Conflict of Laws Across the Ditch

The Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement, signed on 24 July 2008, enters into force today. The provisions of the Agreement have been implemented by legislation in both jurisdictions (Trans-Tasman Proceedings Act 2010 (Cth), (NZ)), which also has effect from today.

Among other matters, this legislation lays down newly harmonised rules governing service of process as a basis of jurisdiction, stays of proceedings on appropriate forum grounds, a partial ban on anti-suit injunctions, proof of laws and the recognition and enforcement of judgments, ensuring that the civil justice systems in the two countries will, henceforth, be more closely integrated and aligned.

The Agreement and implementing legislation have already begun to influence the ways in which the courts of the party States approach litigation with a connection to the other party State. In *Robinson v Studorp Ltd* [2013] QSC 238, Jackson J of the Queensland Supreme Court examined the provisions of the Agreement and the Australian Act concerning court procedural co-operation and treated these as significant in deciding that the Queensland Court was not a "clearly inappropriate forum" for litigation between a New South Wales' (former New Zealand') resident and a New Zealand incorporated corporation relating to exposure to asbestos by the claimant while working with his New Zealand resident father in New Zealand. The asbestos products were manufactured by the defendant in New Zealand. True, the claimant had lived for a time in Queensland and had been diagnosed and treated for his disease within that state, but these connections seem comparatively unimportant.

This outcome is not wholly surprising given the way in which the Australian courts have applied their version of the common law *forum (non) conveniens* test in personal injury claims. If, however, the application had been determined under the new legislation, a different test (more favourable to the defendant) would have applied, requiring the court to ask whether a New Zealand court having jurisdiction is the "more appropriate court" to determine the matters in issue (s. 17(1); see also s. 19). In light of the spirit underlying the Agreement, the result seems topsy-turvy. It remains to be seen whether the entry into force of its

provisions will effect a sea change in judicial attitudes on both sides of the Tasman Sea.