



# **Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010**

**No. 36, 2010 as amended**

**Compilation start date:** 11 October 2013

**Includes amendments up to:** Act No. 136, 2012

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010* as in force on 11 October 2013. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 11 October 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of each amended provision.

### **Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

### **Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

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# **An Act to deal with transitional and consequential matters in connection with the *Trans-Tasman Proceedings Act 2010*, and for related purposes**

## **1 Short title**

This Act may be cited as the *Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010*.

## **2 Commencement**

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

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	13 April 2010
2. Schedule 1	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> commences.	11 October 2013
3. Schedule 2, items 1 to 23	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> commences.	11 October 2013

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4. Schedule 2, item 24	Immediately after the commencement of item 22 of Schedule 2 to the <i>Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011</i> .  However, the provision(s) do not commence at all if item 22 of Schedule 2 to the <i>Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011</i> commences before the commencement of the provision(s) covered by table item 3.	Does not commence
5. Schedule 2, items 25 and 26	At the same time as section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> commences.	11 October 2013
6. Schedule 2, items 27 and 28	The later of: (a) immediately after the commencement of the provision(s) covered by table item 3; and (b) immediately after the commencement of item 22 of Schedule 2 to the <i>Law and Justice Legislation Amendment (Identity Crimes and Other Measures) Act 2011</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	11 October 2013

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

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

### 3 Schedule(s)

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

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## 4 Definitions

(1) In this Act:

*commencement* means the day on which section 3 of the *Trans-Tasman Proceedings Act 2010* commences.

*Trans-Tasman Act* means the *Trans-Tasman Proceedings Act 2010*.

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

## **Schedule 1—Application of the Trans-Tasman Act**

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

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

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

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

Part 3 of the Trans-Tasman Act (which deals with Australian courts declining jurisdiction on the grounds that a New Zealand court is the more appropriate forum) applies to an application made under that Part on or after commencement by a defendant to a civil proceeding that:

- (a) was commenced in an Australian court on or after commencement; or
- (b) was commenced in an Australian court before commencement, but only if an initiating document for the proceeding was served on the defendant in New Zealand after commencement under Part 2 of that Act.

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

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

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

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



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

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

- (1) Part 6 of the Trans-Tasman Act (which deals with remote appearances) applies to a remote appearance that is made on or after commencement. It does not matter whether the proceeding in which the remote appearance is made commenced before, on or after commencement.
- (2) Despite subitem (1), Division 2 of Part 6 of the Trans-Tasman Act (which deals with remote appearances from New Zealand in Australian proceedings) does not apply to a remote appearance if:
  - (a) the remote appearance is to give evidence or make submissions; and
  - (b) before commencement, the court directed under section 25 of the *Evidence and Procedure (New Zealand) Act 1994* that the evidence be given or submissions be made, by video link or telephone, from New Zealand.

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

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

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

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

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

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

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

## Schedule 2—Consequential repeals and amendments

### Part 1—Repeal of the Evidence and Procedure (New Zealand) Act 1994

#### *Evidence and Procedure (New Zealand) Act 1994*

##### 1 The whole of the Act

Repeal the Act.

##### 2 Saving

- (1) This item applies despite the repeal of the *Evidence and Procedure (New Zealand) Act 1994* (the **EPNZA**) made by this Schedule.
- (2) If, before commencement, a court gave leave under section 9 of the EPNZA for a subpoena to be served in New Zealand, then the EPNZA, as in force immediately before commencement, continues to apply on and after commencement in relation to the subpoena.
- (3) If, before commencement, a court directed under section 25 of the EPNZA that:
  - (a) evidence be taken; or
  - (b) submissions be made;by video link or telephone from New Zealand, then the EPNZA, as in force immediately before commencement, continues to apply on and after commencement in relation to the taking of that evidence or the making of those submissions.
- (4) Section 47 of the EPNZA (which deals with the application of the *Foreign Judgments Act 1991*), as in force immediately before commencement, continues to apply on and after commencement in relation to a judgment given before commencement.
- (5) Regulations made under section 49 of the EPNZA, as in force immediately before commencement, continue to apply on and after commencement in relation to:
  - (a) a subpoena to which subitem (2) applies; or

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

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

### *Federal Court of Australia Act 1976*

#### **3 Paragraph 32A(4)(b)**

Omit “Australian proceeding within the meaning of Part IIIA”, substitute “Australian market proceeding within the meaning of the *Trans-Tasman Proceedings Act 2010*”.

#### **4 Part IIIA**

Repeal the Part.

#### **5 Subsection 47A(5) (note)**

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

#### **6 Subsection 47B(3) (note)**

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

#### **7 Section 47G**

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

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

Repeal the paragraphs, substitute:

- (y) the Court’s sittings in New Zealand under Part 8 of the *Trans-Tasman Proceedings Act 2010*; and
- (za) the enforcement of orders under subsection 85(5) of the *Trans-Tasman Proceedings Act 2010*; and
- (zb) the registration and enforcement, and the setting aside of the registration, of judgments under Part 7 of the *Trans-Tasman Proceedings Act 2010*; and
- (zc) the transmission of documents to the High Court of New Zealand; and

- (zd) taking evidence under section 89 of the *Trans-Tasman Proceedings Act 2010*; and
- (ze) the exercise in Chambers of the Court's jurisdiction under Part 8 of the *Trans-Tasman Proceedings Act 2010*; and

## **9 Saving**

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

## Part 3—Other amendments

### *Defence Force Discipline Act 1982*

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

#### **12 Section 148F**

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

### *Family Law Act 1975*

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

#### **16 Section 102L**

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

## ***Federal Magistrates Act 1999***

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

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

Repeal the note, substitute:

Note: See Part 6 of the *Trans-Tasman Proceedings Act 2010*.

### **20 Section 73**

Omit “the *Evidence and Procedure (New Zealand) Act 1994*”, substitute “the *Trans-Tasman Proceedings Act 2010*”.

## ***Foreign Judgments Act 1991***

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

Omit “New Zealand or”.

### **22 Subsection 5(10)**

Repeal the subsection, substitute:

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

Note: For the enforcement in Australia of judgments given by courts of New Zealand, see Part 7 of the *Trans-Tasman Proceedings Act 2010*.

### **23 Saving**

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

***Law and Justice Legislation Amendment (Identity Crimes  
and Other Measures) Act 2010***

**24 Item 22 of Schedule 2**

Repeal the item.

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

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

After “the *Foreign Judgments Act 1991*”, insert “or the *Trans-Tasman Proceedings Act 2010*”.

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

After “the *Foreign Judgments Act 1991*”, insert “or the *Trans-Tasman Proceedings Act 2010*”.

***Trans-Tasman Proceedings Act 2010***

**27 Subsection 62(2)**

Before “judicial proceeding”, insert “federal”.

**28 Subsection 87(2)**

Before “judicial proceeding”, insert “federal”.



## Endnotes

### Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

- Endnote 1—About the endnotes
- Endnote 2—Abbreviation key
- Endnote 3—Legislation history
- Endnote 4—Amendment history
- Endnote 5—Uncommenced amendments
- Endnote 6—Modifications
- Endnote 7—Misdescribed amendments
- Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

### Abbreviation key—Endnote 2

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

### Uncommenced amendments—Endnote 5

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

## Endnotes

Endnote 1—About the endnotes

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### **Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

### **Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

### **Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

**Endnote 2—Abbreviation key**

ad = added or inserted	pres = present
am = amended	prev = previous
c = clause(s)	(prev) = previously
Ch = Chapter(s)	Pt = Part(s)
def = definition(s)	r = regulation(s)/rule(s)
Dict = Dictionary	Reg = Regulation/Regulations
disallowed = disallowed by Parliament	reloc = relocated
Div = Division(s)	renum = renumbered
exp = expired or ceased to have effect	rep = repealed
hdg = heading(s)	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
mod = modified/modification	Sdiv = Subdivision(s)
No = Number(s)	SLI = Select Legislative Instrument
o = order(s)	SR = Statutory Rules
Ord = Ordinance	Sub-Ch = Sub-Chapter(s)
orig = original	SubPt = Subpart(s)
par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)	

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Trans-Tasman Proceedings (Transitional and Consequential Provisions) Act 2010	36, 2010	13 Apr 2010	See s 2(1)	
Trans-Tasman Proceedings Amendment and Other Measures Act 2011	64, 2011	29 June 2011	Sch 2 (item 12): (a)	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Sch 2 (item 44): 2 Mar 2011 (see s 2(1))	—

(a) Subsection 2(1) (item 2) of the *Trans-Tasman Proceedings Amendment and Other Measures Act 2011* provides as follows:

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

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedules 1 and 2	Immediately after the commencement of section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> .	11 October 2013

## Endnote 4—Amendment history

**Endnote 4—Amendment history**

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<b>Provision affected</b>	<b>How affected</b>
s 2 .....	am No 136, 2012
<b>Sch 1</b>	
item 2.....	am No 64, 2011

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## Endnotes

Endnote 5—Uncommenced amendments [none]

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**Endnote 5—Uncommenced amendments [none]**

**Endnote 6—Modifications [none]**

**Endnote 7—Misdescribed amendments [none]**

**Endnote 8—Miscellaneous [none]**