

# FOREIGN PROCEEDINGS (PROHIBITION OF CERTAIN EVIDENCE) ACT 1976

## No. 121 of 1976

An Act to make provision for Preventing the Production of Certain Documents, and the giving of Certain Evidence, for the purposes of Proceedings in Foreign Courts.

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

1. This Act may be cited as the *Foreign Proceedings (Prohibition of Certain Evidence) Act 1976*.<sup>1</sup> Short title.

2. This Act shall come into operation on the day on which it receives that Royal Assent.<sup>1</sup> Commencement.

3. In this Act, unless the contrary intention appears— Definitions.

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

“foreign tribunal” means any tribunal of a country outside Australia or a part of such a country;

“tribunal” includes a court or a grand jury and also includes any authority, officer, examiner or person having authority to take or receive evidence, whether on behalf of a court or otherwise.

4. (1) The Attorney-General shall exercise his powers under this Act so as to impose restrictions only where he is satisfied that— Exercise of powers.

(a) a foreign tribunal is exercising or proposing or likely to exercise jurisdiction or powers of a kind or in a manner not consistent with international law or comity in proceedings having a relevance to matters to which the laws or executive powers of the Commonwealth relate; or

(b) the imposition of the restrictions is desirable for the purpose of protecting the national interest in relation to matters to which the laws or executive powers of the Commonwealth relate.

(2) The validity of any exercise, or refusal of the exercise, of any power of the Attorney-General under this Act is not affected by, and shall not be subject to challenge in any court by reason of, any failure to comply with the provisions of this section.

Orders.

5. (1) The Attorney-General may, by order in writing, prohibit, except with his consent in writing or as otherwise permitted by the order—

- (a) the production in, or for the purposes of, a foreign tribunal of documents that, at the time of the making of the order or at any time while the order remains in force, are in Australia;
- (b) the doing of any act in Australia, in relation to documents that, at the time of the making of the order or at any time while the order remains in force, are in Australia, with the intention that the act will result, or where there is reason to believe that the act will, or is likely to, result, in the documents, or evidence of the contents of the documents, being produced or given in, or for the purposes of, a foreign tribunal;
- (c) the giving by a person, at a time when he is an Australian citizen or is a resident of Australia, of evidence before a foreign tribunal in relation to, or to the contents of, documents that, at the time of the making of the order or at any time while the order is in force, are in Australia; or
- (d) the production of documents before a tribunal in Australia or the giving of evidence, whether in relation to the contents of documents or otherwise, before a tribunal in Australia, for the purposes of proceedings in a foreign tribunal.

(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 tribunal, to a class of foreign tribunals or to foreign tribunals generally; and
- (c) relate to particular documents or to documents included in a class of documents.

Service of orders.

6. (1) An order under this Act—

- (a) may be published in the *Gazette*, in which case it shall be deemed to have been served on the person or persons to whom it is directed on the date of publication; or
- (b) may be served on a person to whom it is directed by serving the order, or a copy of the order, on that person personally or by sending it by post to that person at the place of residence of that person last known to the Attorney-General or at a place of business of that person, or of a company of which that person is a director or officer.

(2) An order revoking or varying an order under this Act may be served on a person to whom the second-mentioned order applies in a manner specified in sub-section (1) and takes effect, in relation to such a person, upon being so served.

7. (1) A person shall not contravene an order under this Act that is applicable to him and has been served on him. Offences.

Penalty: In the case of an individual, a fine of \$5,000 or imprisonment for 6 months or in the case of a company a fine of \$10,000.

(2) A provision of the *Judiciary Act* 1903 by which a court of a State is invested with jurisdiction with respect to offences against the laws of the Commonwealth has effect, in relation to offences against this Act committed outside Australia, as if that jurisdiction were so invested without limitation as to locality.

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#### NOTE

1. Act No. 121, 1976; assented to 19 November 1976.