

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(As read a first time)*

**FOREIGN PROCEEDINGS (EXCESS OF JURISDICTION) BILL  
1983**

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1983

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(Presented pursuant to leave granted and read 1<sup>o</sup>, December 1983)*

(THE ATTORNEY-GENERAL, SENATOR GARETH EVANS)

## A BILL

FOR

**An Act to make provision in relation to the evidence that may be given in certain foreign proceedings, to provide a right of action in Australia in respect of the enforcement outside Australia of certain foreign judgments, and for related purposes**

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

### PART I—PRELIMINARY

#### Short title

- 5     **1.** This Act may be cited as the *Foreign Proceedings (Excess of Jurisdiction) Act 1983*.

#### Extension to external Territories

- 2.** This Act extends to the external Territories.

#### Interpretation

- 10    **3. (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;

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“authority” includes—

- (a) a court or a grand jury; and
- (b) any officer, examiner, investigator or other person authorized—

- (i) to take or receive evidence, whether on behalf of a court or otherwise; or
- (ii) to require the answering of questions or the production of documents;

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“Court” means the Federal Court of Australia;

“document” includes any writing and also includes any disc, tape or device on or in which information is recorded or stored, whether originally or by way of a copy;

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“foreign authority” means an authority of a country other than Australia;

“foreign court” means any court, or prescribed authority, of a country other than Australia or 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;

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“judgment” includes a decree or order.

(2) A reference in this Act to a judgment being given is, in relation to a judgment that is a decree or order, a reference to the decree or order being made.

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(3) A reference in this Act to proceedings in which multiple damages may be awarded is a reference to proceedings in which judgment may be given for an amount calculated by doubling, trebling or otherwise multiplying the amount assessed by the court as the amount that would compensate the person who instituted the proceedings for the loss or damage in respect of which the proceedings were instituted, and a reference in this Act to a judgment for multiple damages is a reference to a judgment for an amount that is so calculated.

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(4) For the purposes of this Act, the question whether a corporation is related to another corporation shall be determined in the same manner as the question whether a corporation is related to another corporation is determined under the *Companies Act* 1981.

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## PART II—FOREIGN PROCEEDINGS

### *Division 1—Interpretation and Application*

#### **Interpretation**

4. (1) In this Part, unless the contrary intention appears—

“antitrust proceedings to which this Part applies” means—

(a) proceedings instituted in or before a foreign court that are—

(i) proceedings instituted under an antitrust law; or

(ii) proceedings for contribution instituted by a person who was a defendant in substantive proceedings that were instituted under an antitrust law,

where those proceedings constitute proceedings to which this Part applies; or

(b) action taken under an antitrust law or in relation to proceedings that have been, or may be, instituted under an antitrust law, where that action constitutes proceedings to which this Part applies;

“prescribed proceedings”, in relation to a court (including an authority that is a foreign court) of a country other than Australia or of a part of such a country, means proceedings—

(a) in respect of which, under any law that is applicable in relation to those proceedings, the court would be empowered to assume jurisdiction if, in the proceedings, an adverse effect, or an adverse effect of a particular kind, on the foreign commerce of that other country were to be alleged, whether or not the conduct in respect of which the proceedings are instituted is alleged to have taken place in that country; and

(b) in which, under any law that is applicable in relation to those proceedings, multiple damages may be awarded;

“proceedings to which this Part applies” means any proceedings or other action to which this Part applies by virtue of section 5;

“substantive proceedings” means proceedings to which this Part applies by virtue of paragraph 5 (a).

(2) For the purposes of this Part, where, in proceedings instituted in or before a foreign court, a person makes a cross-claim, counter-claim, third-party claim, or similar claim, for contribution, the person shall be taken to have instituted proceedings in or before that court for contribution.

#### **Application of Part**

5. This Part applies in relation to—

(a) any proceedings instituted in or before a foreign court, being proceedings that—

(i) relate to or affect trade or commerce with other countries or among the States;

- (ii) relate to or affect the trading operations of a trading corporation formed within the limits of the Commonwealth or the business operations of a financial corporation formed within the limits of the Commonwealth; 5
  - (iii) relate to or affect banking, other than State banking not extending beyond the limits of the State concerned; 5
  - (iv) relate to or affect insurance, other than State insurance not extending beyond the limits of the State concerned;
  - (v) constitute an external affair; or
  - (vi) are connected with proceedings that constitute an external affair; 10
- (b) any action taken by a foreign authority in connection with, or for the purposes of, substantive proceedings or any action taken by a foreign authority that is ancillary to substantive proceedings;
- (c) any proceedings instituted in or before a foreign court, or action taken by a foreign authority, in connection with, or for the purposes of— 15
- (i) the making of a decision whether substantive proceedings should be instituted; or
  - (ii) the institution, or the proposed institution, of substantive proceedings; and 20
- (d) any proceedings instituted in or before a foreign court, or action taken by a foreign authority, in connection with, or for the purposes of, the enforcement of any judgment given in substantive proceedings, including any proceedings for contribution instituted in or before a foreign court by a person who was a defendant in substantive proceedings. 25

***Division 2—Prohibition of the Giving of Certain Evidence in Foreign Courts or to Foreign Authorities***

**Exercise of powers under this Part**

6. (1) The power of the Attorney-General to make an order under section 7 may only be exercised in relation to proceedings to which this Part applies. 30

(2) The Attorney-General shall not exercise his power to make an order under section 7 in relation to proceedings to which this Part applies except as provided by sub-section (3), (4) or (5).

(3) The Attorney-General may make an order under section 7 in relation to proceedings to which this Part applies, being an order prohibiting the doing of an act or thing, if he is satisfied that the making of the order is desirable for the protection of the national interest. 35

(4) The Attorney-General may make an order under section 7 in relation to proceedings to which this Part applies that are constituted by proceedings instituted in or before a foreign court if he is satisfied that the assumption of jurisdiction by the foreign court, or the manner of exercise of jurisdiction by the 40

foreign court, is contrary to international law or is inconsistent with international comity or international practice.

(5) The Attorney-General may exercise his power to make an order under section 7 in relation to proceedings to which this Part applies that are constituted by action taken by a foreign authority if he is satisfied that the taking of that action, or the manner of taking that action, is contrary to international law or is inconsistent with international comity or international practice.

### **Orders**

7. (1) The Attorney-General may, by order in writing, prohibit any one or more of the following acts or things:

(a) the production in a foreign court, or to or for the purposes of a foreign authority, of a document that, at the time of the making of the order or at any time while the order is in force, is in Australia;

(b) the doing of any act in Australia, in relation to a document that, at the time of the making of the order or at any time while the order is in force, is in Australia—

(i) with the intention that the act will result in the document, or evidence of or information about the contents of the document, being produced or given in a foreign court or to or for the purposes of a foreign authority; or

(ii) where there is reason to believe that the act will, or is likely to, result in the document, or evidence of or information about the contents of the document, being produced or given in a foreign court or to or for the purposes of a foreign authority;

(c) the giving by a person, at a time when he is an Australian citizen or a resident of Australia, of evidence or information in a foreign court or to a foreign authority in relation to, or in relation to the contents of, a document that, at the time of the making of the order or at any time while the order is in force, is in Australia;

(d) the production of a document in a court in, or to an authority of, Australia, or the giving of evidence or information, whether in relation to the contents of a document or otherwise, in a court in, or to an authority of, Australia, for the purposes of proceedings in a foreign court.

(2) An order under this section may—

(a) be directed to a particular person, to persons included in a class of persons or to persons generally;

(b) relate to a particular foreign court or foreign authority, to courts included in a class of foreign courts or authorities included in a class of foreign authorities or to foreign courts or foreign authorities generally; and

(c) relate to a particular document or to documents included in a class of documents.

(3) Where the Attorney-General makes an order under sub-section (1) that has effect in relation to a document, the order also has effect in relation to any copy of that document that, at the time of the making of the order or at any time while the order remains in force, is in Australia, whether the copy was made before or after the making of the order, as if the copy were the document. 5

(4) Where the Attorney-General, being satisfied of the matters mentioned in sub-section 6 (3), (4) or (5), makes an order under sub-section (1) prohibiting the doing of a specified act or thing, the Attorney-General may—

(a) provide, in the order, that the doing of that act or thing is not prohibited in specified circumstances; or 10

(b) consent in writing to the doing of that act or thing,

and, where the Attorney-General has consented as mentioned in paragraph (b) to the doing of an act or thing, a person shall not be taken to have contravened the order by reason that he has done that act or thing.

### **Injunctions** 15

8. (1) In this section, "Court" means—

(a) the High Court; or

(b) the Federal Court of Australia.

(2) Where—

(a) there is in force an order made by the Attorney-General under section 7 that prohibits the doing of a specified act or thing in relation to a specified document, or in relation to documents included in a specified class of documents; and 20

(b) the Court is satisfied, on application by the Attorney-General, that there are reasonable grounds for believing that the person having possession or control of the specified document or of a document included in the specified class of documents, as the case may be, might contravene the order referred to in paragraph (a), 25

the Court may grant an injunction restraining that person from dealing with that document in a manner specified in the injunction, or restraining that person from dealing with that document except in a manner specified in the injunction. 30

(3) Where in the opinion of the Court it is appropriate to do so, the Court may, instead of granting an injunction under sub-section (1) in relation to the manner in which a person may deal with a document, accept from the person an undertaking in relation to the manner in which that person will deal with the document, but the acceptance by the Court of an undertaking in relation to the manner in which a person will deal with a document does not prevent the Court from subsequently granting an injunction under sub-section (1) in relation to the manner in which that person may deal with that document. 35 40

(4) The Attorney-General shall not make an application for the purposes of this section to the Federal Court of Australia in relation to any matter that has been the subject of proceedings in the High Court.



**Division 3—Enforceability of Judgments Given in Foreign Antitrust Proceedings**

**Enforceability of judgments given in foreign antitrust proceedings**

**9. (1) Where—**

- 5 (a) a foreign court has, in antitrust proceedings to which this Part applies, given a judgment; and
- (b) the Attorney-General is satisfied that—
- 10 (i) the making of an instrument under this sub-section in relation to the judgment is desirable for the protection of the national interest; or
- (ii) the assumption of jurisdiction or the manner of exercise of jurisdiction by the foreign court, or the exercise of a power or the manner of exercise of a power by the foreign court, was contrary to international law or inconsistent with international comity or international practice,
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the Attorney-General may—

- (c) in the case of any judgment—by instrument in writing declare that he is satisfied as mentioned in sub-paragraph (b) (i) or (ii) in relation to the judgment; or
- 20 (d) in the case of a judgment for a specified amount of money—by instrument in writing declare that he is satisfied as mentioned in sub-paragraph (b) (i) or (ii) in relation to the judgment, and specify in the instrument an amount of money, being an amount that is less than the amount of the judgment, for the purposes of paragraph (2) (b).

25 (2) While an instrument made by the Attorney-General under sub-section (1) in relation to a judgment is in force—

- (a) where the Attorney-General has not, in the instrument, specified an amount of money for the purposes of paragraph (b)—the judgment shall not be recognized and is not enforceable in Australia; or
- 30 (b) where the Attorney-General has, in the instrument, specified an amount of money for the purposes of this paragraph—the judgment may be recognized or enforced in Australia as if the amount specified in the instrument were substituted for the amount of the judgment, and not otherwise.

35 (3) Nothing in this section enables a judgment to be recognized or enforced in Australia if, apart from this Act, the judgment would not be able to be recognized or enforced in Australia.

(4) Where—

- 40 (a) there is in force an instrument, made by the Attorney-General under paragraph (1) (d) in relation to a judgment, specifying an amount of money for the purposes of paragraph (2) (b); and

- (b) by virtue of paragraph (2) (b), the judgment may be recognized or enforced in Australia as if the amount specified in the instrument were substituted for the amount of the judgment,

any amounts recovered (whether before or after the making of the instrument) pursuant to the judgment in a country other than Australia shall, for the purposes of the recognition or enforcement of that judgment in Australia but for no other purposes, be taken to have been recovered pursuant to the judgment in Australia.

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(5) Where—

- (a) a foreign court has, in antitrust proceedings to which this Part applies, given a judgment against 2 or more defendants; and
- (b) there is in force an instrument, made by the Attorney-General under paragraph (1) (d) in relation to the judgment, specifying an amount of money for the purposes of paragraph (2) (b) (in this sub-section referred to as the “specified amount”),

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paragraph (2) (b) has effect, in relation to each defendant, as if the Attorney-General had, in the instrument, specified for the purposes of paragraph (2) (b) an amount ascertained by dividing the specified amount by the number of defendants against whom the judgment was given.

**Defendant in antitrust proceedings may recover against person who has enforced judgment**

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10. (1) Subject to sub-section (3), where—

- (a) there is in force an instrument made by the Attorney-General under paragraph 9 (1) (c) in relation to a foreign judgment; and
- (b) the plaintiff or any other person has (whether before or after the making of the instrument referred to in paragraph (a)) recovered from a defendant, in Australia or in any other country, an amount pursuant to that foreign judgment,

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then (whether or not any liability has arisen previously under this sub-section in relation to that foreign judgment) the plaintiff is liable, or, where another person has recovered the amount mentioned in paragraph (b), the plaintiff and that other person are jointly and severally liable, to pay to the defendant an amount equal to the amount recovered pursuant to the foreign judgment as mentioned in paragraph (b).

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(2) Subject to sub-section (3), where—

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- (a) there is in force an instrument made by the Attorney-General under paragraph 9 (1) (d) in relation to a foreign judgment specifying an amount of money for the purposes of paragraph 9 (2) (b) (in this sub-section referred to as the “recoverable amount”);
- (b) the plaintiff or any other person has (whether before or after the making of the instrument referred to in paragraph (a)) recovered from a defendant, in Australia or in any other country, an amount pursuant to that foreign judgment (in this sub-section referred to as the “relevant amount”);

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(c) in a case where, before the recovery of the relevant amount, neither the plaintiff nor any other person had recovered any amount from the defendant pursuant to that foreign judgment in Australia or in any other country—the relevant amount exceeds the recoverable amount;  
5 and

(d) in a case to which paragraph (c) does not apply—

(i) the amount recovered, or the sum of the amounts recovered, (whether by the plaintiff or by any other person) from the defendant in Australia or in any other country or countries pursuant to that foreign judgment before the recovery of the relevant amount exceeds, or is equal to, the recoverable amount; or

(ii) sub-paragraph (i) does not apply but the sum of the relevant amount and the amount or amounts recovered as mentioned in that sub-paragraph exceeds the recoverable amount,

then (whether or not any liability has arisen previously under this sub-section in relation to that foreign judgment) the plaintiff is liable, or, where another person has recovered the relevant amount, the plaintiff and that other person are jointly and severally liable, to pay to the defendant an amount equal to—

(e) where paragraph (c) applies—the amount by which the relevant amount exceeds the recoverable amount;

(f) where sub-paragraph (d) (i) applies—the relevant amount; or

(g) where sub-paragraph (d) (ii) applies—the amount by which the sum mentioned in that sub-paragraph exceeds the recoverable amount.

(3) Nothing in this section renders a person liable to pay an amount to a defendant in relation to a foreign judgment given by a court (including an authority that is a foreign court) of a country other than Australia or of a part of such a country unless—

(a) the defendant is 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;

(b) the defendant is a corporation incorporated or deemed to be incorporated under a law in force in a State or Territory, other than a corporation whose principal place of business, at the time of the institution of the proceedings in which the foreign judgment was given, was in that country; or

(c) the defendant is the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory.

(4) Where a judgment in relation to which an instrument has been made under paragraph 9 (1) (d) was given against 2 or more defendants, sub-section (2) of this section has effect in relation to each of those defendants as if the references in that sub-section to an amount specified in the instrument were references to the amount ascertained by dividing the amount specified in the instrument by the number of defendants against whom the judgment was given.

(5) Where a corporation that is the plaintiff in relation to a foreign judgment is, by virtue of this section, liable to pay an amount to the person who is the defendant in relation to that foreign judgment, any corporation that is related to that first-mentioned corporation is jointly and severally liable with that first-mentioned corporation to pay that amount to that person. 5

(6) A reference in this section to a person other than the plaintiff recovering an amount pursuant to a foreign judgment is a reference to any person recovering any amount pursuant to the foreign judgment, whether as the successor to the plaintiff, as an assignee of the rights of the plaintiff under the judgment or otherwise. 10

(7) A proceeding in respect of a cause of action arising under this section shall not be commenced after the expiration of the period of 3 years commencing on the date on which the cause of action arises.

(8) For the purposes of sub-section (7), a cause of action under this section in respect of the recovery of an amount pursuant to a foreign judgment in relation to which an instrument has been made under section 9 shall, where the amount was recovered pursuant to the foreign judgment before the making of the instrument, be taken to have arisen when the instrument comes into force for the purposes of this section. 15

(9) In this section— 20

“defendant”, in relation to a foreign judgment, means a person against whom the foreign judgment was given;

“foreign judgment” means a judgment for multiple damages given by a foreign court in antitrust proceedings to which this Part applies, or any other judgment given by a foreign court in antitrust proceedings to which this Part applies; 25

“plaintiff”, in relation to a foreign judgment, means the person or persons in whose favour the foreign judgment was given.

### **Defendant may recover reasonable costs and expenses**

**11. (1)** Subject to sub-section (2), where— 30

(a) private proceedings, being antitrust proceedings to which this Part applies, are instituted in or before a court (including an authority that is a foreign court) of a country other than Australia or of a part of such a country;

(b) the private proceedings are prescribed proceedings; 35

(c) under any law that is applicable in relation to those proceedings, only the plaintiff is entitled to recover any amount in respect of his costs in the proceedings; and

(d) the Attorney-General is satisfied that—

(i) the making of an order under this section in relation to those proceedings is desirable for the protection of the national interest; or 40

- (ii) the assumption of jurisdiction or the manner of exercise of jurisdiction by that court, or the exercise of a power or the manner of exercise of a power by that court, in those proceedings was contrary to international law or inconsistent with international comity or international practice,

the Attorney-General may make an order that the plaintiff in those proceedings is liable or, if the plaintiff is a corporation, the plaintiff and any related corporation are jointly and severally liable, to pay to a defendant in the proceedings an amount equal to the reasonable costs of, and expenses incidental to, the proceedings (in this section referred to as "recoverable costs and expenses"), being costs and expenses incurred by the defendant and including, without limiting the generality of the foregoing, any costs or expenses associated with obtaining legal advice in connection with, or legal representation in or in connection with, the proceedings, and that order has effect accordingly.

(2) Nothing in this section renders a person liable to pay an amount to a defendant in proceedings instituted in or before a court of a country other than Australia or of a part of such a country unless—

- (a) the defendant is an Australian citizen, other than a person who, at the time of the institution of the proceedings, was ordinarily resident in that country;
- (b) the defendant is a corporation incorporated or deemed to be incorporated under a law in force in a State or Territory, other than a corporation whose principal place of business, at the time of the institution of the proceedings, was in that country; or
- (c) the defendant is the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory.

(3) Proceedings in respect of a cause of action arising under this section (in this sub-section referred to as "costs proceedings") in relation to proceedings instituted in or before a foreign court (in this sub-section referred to as the "foreign proceedings") may be instituted, notwithstanding that the foreign proceedings are still pending, in respect of recoverable costs and expenses that have been incurred by a defendant in the foreign proceedings at any time before he institutes the costs proceedings (other than recoverable costs and expenses in respect of which costs proceedings have previously been instituted as provided by this sub-section), and the institution of costs proceedings under this section in relation to foreign proceedings that are still pending does not prevent the defendant from instituting costs proceedings, after judgment has been given in the foreign proceedings or the foreign proceedings have been discontinued or otherwise terminated, in respect of recoverable costs and expenses (other than recoverable costs and expenses in respect of which costs proceedings have previously been instituted as provided by this sub-section).

(4) Proceedings in respect of a cause of action arising under this section in relation to proceedings instituted in or before a foreign court (in this

sub-section referred to as the “foreign proceedings”) may be instituted by a defendant in the foreign proceedings notwithstanding that judgment has been given in favour of the plaintiff in the foreign proceedings.

(5) Proceedings in respect of a cause of action arising under this section in relation to proceedings instituted in or before a foreign court (in this sub-section referred to as the “foreign proceedings”) shall not be commenced after the expiration of the period of 3 years commencing on the date on which judgment is given in the foreign proceedings, or the foreign proceedings are discontinued or otherwise terminated.

## **Enforcement of judgments under reciprocal agreement**

### **12. (1) Where—**

(a) an agreement is in force between Australia and another country that makes provision for the enforcement in that other country of judgments obtained in proceedings in respect of certain causes of action arising under section 10, or in respect of all causes of action arising under that section, and also—

(i) makes provision for the enforcement in Australia of judgments obtained in proceedings in respect of causes of action arising under any provision of the law of that country relating to the recovery of sums paid or obtained pursuant to judgments for multiple damages within the meaning of sub-section 3 (3), whether or not that last-mentioned provision corresponds to section 10; or

(ii) makes provision for the enforcement in Australia of judgments obtained in proceedings in respect of causes of action arising under any provision of the law of that country that corresponds to section 10; and

(b) a person has obtained a judgment in a proceeding instituted under a provision of the law of that other country referred to in sub-paragraph (a) (i) or (ii),

the Attorney-General may, by order in writing, declare that the judgment referred to in paragraph (b), to the extent that it has not been satisfied when the order is made, may be enforced in Australia.

(2) Where an order made under sub-section (1) in relation to a judgment is in force, the judgment creditor may apply to the Court, at any time within 3 years after the date of the making of the order, to have the judgment registered in the Court.

(3) Subject to sub-section (4) and to the regulations, the Court shall, on an application under sub-section (2) for the registration of a judgment, order the judgment to be registered.

(4) A judgment shall not be registered under this section if, at the date of the application for registration of the judgment, the judgment has been wholly satisfied.

(5) If, at the date of the application for registration of a judgment under this section, the judgment has been partly satisfied, the judgment shall not be registered in respect of the whole amount payable under the judgment but shall be registered only in respect of the balance remaining payable at that date.

5 (6) Where a judgment is registered under this section, in addition to the amount payable under the judgment, the judgment shall be registered for the reasonable costs of and incidental to registration, including costs of obtaining a certified copy of the judgment from the court in which it was obtained.

10 (7) Subject to sub-section (8) and any order of the Court made for the purposes of sub-section (11)—

(a) a judgment registered under this section is, for the purposes of execution, of the same force and effect;

(b) proceedings may be taken on such a judgment; and

15 (c) the sum for which such a judgment is registered carries interest, as if the judgment were a final judgment originally given in the Court and entered on the date of registration.

20 (8) Execution shall not issue on a judgment registered under this section so long as, under this section and any Rules of Court, it is competent for any person to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.

25 (9) On an application in that behalf duly made to the Court by a person against whom a judgment registered under this section may be enforced, the registration of the judgment shall be set aside if the Court is satisfied that the judgment—

(a) is not a judgment in respect of which an order made under sub-section (1) is in force;

(b) was registered in contravention of this section;

30 (c) has been reversed on appeal or otherwise set aside in the country in which the judgment was obtained; or

(d) has, since registration, been wholly satisfied in Australia or in any other country.

35 (10) If, on an application under sub-section (9) in relation to a judgment, the judgment is found to have been partly satisfied in Australia or any other country, the amount for which it is registered in the Court shall be reduced by the amount by which it has been partially satisfied.

40 (11) If, on an application under sub-section (9), the Court is satisfied either that an appeal is pending, or that a person is entitled and intends to appeal, against the judgment in the country in which it was obtained, the Court, if it thinks fit, may, on such terms as it thinks just, including terms relating to the suspension of the execution of the judgment, adjourn the application until after the expiration of such period as appears to the Court to be reasonably sufficient

to enable the applicant to take the necessary steps to have the appeal disposed of by the relevant tribunal.

(12) Where an application under sub-section (9) has been adjourned under sub-section (11), the Court shall, on the expiration of the period of adjournment, deal with the application. 5

(13) For the purposes of this section, the amount payable under a judgment in a proceeding instituted under a provision of the law of a country other than Australia shall be taken to include any interest that by the law of that country becomes due on the judgment up to the time of the registration of the judgment under this section. 10

(14) In this section, "judgment creditor", in relation to a judgment, means the person or persons in whose favour the judgment was given and includes the person or persons in whom the rights under the judgment have become vested by succession, assignment or otherwise.

**PART III—ACTIONS AND DECISIONS OF FOREIGN GOVERNMENTS AFFECTING AUSTRALIA** 15

**Attorney-General may make orders relating to actions or decisions**

13. (1) Where—

(a) under a law of a country other than Australia, being a law that regulates or controls the trade or commerce of that country with another country or other countries, or trade or commerce among other countries, action has been or is proposed to be taken, or a decision has been or is proposed to be made, by or on behalf of the government of that first-mentioned country or by or on behalf of an agency or instrumentality, whether corporate or unincorporated, of that government; 20 25

(b) the action or decision imposes, or would impose, on—

(i) a natural person who is an Australian citizen or a resident of Australia; or

(ii) a corporation that is incorporated or carries on business in Australia, 30

an obligation of any kind (including an obligation to refrain from doing any act or thing), being an obligation that could be, or must be, performed in Australia; and

(c) that action or decision, or the performance of any obligation imposed by that action or decision— 35

(i) relates to or affects, or would relate to or affect, trade or commerce with other countries or among the States;

(ii) relates to or affects, or would relate to or affect, the trading operations of a trading corporation formed within the limits of the Commonwealth or the business operations of a financial corporation formed within the limits of the Commonwealth; 40



- (iii) relates to or affects, or would relate to or affect, banking, other than State banking not extending beyond the limits of the State concerned;
- (iv) relates to or affects, or would relate to or affect, insurance, other than State insurance not extending beyond the limits of the State concerned; or
- (v) constitutes, or would constitute, an external affair,

the Attorney-General may, if he is satisfied that the making of an order under this sub-section in relation to the obligation is desirable for the protection of the national interest, by order in writing prohibit the performance of that obligation in Australia by the person or corporation referred to in paragraph (b).

(2) An order made under sub-section (1) may prohibit the performance of an obligation—

- (a) absolutely;
- (b) in such cases as are specified in the order; or
- (c) subject to such conditions as to consent or as to other matters as are specified in the order.

#### **PART IV—PROHIBITION ON GIVING EFFECT TO CERTAIN FOREIGN JUDGMENTS**

##### **Attorney-General may prohibit compliance with foreign judgments, &c.**

14. (1) A reference in this section to a relevant judgment is a reference to a judgment (including an injunction) that, whether expressly or by necessary implication—

- (a) requires an act or thing to be done in Australia;
- (b) prohibits the doing of an act or thing in Australia; or
- (c) requires a person to refrain from conduct in Australia, where the doing of the act or thing, the refraining from doing the act or thing or the refraining from conduct, as the case may be, would—
- (d) relate to or affect trade or commerce with other countries or among the States;
- (e) relate to or affect the trading operations of a trading corporation formed within the limits of the Commonwealth or the business operations of a financial corporation formed within the limits of the Commonwealth;
- (f) relate to or affect banking, other than State banking not extending beyond the limits of the State concerned;
- (g) relate to or affect insurance, other than State insurance not extending beyond the limits of the State concerned; or
- (h) constitute an external affair,

but does not include a reference to a judgment to the extent (if any) that the judgment expressly requires the payment of an amount of money.

(2) Where a foreign court has given a relevant judgment against a person, the Attorney-General may, if he is satisfied that the making of an order under this sub-section in relation to the relevant judgment is desirable for the protection of the national interest, by order prohibit the person from complying with the relevant judgment in Australia. 5

(3) Where a foreign court has given a relevant judgment against a person, the Attorney-General may, if he is satisfied that compliance in Australia by any other person with an order, requirement, request, direction or instruction that has been or may be made or given, by or on behalf of that first-mentioned person— 10

(a) in accordance with the relevant judgment; or

(b) for the purpose of enabling that first-mentioned person to comply with the relevant judgment,

would or might be detrimental to the national interest, by order prohibit compliance in Australia with any such order, requirement, request, direction or instruction that has been or may be made or given. 15

(4) An order under sub-section (3) may be directed to a particular person, to persons included in a class of persons or to persons generally.

(5) Where the Attorney-General makes an order under sub-section (2) prohibiting compliance with a relevant judgment or an order under sub-section (3) prohibiting compliance with an order, requirement, request, direction or instruction, the Attorney-General may provide, in the order, that the relevant judgment or the order, requirement, request, direction or instruction, as the case may be, may be complied with in specified circumstances, and the circumstances that may be specified include the circumstance that the Attorney-General has consented to that compliance. 20 25

## PART V—MISCELLANEOUS

### Parliamentary disallowance of orders and instruments under this Act

15. (1) Subject to sub-section (2), sections 48, 49, 49A and 50 of the *Acts Interpretation Act 1901* apply in relation to orders and instruments made by the Attorney-General under this Act as if references in those sections to regulations were references to an order or instrument made under this Act and references to a regulation were references to a provision of such an order or instrument. 30

(2) Notwithstanding sub-section 48 (1) of the *Acts Interpretation Act 1901* as applied by sub-section (1) of this section— 35

(a) an instrument that has been made under section 9 in relation to a judgment comes into force for the purposes of section 10; and

(b) an order that has been made under section 12 in relation to a judgment comes into force, 40

on a date fixed by the Attorney-General by notice in writing published in the *Gazette*.

5 (3) The Attorney-General shall not publish a notice under sub-section (2) in relation to an order or instrument unless he is satisfied that the order or instrument, as the case may be, is no longer liable to be disallowed by either House of the Parliament, and is no longer liable to be deemed to have been disallowed, pursuant to section 48 of the *Acts Interpretation Act 1901* as applied by sub-section (1) of this section.

### Jurisdiction of Federal Court

16. (1) Jurisdiction is conferred on the High Court with respect to matters arising under section 8.

10 (2) Jurisdiction is conferred on the Court with respect to matters arising under sections 8, 10, 11, 12 and 18, and, subject to sub-section (1), that jurisdiction is exclusive of the jurisdiction of any other court, other than the jurisdiction of the High Court under section 75 of the Constitution.

### Service of notice of orders

15 17. Where the Attorney-General makes an order under this Act that is directed to a particular person, the Attorney-General shall—

(a) except in a case to which paragraph (b) applies, cause to be sent to the person by registered post addressed to the person—

20 (i) in the case of a natural person—at his last known address in Australia; or

(ii) in the case of a body corporate—at the registered office of the body corporate, or the principal place of business of the body corporate, in Australia,

25 a copy of the notice of that order published in the *Gazette* in accordance with sub-section 48 (1) of the *Acts Interpretation Act 1901* as applied by sub-section 15 (1) of this Act; or

30 (b) if the person, being a natural person, does not have an address in Australia, or being a body corporate, does not have a registered office or principal place of business in Australia, cause such steps to be taken as are, in the opinion of the Attorney-General, reasonable and practicable, to bring to the attention of the person the notice of the order published as mentioned in paragraph (a).

### Offences

35 18. (1) A person who contravenes an order by the Attorney-General in force under section 7, 13 or 14 that is applicable to him is guilty of an offence punishable, on conviction—

(a) in the case of a person who is a natural person—by a fine not exceeding \$50,000 or imprisonment for a period not exceeding 12 months, or both; or

40 (b) in the case of a person that is a corporation—by a fine not exceeding \$250,000.

(2) An offence referred to in sub-section (1) is not an indictable offence and is punishable on summary conviction.

(3) It is a defence to a prosecution for an offence constituted by contravening an order in force under sub-section 14 (2) prohibiting compliance with a judgment if it is proved that the conduct that is alleged to have constituted a contravention of the order was not engaged in for the purpose of complying with the judgment concerned.

(4) It is a defence to a prosecution for an offence constituted by contravening an order in force under sub-section 14 (3) prohibiting compliance with an order, requirement, request, direction or instruction if it is proved that the conduct that is alleged to have constituted a contravention of the order was not engaged in for the purpose of complying with the order, requirement, request, direction or instruction concerned.

### **Regulations**

**19. (1)** The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular—

- (c) making provision for and in relation to the service and execution of process of the Court in proceedings instituted under section 10 or 11 or in proceedings for the registration of judgments under section 12, including the manner in which and the extent to which the process of the Court, or notice of any such process, may be served out of the jurisdiction of the Court;
- (d) making provision for and in relation to the proof by affidavit or otherwise of any matter relating to the registration of judgments under section 12;
- (e) making provision for and in relation to the enforcement and execution of judgments of the Court given in proceedings instituted under this Act or of judgments registered under section 12; and
- (f) making provision for and in relation to the determination of the rate of exchange applicable where, for the purposes of the application of this Act, it is necessary to express in Australian currency an amount of foreign currency.

(2) Notwithstanding sub-sections 48 (1) and (2) of the *Acts Interpretation Act 1901*, regulations prescribing an authority for the purposes of the definition of “foreign court” in sub-section 3 (1) of this Act shall take effect from a date specified in the regulations, which may be a date earlier than the date of notification of the regulations in the *Gazette*.

**Repeal, &c.**

**20. (1)** The following Acts are repealed:

*Foreign Proceedings (Prohibition of Certain Evidence) Act 1976*

*Foreign Proceedings (Prohibition of Certain Evidence) Amendment Act 1976*

*Foreign Antitrust Judgments (Restriction of Enforcement) Act 1979.*

**(2)** An order that—

(a) was made under section 5 of the *Foreign Proceedings (Prohibition of Certain Evidence) Act 1976*; and

(b) was in force immediately before the commencement of this Act, has, from the commencement of this Act, such force and effect as it would have if it had been made under section 7 of this Act and had come into force at the commencement of this Act and—

(c) the provisions of this Act (other than sections 15 and 17) apply in relation to the order; and

(d) the order may be revoked or varied, as if the order had been made under section 7 of this Act.





