

New Zealand

Trans-Tasman Proceedings Act 2010

Public Act 2010 No 108

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[...]

Part 2 Trans-Tasman proceedings

[...]

Subpart 2 – New Zealand courts declining jurisdiction on grounds that Australian court is more appropriate forum

21. Guide to this subpart

(1) This subpart is about when a New Zealand court may stay a proceeding on the grounds that an Australian court is the more appropriate court to determine the matters in issue.

(2) The New Zealand court may only stay the proceeding if the defendant applies for the proceeding to be stayed. The defendant must make the application within 30 working days after being served with the initiating document for the proceeding, or such shorter or longer period that the court considers appropriate.

(3) The New Zealand court may only stay the proceeding if it is satisfied that an Australian court has jurisdiction to determine the matters in issue and that it is the more appropriate court to determine those matters. In determining whether the Australian court is the more appropriate court, the New Zealand court must take certain matters into account. They are set out in section 24(2).

(4) However, if the parties have made an exclusive choice of court agreement that designates either an Australian court or a New Zealand court as the court to determine the matters in issue, the New Zealand court's order as to whether or not to stay the proceeding must be consistent with that agreement (see section 25).

22. Application for stay of New Zealand civil proceeding on grounds that Australian court is more appropriate forum

(1) A defendant in a civil proceeding commenced in a New Zealand court may apply to the court for an order staying the proceeding on the grounds that an Australian court is the more appropriate court for the proceeding.

(2) The proceeding may be one commenced in the New Zealand court before the commencement of this subpart, but only if an initiating document for it was served on the defendant in Australia under subpart 1.

(3) The application must be made—

(a) within 30 working days of the New Zealand court after the day on which the defendant was served with the initiating document for the proceeding; or

(b) if, before or after the end of the period in paragraph (a), the plaintiff or defendant applies to the New Zealand court for a shorter or longer period—within any shorter or longer period the New Zealand court considers appropriate.

23. Hearing on, or other determination of, application

(1) The New Zealand court may determine the defendant's application under section 22 without a hearing.

(2) However, the New Zealand court must determine the defendant's application under section 22 with a hearing if any of the following requests it to do so:

- (a) the plaintiff; and
- (b) the defendant; and
- (c) any other person who is required or permitted, by regulations under subsection (5)(a), to be served with the defendant's application.

(3) The request must be made—

- (a) within 10 working days of the New Zealand court after the day the defendant made the application; or
- (b) if, before or after the end of the period in paragraph (a), a person referred to in subsection (2) applies to the New Zealand court for a shorter or longer period—within any shorter or longer period the New Zealand court considers appropriate.

(4) The defendant, the defendant's counsel, or both may, despite section 38 (but subject to the rest of subpart 4), appear remotely in the hearing if—

- (a) the defendant was served, or purportedly served, in Australia under section 13 with an initiating document for a proceeding; and
- (b) the New Zealand court is determining with a hearing the defendant's application under section 22 for an order to stay the proceeding; and
- (c) the defendant has made to the New Zealand court within the period (if any) prescribed for the purposes of this paragraph by regulations under subsection (5)(b) a request to appear remotely in the hearing; and
- (d) a remote appearance medium is, or can reasonably be made, available.

(5) The Governor-General may, by Order in Council, make regulations—

- (a) requiring or permitting the defendant's application under section 22 for a stay to be served on people other than the plaintiff and the defendant;
- (b) prescribing a period for the purposes of subsection (4)(c).

24. Order of stay of proceeding

(1) On an application under section 22, the New Zealand court may, by order, stay the proceeding if it is satisfied that an Australian court—

- (a) has jurisdiction to determine the matters in issue between the parties to the proceeding; and
- (b) is the more appropriate court to determine those matters.

(2) In determining whether an Australian court is the more appropriate court to determine the matters in issue between the parties to the proceeding, the New Zealand court must not take into account the fact that the proceeding was commenced in New Zealand, but must take into account the following matters:

- (a) the places of residence of the parties or, if a party is not an individual, its principal place of business;
- (b) the places of residence of the witnesses likely to be called in the proceeding;
- (c) the place where the subject matter of the proceeding is situated;

- (d) any agreement between the parties about the court or place in which those matters should be determined or the proceeding should be instituted (other than an exclusive choice of court agreement to which section 25(1) applies):
- (e) the law that it would be most appropriate to apply in the proceeding:
- (f) whether a related or similar proceeding has been commenced against the defendant or another person in a court in Australia:
- (g) the financial circumstances of the parties, so far as the New Zealand court is aware of them:
- (h) any other matters that the New Zealand court considers relevant.

25. Exclusive choice of court agreements

- (1) On an application under section 22 (and despite section 24) the New Zealand court—
 - (a) must, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates an Australian court as the court to determine the matters in issue between the parties to the proceeding; and
 - (b) must not, by order, stay the proceeding, if satisfied that an exclusive choice of court agreement designates a New Zealand court as the court to determine those matters.
- (2) However, subsection (1)(a) does not apply to an exclusive choice of court agreement if the New Zealand court is satisfied that—
 - (a) it is null and void under the law (including, without limitation, the rules of private international law) of Australia; or
 - (b) under New Zealand law, a party to it lacked the capacity to conclude it; or
 - (c) giving effect to it would lead to a manifest injustice or would be manifestly contrary to New Zealand 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 issue between the parties to the proceeding has decided not to determine those matters.
- (3) However, subsection (1)(b) does not apply to an exclusive choice of court agreement if the New Zealand court is satisfied that it is null and void under the law (including, without limitation, the rules of private international law) of New Zealand.
- (4) Exclusive choice of court agreement, in relation to matters in issue 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 1 or more individuals acting primarily for personal, family, or household purposes; and
 - (c) is not a contract of employment (including, without limitation, a collective agreement).

26. Power to make stay subject to conditions

An order under section 24 or 25 may be made subject to any conditions the New Zealand court considers are appropriate in order to facilitate, without delay or undue expense, the determination of the matters in issue between the parties to the proceeding.

27. How this subpart affects New Zealand court's powers to stay proceedings

(1) A New Zealand court cannot stay a civil proceeding before it on forum grounds connected with Australia otherwise than in accordance with this subpart.

(2) However, this subpart does not affect any power of the New Zealand court to stay the proceeding on any other grounds.

28. No restraint of proceedings

(1) A New Zealand court must not restrain a person from commencing a civil proceeding in an Australian court on the grounds that the Australian court is not the appropriate forum for the proceeding.

(2) Also, a New Zealand court must not restrain a party to a civil proceeding before an Australian court from taking a step in that proceeding on the grounds that the Australian court is not the appropriate forum for the proceeding.

29. Suspension of limitation periods for claims made earlier in stayed proceedings in Australian courts

(1) This section applies if—

(a) a claim is made in a proceeding commenced in an Australian court (the Australian proceeding) that is later stayed by an order of the Australian Court made under the Australian Act on the grounds that a New Zealand court is the more appropriate court to determine the matters in issue between the parties to the proceeding; and

(b) the claim is to be made again in a proceeding commenced in a New Zealand court (the New Zealand proceeding) after the staying of (and, if applicable, before any deadline stated in the condition of that order staying) the Australian proceeding.

(2) For the purposes of every applicable limitation period or defence under New Zealand law, the New Zealand proceeding is to be treated as commencing at the time the Australian proceeding commenced.

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