

Trans-Tasman Co-operation in Civil Proceedings

The Australian Attorney-General and New Zealand Associate Justice Minister have recently announced that their respective governments will implement, by way of a bilateral treaty, the recommendations of the Trans-Tasman Working Group report on Court Proceedings and Regulatory Enforcement. That report was released in December 2006 and recommended that there be closer co-operation between the two countries in civil proceedings, especially as regards matters of jurisdiction and enforcement of judgments.

The Working Group's central recommendation was that a 'trans-Tasman regime', modelled on the *Service and Execution of Process Act 1992* (Cth), be introduced as between the two countries. The report went on to recommend that:

- The defendant's address for service could be in Australia or New Zealand, and parties in one country should be able to appear in court in the other by telephone or video link.
- The test for stay of proceedings should be on the basis that a court in the other country is the "more appropriate" court for the proceeding. This contrasts with the "clearly inappropriate" test for *forum non conveniens* that currently applies in Australia. Anti-suit injunctions will no longer be available as between Australia and New Zealand.
- Appropriate Australian and New Zealand courts should be given statutory authority to grant interim relief in support of proceedings in the other country's courts, such as Mareva and Anton Piller orders.
- A judgment from one country could be registered in the other. It would have the same force and effect, and could be enforced, as a judgment of the court where it is registered. Final non-money judgments such as injunctions will also be registrable.
- A judgment could only be refused enforcement in the other country on public policy grounds. Other grounds, such as breach of natural justice, would have to be raised with the original court. Currently, the grounds for non-enforcement of New Zealand judgments under the *Foreign Judgments Act 1991* (Cth) are wider.
- The common law rule that an Australian or New Zealand court will not

directly or indirectly enforce a foreign public law should not apply to the enforcement of judgments under the Trans-Tasman scheme. Thus, civil pecuniary penalties from one country should be enforceable in the other unless specifically excluded, and criminal fines imposed for certain regulatory offences in one country should be enforceable in the other in the same way as a civil judgment debt.

The proposals apply to *in personam* civil matters; actions *in rem* are excluded, as are matters covered by existing multilateral agreements such as those regarding the dissolution of marriage and enforcement of maintenance and child support obligations. The Working Group made no recommendation about the *Mozambique* rule as it applies to foreign land, preferring to leave this matter to independent domestic reform in the respective countries.