

SUMMARY OF TRANS-TASMAN WORKING GROUP RECOMMENDATIONS

Issue	Problem	Recommendation
1. Enforcing civil court judgments	<ul style="list-style-type: none"> • Service on defendant means court can hear a case. • Defendant can be served overseas, if conditions met. • Final money judgments enforceable in the 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 appropriate to hear dispute. • Judgments registered and enforceable in other country. • Public policy grounds only basis for refusing enforcement.
2. Final non-money judgments	<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.
3. Interim relief in support of foreign proceedings	<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. 	<p>Give courts in both countries statutory power to grant interim relief in support of proceedings in the other country.</p>
4. Tribunal order	<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 in Issue 1.
5. Forum non conveniens rules	<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. 	<p>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.</p>

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6. Leave requirement for trans-Tasman subpoena	<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. <u>But</u> District Court proceedings require permission from High Court, adding cost, complexity and delay. 	<p>Allow lower court judges to give permission to serve a subpoena across the Tasman in proceedings before that court or a tribunal.</p>
7. Court appearance by video link	<ul style="list-style-type: none"> Video links already used for trans-Tasman evidence. Greater use could reduce cost and inconvenience of physically attending a court in the other country. 	<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 Issue 1).
8. Enforcing civil penalty orders	<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 if it wished.
9. Enforcing fines for particular regulatory offences	<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).
10. Trans-Tasman subpoenas in criminal proceedings	<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).