



Minister of Commerce
Hon Lianne Dalziel

Joint Press Release



Attorney-General
Hon Robert McClelland MP

Treaty to improve trans-Tasman legal cooperation

Businesses and individuals involved in trans-Tasman civil legal cases are set to benefit from reforms that will make the legal process easier and more affordable.

Australian Attorney-General Robert McClelland and New Zealand Associate Justice Minister Lianne Dalziel will tomorrow sign a treaty in Christchurch between the two Governments on Trans-Tasman Court Proceedings and Regulatory Enforcement.

“This Treaty represents an unprecedented level of co operation between Australia and New Zealand in civil court proceedings,” the Ministers said.

Once it is brought into force, the Treaty will enhance the effectiveness of civil court proceedings in both countries. One way it will do this is by expanding the range of court judgments that can be enforced across the Tasman and simplifying the process for doing so.

The Ministers said these reforms will benefit both businesses and individuals involved in legal disputes across the Tasman.

“Being able to resolve trans-Tasman disputes more effectively and at lower cost supports closer economic relations between Australia and New Zealand and will underpin a broad range of other trans-Tasman initiatives. It is a fitting contribution to the 25th anniversary year of the CER.”

The reforms will also increase the effectiveness of each country’s regulatory rules. Under the new arrangements, fines in a range of areas deemed to be of mutual interest, such as securities offerings made to the public, will be enforceable across the Tasman.

Before legislation will be introduced to implement the reforms, both governments will be subjecting the treaty to their parliamentary examination processes. New Zealand and Australia will also embark on wide consultations with key stakeholders. Ministers anticipate that legislation can be introduced on both sides of the Tasman in 2009.

These reforms are based on recommendations made in December 2006 by the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement. The Working Group consulted with stakeholders in both countries.

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Media Contacts:

Elsbeth McIntyre, Lianne Dalziel's Press Secretary, ph +64 21 227 9397

All Lianne Dalziel's media statements and speeches are at

www.beehive.govt.nz/lianne+dalziel

Adam Sims, Mr McClelland's Media Adviser, ph +61 419 480 224

Details of signing ceremony:

When: 9.30am, Thursday 24 July

Where: No. 1 Courtroom, High Court, Durham Street, Christchurch, NZ.

Media and photographers are welcome to attend

Background information on the Trans-Tasman Court Proceedings and Regulatory Enforcement Agreement**What does the Agreement do?**

The Agreement:

- Allows civil proceedings from a court in one country to be served in the other without additional requirements.
- Extends the range of civil court judgments that can be enforced across the Tasman. Judgments can only be refused enforcement if they conflict with public policy in the country of enforcement.
- Provides for interim relief to be obtained from a court in one country in support of civil proceedings in the other.
- Allows the regime to be extended to tribunals on a case by case basis.
- Adopts a common 'give way' rule to apply when a dispute could be heard by a court in either country.
- Encourages greater use of technology for trans-Tasman court appearances.
- Allows enforcement of civil penalty orders across the Tasman.
- Allows the trans-Tasman enforcement of fines for certain regulatory offences, where there is a strong mutual interest in doing so.

What is the background to the Agreement?

In 2003 the New Zealand and Australian Prime Ministers agreed to establish the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement (the Working Group), comprising officials from both countries, to review existing trans-Tasman co-operation in court proceedings and regulatory enforcement. The Working Group submitted a report with final recommendations to both Governments in December 2006.

In 2007, the New Zealand and Australian Governments each agreed to implement the Working Group's recommendations. Negotiations began on a treaty to record that agreement. The outcome is the Agreement that has now been signed by both Governments.

How does the Agreement fit into the broader CER context?

The Agreement is one of a number of initiatives which Australia and New Zealand have commenced to build on the liberal trading environment created by the 1983 Australia New Zealand Closer Economic Relations Agreement and to work toward achieving a Single Economic Market (SEM) across the Tasman.

The aim of the SEM agenda is to make it just as easy for a business located in Australia or New Zealand to operate on either side of the Tasman, by identifying and removing behind-the-border impediments to trans-Tasman trade.

Next steps

Once the Agreement has been signed, it will undergo parliamentary scrutiny in Australia and New Zealand. Following the completion of this process, implementing legislation will need to be put in place in both countries before the Agreement can be brought into force.

Summary of the Working Group's recommendations

The problems identified by the Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement and its recommended solutions (together with the relevant Article(s) in the Agreement) are:

Issue	Problem	Solution	Article
<i>Enforcing civil court judgments</i>	<ul style="list-style-type: none"> •Service on defendant means court can hear a case •Defendant can be served overseas, if conditions are met •Final money judgments enforceable in other country •<u>But</u> if defendant served overseas and takes no steps in the proceedings, judgment not enforceable in other country 	<ul style="list-style-type: none"> •Allow proceedings in one country to be served in the other, without additional requirements •Defendant not able to ignore proceedings but could apply for a stay on grounds a court in other country is more appropriate to hear dispute. •Judgments registered and enforceable in other country •Public policy only basis for refusing enforcement. 	Articles 4 and 5
<i>Final non-money judgments</i>	<ul style="list-style-type: none"> •Only final money judgments can be enforced across the Tasman. •Other orders (eg order requiring defendant to return a specific item of property) are not enforceable. 	<ul style="list-style-type: none"> •Extend range of enforceable judgments to include those requiring someone to do, or not do, something. •Some exclusions, eg orders about wills and care/welfare of children. 	Articles 3 and 5
<i>Tribunal orders</i>	<ul style="list-style-type: none"> •Many tribunals decide disputes like a court. •Tribunal orders are not enforceable in the other country. 	<ul style="list-style-type: none"> •Allow some decisions or decisions in certain proceedings of particular tribunals to be enforced in the other country. •Allow some tribunals to use the service proposal (see 'Enforcing Civil Court Judgments'). 	Article 6

Issue	Problem	Solution	Article
<i>Interim relief in support of foreign proceedings</i>	<ul style="list-style-type: none"> •Interim relief (eg freezing assets until court makes final decision) not available from a court in one country to support proceedings in the other country. •Instead need to start new full proceedings in country where interim relief sought. 	<ul style="list-style-type: none"> •Give courts in both countries statutory power to grant interim relief in support of proceedings in the other country. 	Article 7
<i>Forum non conveniens rules</i>	<ul style="list-style-type: none"> •New Zealand and Australia apply potentially inconsistent ‘give way’ rules if courts in both countries could decide a dispute. •If proceedings on the same dispute in each country, possible neither court would give way. 	<ul style="list-style-type: none"> •Adopt a common statutory test requiring a court in one country to give way if a court in the other country is the appropriate court to decide the dispute. 	Article 8
<i>Leave requirement for trans-Tasman subpoena</i>	<ul style="list-style-type: none"> •Subpoena (summons requiring a person to give evidence in court) from one country can be served on a witness in the other. Permission of a High Court judge required. •But District Court proceedings require permission from High Court, adding cost, complexity and delay. 	<ul style="list-style-type: none"> •Allow lower court judges to give permission to serve a subpoena across the Tasman in proceedings before that court or a tribunal. 	Article 12
<i>Trans-Tasman subpoenas in criminal proceedings</i>	<ul style="list-style-type: none"> •Trans-Tasman evidence regime subpoenas not available in criminal proceedings. •Must use less convenient procedures such as Mutual Assistance in Criminal Matters legislation. 	<ul style="list-style-type: none"> •Extend trans-Tasman subpoenas to criminal proceedings. •Adequate safeguards in the regime’s existing protections (eg leave of judge, applying to set aside if complying causes hardship). 	Article 12
<i>Court appearance by video link</i>	<ul style="list-style-type: none"> •Video links already used for trans-Tasman evidence. •Physically attending a court in the other country is inconvenient and adds to the cost of proceedings. 	<ul style="list-style-type: none"> •Allow parties or lawyers to appear by technology with court’s agreement (civil cases). Lawyers without the right to appear before the court could still do so with leave. •Allow as of right when applying to stay proceedings in the other country (see ‘Enforcing Civil Court Judgments’). 	Article 11
<i>Enforcing civil penalty orders</i>	<ul style="list-style-type: none"> •Civil pecuniary penalty orders from a court in one country not enforceable in other country. •Long-standing rule against enforcing another country’s penalties but strong mutual interest in the effectiveness of each other’s regulatory regime. 	<ul style="list-style-type: none"> •Allow all civil pecuniary penalty orders from one country to be enforced in the other. •Public policy exception to enforcement. •A country could exclude particular civil penalty regimes from the other by agreement. 	Article 9

Issue	Problem	Solution	Article
<p><i>Enforcing fines for particular regulatory offences</i></p>	<ul style="list-style-type: none"> •Criminal fines are not enforceable in the other country as a penalty. •Impairs effective enforcement of regulatory regimes in which each country has a strong mutual interest. 	<ul style="list-style-type: none"> •Allow criminal fines under regulatory regimes that impact on the integrity and effectiveness of trans-Tasman markets to be enforced in other country. •Enforce in same way as a civil judgment debt. •Public policy exception to enforcement available and enforce through High Court (or Australian equivalents). 	<p>Article 10</p>