

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 11 June 1981)

(ATTORNEY-GENERAL, SENATOR DURACK)

No. 150

A BILL

FOR

**An Act to amend the *Foreign Antitrust Judgments
(Restriction of Enforcement) Act 1979***

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

5 **1.** (1) This Act may be cited as the *Foreign Antitrust Judgments (Restriction of Enforcement) Amendment Act 1981*.

(2) The *Foreign Antitrust Judgments (Restriction of Enforcement) Act 1979*¹ is in this Act referred to as the Principal Act.

Commencement

10 **2.** This Act shall come into operation on the day on which it receives the Royal Assent.

3. After section 2 of the Principal Act the following sections are inserted:

Extension to external Territories

“2A. This Act extends to the external Territories.

Interpretation

“2B. (1) In this Act, unless the contrary intention appears—

‘antitrust law’ means any law of a kind commonly known as an antitrust law and includes any law having as its purpose, or as its dominant purpose, the preservation of competition between manufacturing, commercial or other business enterprises or the prevention or repression of monopolies or restrictive practices in trade or commerce;

‘Australia’, when used in a geographical sense, includes the external Territories;

‘foreign court’ means a court of a country outside Australia or of a part of such a country but does not include the Judicial Committee of the Privy Council in the exercise of jurisdiction in respect of appeals from any court in Australia;

‘judgment’ includes any decree or order.

“(2) For the purposes of this Act, the question whether a body corporate is related to another body corporate shall be determined in the same manner as the question whether a corporation within the meaning of the *Companies Ordinance* 1962 of the Australian Capital Territory as amended and in force from time to time is related to another such corporation would be determined under that Ordinance.”.

Certain foreign judgments in antitrust proceedings may be made wholly or partly unenforceable in Australia

4. Section 3 of the Principal Act is amended—

(a) by omitting sub-section (1);

(b) by inserting in sub-section (2) “, subject to sub-section (2A)” after “the Attorney-General may”; and

(c) by inserting after sub-section (2) the following sub-section:

“(2A) The Attorney-General shall not make an order under sub-section (2) in relation to a judgment given by a court of a country outside Australia or of a part of a country outside Australia in proceedings instituted under an antitrust law if he is satisfied that the conduct of the defendant or defendants in relation to which the judgment was given took place in that country or in that part of that country, as the case may be.”.

5. After section 3 of the Principal Act the following sections are added:

Defendant in antitrust proceedings may recover against plaintiff who has enforced judgment

“4. (1) Where—

5 (a) the Attorney-General has made an order under paragraph 3 (2) (c) in relation to a judgment (in this section referred to as the ‘foreign judgment’); and

10 (b) a person in whose favour the foreign judgment was given (in this sub-section referred to as the ‘plaintiff’) has recovered, in a country outside Australia, an amount pursuant to that foreign judgment,

the plaintiff is liable, or, where the plaintiff is a body corporate, the plaintiff and any body corporate that is related to the plaintiff are jointly and severally liable, to pay, to the person who is the prescribed person in relation to the foreign judgment or to the persons who are the prescribed persons in relation to the foreign judgment, an amount equal to the amount recovered by the plaintiff pursuant to the foreign judgment as mentioned in paragraph (b).

“2) Where—

20 (a) the Attorney-General has made an order under paragraph 3 (2) (d) in relation to a judgment (in this section also referred to as the ‘foreign judgment’) declaring that, for the purposes of the recognition or enforcement of the judgment in Australia, the amount of the judgment shall be deemed to be reduced to an amount specified in the order (in this sub-section referred to as the ‘specified amount’);

25 (b) a person in whose favour the foreign judgment was given (in this sub-section referred to as the ‘plaintiff’) has recovered, in a country outside Australia, an amount pursuant to that foreign judgment;

(c) before the recovery of the amount mentioned in paragraph (b), either—
30 (i) the plaintiff had not recovered any amount pursuant to that foreign judgment in Australia or in any other country; or

(ii) the amount recovered by the plaintiff, or the sum of the amounts recovered by the plaintiff, in Australia or in any other country or countries, pursuant to that foreign judgment did not exceed the specified amount; and

(d) either—

35 (i) in a case to which sub-paragraph (c) (i) applies—the amount recovered as mentioned in paragraph (b); or

(ii) in a case to which sub-paragraph (c) (ii) applies—the sum of the amount recovered as mentioned in paragraph (b) and the amount or amounts previously recovered in Australia or in any other country or countries pursuant to that foreign judgment,

40 exceeds the specified amount,

the plaintiff is liable, or, where the plaintiff is a body corporate, the plaintiff and any body corporate that is related to the plaintiff are jointly and severally

liable, to pay, to the person who is the prescribed person in relation to the foreign judgment or to the persons who are the prescribed persons in relation to the foreign judgment, an amount equal to the amount by which the amount mentioned in sub-paragraph (d) (i), or the sum of the amounts mentioned in sub-paragraph (d) (ii), as the case may be, exceeds the specified amount. 5

“(3) Where—

- (a) the Attorney-General has made an order under paragraph 3 (2) (d) in relation to a judgment (in this section also referred to as the ‘foreign judgment’) declaring that, for the purposes of the recognition or enforcement of the judgment in Australia, the amount of the judgment shall be deemed to be reduced to an amount specified in the order (in this sub-section referred to as the ‘specified amount’); 10
- (b) a person in whose favour the foreign judgment was given (in this sub-section referred to as the ‘plaintiff’) has recovered, in a country outside Australia, an amount pursuant to that foreign judgment; and 15
- (c) before the recovery of the amount mentioned in paragraph (b) the plaintiff had, pursuant to that foreign judgment, recovered, in Australia or in any other country or countries, an amount that was equal to or exceeded, or amounts the sum of which was equal to or exceeded, the specified amount, 20

the plaintiff is liable, or, where the plaintiff is a body corporate, the plaintiff and any body corporate that is related to the plaintiff are jointly and severally liable, to pay, to the person who is the prescribed person in relation to the foreign judgment or to the persons who are the prescribed persons in relation to the foreign judgment, an amount equal to the amount recovered by the plaintiff pursuant to the foreign judgment as mentioned in paragraph (b). 25

“(4) A person against whom a foreign judgment has been given by a court of a country outside Australia or of a part of a country outside Australia is a prescribed person in relation to that foreign judgment for the purposes of sub-sections (1), (2) and (3) if that person is— 30

- (a) an Australian citizen, other than a person who, at the time of the institution of the proceedings in which the foreign judgment was given, was ordinarily resident in that country or in that part of that country; 35
- (b) a body corporate incorporated or deemed to be incorporated under a law in force in a State or Territory; or
- (c) the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory.

“(5) Where, by reason of the operation of sub-section (4), a body corporate is a prescribed person in relation to a foreign judgment for the purposes of 40

sub-sections (1), (2) and (3), a body corporate that is related to that body corporate is also a prescribed person in relation to that foreign judgment for the purposes of sub-sections (1), (2) and (3) if that second-mentioned body corporate is—

- 5 (a) a body corporate incorporated or deemed to be incorporated under a law in force in a State or Territory; or
(b) an authority of the Commonwealth, of a State or of a Territory.

“(6) Where there are 2 or more prescribed persons in relation to a foreign judgment, a proceeding in respect of a cause of action arising under sub-section (1), (2) or (3) in respect of that foreign judgment may be instituted by any one of those prescribed persons or jointly by those prescribed persons or by 2 or more of those prescribed persons.

“(7) Where—

- 15 (a) a proceeding is instituted in respect of a cause of action arising under sub-section (1), (2) or (3) by a person who is a prescribed person or 2 or more persons who are prescribed persons in relation to a foreign judgment, being a proceeding in respect of an amount recovered in a country outside Australia pursuant to the foreign judgment; and
20 (b) the defendant in that proceeding is adjudged to be liable to pay an amount to the prescribed person or prescribed persons,

then, notwithstanding sub-section (1), (2) or (3), as the case may be, neither the defendant in that proceeding nor any other person is under any liability under that sub-section in respect of that cause of action other than the liability to pay the amount mentioned in paragraph (b).

“(8) A proceeding in respect of a cause of action arising under sub-section (1), (2) or (3) may be instituted only in the Federal Court of Australia.

“(9) Jurisdiction is conferred on the Federal Court of Australia with respect to matters arising under sub-sections (1), (2) and (3).

“(10) The jurisdiction conferred on the Federal Court of Australia by sub-section (9) may be exercised by a single Judge.

“(11) A proceeding in respect of a cause of action arising under sub-section (1), (2) or (3) may be commenced within 3 years after the date on which the cause of action arose.

Enforcement of judgments under reciprocal agreement

“(5. (1) Where—

- 35 (a) an agreement is in force between Australia and another country that makes provision for—
40 (i) the enforcement in that other country of judgments obtained in proceedings in respect of causes of action arising under sub-sections 4 (1), (2) and (3); and

(ii) the enforcement in Australia of judgments obtained in proceedings instituted in that other country in respect of causes of action arising under provisions of the law of that country that correspond to sub-sections 4 (1), (2) and (3); and

(b) a person has obtained a judgment in a proceeding instituted under such a provision of the law of that other country, 5

the following provisions of this section have effect.

“(2) The Attorney-General may, by order in writing, declare that the judgment referred to in paragraph (1) (b) may be enforced in Australia. (

“(3) Where an order is made by the Attorney-General under sub-section (2), a copy of the order shall be laid before each House of the Parliament. 10

“(4) Where—

(a) a copy of an order made under sub-section (2) has been laid before each House of the Parliament in accordance with sub-section (3); and

(b) neither House of the Parliament has, within 15 sitting days of that House after the copy of the order has been laid before that House, passed a resolution disapproving the order, 15

the Attorney-General shall cause a copy of the order to be published in the *Gazette* and the order has effect on and from the day of publication.

“(5) Where an order made under sub-section (2) is in force, the judgment, or a copy of the judgment certified by the proper officer of the court by which the judgment was given to be a true copy of the judgment, may be filed in the Federal Court of Australia and, where a judgment, or a copy of a judgment, is filed in the Federal Court of Australia in accordance with this sub-section, that judgment is thereupon enforceable in all respects as if it were a final judgment of that Court.”. 20
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NOTE

1. No. 13, 1979.

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