



# **Trans-Tasman Proceedings Amendment and Other Measures Act 2011**

**No. 64, 2011**

**An Act to amend the *Trans-Tasman Proceedings Act 2010* and to validate certain court fees, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Trans-Tasman Proceedings Amendment and Other Measures Act 2011

No. 64, 2011

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**An Act to amend the *Trans-Tasman Proceedings Act 2010* and to validate certain court fees, and for related purposes**

[Assented to 29 June 2011]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Trans-Tasman Proceedings Amendment and Other Measures Act 2011*.

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## 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.

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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>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	29 June 2011
2. Schedules 1 and 2	Immediately after the commencement of section 3 of the <i>Trans-Tasman Proceedings Act 2010</i> .	11 October 2013
3. Schedule 3	The day after this Act receives the Royal Assent.	30 June 2011

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to staying an Australian proceeding on forum grounds**

### *Trans-Tasman Proceedings Act 2010*

#### **1 Section 3 (paragraph relating to Part 3)**

Omit “matters in dispute”, substitute “matters in issue”.

#### **2 Section 16 (first paragraph)**

Omit “appropriate court to determine the matters in dispute”, substitute  
“appropriate court to determine the matters in issue”.

#### **3 Section 16 (third paragraph)**

Omit “all the matters in dispute”, substitute “the matters in issue”.

#### **4 Section 16 (last paragraph)**

Omit “the court to determine the matters in dispute”, substitute “the  
court to determine the matters in issue”.

#### **5 Subsection 17(1)**

Omit “matters in dispute”, substitute “matters in issue”.

#### **6 Paragraph 19(1)(a)**

Omit “all the matters in dispute”, substitute “the matters in issue”.

#### **7 Subsection 19(3)**

Omit “all matters in dispute”, substitute “the matters in issue”.

#### **8 Paragraphs 20(1)(a) and (2)(e)**

Omit “matters in dispute”, substitute “matters in issue”.

#### **9 Subsection 20(3)**

Omit “matters in dispute”, substitute “matters in issue”.

## Schedule 2—Other amendments

### *Trans-Tasman Proceedings Act 2010*

**1 Section 4 (paragraph (d) of the definition of *criminal proceeding*)**

After “compensation”, insert “, damages or reparation”.

**2 Section 4 (paragraph (b) of the definition of *entitled person*)**

After “compensation”, insert “, damages or reparation”.

**3 Section 4 (subparagraph (b)(ii) of the definition of *excluded matter*)**

Omit “*Interpretation Act 1999*”, substitute “*Property (Relationships) Act 1976*”.

**4 Subsection 8(3)**

Omit “the NZ Act to be an Australian court for the purposes of subpart 5 of Part 2 of that Act”, substitute “section 55 of the NZ Act to be a tribunal to which subpart 5 of Part 2 of that Act applies”.

**5 Subsection 20(2)**

Omit “However, subsection (1)”, substitute “Paragraph (1)(a)”.

**6 After subsection 20(2)**

Insert:

(2A) Paragraph (1)(b) does not apply to an exclusive choice of court agreement if the Australian court is satisfied that it is null and void under Australian law (including the rules of private international law).

**7 Subsection 26(2)**

Repeal the subsection.

**8 Subsection 56(2)**



Omit “in allowing a person in Australia to appear remotely”, substitute “in relation to a remote appearance by a person in Australia”.

**9 Before subparagraph 61(1)(b)(i)**

Insert:

(ia) a party to the proceeding; or

**10 After subparagraph 61(2)(b)(ii)**

Insert:

(iia) a party to the proceeding; or

**11 Subsection 66(4)**

Omit all the words after “subparagraph (1)(b)(i)”, substitute:

if the judgment:

- (a) is not made in connection with the performance of an adjudicative function; or
- (b) is not enforceable without an order of a court; or
- (c) imposes a civil pecuniary penalty.

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

**12 Item 2 of Schedule 1**

Omit all the words after “forum)”, substitute:

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.

## Schedule 3—Validation of certain court fees

### 1 Validation of court fees for de facto financial proceedings

(1) If:

- (a) during the relevant period, proceedings under the *Family Law Act 1975* were instituted in a court (other than the Federal Magistrates Court); and
- (b) the proceedings were de facto financial proceedings; and
- (c) apart from this item, a court fee for the proceedings:
  - (i) was not payable under the *Family Law Regulations 1984* in relation to the period; but
  - (ii) would have been so payable if, at all times during the period, references in those regulations to “financial or Part VII proceedings” had included a reference to “de facto financial proceedings”;

then the court fee is taken to have been so payable.

(2) In this item:

***de facto financial proceedings*** means any of the proceedings mentioned in paragraphs (a) to (f) of the definition of ***de facto financial cause*** in subsection 4(1) of the *Family Law Act 1975*.

***relevant period*** means the period that:

- (a) starts on 1 March 2009; and
- (b) ends on 25 November 2010.

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*[Minister's second reading speech made in—  
House of Representatives on 2 March 2011  
Senate on 12 May 2011]*

(35/11)

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