

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA
AND
THE GOVERNMENT OF NEW ZEALAND
ON TRANS-TASMAN COURT PROCEEDINGS AND REGULATORY
ENFORCEMENT**

(Christchurch 24 July 2008)

Not yet in force
[2008] ATNIF 12

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE
GOVERNMENT OF NEW ZEALAND ON TRANS-TASMAN COURT
PROCEEDINGS AND REGULATORY ENFORCEMENT**

Preamble

The Government of Australia and the Government of New Zealand (hereinafter “the Parties”):

CONSCIOUS of their long-standing friendship and close historic, political and economic relationship;

RECOGNISING the development of that relationship through the framework established by the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983, and subsequent arrangements and agreements developed within that framework of which this Agreement forms a part;

ACKNOWLEDGING each Party’s confidence in the judicial and regulatory institutions of the other Party;

AFFIRMING their shared commitment to appropriate and effective resolution of trans-Tasman civil disputes and increased regulatory cooperation;

DESIRING therefore to establish a new trans-Tasman regime, building on the existing cooperative regime covering the taking of evidence and associated court procedures, to further streamline aspects of civil court proceedings and regulatory enforcement and reduce unnecessary procedural and regulatory barriers to the conduct of litigation;

HAVE agreed as follows:

Part 1
Definitions and Objective

Article 1
Definitions

Adjudicative function means, in relation to tribunals, the function of determining the rights or liabilities of a person in a proceeding in which there are two (2) or more parties.

Appear remotely means where a person physically located in the territory of one Party is heard, or seen and heard, using technology including video or telephone link, by a court within the territory of the other Party.

Court within the territory of a Party for Australia means any federal court (including the High Court of Australia), or any court of a State or Territory.

Defendant includes a judgment debtor.

Judge for Australia includes a magistrate.

Inferior court means a court that is not a superior court.

Local registration means an entitlement to practice as a legal practitioner before a court by having fulfilled the necessary local requirements.

Money judgment means a judgment under which money is payable.

Non-money judgment means a judgment which does not involve the payment of money, including but not limited to, a judgment requiring a person to do or refrain from doing something.

Plaintiff includes a judgment creditor.

Superior court means:

1. In the case of Australia:
 - a) the High Court of Australia;
 - b) the Federal Court of Australia;
 - c) the Family Court of Australia; or
 - d) the Supreme Court of a State or Territory.

2. In the case of New Zealand:
 - a) the High Court;
 - b) the Court of Appeal; or
 - c) the Supreme Court.

The territory of a Party means the land areas, internal waters and territorial sea under the sovereignty or jurisdiction of a Party, but with respect to New Zealand does not include Tokelau.

Article 2 Objective

1. The objective of this Agreement is to streamline the process for resolving civil proceedings with a trans-Tasman element in order to reduce costs, improve efficiency, and minimise existing impediments to enforcing certain judgments and regulatory sanctions.

Part 2
Service of Process and Recognition and Enforcement of Judgments in Civil Proceedings

Article 3
Application

1. This Part shall apply to civil proceedings before courts within the territory of either Party, except civil proceedings in relation to the following matters:
 - a) dissolution of marriage;
 - b) enforcement of maintenance obligations; and
 - c) enforcement of child support obligations.
2. The Parties may, by mutual arrangement, exclude statutory cooperative arrangements and matters covered by existing or proposed bilateral or multilateral arrangements and agreements from the operation of this Part.
3. Actions in rem shall be excluded from the operation of Article 4.
4. The following judgments shall be capable of recognition and enforcement under Article 5:
 - a) final money judgments, and
 - b) final non-money judgments, except for the following:
 - i) orders about probate, letters of administration or the administration of an estate;
 - ii) orders about the guardianship or management of property of someone who is incapable of managing their personal affairs or property;
 - iii) orders about the care, control or welfare of a child; and
 - iv) orders that, if not complied with, may lead to conviction for an offence in the place where the order was made.
5. The Parties may, by mutual arrangement, exclude other non-money judgments from recognition and enforcement under Article 5.
6. A judgment shall be deemed to be final even though an appeal may be pending against it, or it may still be subject to appeal.

Article 4
Service of Process

1. Initiating process in civil proceedings in a court within the territory of one Party may be served, without leave of a court, in the territory of the other Party.
2. Service rendered in accordance with this Article shall have the same effect as if it had occurred in the jurisdiction of the court in which the initiating process was issued.
3. A plaintiff to a proceeding in the court in which the initiating process is issued shall not be required to establish any particular connection between the proceedings and the forum in order to render service under this Article.
4. Once service has been rendered under this Article, the defendant may apply for a stay of the proceedings on the basis that a court within the territory of the other Party is the more appropriate court.
5. When responding to initiating process served under this Article, the defendant may nominate an address for service in the territory of either Party.

Article 5
Recognition and Enforcement of Judgments

1. On application by the plaintiff, a judgment to which this Article applies issued by a court within the territory of one Party shall be registered by a court within the territory of the other Party (hereinafter “the registering court”).
2. A judgment registered under this Article shall have the same force and effect, and may be enforced, as if the judgment had been issued by the registering court.
3. The defendant shall receive notice where a judgment is registered under this Article.
4. Subject to paragraph 6 and 8 of this Article, a judgment registered under this Article shall only be varied or set aside by the court in which it was issued, and shall only be the subject of appeal before the courts within the territory of the Party in which it was issued.
5. The registering court may grant a stay of enforcement proceedings in order for an application for variation or setting aside to be made in the court in which the judgment was issued, or in order for an appeal against the judgment to be lodged in the courts within the territory of the Party in which the judgment was issued.
6. The registration of a judgment pursuant to this Article may only be set aside in the registering court, and the judgment refused recognition and enforcement in

the country of registration, if registration of the judgment would be contrary to the public policy of that country.

7. Judgments registered under this Article shall not be refused recognition and enforcement on the grounds that to do so would involve the direct or indirect enforcement of a foreign public or revenue law.
8. Registration of the following judgments may be set aside in the registering court on the basis that the property in question was not, at the time of the proceedings before the court which issued the judgment, situated within the territory of the Party in which the court which issued the judgment is located:
 - a) judgments given in an action where the subject matter is immovable property; and
 - b) judgments in an action in rem where the subject matter is movable property.
9. For the purposes of this Article, registering court means:
 - a) In the case of Australia:
 - i) the Federal Court of Australia;
 - ii) the Family Court of Australia; or
 - iii) the Supreme Court of a State or Territory.
 - b) In the case of New Zealand:
 - i) the High Court.
 - c) In addition, any other court within the territory of either Party that could have granted the relief contained in the judgment.

Article 6 Tribunals

1. The Parties may mutually determine a list of specified tribunals, the decisions, or classes of decisions, of which may be capable of recognition and enforcement pursuant to Article 5 in the courts within the territory of the other Party.
2. In order to be specified under paragraph 1 of this Article, a tribunal must exercise an adjudicative function and its decisions must be capable of enforcement without an order of a court.
3. The Parties may mutually determine the tribunals specified under paragraph 1 of this Article the initiating process of which may be served pursuant to Article 4.
4. In order to be specified under paragraph 3, initiating process in proceedings before that tribunal must be able to be served overseas.

Article 7

Interim relief in support of proceedings in the territory of the other Party

1. Each Party shall nominate courts within its territory to grant interim relief in support of proceedings commenced in the courts within the territory of the other Party.
2. Courts nominated under paragraph 1 shall have the ability to grant the same types of interim relief in support of proceedings initiated in the courts within the territory of the other Party as they are able to grant in domestic proceedings.

Article 8

Declining jurisdiction

1. Where the appropriateness of the forum is in issue in a proceeding, courts within the territory of each Party shall be able to grant a stay of proceedings on the ground that a court within the territory of the other Party is the more appropriate forum to determine the proceedings.
2. The courts within the territory of each Party shall determine the more appropriate forum for the proceeding having regard to the following factors:
 - a) where the parties and witnesses live;
 - b) which jurisdiction's law is to be applied; and
 - c) whether there is agreement between the parties to the proceeding about the court or place where proceedings should be heard.
3. Any additional factors to which the courts within the territory of each Party must have regard shall be determined by mutual arrangement between the Parties.
4. The preceding paragraphs are not intended to:
 - a) limit the discretion of the courts to have regard to factors other than those listed in paragraph 2 or mutually determined under paragraph 3; or
 - b) affect the power of the courts to stay a proceeding on a ground other than the ground mentioned in paragraph 1.
5. Courts within the territory of each Party shall not:
 - a) restrain a party from commencing proceedings in a court within the territory of the other Party on the ground that the court is not the appropriate forum for the proceeding; or

- b) restrain a party in a proceeding before a court within the territory of the other Party from taking a step in the proceeding on the ground that the court is not the appropriate forum for the proceeding.

Part 3
Regulatory Enforcement

Article 9
Enforcing civil pecuniary penalty orders

1. Civil pecuniary penalties imposed by the courts within the territory of one Party shall be enforceable in the courts within the territory of the other Party as a civil judgment debt, under Article 5.
2. The Parties may, by mutual arrangement, exclude civil pecuniary penalty regimes from enforcement under this Article on the basis that a regime is inconsistent with the public policy of the Party seeking to exclude it.

Article 10
Enforcing fines for certain regulatory offences

1. The Parties shall mutually determine a list of statutes (or parts or provisions of statutes) under which fines are imposed for criminal offences under regulatory regimes that affect the effectiveness, integrity and efficiency of trans-Tasman markets and in which both Parties have a strong mutual interest.
2. Fines imposed by the courts within the territory of one Party under a statutory provision covered by paragraph 1 shall be enforceable in the courts within the territory of the other Party in the same way as a civil judgment debt under Article 5, but must be registered in a superior court of the country registering the judgment.

Part 4
Remote Appearances and Subpoenas

Article 11
Appearing remotely in civil proceedings

1. A party or their legal representative, residing in the territory of one Party, may appear remotely in civil proceedings in the territory of the other Party, with leave of the court.
2. Legal representatives may only appear remotely in that capacity if they have the right to appear before that court, or the court permits an appearance without local registration.

3. Legal representatives may seek leave to appear without local registration if they are registered where their client resides and they will be appearing remotely from that place.
4. Notwithstanding the preceding paragraphs, a party or their legal representative seeking a stay of civil proceedings in accordance with Article 4(4) and Article 8 has the right to appear remotely without applying for leave of the court.
5. This Article is not intended to restrict the circumstances in which legal representatives may appear in accordance with other arrangements between the Parties.

Article 12
Issue and service of subpoenas

1. Each Party shall ensure that it builds on the existing cooperative regime between the Parties covering the taking of evidence and associated court procedures by providing for:
 - a) subpoenas to be issued in criminal proceedings and served in the territory of the other Party; and
 - b) inferior courts to issue subpoenas in proceedings before that court, or before a prescribed tribunal, without leave being sought from a superior court.

Part 5
Final Provisions

Article 13
Consultation

1. Any disputes between the Parties arising out of or in connection with this Agreement shall be resolved amicably and expeditiously by consultation or negotiation between the Parties.

Article 14
Amendment

1. Any amendments to this Agreement agreed by the Parties shall enter into force 30 days after the date of the later notification by which the Parties notify each other that their domestic requirements for the entry into force of the amendments have been fulfilled.

Article 15
Termination and Transitional Provision

1. Either Party may at any time give notice in writing through diplomatic channels to the other Party of its decision to terminate this Agreement.
2. Upon such notice being given, the Agreement shall terminate on a date to be agreed by the Parties in writing. In the absence of such agreement, this Agreement shall terminate on the later of:
 - a) any date specified in the notice as the date on which the termination is to be effective; or
 - b) the date 1 year after the date on which the notice was received.
3. The termination of this Agreement shall be without prejudice to the completion of any proceedings commenced by persons in reliance on this Agreement before and up to the date of termination.

Article 16
Entry into Force

1. Each of the Parties shall notify the other, through diplomatic channels, of the completion of their respective domestic procedures for the entry into force of this Agreement.
2. This Agreement shall enter into force 30 days after the date of the later of these notifications.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Christchurch on this twenty-fourth day of July, 2008.

FOR THE GOVERNMENT OF
AUSTRALIA:

FOR THE GOVERNMENT OF
NEW ZEALAND:

.....
Hon Robert McClelland
Attorney-General

.....
Hon. Lianne Dalziel
Minister of Commerce, Minister for
Food Safety, and Associate
Minister of Justice

