

South Australia

## Foreign Judgments Act 1971

An Act to provide for the registration and enforcement of judgments of foreign courts; to repeal the *Administration of Justice Act 1921*; and for other purposes.

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### Legislative history

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**The Parliament of South Australia enacts as follows:**

#### **1—Short title**

This Act may be cited as the *Foreign Judgments Act 1971*.

#### **3—Repeal and transitional provision**

- (1) The following Acts are repealed:
  - the *Administration of Justice Act 1921*
  - the *Administration of Justice Act Amendment Act 1926*.
- (2) Any judgment registered under the repealed Act, the execution of which had not been completed at the commencement of this Act, may, notwithstanding the provisions of subsection (1) of this section, be executed or enforced pursuant to, and in accordance with, the provisions of the repealed Act.

#### **4—Interpretation**

- (1) In this Act, unless the contrary intention appears—
  - appeal* means any proceedings that may result in the setting aside of a judgment;
  - court of reciprocal jurisdiction* means a court declared by proclamation under this Act to be a court of reciprocal jurisdiction;

**judgment** means a judgment or order for the payment of a monetary sum or the recovery or delivery up of personal property given or made in civil proceedings by a court of any country or state (except a State or Territory of the Commonwealth) and includes a judgment or order of any such court awarding monetary compensation in criminal proceedings to any person in respect of loss or injury sustained by him;

**judgment creditor** means a person in whom the rights established by, or arising under, the judgment are vested;

**judgment debtor** means a person against whom a judgment is enforceable in accordance with the law of the country or state in which the original court is situated;

**non-recoverable tax** means tax other than recoverable tax;

**original court** in relation to a judgment means the court by which the judgment was given;

**recoverable tax** means tax payable under the laws of Papua New Guinea relating to taxes on income, but does not include—

- (a) additional or other tax payable, by way of penalty, interest or otherwise, because of a contravention or failure to comply with any of those laws or of a requirement made under any of those laws; or
- (b) tax of a class or description for the time being specified in a proclamation in force under subsection (2);

**the Court or the Supreme Court** means the Supreme Court of South Australia;

**the repealed Act** means the *Administration of Justice Act 1921* repealed by this Act.

- (2) Where the Governor is of the opinion that tax of a particular class or description, payable under the laws of Papua New Guinea, is not properly a tax on income, he may, by proclamation, declare tax of that class or description not to be recoverable tax.
- (3) The Governor may, by subsequent proclamation, vary or revoke a declaration under subsection (2).
- (4) A declaration under subsection (2) does not have effect in relation to a judgment if an application for registration of the judgment was made in accordance with this Act before the declaration came into operation.

## 5—Conditions under which a judgment is registrable

- (1) Subject to subsection (2) of this section, a judgment shall be registrable under this Act if—
  - (a) the jurisdiction of the original court in the cause of action is recognised under the rules of private international law, and the judgment is final and conclusive; or
  - (b) the circumstances in which jurisdiction was assumed by the original court justify recognition of the judgment on the basis of comity and the judgment is final and conclusive; or
  - (c) it is, in the opinion of the court, just and equitable that the judgment be enforced pursuant to the provisions of this Act.

- (2) A judgment shall not be registrable under this Act if it is a judgment for the enforcement of any penal law or for the recovery of a non-recoverable tax.

## **6—Courts of reciprocal jurisdiction**

- (1) Where the Governor is satisfied that the courts, or any of the courts, of a country or state exercise jurisdiction upon substantially the same grounds as the Supreme Court, he may by proclamation declare the courts of that country or state, or any of those courts, to be courts of reciprocal jurisdiction.
- (2) The Governor may by subsequent proclamation vary or revoke a proclamation under subsection (1) of this section.
- (3) In any proceedings under this Act, it shall be presumed in the absence of evidence to the contrary, that a judgment (not being a judgment for the enforcement of any penal law or for the recovery of a non-recoverable tax) of a court of reciprocal jurisdiction is registrable under this Act.

## **7—Registration of judgment**

- (1) An application for registration of a judgment may be made by or on behalf of the judgment creditor at any time within six years after the date of the judgment or, where there have been proceedings by way of appeal, within six years of the final determination of the appeal.
- (2) An application may, subject to this section, be made in respect of a judgment given before or after the commencement of this Act.
- (3) An application for registration of a judgment must be accompanied by an affidavit or affidavits—
  - (a) stating whether a right of appeal exists, or an appeal has been instituted, against the judgment and whether the judgment is subject to a stay of execution in the original court; and
  - (b) setting forth all other proceedings that have been taken for the execution or enforcement of the judgment and the extent to which the judgment has been satisfied; and
  - (c) containing evidence of such other matters as may be required under the rules of the Supreme Court.
- (4) Where the Court is satisfied that the judgment is registrable under this Act and that any other matters of which proof is required under the rules of the Court have been proved, the Court shall register the judgment.
- (5) Where a judgment is not in all respects a judgment registrable under this Act but portion of the judgment would, if it alone constituted the judgment of the original court, be so registrable, the Court may, if it is in the opinion of the Court, just and equitable to do so, register that portion of the judgment.
- (6) An application for registration of a judgment may be made without notice to any person but notice of the registration of the judgment must be served upon the judgment debtor in conformity with rules of the Supreme Court.

- (7) Subject to this Act, a registered judgment shall, for the purposes of execution, be of the same force and effect as a judgment of the Supreme Court recorded at the date of the registered judgment, its execution shall be subject to the control of the Court, and proceedings may be taken thereupon as if it were such a judgment.
- (8) Subject to this Act, where a judgment for the payment of any monetary sum is registered, the following amounts may be recovered upon the registered judgment—
  - (a) the amount payable under the judgment (including interest) at the date of registration; and
  - (b) interest from the date of registration on the original judgment debt (excluding interest) or so much thereof as remains unsatisfied at the date of registration calculated at the rate applicable to a judgment of the Supreme Court; and
  - (c) any costs awarded by the Supreme Court pursuant to this section.
- (9) Where an amount payable under a judgment is not expressed in the currency of the Commonwealth, that amount shall be converted on the basis of the rate of exchange prevailing at the date of the judgment into the currency of the Commonwealth.
- (10) Where the judgment of the original court is satisfied wholly or partly otherwise than by execution levied upon the registered judgment, the registered judgment shall be deemed to be wholly or proportionately satisfied, as the case may require, but this subsection does not affect the recovery of costs awarded in respect of registration.
- (11) Where a judgment for the payment of a monetary sum is satisfied in part by payment in a currency other than the currency of the Commonwealth, the extent to which the registered judgment has been satisfied shall, for the purposes of subsection (10) of this section, be calculated on the basis of the rate of exchange prevailing at the date of the judgment of the original court.
- (12) Unless the Court by order otherwise directs, execution upon a registered judgment shall, by virtue of this subsection, be stayed—
  - (a) until the expiration of fourteen days from the day on which the judgment debtor is served with notice of registration of the judgment, or, if an application that the registration of the judgment be set aside is made, until the application is finally determined; or
  - (b) while any order staying execution of the judgment is in force in the original court.
- (13) A judgment may be registered under this Act notwithstanding that a right of appeal exists, or an appeal has been instituted, against the judgment.
- (14) The Court may grant registration of a judgment upon such conditions as the Court thinks necessary or desirable to protect the interests of the judgment debtor in the event of a successful appeal against the judgment, or for any other purpose.

## **8—Setting aside registration**

- (1) Where a judgment has been registered under this Act, an application may be made by or on behalf of the judgment debtor that the judgment be set aside on the ground—
  - (a) that the judgment is not registrable under this Act; or
  - (b) that the judgment debtor did not receive notice of the proceedings in sufficient time to enable him to defend the proceedings; or

- (c) that the judgment was obtained by fraud; or
  - (d) that the cause of action upon which the judgment was given had previously been determined by the judgment of a court having jurisdiction to adjudicate upon that cause of action; or
  - (e) that the enforcement of the judgment would be contrary to public policy in this State; or
  - (f) that the rights under the judgment are not vested in the person by or on behalf of whom the application for registration was made.
- (2) An application may be made under paragraph (b) of subsection (1) of this section notwithstanding that process may have been duly served upon the judgment debtor in conformity with the law of the country or state in which the original court is situated.
- (3) Where the Court is satisfied that any of the grounds set out in subsection (1) of this section have been established, it shall set aside the registration of the judgment.

### **9—Copy of judgment and certificate to be supplied**

- (1) Where a judgment is given by the Supreme Court, the Court shall, upon application by the judgment creditor and payment of the fee prescribed by rules of Court issue a certified copy of the judgment together with a certificate containing such particulars in relation to the judgment as may be prescribed.
- (2) Where execution of a judgment has been stayed, a certificate issued under subsection (1) of this section shall contain a statement of that fact.

### **10—Rules of Court**

- (1) Rules of the Supreme Court may be made by any three or more Judges of the Supreme Court prescribing any matters necessary or expedient for the purposes of this Act and without limiting the generality of the foregoing those rules may—
- (a) invest the Court with discretion to require any person applying for registration of a judgment to give security for costs; and
  - (b) prescribe any matters to be proved upon an application for registration of a judgment and regulate the manner in which those matters are to be proved; and
  - (c) regulate the manner in which a judgment debtor is to be served with notice of the registration of a judgment; and
  - (d) fix a period within which an application to set aside registration of a judgment may be made and provide for the extension of that period by order of the Court; and
  - (e) prescribe the manner in which any questions arising under this Act are to be determined; and
  - (f) prescribe any fee for the purposes of this Act.
- (2) All rules made in pursuance of this section—
- (a) shall be published in the Gazette; and

- (b) shall be laid before both Houses of Parliament within fourteen days after that publication if Parliament is then in session, and if not, within fourteen days after the commencement of the next session of Parliament; and
  - (c) shall, subject to disallowance in accordance with this section, have, as from the date of publication in the Gazette, or from any later date specified in the rules, the force of law, and be judicially noticed.
- (3) If either House of Parliament within fourteen sitting days (whether or not those sitting days occur in the same Session of Parliament as that in which the rules were laid before that House) after the rules are laid before it passes a resolution disallowing all or any of those rules, the rules disallowed shall cease to have any effect, but that disallowance shall not affect the validity, or cure the invalidity of anything done in the meantime.

## Legislative history

### Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1971	72	<i>Foreign Judgments Act 1971</i>	11.11.1971	23.12.1971 ( <i>Gazette 23.12.1971 p2629</i> )
1980	66	<i>Foreign Judgments Act Amendment Act 1980</i>	13.11.1980	1.7.1982 ( <i>Gazette 24.6.1982 p2032</i> )
<b>2006</b>	<b>17</b>	<b><i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i></b>	<b>6.7.2006</b>	<b>Pt 36 (s 129)—4.9.2006 (<i>Gazette 17.8.2006 p2831</i>)</b>

### Provisions amended since 3 February 1976

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
<i>s 2</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>4.9.2006</i>
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 66/1980 s 3(c)	1.7.1982
non-recoverable tax	inserted by 66/1980 s 3(a)	1.7.1982
recoverable tax	inserted by 66/1980 s 3(b)	1.7.1982
s 4(2)—(4)	inserted by 66/1980 s 3(c)	1.7.1982
s 5		
s 5(2)	amended by 66/1980 s 4	1.7.1982
s 6		
s 6(3)	amended by 66/1980 s 5	1.7.1982
s 7		
<b>s 7(6)</b>	<b>amended by 17/2006 s 129</b>	<b>4.9.2006</b>

### Historical versions

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