

Questions and Answers

Why are the trans-Tasman Proceedings arrangements important?

These arrangements have three main aims. They will:

- help resolve trans-Tasman legal disputes more efficiently and effectively, and at a lower cost to businesses and individuals.
- make it easier for civil penalties and certain criminal fines that have been imposed on businesses and individuals in one country to be enforced in the other.
- ensure there is an effective and efficient legal framework to support the development of a single economic market between New Zealand and Australia .

What does the agreement do?

Among other things, the new arrangements will make it easier for people in New Zealand involved in a New Zealand court case to:

- start New Zealand court proceedings against a person in Australia
- require people in Australia to give evidence
- register and enforce a civil court judgment in Australia

It will be easier for people in New Zealand involved in Australian court cases will be able to ask:

- for the Australian case to be heard before New Zealand courts
- to appear before the Australian court via video or audio link
- to suspend enforcement of an Australian civil court judgment

How were these arrangements developed?

These arrangements are the result of a joint process of consultation and policy development between New Zealand and Australia.

Beginning in 2003, the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement (made up of senior officials from relevant government agencies in both Australia and New Zealand) reviewed trans-Tasman co-operation in court proceedings and regulatory enforcement.

In 2005, the Working Group issued a public discussion paper canvassing the problems and proposed solutions. Submissions were received from a range of key stakeholders.

In December 2006, the Working Group presented its final recommendations. The New Zealand and Australian governments agreed to adopt the reforms. The resulting *Agreement between the Government of New Zealand and the Government of Australia on Trans-Tasman Court Proceedings and Regulatory Enforcement* was signed in July 2008.

In 2010, mirror legislation was passed in each country (both called the Trans-Tasman Proceedings Act 2010) to implement the Agreement. Both countries recently finalised regulations and court rules necessary for the Agreement and legislation to enter into force on 11 October 2013.

Where can I find a copy of the Agreement and related legislation?

A copy of the agreement between the Government of New Zealand and the Government of Australia on Trans-Tasman Court Proceedings and Regulatory Enforcement can be found [here](#)

The New Zealand Trans-Tasman Proceedings Act 2010 can be found [here](#). The Australian Trans-Tasman Proceedings Act 2010 can be found [here](#).

What is the single economic market and how does it relate to the agreement?

The Closer Economic Relations Agreement (CER) between New Zealand and Australia, signed in 1983, created one of the most open economic and trade relationships of any two countries in the world. CER has increased co-operation and integration between the two countries and encouraged trans-Tasman trade and travel.

Thirty years on, a key priority for the New Zealand Government is to work with Australia to create a Single Economic Market (SEM) which aims to harmonise laws and systems to reduce the costs of doing business across the Tasman.

In August 2009, the New Zealand and Australian Prime Ministers announced a new framework for developing cross-border economic initiatives. The framework would aim to help reduce the transaction costs companies face when doing business on both sides of the Tasman, as a result of differences in laws and regulations.

The trans-Tasman proceedings arrangements agreement support closer economic relations between Australia and New Zealand and the progress being made toward an SEM. By providing an effective framework for dealing with trans-Tasman disputes, the new regime will support the development of SEM initiatives and ensure that businesses can operate across the Tasman with confidence.

What's the Agreement's model based on?

The new regime is modelled on the Australian inter-state scheme, the *Service and Execution of Process Act (Cth)* which has resolved similar issues between Australian States.

Does the agreement apply to court decisions already made and fines already imposed?

No. The new arrangements for enforcing judgments only apply to decisions given and fines imposed after the TTPA comes into force.

The new regime will apply to civil proceedings that are started on or after 11 October 2013. It also applies to civil proceedings commenced before 11 October but only if the initiating documents for that proceeding were not served before 11 October. Judgments may be registered and enforced under the Act if they are given on or after 11 October 2013.

Does the Agreement include criminal fines, such as driving fines?

Countries usually won't enforce penalties such as driving fines imposed by another country as it can be considered a breach of sovereignty. However, New Zealand and Australia have agreed that the existence of a 'trans-Tasman market' creates a compelling case for enforcing each other's criminal fines, when they are imposed under agreed regulatory regimes.

Many businesses operate in both countries or operate from one country and provide services in the other. In many cases New Zealand and Australian regulatory regimes are similar or have even converged (for example, food regulation and product safety standards). It is in both countries' interests to ensure that these laws are adequately enforced, to prevent people and businesses taking advantage of an enforcement gap.

Australia will enforce criminal fines imposed under the following New Zealand Acts:

- Agricultural Compounds and Veterinary Medicines Act 1997
- Companies Act 1993
- Credit Contracts and Consumer Finance Act 2003
- Fair Trading Act 1986
- Financial Markets Authority Act 2011
- Financial Reporting Act 1993
- Financial Service Providers (Registration and Dispute Resolution) Act 2008
- Food Act 1981
- Insurance (Prudential Supervision) Act 2010
- Securities Act 1978
- Securities Markets Act 1988
- Takeovers Act 1993
- Unit Trusts Act 1960
- a provision of the Commerce Act 1986, other than a provision in Subpart 9 Or 10 of Part 4
- subsection 54(1) or (2) of the Health and Disability Services (Safety) Act 2001
- sections 17, 18(5), 20, 24, 36, 38, 41, 42, 59 and 78 of the Medicines Act 1981
- a provision in Part 4, 5 or 5D of the Reserve Bank of New Zealand Act 1989

New Zealand will enforce criminal fines under the following Australian Acts:

- Securities and Investments Commission Act 2001 (Cth)
- Banking Act 1959 (Cth)
- Corporations Act 2001 (Cth)
- parts of the Competition and Consumer Act 2010 (Cth)
- Fair Trading (Australian Consumer Law) Act 1992 (Australian Capital Territory)
- Fair Trading Act 1987 (South Australia)
- Fair Trading Act 1999 (Victoria)

How do I register a New Zealand judgment in Australia?

You can apply directly to an Australian court to register a New Zealand civil court judgment. You can register the judgment in an Australian superior court or in a lower court that has the power to make that kind of judgment. Further information about registering a New Zealand judgment in Australia is available at www.ag.gov.au/ttpa.

A person must register a judgment within six years from the day on which the judgment is given, or six years after the date of the last judgment in any appeal proceedings, or such longer period as the court considers appropriate.

How do I register an Australian judgment in New Zealand

You can apply directly to the New Zealand High Court to register an Australian civil court judgment, or to a lower court that has the power to make that kind of judgment.

A person must register a judgment within six years from the day on which the judgment is given, or six years after the date of the last judgment in any appeal proceedings, or such longer period as the court considers appropriate. The application form is in the Trans-Tasman Proceedings Regulations and Rules 2013 and is available on www.justice.govt.nz/ttpa. The fee is \$100.

Can a person stop an Australian judgment being enforced against them in New Zealand?

If an Australian judgment has been registered against you in New Zealand you may:

- ask the New Zealand court to review the Registrar's decision to register an Australian judgment if you think it was registered using information that was incorrect or incomplete.
- apply to the New Zealand court for an order to set aside the registration of the judgment on limited grounds, including that:
 - o The judgment was registered wrongly; or
 - o Enforcing the judgment would be contrary to 'public policy' in New Zealand.
- Apply to the New Zealand court to 'stay' (suspend) enforcement while you are appealing against the Australian judgment or asking the Australian court to change or cancel the judgment.

What role do Courts and/or MOJ Collections play in enforcing court orders?

Once an Australian judgment is registered in a New Zealand court, it is enforced in the same way as a New Zealand civil court order – even if the Australian judgment imposes a criminal fine or a civil financial penalty.

The same options for enforcing a New Zealand civil court order will be available for enforcing an Australian judgment registered in New Zealand. This means that while the Courts and Ministry of Justice Collections may be asked to enforce some extra court orders, the enforcement process is the same for a New Zealand or Australian judgment.

See <http://www.justice.govt.nz/fines/civil-debt/collecting-your-civil-debt-1> for information about the steps you can take to enforce a civil court judgment.

The Agreement was signed in 2008 and the Acts were passed in 2010. Why has it taken so long to implement these arrangements?

Regulations and court rules setting out the supporting procedural detail were required in both countries. In Australia court rules were also required in all seven states. This process has taken several years to complete.