

1990

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

TRADE PRACTICES (MISUSE OF TRANS-TASMAN MARKET POWER)
BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General, the
Honourable Michael Duffy MP)



TRADE PRACTICES (MISUSE OF TRANS-TASMAN MARKET POWER) BILL 1990

OUTLINE

This Bill implements Australia's obligations under Article 4 of the Protocol to the Australia New Zealand Closer Economic Relations - Trade Agreement on Acceleration of Free Trade in Goods (the 'Protocol'). Article 4 of the Protocol recognises that the maintenance of Australian and New Zealand anti-dumping provisions in respect of goods originating in the other country will be inappropriate upon the achievement of full free trade in goods on 1 July 1990. It provides that from that date the competition laws of both countries should be applied to 'relevant anti-competitive conduct affecting trans-Tasman trade in goods'.

2. Similar amendments to New Zealand legislation will implement New Zealand's obligations under the Protocol.

Amendments to the Customs Tariff (Anti-Dumping) Act 1975, the Customs Act 1901 and the Anti-Dumping Authority Act 1988.

3. The amendments to the Customs Tariff (Anti-Dumping) Act, the Customs Act and the Anti-Dumping Authority Act exempt goods that originate in New Zealand (ie goods that are the produce or manufacture of New Zealand within the meaning of section 151 of the Customs Act) from anti-dumping measures so that, in respect of such goods:

- (a) no investigations into anti-dumping complaints are to be incurred or continued, and any securities provided in connection with such investigations are to be returned;
- (b) no new anti-dumping duties are to be levied, nor any other anti-dumping measures taken (including the provision of undertakings); and
- (c) all existing anti-dumping and other anti-dumping measures are to be revoked, including any undertakings made in connection with anti-dumping investigations.

Amendments to the Trade Practices Act 1974

4. The amendments to the Trade Practices Act insert a new prohibition concerning the misuse of market power by a corporation with a substantial degree of power in a trans-Tasman market and also make necessary consequential amendments to the Act.

Amendments to the Evidence Act 1905 and the Federal Court of Australia Act 1976

5. The amendments to the Evidence Act and the Federal Court of Australia Act are designed to provide an effective enforcement and procedural framework to support the operation of the new Australian and New Zealand prohibitions on the misuse of trans-Tasman market power.

FINANCIAL IMPACT STATEMENT

6. While there has been a low incidence of anti-dumping actions in recent years involving New Zealand goods (so that, consequently, no off-setting savings will be achieved through the abolition of such actions) the likely number and complexity of complaints under the new prohibition on the misuse of trans-Tasman market power is difficult to estimate. Nevertheless, the Government is concerned to ensure that the Trade Practices Commission is given adequate resources to enable it to undertake its new investigative and enforcement functions. Accordingly, the Commission has been allocated additional resources, initially involving two extra staff and expenditure of \$m0.146 per year. This funding will be kept under constant review and increased if necessary. No extra funding is being allocated at this time to the Federal Court as matters arising under the new provisions will be dealt with within existing court resources.

ABBREVIATIONS

7. The following abbreviations are used in this explanatory memorandum:

FCA: Federal Court of Australia Act 1976

NZCA: New Zealand Commerce Act 1986

NZCC: New Zealand Commerce Commission

TPA: Trade Practices Act 1974

TPC: Trade Practices Commission

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

8. This clause provides for the Act to be cited as the Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990.

Clause 2 - Commencement

9. This clause provides for the Act to commence by Proclamation. However, in the absence of such a Proclamation, the Act will commence operation on the first day following a period of six months after it receives the Royal Assent.

PART 2 - AMENDMENTS OF THE TRADE PRACTICES ACT 1974

Clause 3 - Principal Act

10. This clause provides that the 'Principal Act' referred to in this Part of the Bill means the TPA.

Clause 4 - Interpretation

11. Subsection 4(1) of the TPA contains a number of interpretative provisions. This clause inserts new definitions of Australian State and Territory authorities, the NZCC and New Zealand Crown corporations for the purposes of the new Australian and New Zealand prohibitions on the misuse of trans-Tasman market power and related enforcement provisions.

Clause 5 - Market

12. Section 4E of the TPA defines the term 'market' as a market in Australia which, when used in relation to goods or services, includes a market for those goods or services and other substitutable or competitive goods or services.

5.

13. To take account of the new definition in subsection 46A(1) of 'trans-Tasman market' (that is, a market in Australia, New Zealand or Australia and New Zealand for goods or services) this clause amends section 4E to make it clear that the definition of 'market' contained in that provision applies, unless the contrary intention appears.

Clause 6 - Extended application of Parts IV and V

14. Subsection 5(1) of the TPA includes provision for the extraterritorial operation of Part IV of the TPA (which deals with restrictive trade practices) in relation to conduct engaged in outside Australia by certain persons.

15. This clause inserts a new subsection 5(1A) of the TPA to provide that, in addition to the extraterritorial operation already provided for in subsection 5(1), section 46A will also be applicable to conduct engaged in outside Australia by New Zealand and New Zealand Crown corporations, bodies corporate carrying on business within New Zealand or persons ordinarily resident within New Zealand.

16. The purpose of this amendment is to extend the operation of section 46A so that it will be applicable to a wider range of conduct outside Australia, in order to provide an effective prohibition against the misuse of trans-Tasman market power.

Clause 7 - Additional operation of Act

17. Section 6 of the TPA is concerned with the constitutional bases for the TPA. In particular sub-section 6(2) of the TPA extends the operation of specified provisions of the TPA (including section 46) to persons other than corporations where such persons are engaging in overseas or interstate trade or commerce, or trade or commerce within a Territory, between a State and a Territory or between Territories, or in the supply of goods or services to the Commonwealth or a Commonwealth authority or instrumentality.

18. This clause amends paragraph 6(2)(b) of the TPA to insert a reference to section 46A so as to provide for the additional operation of section 46A in relation to persons other than corporations. As provided for in sub-section 6(1) of the TPA, this additional operation is without prejudice to the effect that section 46A would have apart from section 6.

Clause 8 - Insertion of new sections

19. This clause inserts two new provisions in the TPA - section 46A, which deals with misuse of market power by a corporation with a substantial degree of power in a trans-Tasman market, and section 46B, which relates to the jurisdiction of Australian and New Zealand courts in relation to the New Zealand prohibition concerning the use of a dominant position in trans-Tasman markets and related provisions.

Section 46A - Misuse of market power - corporation with substantial degree of power in trans-Tasman market

20. Section 46 of the TPA prohibits a corporation which has a substantial degree of power in an Australian market from taking advantage of that power for certain purposes, namely:

- to eliminate or substantially damage a competitor of the corporation in that market or any other Australian market;
- to prevent the entry of a person into that market or any other Australian market; or
- to deter or prevent a person from engaging in competitive conduct in that market or any other Australian market.

21. Section 46A of the TPA prohibits a corporation with a substantial degree of market power in a trans-Tasman market (that is, a market in Australia, New Zealand or Australia and New Zealand for goods or services) from taking advantage of that power for the same prohibited purposes as are specified in section 46. However, the prohibition in section 46A is

restricted to the misuse of market power in relation to an impact market (that is, a market in Australia that is not a market exclusively for services).

22. In addition to the definitions of 'impact market' and 'trans-Tasman market' in subsection 46A(1), that subsection also contains definitions of 'conduct' and 'market power' which are based on existing interpretative provisions in subsection 46(4) of the TPA.

23. Subsections 46A(3) and (4) contain provisions which relate to the question of whether a corporation has a substantial degree of market power in a trans-Tasman market. Subsection 46A(3), which is modelled on subsection 46(2) of the TPA, deals with the issue of market power held by related bodies corporate. Subsection 46A(4), which is modelled on subsection 46(3) of the TPA, provides guidance as to the way in which the degree of trans-Tasman market power is to be determined. It requires the Federal Court to consider the extent to which the conduct of a body corporate is constrained by actual or potential competitors in the market or by suppliers or purchasers.

24. Subsection 46A(5) exempts from the prohibition against the misuse of trans-Tasman market power the mere acquisition of plant or equipment. This provision is based on subsection 46(5) of the TPA.

25. A further exemption is provided in subsection 46A(6) in relation to conduct which does not constitute a contravention of sections 45, 45B, 47 and 50 of the TPA because an authorisation is in force or because of the operation of section 93 (which deals with notification of exclusive dealing). This provision is based on subsection 46(6) of the TPA.

26. Subsection 46A(7), which is based on subsection 46(7) of the TPA, makes it clear that the issue of whether a corporation has taken advantage of its market power for a particular purpose is a matter which may be ascertained by inference from conduct or from other relevant circumstances.

27. Under section 2A of the TPA, the TPA is applicable to the Commonwealth and Commonwealth authorities, as if they were corporations, insofar as they carry on a business. However, section 2A of the TPA provides that the Crown in right of the Commonwealth is not liable to be prosecuted for an offence under the TPA. The issue of the application of section 46A and other provisions of the TPA, insofar as they relate to contraventions of section 46A, to New Zealand and to New Zealand Crown corporations is dealt with in subsection 46A(8), which imposes the same test that is applicable under section 2A of the TPA to the Commonwealth and authorities of the Commonwealth.

28. Subsection 46A(9) expressly provides that subsection 46A(8) has effect despite section 9 of the Foreign States Immunities Act 1985, which provides foreign states with general immunity from the jurisdiction of Australian courts, subject to various exceptions.

Section 46B - No immunity from jurisdiction in relation to certain New Zealand laws

29. Section 46B declares, for the avoidance of doubt, that no immunity from the jurisdiction of Australian and New Zealand courts may be claimed in relation to the New Zealand prohibition on the use of a dominant position in trans-Tasman markets and related provisions in the NZCA by the Commonwealth, the States, the Australian Capital Territory, the Northern Territory and their authorities.

Clause 9 - Exceptions

30. Subsection 51(3) of the TPA provides certain exceptions concerning intellectual property in relation to contraventions of Part IV other than sections 46 or 48. Consistent with the exclusion of section 46 from the exceptions in sub-section 51(3), paragraph 9(a) inserts a reference to section 46A in subsection 51(3), so as to exclude the operation of these exceptions in relation to section 46A.

31. Subsection 51(2A) of the TPA provides an exception in relation to Part IV (into which section 46A is being inserted) other than section 48, concerning acts done, otherwise than in the course of trade or commerce, in concert by ultimate users or consumers of goods or services against the suppliers of those goods or services. 'Trade or commerce' is defined in subsection 4(1) of the TPA to mean trade or commerce within Australia or between Australia and places outside Australia.

32. Paragraph 9(b) inserts a new subsection 51(5) of the TPA which provides that, in the application of subsection 51(2A) of the TPA to section 46A, the term 'trade and commerce' will include trade and commerce within New Zealand. The purpose of this amendment is to apply subsection 51(2A) equally in relation to Australian and New Zealand consumers.

Clause 10 - Conduct by directors, servants or agents

33. Section 84 of the TPA provides that where it is necessary to establish the state of mind of a body corporate in relation to conduct to which section 46 or Part V of the TPA applies, it is sufficient to establish that a director, servant or agent who engaged in the conduct within that person's actual or apparent authority had that state of mind.

34. This clause amends section 84 of the TPA so that it is also applicable to section 46A.

Clause 11 - Power to obtain information, documents and evidence

35. Section 155 of the TPA empowers the TPC to require a person to furnish information, produce documents or give evidence relating to contraventions or possible contraventions of the TPA. Powers of entry are also granted to the TPC by this provision.

36. This clause inserts a new subsection 155(8) of the TPA to make it clear that nothing in section 155 implies that notices may not be served under both section 155 and new section 155A in respect of the same conduct. As mentioned below, clause 12 of the Bill inserts a new section 155A of the TPA which grants power to the TPC to obtain information and documents in New Zealand relating to trans-Tasman markets.

Clause 12 - Insertion of new sections

37. This clause inserts two new sections into the TPA. Section 155A grants power to the TPC to obtain information and documents in New Zealand relating to trans-Tasman markets. Section 155B provides that the TPC may receive information and documents on behalf of the NZCC.

Section 155A - Power to obtain information and documents in New Zealand relating to trans-Tasman markets

38. New section 155A provides investigatory procedures to support the operation of section 46A. It empowers the TPC, by written notice served on a person in New Zealand, to require the person to furnish information or produce documents relating to contraventions or possible contraventions of section 46A of the TPA. Powers to require the giving of evidence to the TPC and powers of entry, such as are provided in section 155, are not provided for in section 155A.

39. A person will be able to comply with a notice under section 155A by providing the information or document to the NZCC for transmission to the TPC. Failure to comply with such a notice will constitute an offence under proposed section 99A of the NZCA.

40. Section 155A also makes it clear that nothing in section 155A implies that notices may not be served under both sections 155 and 155A in relation to the same conduct.

41. Section 155A provides that it binds the Crown in all its capacities.

Section 155B - Trade Practices Commission may receive
information and documents on behalf of the
NZCC

42. The equivalent New Zealand provision to section 155A of the TPA is proposed section 98H of the NZCA. That provision empowers the NZCC to require a person in Australia to furnish information or produce documents where the NZCC considers it necessary or desirable for the carrying out of its functions and powers in relation to the New Zealand prohibition on use of a dominant position in trans-Tasman markets.

43. New section 155B provides that information or documents required under section 98H of the NZCA may be provided to the TPC for transmission to the NZCC. It requires the TPC to transmit the information or document to the NZCC as soon as practicable.

44. Section 155B imposes penalties for contravention of a notice under section 98H of the NZCA without reasonable excuse or for knowingly furnishing information that is false or misleading in a material particular in purported compliance with such a notice. Proposed section 99A of the NZCA deals with failures to comply with notices issued by the TPC under new section 155A of the TPA.

45. A person is not excused from complying with a notice under proposed section 98H of the NZCA on the ground of self-incrimination, although any information furnished or document produced under such a notice and any information, document or thing obtained as a consequence of furnishing the information or producing the document is not admissible in evidence against the person in any criminal proceedings other than for proceedings under subsection 155B(3).

46. Section 155B binds the Crown in all its capacities, but does not permit the Crown to be prosecuted for an offence. Section 155B is applicable both in and outside Australia.

Clause 13 - Inspection of documents by Commission

47. Subsection 156(1) of the TPA empowers the TPC to inspect, make copies of or take extracts from documents produced pursuant to a section 155 notice. Subsection 156(2) of the TPA provides that the TPC may take and retain possession of such documents for as long as is necessary, however, the person otherwise entitled to possession of the documents is entitled to be supplied with a certified copy of the documents.

48. This clause amends section 156 of the TPA to also make subsections 156(1) and (2) applicable to documents produced pursuant to a section 155A notice.

Clause 14 - Prosecutions

49. Subsection 163(5) of the TPA provides that a prosecution for an offence against section 155 may be commenced at any time after the commission of the offence.

50. This clause amends subsection 163(5) so as to also make the provision applicable to offences against section 155B of the TPA, which deals with failure to comply with a notice under proposed section 98H of the NZCA.

Clause 15 - Judicial notice

51. Subsection 167(1) of the TPA requires all courts to take judicial notice of the official signature of a person who holds or has held the office of President, Deputy President, member, Registrar or Deputy Registrar of the Trade Practices Tribunal, Chairman, Deputy Chairman or member of the TPC, and of the fact that that person holds or has held that office, and the official seal of the Tribunal or the TPC, if the signature or seal purports to be attached or appended to an official document.

52. To facilitate the enforcement of the new trans-Tasman prohibitions on the misuse of trans-Tasman market power, this clause inserts a new subsection 167(1A) which requires all courts to take judicial notice of the official signature of a person who holds or has held the office of Chairman, Deputy Chairman or member (including associate member) of the NZCC and of the fact that the person holds or has held the office and of the imprint of the common seal of the NZCC if the signature or imprint purports to be attached or appended to an official document.

PART 3 - AMENDMENT OF THE ANTI-DUMPING AUTHORITY ACT 1988

Clause 16 - Principal Act

53. This clause is a machinery provision to provide that the 'Principal Act' referred to in this Part shall be the Anti-Dumping Authority Act 1988.

Clause 17 - Insertion of new section

54. This clause provides for the Principal Act to be amended by the insertion of a new section 3A, and contains certain related transitional provisions.

55. The purpose of these amendments is to ensure that the Anti-Dumping Authority does not in future undertake any investigation in relation to goods exported to Australia which are produced or manufactured in New Zealand.

56. Subclause (1) inserts the new section 3A, as follows:

Anti-dumping measures not to apply to goods of New Zealand origin

57. New section 3A provides that the Principal Act, insofar as it relates to dumping duty that may become payable, shall not apply to goods that are the produce or manufacture of New Zealand (proposed subsection (1)).

58. Proposed subsection (2) provides that, in determining the question whether goods are the produce or manufacture of New Zealand, section 151 of the Customs Act 1901 is to apply for the purposes of the Principal Act in like manner as it applies in determining that question for the purposes of Part XVB of the Customs Act 1901. As to the operation of section 151 of the Customs Act 1901, refer to clause 19 (below).

59. Proposed subsection (3) provides that 'goods' in this context includes goods imported into Australia before the commencement of the new section 3A.

60. This new section is intended to be construed widely to prohibit anti-dumping action on goods the produce or manufacture of New Zealand, whether imported into Australia before or after the commencement of the new section 3A.

61. Subclause (2) is a transitional provision which prevents the continuation of any dumping action which is being taken on goods the produce or manufacture of New Zealand at the time these amendments come into operation. New section 3A of the Principal Act is intended to achieve this same object, however, this sub-clause is included as a precautionary measure to protect against the possibility that, for some reason, new section 3A is construed more narrowly and fails to achieve that intended effect. Subclause (5) (as to which see below) is included to protect against a narrow construction of new section 3A, simply by reason of the inclusion of the transitional provision.

62. Subclause (3) provides that, in determining the question whether goods are the produce or manufacture of New Zealand (for the purposes of the subclause (2) prohibition on dumping action prior to the commencement of the Principal Act amendments), section 151 of the Customs Act 1901 is to apply for the purposes of the Principal Act in like manner as it applies in determining that question for the purposes of Part XVB of the Customs Act 1901.

63. Subclause (4) provides that subclauses (2) and (3) have effect despite anything in the Principal Act as amended by this Act. The purpose of this provision is to ensure that subclauses (2) and (3), overlapping as they do with new section 3A of the Principal Act (as to which see above), are not limited by that provision, in the event it becomes necessary to rely upon subclause (2) to prevent anti-dumping

action being taken in respect of goods the produce or manufacture of New Zealand and which were imported into Australia prior to the commencement of this section (which would be necessary if new section 3A of the Principal Act were construed narrowly).

64. Subclause (5) provides that subclauses (2), (3) and (4) do not limit by implication the operation of new section 3A of the Principal Act (as to which see above). The purpose of this provision is to ensure that subclauses (2) and (3), overlapping as they do with new section 3A as a precautionary measure (as to which see above), do not by their very inclusion impliedly limit the operation of that section.

PART 4 - AMENDMENTS OF THE CUSTOMS ACT 1901

Clause 18 - Principal Act

65. This clause is a machinery provision to provide that the 'Principal Act' referred to in this Part shall be the Customs Act 1901.

Clause 19 - When goods treated as the produce or manufacture of a country

66. This clause makes several amendments to section 151 of the Principal Act for the purpose of ensuring that that section, which prescribes the test of origin for the purposes of the Principal Act, can be independently applied to determine the origin of goods for the purposes of anti-dumping action in Part XVB of the Principal Act. This will give effect to the policy in clause 20 to exempt goods produced or manufactured in New Zealand from dumping duty.

67. The purpose of these amendments is to allow a different test to be applied for the purposes of Part XVB, should it transpire that that is necessary to give effect to the Australia New Zealand Closer Economic Relations Trade Agreement anti-dumping policy, while allowing the section to retain its existing application in relation to the remainder of the Principal Act.

68. Section 151 of the Principal Act defines, for the purposes of the Principal Act, the circumstances in which goods may be considered to be the produce or manufacture of a country;

- . in particular, subsection 151(7) provides that goods are the manufacture of New Zealand if the last process of their manufacture was performed in New Zealand, and not less than 50% of their factory or works cost is represented by labour and materials of Australia and New Zealand;

- . paragraph 151(7)(b) of the Principal Act empowers the Comptroller to vary this percentage in relation to a class of goods by means of a notice published in the Gazette;
- . subsection 151(13) provides that the Comptroller may, by notice published in the Gazette, specify the manner in which the factory and works cost is to be determined for the purposes of this section, and specify the manner in which the value of labour and materials is to be determined.

69. Paragraph (a) amends subsection 151(13) to extend the operation of this provision to the entire Principal Act, including the Part containing the anti-dumping provisions, Part XVB. This provision will enable the Comptroller to specify different means of calculating factory and works costs, and different means of determining the value of labour and materials, for different purposes of the Act.

70. Paragraph (b) inserts a two new subsections into section 151 of the Principal Act, as follows:

- . New subsection (14A), which provides that determinations made by the Comptroller pursuant to paragraph 151(7)(b) or subsection 151(13) may be made for the purposes of Part XVB of the Principal Act only, for the remainder of the Principal Act only, or for both. Part XVB of the Principal Act contains the anti-dumping provisions. This new subsection, in conjunction with the amendment made by paragraph (a) (above) to subsection 151(13) of the Principal Act, will enable the Comptroller to give effect to the ANZCERTA agreement without affecting other provisions of the Principal Act which also rely on section 151 for the purposes of determining the place of production or manufacture of goods.
- . New subsection (14B), is a technical drafting amendment to ensure that the above amendments do not impair the operation of the Acts Interpretation Act 1901 in its application to the Principal Act.

Clause 20 - Insertion of new section

71. This clause provides for the Principal Act to be amended by the insertion of a new section 269TAAA, and contains certain related transitional provisions.

72. Subclause (1) inserts the new section 269TAAA, as follows:

Anti-dumping measures not to apply to goods of New Zealand origin

73. New section 269TAAA provides that the Principal Act, insofar as it relates to dumping duty, shall not apply to goods that are the produce or manufacture of New Zealand (proposed subsection (1)). 'Dumping duty' means any duty that may become payable under sections 8 or 9 of the Customs Tariff (Anti-Dumping) Act 1975. Duties imposed under sections 10 and 11 of that Act (which relate to "countervailing duty") are not affected by these amendments. Dumping duties are imposed where goods are sold at less than their normal value in the country of export; countervailing duties on the other hand are imposed where the normal value of the goods is abnormally low, due to a subsidy or like payment.

74. Proposed subsection (2) defines 'goods' for the purposes of subsection (1) as including goods imported into Australia before the commencement of new section 269TAAA. New section 269TAAA is intended to be construed widely to prohibit anti-dumping action on goods the produce or manufacture of New Zealand, whether imported into Australia before or after the commencement of the new section 269TAAA.

75. Subclause (2) is a transitional provision which prevents the continuation of any dumping action which is being taken on goods the produce or manufacture of New Zealand at the time these amendments come into operation. New section 269TAAA of the Principal Act is intended to achieve this same object;

however, this subclause is included as a precautionary measure to protect against the possibility that, for some reason, new section 269TAAA is construed more narrowly and fails to achieve that intended effect. Subclause (7) (as to which see below) is included to protect against a narrow construction of new section 269TAAA simply by reason of the inclusion of the transitional provision.

76. Subclause (3) is a transitional provision which provides for the return of any securities taken pursuant to section 42 of the Principal Act in respect of goods the produce or manufacture of New Zealand, insofar as those securities relate to duty that may become payable under sections 8 or 9 of the Customs Tariff (Anti-Dumping) Act 1975. Pursuant to this provision, securities must be returned as soon as practicable, and in any event not later than six months after the commencement of section 20 of the Trade Practices (Misuse of Market Power) Act 1990.

77. Subclause (4) is a transitional provision which provides that any declarations in force pursuant to sections 269TG or 269TH in relation to goods the produce or manufacture of New Zealand cease to have force in relation to those goods. Sections 269TG and 269TH provide the mechanism which connects the ancillary investigation provisions of the Principal Act with the duty-imposing provisions of the Customs Tariff (Anti-Dumping) Act 1975. Pursuant to these sections, where an investigation has revealed dumping, the Minister may make a declaration that the duty-imposing provisions of the Tariff Act apply to the goods.

78. Subclause (5) is a transitional provision which provides that any undertakings in force pursuant to sub-section 269TG(4) in relation to goods the produce or manufacture of New Zealand cease to have force in relation to those goods.

79. Subclause (6) provides that subclauses (2), (3), (4) and (5) have effect despite anything in the Principal Act as amended by this Act. The purpose of this provision is to ensure that subclauses (2), (3), (4) and (5), overlapping as they do with new section 269TAAA of the Principal Act (as to which see above), are not limited by that provision, in the event it becomes necessary to rely upon any of these sub-clauses to prevent anti-dumping action being taken in respect of goods the produce or manufacture of New Zealand and which were imported into Australia prior to the commencement of this section (which would be necessary if new section 269TAAA of the Principal Act were construed narrowly).

80. Subclause (7) provides that subclauses (2), (3), (4), (5) and (6) do not limit by implication the operation of new section 269TAAA of the Principal Act (as to which see above). The purpose of this provision is to ensure that subclauses (2), (3), (4), (5) and (6), overlapping as they do with new section 269TAAA as a precautionary measure (as to which see above), do not by their very inclusion impliedly limit the operation of that section.

PART 5 - AMENDMENTS OF THE CUSTOMS TARIFF (ANTI-DUMPING) ACT
1975

Clause 21 - Principal Act

81. This clause is a machinery provision to provide that the 'Principal Act' referred to in this Part shall be the Customs Tariff (Anti-Dumping) Act 1975.

Clause 22 - Dumping duties

82. This clause amends section 8 of the Principal Act, relating to the imposition of dumping duty, to insert a new subsection (1) which provides that, from the commencement of this subsection, section 8 shall not apply to goods that are the produce or manufacture of New Zealand.

Clause 23 - Third country dumping duties

83. This clause amends section 9 of the Principal Act, relating to the imposition of third country dumping duty, to insert a new subsection (1) which provides that, from the commencement of this subsection, section 9 shall not apply to goods that are the produce or manufacture of New Zealand.

84. Dumping duties under section 8 are imposed where it is found that dumping has caused or may cause material injury to an industry in Australia. By contrast, third country dumping duties are imposed by Australia at the request of a third country whose industry is likewise affected by the dumped goods.

85. Countervailing duties (section 10) and third country countervailing duties (section 11), which are imposed to counteract the material injury occasioned by the marketing of subsidised goods, are not affected by these amendments.

PART 6 - AMENDMENTS OF THE EVIDENCE ACT 1905Clause 24 - Principal Act

86. This clause provides that the 'Principal Act' referred to in this Part is the Evidence Act 1905.

Clause 25 - Insertion of new Part

87. This clause inserts a new Part, Part VA - Evidence of Certain New Zealand Matters, into the Principal Act to provide for the proof of New Zealand judicial and other official acts or documents, and public documents. Most of the sections in this Part are based on existing Commonwealth provisions for the proof of Commonwealth, State and Territory acts or documents.

88. In particular, proposed section 11E is modelled on section 4 of the Principal Act, and proposed sections 11D and 11F to 11Q are modelled on sections of the State and Territorial Laws and Records Recognition Act 1901 ("Records Act") as follows

New Evidence Act section	Equivalent Records Act section
11D	3
11F	6
11G	7
11H	8
11J	9
11K	10
11L	12
11M	13
11N	14, 14A
11P	15
11Q	17

Division 1 - Preliminary

Section 11A - Interpretation

89. Section 11A contains definitions for the purposes of Part VA.

Section 11B - Application of Part

90. Section 11B applies new Part VA to proceedings in which a matter arises for determination under sections 46A, 155A or 155B of the TPA, or a provision of Parts VI or XII of the TPA so far as it relates to sections 46A, 155A or 155B of the TPA or Part IIIA of the FCA to be inserted by this Bill. This includes proceedings relating to an alleged contravention of section 46A of the TPA, proceedings for judicial review of relevant decisions under the TPA, and enforcement proceedings.

Section 11C - Facsimiles

91. Section 11C applies new Part VA so that, subject to any Federal Court Rules, a facsimile of an instrument, document or thing can be received in evidence in the same way as the instrument, document or thing from which the facsimile is produced. This is intended to enable proceedings to go ahead on the basis of facsimile evidence in cases of urgency.

Division 2 - Judicial notice of certain
New Zealand matters

Section 11D - New Zealand Acts

92. Section 11D provides for judicial notice to be taken of all New Zealand Acts.

Section 11E - Official New Zealand signatures, seals and stamps

93. Section 11E provides for judicial notice to be taken of the official signature of a person who holds or has held an

office of Judge, Master, Registrar or Deputy Registrar of the High Court of New Zealand or an office in New Zealand to which section 11E is applied by a declaration by the Governor-General, in the Gazette, where the signature is on a judicial or official document.

94. The section also provides for judicial notice to be taken of the imprint of the official seal or stamp of such persons or of a seal of the High Court of New Zealand where the imprint is attached or appended to a judicial or other official document.

Division 3 - Evidence of certain New Zealand instruments

Section 11F - Evidence of New Zealand official instruments

95. Section 11F provides for evidence to be given of an official instrument issued by the Governor-General of New Zealand, or by or under the authority of a New Zealand Minister. The expressions "official instrument" and "New Zealand Minister" are defined in proposed section 11A.

96. Under the section, evidence of an official instrument may be given by producing the New Zealand Gazette purporting to contain the instrument, a purported copy of the instrument printed under the authority of the Government of New Zealand or a copy or extract purporting to have been certified as a true copy or extract by a New Zealand Minister.

97. The section also provides that evidence of an official instrument made by the New Zealand Governor-General in Council may be given by producing a copy or extract purporting to have been certified to be a true copy or extract by the Clerk of the Executive Council of New Zealand.

Section 11G - Evidence of New Zealand proclamations and other acts of state

98. Section 11G enables evidence of a proclamation or other act of state of New Zealand to be given by producing a copy which is proved to be an examined copy or which purports to be sealed with the seal of New Zealand.

99. Evidence of an examined copy or extract is given by the testimony of the person who examined the original and the copy or extract.

Section 11H - Evidence of public documents admissible in New Zealand under New Zealand Acts

100. Section 11H provides that where a public document is admissible in evidence in New Zealand under a New Zealand Act, the document is admissible to the same extent and for the same purpose under this Part if it purports to be sealed, stamped, signed, signed and sealed or signed and stamped in accordance with the New Zealand Act. A certified copy of, and an extract from such a document is also admissible.

Section 11J - Evidence of other New Zealand public documents

101. Section 11J allows public documents admissible in evidence in New Zealand to any extent or for any purpose without proof of the seal, stamp or signature that authenticates it, or of the judicial or official character of the person who purports to sign it, to be admissible in the same way, under this Part.

Section 11K - Evidence of New Zealand documents of a public nature

102. Section 11K enables a New Zealand document, which is of such a public nature as to be admissible in evidence in New Zealand on its mere production from proper custody, to be

proved by an examined copy or extract, or a copy or extract purported to be certified to be a true copy or extract by a New Zealand officer who certifies that he or she has the custody of it.

Division 4 - Evidence of other New Zealand matters

Section 11L - New Zealand Gazette

103. Section 11L provides that production of a document purporting to be the New Zealand Gazette is evidence that it is that Gazette and that it was published on the day shown on it as the day on which it was published.

Section 11M - Evidence of printing under authority of New Zealand Government

104. Section 11M provides that production of a document purporting to be printed under authority of the New Zealand Government is evidence that the document was so printed.

Section 11N - Acts done by New Zealand Governor-General or Minister

105. Section 11N provides that, where a New Zealand law require or authorises any act by the Governor-General of New Zealand or a New Zealand Minister, production of the New Zealand Gazette purporting to contain a copy or notification of the act is evidence the act was properly done.

Section 11P - By-laws and regulations under New Zealand Acts

106. Section 11P provides that, where a New Zealand Act confers a power to make by-laws or regulations, a document purporting to contain the terms of the by-laws or regulations and purporting to be printed by the authority of the Government of New Zealand is evidence of the by-law or regulation and its due making and, if it so appears, its approval or confirmation by the New Zealand Governor-General.

Division 5 - Evidence relating to New Zealand
judicial proceedings

Section 11Q - Evidence of act or process of New Zealand court

107. Section 11Q provides that evidence of any act or process of a New Zealand court, and any legal document lodged with a New Zealand court, may be given by producing an examined copy or a copy purporting to be sealed by the New Zealand court.

Division 6 - Miscellaneous

Section 11R - Part not to derogate from existing Australian
laws

108. Section 11R provides that Part VA does not derogate from any other law (so that it does not affect any other means of giving evidence of matters referred to in the Part).

PART 7 - AMENDMENTS OF THE FEDERAL COURT OF AUSTRALIA ACT 1976

109. The amendments to the FCA are directed at ensuring the effectiveness of proceedings related to proposed new section 46A of the TPA, and related proceedings. To this end it provides for the Federal Court to have available to it enhanced means of obtaining evidence from New Zealand and more flexible means of conducting proceedings.

110. The Part also enables the High Court of New Zealand to use similar procedures in Australia and provides the Federal Court with procedures to enforce in Australia relevant New Zealand High Court judgments and orders.

111. Reciprocal legislation in New Zealand will enable the Federal Court to use the new procedures in New Zealand and will enable the High Court of New Zealand to enforce relevant Federal Court judgments and orders in New Zealand.

112. The Part authorises the Federal Court to exercise powers in, and in relation to, New Zealand. Some of these powers may not, at present, be exercised under international law. New Zealand law will permit the exercise of these powers by the Federal Court.

113. The Part also permits the High Court of New Zealand to exercise similar powers in, and in relation to, Australia.

Clause 26 - Principal Act

114. This clause provides that the 'Principal Act' referred to in this Part of the Bill is the FCA.

Clause 27 - State Supreme Courts invested with jurisdiction in Chambers

115. Section 32A of the FCA enables a State or Northern Territory Supreme Court to hear and determine any application that may be made to a Federal Court Judge in Chambers.

116. Clause 27 amends section 32A so that State and Territory Supreme Courts will not have this jurisdiction in proceedings within proposed Part IIIA of the FCA.

Clause 28 - Insertion of new Part

117. Clause 28 inserts after Part III of the Principal Act a new Part 111A - TRANS-TASMAN MARKET PROCEEDINGS.

Division 1 - Preliminary

Section 32B - Interpretation

118. Section 32B contains definitions for the purposes of Part IIIA. The critical definitions are those of "Australian proceeding" and "New Zealand proceeding".

119. "Australian proceeding" means proceedings in which a matter arises for determination under sections 46A, 155A or 155B of the TPA, or a provision of Parts VI or XII of the TPA so far as it relates to sections 46A, 155A or 155B of the TPA or Part IIIA of the FCA to be inserted by this Bill. This includes proceedings relating to an alleged contravention of section 46A of the TPA, judicial review of relevant decisions under the TPA and enforcement proceedings. 'New Zealand proceeding' means proceedings under sections 36A, 98H and 99A of the NZCA (which correspond to sections 46A, 155A and 155B of the TPA).

120. A reference in this Part to an "Australian proceeding" or "New Zealand proceeding" or any aspect of such proceedings is limited to these restricted classes of proceeding.

Division 2 - Exercise in New Zealand of jurisdiction
by the Federal Court

Section 32C - Federal Court sittings in New Zealand etc

121. Section 32C enables the Federal Court to continue or conduct an Australian proceeding at a place in New Zealand when it is satisfied the proceeding could be more conveniently or fairly be conducted or continued in New Zealand. The Court may also give judgment when sitting in New Zealand. A direction that a proceeding be conducted or continued in New Zealand may be subject to conditions.

122. Section 32C also authorises the Federal Court, for the purposes of an Australian proceeding, to take evidence or receive submissions by video link or telephone from New Zealand. This will enable ancillary matters, such as an application by a person in New Zealand to set aside an Australian subpoena, or directions hearings, to be conducted without the New Zealand party or his or her counsel having to come to Australia.

123. Under the section the Federal Court may exercise its powers in New Zealand, subject to New Zealand law, for the purposes of Australian proceedings. New Zealand law will enable the Federal Court to exercise in New Zealand powers similar to those which this Bill will enable the High Court of New Zealand to exercise in Australia.

Section 32D - New Zealand counsel entitled to practise in
Federal Court in New Zealand etc

124. Section 32D confers on a person entitled to practise as a barrister, solicitor or both before the High Court of New Zealand, a limited right to practise as a barrister, solicitor or both in an Australian proceeding. The person may practise in such proceedings when the Federal Court is sitting in New Zealand and when the Federal Court is receiving evidence, or submissions by video link or telephone from New Zealand.

Section 32E - Australian injunction may be made in relation to New Zealand conduct etc

125. Subsection 32E(1) authorises the Federal Court in an Australian proceeding to make an order or grant an injunction restraining a person from engaging in conduct or requiring a person to do an act or thing, in New Zealand.

126. Subsection 32E(2) authorises the Federal Court in an Australian proceeding to issue a subpoena addressed to a person in New Zealand requiring the person's attendance before the Federal Court in Australia or New Zealand.

127. Subsection 32E(3) provides that the section does not limit any power that the Federal Court otherwise has to make an order, grant an injunction or issue a subpoena.

Section 32F - Service of injunction in New Zealand etc

128. Section 32F authorises, subject to the Rules of Court, service in New Zealand of an Australian injunction or other Australian judgment, or of an Australian subpoena. New Zealand law will provide for enforcement by the High Court of New Zealand of Australian injunctions, other judgments and subpoenas.

Section 32G - Subpoena for service in New Zealand not to be issued without leave of Judge

129. Section 32G requires the leave of a Judge for the issue in an Australian proceeding of a subpoena for service in New Zealand. This requirement recognises that the subpoena may require attendance in another country.

32H - Subpoena for production must permit production at certain registries of High Court of New Zealand

130. Section 32H provides that an Australian subpoena which only requires production of documents or things, and which is issued for service in New Zealand, must permit the person named in the subpoena to comply by producing the documents or things to a High Court of New Zealand Registry prescribed by the Rules of Court. New Zealand law will provide for the documents or things to be sent to the Federal Court.

Section 32J - Effective service of subpoena

131. Section 32J provides that service of an Australian subpoena in New Zealand is of no effect unless two conditions are fulfilled, namely that -

- (a) the subpoena is accompanied by a statement in a form (to be prescribed by the Rules of Court) setting out the rights and obligations of the person served in relation to the subpoena including information about the how an application may be made to have the subpoena set aside; and
- (b) at the time of service or at some other reasonable time before the time for compliance with the subpoena, allowances and travelling expenses or vouchers sufficient to meet the person's reasonable expenses of complying with the subpoena are paid or tendered to the person.

Section 32K - Application to set subpoena aside

132. Section 32K provides a procedure additional to that provided by Rules of Court for applying to the Federal Court to set aside an Australian subpoena.

133. Under this procedure the application may be made ex parte.

134. It must be made by an affidavit which sets out the facts on which the applicant relies, and which is lodged with the Registrar of the Federal Court. The Registrar is required to serve a copy of the affidavit on the solicitor of the party who issued the subpoena or if there is no solicitor, on the party.

Section 32L - Grounds for setting aside subpoena

135. Section 32L enables the Federal Court to set aside, in whole or part, an Australian subpoena issued for service in New Zealand. It provides that, without limiting the grounds on which a subpoena may be set aside, the Federal Court may set aside a subpoena on any of several grounds, which basically relate to difficulty, hardship or penalty that the person served with the subpoena would suffer in complying with the subpoena. These grounds are:

- (a) that the person does not have and cannot reasonably be expected to obtain necessary travel documents;
- (b) that the person is liable to be detained to serve a sentence;
- (c) that the person is liable to prosecution or is being prosecuted for an offence;
- (d) that the person is liable to the imposition of a penalty in civil proceedings (other than TPA proceedings);
- (e) that the evidence to be given could be obtained by other means without significantly greater expense;
- (f) that compliance with the subpoena would cause the person hardship or serious inconvenience; and
- (g) in the case of a subpoena for production - that the Federal Court is satisfied:

- (i) that the document or thing should not be taken out of New Zealand; and
- (ii) that evidence of the contents of the document or of the thing can be given by other means.

Division 3 - Exercise in Australia of jurisdiction
by High Court of New Zealand

136. This Division enables the High Court of New Zealand to exercise powers in Australia.

Section 32M - High Court of New Zealand sitting in Australia
etc

137. Subsections 32M(1) and (2) permit the New Zealand High Court to conduct or continue a New Zealand proceeding (and give judgment in the proceeding) in Australia. The expression "New Zealand proceeding" is defined in section 32B.

138. Subsection 32M(3) permits the New Zealand High Court, for the purposes of a New Zealand proceeding, to take evidence or receive submissions by video link or telephone from Australia.

139. Subsection 32M(4) permits the New Zealand High Court when sitting in Australia for the purposes of a New Zealand proceeding, to exercise in Australia all the powers it has when sitting in New Zealand, except its powers -

- (a) to punish a person for contempt; and
- (b) to enforce or execute its judgments or process.

140. Subsection 32M(5) provides in particular that the New Zealand High Court may -

- (a) direct that the proceeding be conducted or continued in private;
- (b) require a person to leave the Court; or
- (c) prohibit or restrict the publication of evidence given in the proceeding or the name of a party to, or a witness in the proceedings.

141. Subsection 32M(6) permits the New Zealand High Court to exercise any of its powers except its powers -

- (a) to punish a person for contempt; and
- (b) to enforce or execute its judgments or process,

in relation to a person in Australia who is taking part in the proceeding by video link or telephone.

142. Subsection 32M(7) declares that the New Zealand Judicature Act 1908 and the New Zealand High Court Rules apply to the practice and procedure of the New Zealand High Court in a New Zealand proceeding, so far as the proceeding is conducted or continued in Australia or the New Zealand High Court receives evidence or submissions from Australia by video link or telephone.

143. Subsection 32M(8) imposes an obligation to comply with an order under subsection 32(5).

144. By subsections 32M(9) and (10) an order of the New Zealand High Court under subsection 32M(5) may be enforced by a Federal Court Judge, as if the order were made by the Federal Court. A contravention of subsection 32M(5) is to be deemed to be contempt of the Federal Court, unless the person served with the subpoena shows that the contravention should be excused.

Section 32N - Privileges, protection and immunity of participants in New Zealand proceedings .

145. Section 32N confers, when the New Zealand High Court sits in Australia or takes evidence or receives submissions from Australia by video link or telephone in a New Zealand proceeding:

- (a) on a New Zealand High Court Judge the privileges, protection and immunity of a Federal Court Judge;
- (b) on a person appearing as a barrister or solicitor or both the same protection and immunity as a barrister appearing before the Federal Court; and
- (c) on a person appearing as a witness, the same protection as a witness in a proceeding in the Federal Court.

32P - High Court of New Zealand may administer oath in Australia etc

146. Subsection 32P(1) authorises the New Zealand High Court to administer, in accordance with its practice and procedure, an oath or affirmation to a witness in Australia participating in a New Zealand proceeding.

147. Subsection 32P(2) applies section 35 of the Crimes Act 1914, which relates to false testimony, to evidence given under an oath or affirmation administered by the High Court under subsection 32P(1).

32Q - Service of New Zealand injunctions in Australia etc

148. Section 32Q authorises the service in Australia of a New Zealand injunction or other New Zealand judgment, and of a New Zealand subpoena.

32R - Service of a New Zealand subpoena in Australia

149. Section 32R provides that service of a New Zealand subpoena in Australia is effective where -

- (a) the subpoena was issued with leave of a New Zealand High Court Judge; and
- (b) a sealed copy of the subpoena was left with the person named in it together with a statement setting out the person's rights and obligations relating to the subpoena, including information about how application can be made to the New Zealand High Court to set the subpoena aside.

150. The section excuses the person named in a New Zealand subpoena served on him or her in Australia from complying with the subpoena where allowances, travelling expenses or vouchers sufficient to meet his or her reasonable expenses of complying with the subpoena are not paid or tendered at the time of service, or within a reasonable time before the time for compliance with the subpoena.

Section 32S - Documents etc to be transmitted to High Court of New Zealand

151. Section 32S requires the Registrar of the Federal Court to transmit to the New Zealand High Court documents or things produced to the Registrar under a New Zealand subpoena for production.

Division 4 - Taking of evidence by Federal Court

152. Subsection 32T(1) permits the New Zealand High Court to request the Federal Court to obtain evidence for it for the purposes of a New Zealand proceeding.

153. Subsections 32T(2) to (5) enable the Federal Court by order to provide for obtaining the evidence requested by the New Zealand High Court.

154. Subsection 32T(6) gives the person required to give testimony the same rights to conduct money and payment for expenses and loss of time as a witness before the Federal Court.

Section 32U - Privilege of witnesses

155. Section 32U provides that the Federal Court may not, under section 32T require a person to give evidence he or she could not be compelled to give in the New Zealand proceeding.

Section 32V - Division not to derogate from existing Australian laws

156. Section 32V provides that Division 4 is in addition to, and not in derogation of, any other law in force in Australia (so that any other means available for obtaining evidence are not affected).

Division 5 - Enforcement of judgments of High Court of New Zealand

157. This Division is intended to enable judgments and orders made by the High Court of New Zealand in New Zealand proceedings to be enforced by the Federal Court in Australia. The procedures provided by the Division are available with respect to both money judgments and non-money judgments (e.g. injunctions) and to interlocutory or interim orders as well as final judgments and orders.

158. The expression 'judgment debtor' is used here to refer to the person against whom a judgment may be enforced.

Section 32W - Registration of judgment in Federal Court

159. Subsections 32W(1) and (2) provide for a New Zealand judgment to be registered in the Federal Court.

160. Subsection 32(3) forbids registration of a New Zealand judgment if, when the application for registration is made, the judgment has been wholly satisfied or the judgment cannot be enforced in New Zealand.

161. Subsection 32W(4) gives a registered New Zealand judgment the same force and effect as a Federal Court judgment for the purpose of enforcement. It carries interest, and proceedings may be brought upon it, as if it were a Federal Court judgment.

162. Subsection 32W(5) provides for a judgment in New Zealand currency to be registered as a judgment for the equivalent sum in Australian currency, using the exchange rate at the date of the New Zealand judgment.

163. Under subsection 32W(6) a partly satisfied judgment may be registered only for the balance owing at the date of registration.

164. Subsection 32W(7) provides that a judgment may be registered for an amount including any interest due under New Zealand law on the judgment up to the date of registration and also including the reasonable costs of registration.

Section 32X - Variation of registered judgment

165. Section 32X provides that every New Zealand judgment which varies a New Zealand judgment registered in the Federal Court must itself be registered. Pending registration of the varying judgment the registered judgment must not be enforced without leave of the Federal Court.

Section 32Y - Cases in which registration must be set aside

166. Section 32Y requires the Federal Court to set aside registration of a New Zealand judgment, on application, where

- (a) the judgment has been discharged or can no longer be enforced in New Zealand;
- (b) the judgment has been wholly satisfied;
- (c) the judgment was not registrable under Division 5 or was not properly registered;
- (d) the judgment has been reversed on appeal or set aside; or
- (e) the judgment relates to a claim for relief for a contravention of section 36A of the NZCA and that claim has been finally dismissed.

167. Paragraphs (a), (b) and (d) provide for situations where there is no longer an enforceable judgment, and paragraph (c) for where the judgment ought not to have been registered. Paragraph (e) is directed to cases where, by reason, of dismissal of a claim in proceedings, the proceedings no longer fall within the definition of 'New Zealand proceedings' and so the judgment is not entitled to (continued) registration.

Section 32Z - Stay of execution of registered judgment

168. Section 32Z enables the Federal Court to stay enforcement of a registered judgment where the judgment debtor under a New Zealand judgment has applied, or intends to apply, to set the judgment aside, or has appealed or intends to appeal against the judgment.

169. When granting a stay the Federal Court must impose a condition that the judgment debtor make the application or bring the appeal by a specified day or within a specified period if the application or appeal has not already been lodged. Further, every stay order is to be made on the condition that the judgment debtor pursue the application or appeal in an expeditious manner.

170. Other conditions, including conditions relating to giving security, may be imposed.

Section 32ZA - New Zealand judgment not to be enforceable otherwise than under Division

171. Section 32ZA excludes other means of enforcing a judgment registrable under Division 5. Judgments for a sum of money are, subject to some exceptions, enforceable by registration in a State or Territory Supreme Court. The section ensures that all enforcement of New Zealand proceedings under this Part is carried out by the Federal Court.

Section 32ZB - Application of rules of private international law

172. Section 32ZB displaces the operation of rules of law which refuse enforcement of a judgment of a foreign court -

- (a) where the foreign court's assertion of jurisdiction is not recognised; or
- (b) where enforcement of the judgment is regarded as contrary to public policy.

The effect is that neither the assertion of jurisdiction by the New Zealand High Court nor its judgments may be called in question in the Federal Court.

Division 6 - Miscellaneous

Section 32ZC - Jurisdiction of Federal Court

173. Section 32ZC confers jurisdiction on the Federal Court in matters arising under Part IIIA. The jurisdiction is, subject to section 75 of the Constitution, exclusive of other courts. Prosecutions for offences against Part IIIA may be brought only in the Federal Court.

Section 32ZD - Non-compliance with a New Zealand subpoena

174. Section 32ZD makes it obligatory to comply with a New Zealand subpoena. Failure to comply is deemed to be a contempt of the Federal Court and is punishable accordingly unless the person establishes an excuse.

175. In determining whether to excuse the person the Federal Court may have regard to matters not made known to the New Zealand High Court which are likely, if they had been known, to have led that Court to set aside its subpoena. To do this the Federal Court must be satisfied the failure to make the facts known to the High Court is excusable.

176. The Federal Court may also have regard to other matters to which it would have regard if it had issued the subpoena.

177. A certificate by the High Court that a person has failed to comply with a subpoena is prima facie evidence of non-compliance. Findings of fact made by the High Court on any application to it to set aside the subpoena cannot be challenged unless the High Court was deliberately misled in making those findings.

Section 32ZE - Contempt of High Court of New Zealand

178. Section 32ZE creates a number of offences, each punishable by 3 months imprisonment, relating to misconduct in the face of the New Zealand High Court when sitting in Australia.

Section 32ZF - Reciprocal arrangements for use of Court facilities

179. Section 32ZF authorises the Chief Justice of the Federal Court to make arrangements with the Chief Justice of New Zealand for the purposes of giving effect to Part IIIA.

180. The section lists a range of particular matters which may be the subject of arrangements, without limiting the power to make arrangements. These matters relate to the use of court rooms and other places, registry facilities and staff of one court when the other court sits in the first court's country or conducts proceedings by video link or telephone to that country.

Clause 29 - Rules of Court

181. Clause 29 amend subsection 59(2) of the FCA by adding paragraphs 59(2)(u) to (xe) inclusive to the matters in respect of which the Rules of Court may make provision.

182. The new paragraphs relate to matters of evidence and procedure under Part VA of the Evidence Act and Part IIIA of the FCA.

PART 8 - AMENDMENTS OF THE JURISDICTION OF COURTS
(CROSS-VESTING) ACT 1987

Clause 30 - Principal Act

183. This clause is a machinery provision to provide that the "Principal Act" referred to in this Part is the Jurisdiction of Courts (Cross-vesting) Act 1987.

Clause 31 - Additional jurisdiction of certain courts

184. Clause 31 amends section 4 of the Principal Act by omitting subsection (4) and substituting a new subsection.

185. The new subsection 4(4) excludes the application of section 4 to certain provisions. The effect of the amendment is that matters covered by the new Part IIIA cannot be determined in a State or Territory Supreme Court under the Jurisdiction of Courts (Cross-vesting) Act.

