



Australian Government

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# The Trans-Tasman Proceedings Regime and the Choice of Court Agreements Convention

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# TTPA and Choice of Court

- **Question:**
  - How is the Choice of Court Convention implemented into the Trans-Tasman Proceedings Regime?
- **Answer:**
  - Through s20 *Trans-Tasman Proceedings Act 2010*
- **This presentation will:**
  - explain the legislative context in which s20 TTPA is placed
  - present the provision's key elements and explain their operation
  - Explain how recognition and enforcement was approached



# TTPA and Choice of Court

- **The legislative context**

- s20 TTPA is part of Part 3, Division 2 of the TTPA:

*“Australian courts declining jurisdiction on the grounds that a New Zealand court is a more appropriate forum”*

Common law tradition	Civil law tradition
Focus on flexibility through judicial discretion	Focus on clarity and predictability



# TTPA and Choice of Court

- **The key elements: the definition**

- (3) *Exclusive choice of court agreement*, in relation to matters in dispute between parties to a proceeding, means a written agreement between those parties that:
- (a) designates the courts, or a specified court or courts, of a specified country, to the exclusion of any other courts, as the court or courts to determine disputes between those parties that are or include those matters; and
  - (b) is not an agreement the parties to which are or include an individual acting primarily for personal, family, or household purposes; and
  - (c) is not a contract of employment.



# TTPA and Choice of Court

- **The key elements: removing the discretion**

(1) On application under section 17 (and despite section 19), the Australian court:

- (a) must, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates a New Zealand court as the court to determine the matters in dispute; and
- (b) must not, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates an Australian court as the court to determine those matters.



# TTPA and Choice of Court

- **The key elements: the exceptions**

(2) However, subsection (1) does not apply to an exclusive choice of court agreement if the Australian court is satisfied that:

- (a) it is null and void under New Zealand law (including the rules of private international law); or
- (b) a party to it lacked the capacity to conclude it under Australian law; or
- (c) giving effect to it would lead to a manifest injustice or would be manifestly contrary to Australian public policy; or
- (d) for exceptional reasons beyond the control of the parties to it, it cannot reasonably be performed; or
- (e) the court designated by it as the court to determine the matters in dispute between the parties to the proceeding has decided not to determine those matters.



# TTPA and Choice of Court

- **Recognition and enforcement**

- There is no specific R/E provision that implements the Convention
- The TTPA Regime is more generous toward the judgment creditor
- Examples:
  - Very limited grounds to set aside registration (s72 TTPA)
  - Lack of registration notice not fatal (s74(2) TTPA)
  - Stay/postponement of R/E where NZ judgments subject to review (s76(1) TTPA)



# TTPA and Choice of Court

- **And one more difference...**
  - Article 3(b):

*“a choice of court agreement which designates the courts of one Contracting State or one or more specific courts of one Contracting State shall be deemed to be exclusive unless the parties have expressly provided otherwise”*
  - This is the opposite to AUS and NZ common law position.
  - Requires cooperative implementation of COC.