

Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement *

On 1st August 2005 representatives of both the Australian and New Zealand governments announced the release of a Discussion Paper by the above Working Group. The Prime Ministers of both countries had previously agreed to review the current system of trans-Tasman co-operation in these areas.

The Working Group has effectively found certain issues with current trans-Tasman arrangements for service of process, taking of evidence and enforcing judgements in civil proceedings, civil penalty proceedings and certain criminal regulatory proceedings. It has also, as a consequence, suggested some preferred solutions. The discussion paper has raised 11 key issues, of which only a couple will be touched on here.

Firstly both countries' courts generally allow the service of proceedings on a defendant overseas. However, if the defendant served overseas does not submit to the Court's jurisdiction, the resulting judgement may not be enforceable in the other country. The Working Group has proposed to allow initiating process in civil proceedings in any Australian or New Zealand Court to be serviced

in the other country without leave, thus meaning that the service would have the same effect as if it had occurred where the proceedings were filed.

At present only final money judgements can be enforced between the two countries. Any other orders for specific performance, for example, are not enforceable in the other country. The suggestion from the Working Group is that any judgements that require someone to do or not to do something should also be enforceable.

Currently any criminal fine imposed in either country is not enforceable in the other country. This has been identified as an issue, particularly under a regulatory regime that impacts on the integrity of markets and in which each country has a mutual interest. The suggestion is that certain criminal fines should be enforceable in the other country.

Under the trans-Tasman evidence regime, a subpoena cannot currently be issued in criminal proceedings. Therefore if a witness does not want to give evidence then other procedures may or may not be available, depending on the circumstances. The simple suggestion here is to extend the subpoena regime to criminal proceedings, whilst retaining some safeguards.

There are various other issues involved in the discussion paper. If anyone is interested in the full version then please contact me and I will be happy to email it to you.

The period for comments on the discussion paper has now passed. From these, certain final recommendations will be made to each government. After that, if agreed, some form of treaty or arrangement would be made. Thereafter various legislation would be drafted in both countries to effect the arrangement, which would also then be the subject of community consultation and, in Australia's case, also involve the various other state and territory governments. Please do not hold your breath!

New Web Site

The beginning of November saw the launch of our new web site, www.apears.com.au. The site was designed and built in-house and provides basic information in a brochure type format. Any suggested improvements would be most welcome!

Regards from Australia
Andrew Johnstone

APEARS

Level 2, 275 George Street
GPO Box 4859, Sydney NSW 2001
Australia
Ph: 61 2 9279 0516
Fax: 61 2 9279 0514
Email: APEARS@bigpond.com

* Parts of this article have been taken directly from the Discussion Paper.

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GPO Box 4859, Sydney NSW 2001, Australia, Email: APEARS@bigpond.com, Phone: 61 2 9279 0516, Fax: 61 2 9279 0514, www.apears.com.au

