

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 1978

Act No. 8 of 1978

NB – Reference should be made to the *Foreign Judgments Act 1991* (Cmlth.) and the Regulations thereunder having application to Norfolk Island.

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FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 1978)
Act No. 8 of 1978

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Act under the *Norfolk Island Act 1957*.

Dated 7 July 1978.

Zelman Cowen
Governor-General

By His Excellency's Command
R. Ellicott
Minister of State for Home Affairs

Relating to the enforcement of foreign judgments in the Territory, and for other purposes

[Made 7 July 1978]

PART 1 - PRELIMINARY

Short title

1. This Act may be cited as the *Foreign Judgments (Reciprocal Enforcement) Act 1978*.

Commencement

2. (1) The provisions of this Act, other than section 3, shall come into operation on a date to be fixed by the Administrator by notice published in the Norfolk Island Government Gazette.

(2) Section 3 shall come into operation on a date to be fixed by the Administrator by notice published in the Norfolk Island Government Gazette, being a date not earlier than the date fixed under subsection (1).

Repeal

3. The *Reciprocal Enforcement of Judgments Act 1925* and the *Reciprocal Enforcement of Judgments Act (No. 2) 1925* are repealed.

Interpretation

4. In this Act, unless the contrary intention appears —

“appeal” includes a proceeding by way of discharging or setting aside a judgment, an application for a new trial or a stay of execution;

“country” includes a part of the Queen's dominions (other than a State or Territory”;

- “country of the original court” means the country in which the original court is situated;
- “judgment” means a judgment or order given or made by a court in civil proceedings, or a judgment or order given or made by a court in criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;
- “judgment creditor” means the person in whose favour the judgment was given and includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise;
- “judgment debtor” means the person against whom the judgment was given, and includes a person against whom the judgment is enforceable under the law of the original court;
- “judgments given in the Supreme Court” includes judgments given in the High Court, or in the Federal Court of Australia, on appeals against judgments given in the Supreme Court;
- “original Court”, in relation to a judgment, means the court by which the judgment was given;
- “prescribed” means prescribed by Rules of Court;
- “Registrar” has the same meaning as in the *Supreme Court Act 1960*;
- “registration” means registration under Part 2, and “register” and “registered” have corresponding meanings.

(2) For the purposes of this Act, the expression “action *in personam*” shall not be deemed to include a matrimonial cause or proceedings in connection with matrimonial matters, the administration of the estates of deceased persons, bankruptcy or insolvency, the winding up of companies, lunacy or the guardianship of infants.

(3) In this Act, a reference to the Queen’s dominions shall be deemed to include a reference to a territory which is under Her Majesty’s protection and to a territory administered by the government of a part of the Queen’s dominions under the trusteeship system of the United Nations.

(4) In this Act, a reference to “Rules of Court” includes a reference to rules of court made under the *Supreme Court Act 1960* and to the Rules of Court applied by section 14 of this Act.

PART 2 – RECIPROCAL ENFORCEMENT OF JUDGMENTS

Application of Part 2

5. (1) This Part extends in relation to the United Kingdom.

(2) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any country, substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court, he may be Proclamation declare —

- (a) that this Part extends in relation to that country; and
- (b) that such courts as are specified in the Proclamation shall, for the purposes of this Part, be deemed to be superior courts of that country.

(3) A judgment of a superior court of a country in relation to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, is a judgment to which this Part applies —

- (a) if it is final and conclusive as between the parties to the proceedings;
- (b) if there is payable under the judgment a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty;
- (c) in the case of a judgment given in a country other than the United Kingdom, if it is given after the coming into operation of the Proclamation declaring that this Part extends in relation to that country; and
- (d) in the case of a judgment given in the United Kingdom, whether it was given before, or is given after, the commencement of this Act.

(4) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(5) A Proclamation under this section may make provision with respect to the manner in which it may be proved —

- (a) that a judgment of the courts of the country specified in the Proclamation could be enforced by execution in that country; or
- (b) that interest is payable under such a judgment, and the rates of the interest.

Application for, and effect of, registration of foreign judgment

6. (1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the Supreme Court at any time within 6 years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the Supreme Court.

(2) Subject to the provisions of this Act and to proof of the prescribed matters, the Supreme Court shall, on an application under this section, order the judgment to be registered.

- (3) A judgment shall not be registered if at the date of the application —
 - (a) it has been wholly satisfied; or
 - (b) it could not be enforced by execution in the country of the original court.

(4) Subject to the provisions of this Act with respect to the setting aside of registration —

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

- (b) proceedings may be taken on a registered judgment;
- (c) the sum for which a judgment is registered carries interest; and
- (d) the registering court has the same control over the execution of a registered judgment,

as if the judgment had been a judgment originally given in the Supreme Court and entered on the date of registration.

(5) Execution shall not issue on a registered judgment so long as, under this Part and the Rules of Court, it is competent for any party 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.

(6) Where the sum payable under a judgment which is to be registered is expressed in a currency other than Australian currency, the judgment shall be registered as if it were a judgment for such sum in Australian currency as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

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

(8) If, on an application for the registration of a judgment, it appears to the Supreme Court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of those provisions but not in respect of any other provisions contained in it.

(9) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

Rules of Court for the purposes of Part 2

7. The provisions of this Act are subject to any Rules of Court (not inconsistent with a Proclamation under this Act) —

- (a) making provision with respect to the giving of security for costs by a person applying for the registration of a judgment;
- (b) prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
- (c) providing for the service on the judgment debtor of notice of the registration of a judgment;
- (d) making provision with respect to the fixing of the period within which an application may be made to have the registration of a judgment set aside and with respect to the extension of the period so fixed; and
- (e) relating to the method of determining a question arising under this Act as to —

- (i) whether a judgment given in a country in relation to which this Part extends can be enforced by execution in the country of the original court; or
- (ii) what interest is payable under a judgment under the law of the original court.

Cases in which registered judgments shall be set aside

8. (1) On an application in that behalf duly made to the Supreme Court by a party against whom a registered judgment may be enforced, the registration of the judgment —

- (a) shall be set aside if the Court is satisfied —
 - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the provisions of this Act;
 - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
 - (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
 - (iv) that the judgment was obtained by fraud;
 - (v) that the judgment has been reversed on appeal or otherwise set aside in the courts of the country of the original court;
 - (vi) that the enforcement of the judgment would be contrary to public policy in Norfolk Island; or
 - (vii) that the rights under the judgment are not vested in the person by whom the application for registration was made; and
- (b) may be set aside if the Court is satisfied that the matter in dispute in the proceeding in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section, the courts of the country of the original court shall, subject to subsection (3), be deemed to have had jurisdiction —

- (a) in the case of a judgment given in an action *in personam* —
 - (i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of the court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court;
 - (ii) if the judgment debtor was plaintiff in, or counter claimed in, the proceedings in the original court;
 - (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to

the jurisdiction of that court or of the courts of the country of that court;

(iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action *in rem* of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court; and

(c) in the case of a judgment given in an action other than an action referred to in paragraph (a) or (b), if the jurisdiction of the original court is recognised by the law of Norfolk Island.

(3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction —

(a) if the subject matter of the proceedings was immovable property outside the country of the original court;

(b) except in the cases mentioned in subparagraphs (2)(a)(i), (ii) and (iii) and in paragraph (2)(c), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or

(c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Powers of Supreme Court on application to set aside registration

9. (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the Supreme Court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment, the Court, if it thinks fit, may, on such terms as it thinks just, either set aside the registration or adjourn the application to set aside the registration 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 competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration does not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable under it, the Supreme Court shall, on the application of the judgment creditor, order the judgment to be registered for the balance remaining payable at the date of the last mentioned application

Judgments which can be registered not to be enforceable otherwise

10. No proceedings for the recovery of a sum payable under a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by a court having jurisdiction in Norfolk Island.

PART 3 – MISCELLANEOUS

General effect of certain judgments

11. (1) Subject to this section, a judgment to which Part 2 applies, or would have applied if a sum of money had been payable under it, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in Norfolk Island as conclusive between the parties to it in all proceedings founded on the same cause of action and may be relied on by way of defence or counter claim in any such proceedings.

(2) This section does not apply in the case of a judgment —

- (a) where the judgment has been registered and the registration has been set aside on a ground other than —
 - (i) that a sum of money was not payable under the judgment;
 - (ii) that the judgment had been wholly or partly satisfied; or
 - (iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or
- (b) where the judgment has not been registered (whether it could have been registered or not) and it is shown that if it had been registered the registration would have been set aside on an application for that purpose on a ground other than one of the grounds specified in paragraph (a).

(3) Nothing in this section shall be taken to prevent any court having jurisdiction in Norfolk Island from recognising a judgment as conclusive of any matter of law or fact decided in the judgment if that judgment would have been so recognised before the commencement of this Act.

Power to make judgments unenforceable in Norfolk Island if no reciprocity

12. (1) If it appears to the Governor-General that the treatment in respect of recognition and enforcement accorded by the courts of a country to judgments given in the Supreme Court is substantially less favourable than that accorded by the courts of Norfolk Island to judgments of the superior courts of that country, the Governor-General may by Proclamation declare that this section applies in relation to that country.

(2) Except so far as the Governor-General by Proclamation otherwise directs, no proceedings shall be entertained in a court in Norfolk Island for the recovery of a sum alleged to be payable under a judgment given in a court of a

country declared by Proclamation to be a country in relation to which this section applies.

Issue of certificates of judgments obtained in Norfolk Island

13. (1) Except as provided in subsection (2), where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the Supreme Court against a person and the judgment creditor desires to enforce the judgment in a country in relation to which Part 2 extends, the Registrar shall, on an application made by the judgment creditor as prescribed and on payment of the prescribed fee, and if such matters with respect to the judgment as are prescribed are shown, issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the causes of action, and the rate of interest, if any, payable on the sum payable under the judgment, as are prescribed.

(2) When execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

Application of the Rules of Court of the Supreme Court of the Australian Capital Territory

14. Subject to any rules of court made under the *Supreme Court Act 1960*, the Rules of Court of the Supreme Court of the Australian Capital Territory as in force from time to time shall apply, so far as applicable and *mutatis mutandis*, in relation to matters under this Act as if those Rules were rules of court of the Supreme Court and as if there were substituted for the references in those Rules to the *Foreign Judgments (Reciprocal Enforcement) Act 1954* references to this Act.

Notified Gazette No. 33, 27 July 1978.

The provisions of this Act, **other than section 3**, came into operation on a date fixed by the Administrator by notice published in Gazette No. 33, 27 July 1989.

NB – Reference should be made to the *Foreign Judgments Act 1991 (Cmlth.)* and the Regulations thereunder having application to Norfolk Island.

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