 17 (4) This section does not affect any power to make rules under any
18 other law.

19 **110 Regulations**

- 20 The Governor-General may make regulations prescribing matters:
21 (a) required or permitted by this Act to be prescribed; or
22 (b) necessary or convenient to be prescribed for carrying out or
23 giving effect to this Act.