

Foreign Judgments Act 1973 No 39

[1973-39]



New South Wales

Status Information

Currency of version

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Previously named**
Foreign Judgments (Reciprocal Enforcement) Act 1973
- **Repeal**
The Act was repealed by Sch 4 to the [Civil Procedure Act 2005 No 28](#) with effect from 15.8.2005.

Authorisation

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Foreign Judgments Act 1973 No 39



New South Wales

An Act to provide for the enforcement in the State of judgments given in certain countries which accord reciprocal treatment to judgments given in the State; to facilitate the enforcement in other countries of judgments given in the State; to restrict the enforcement in the State of certain judgments given in other countries; to amend the [Administration of Justice Act 1924](#); and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act

This Act may be cited as the [Foreign Judgments Act 1973](#).

2 Commencement

This Act shall commence on such day as may be appointed by the Governor in respect thereof and as may be notified by proclamation published in the Gazette.

3 (Repealed)

4 Definitions

(1) In this Act, except in so far as the context or subject-matter otherwise indicates or requires:

appeal includes any proceedings by way of discharging or setting aside a judgment, and an application for a new trial or a stay of execution.

Commonwealth country means a country that is a member of the British Commonwealth of Nations, and includes every territory for whose international relations the Government of that country is responsible and a part of any such country or territory.

country includes part of a country.

country of the original court means the country in which the original court is situated.

foreign country means a country which is not a Commonwealth country.

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 person, whether before or after the commencement of this Act and includes an award in proceedings on an arbitration other than a foreign award enforceable by virtue of Part 7 of the *Commercial Arbitration Act 1984* if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

judgment creditor means the person in whose favour a judgment is given, and includes a person in whom the rights under the judgment become vested by succession or assignment or otherwise.

judgment debtor means the person against whom a judgment is given, and includes a person against whom the judgment is enforceable under the law of the original court.

judgments given in the Supreme Court include judgments given on appeals against judgments given in the Supreme Court, and judgments that have become enforceable as judgments of the Supreme Court though not given therein.

non-recoverable tax means tax other than recoverable tax.

order means order published in the Gazette.

original court, in relation to a judgment, means the court by which the judgment was given.

prescribed means prescribed by rules of court.

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 of 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 an order in force under subsection (3).

registration means registration under Part 2.

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

- (3) Where the Governor is of the opinion that any tax payable under the laws of Papua New Guinea is not properly a tax on income, the Governor may, for the purpose of paragraph (b) of the definition of **recoverable tax** in subsection (1), by order declare any class or description of tax specified in the order not to be recoverable tax.

Part 2 Reciprocal enforcement of judgments

5 Application of this Part

- (1) This Part applies to any Commonwealth country or foreign country to which it is directed that this Part shall apply under subsection (3) (a).
- (2) A reference in this Part to a superior court, in relation to a country, is a reference to a court declared to be a superior court of that country under subsection (3) (b).
- (3) Where the Governor is satisfied that, if the benefits conferred by this Part are applied to judgments given in superior courts of a Commonwealth country, not including the Commonwealth of Australia or any part thereof, or given in the superior courts of a foreign country, substantial reciprocity of treatment will be assured as respects the enforcement within that Commonwealth country or that foreign country, as the case may be, of judgments given in the Supreme Court, the Governor may by order:
- (a) direct that this Part shall apply to that country, and
 - (b) declare that such courts as are specified in the order shall, for the purposes of this Part, be superior courts of that country.

Editorial note—

For a list of orders made pursuant to sec 5 (3), see the Historical notes at the end of this Act.

- (4) A judgment of a superior court of a country to which this Part applies, including any judgment of that superior court for the payment of the costs of an appeal to that superior court from a court which is not a superior court, but not including any other judgment of such a court given on appeal from a court that is not a superior court, is a judgment to which this Part applies, if:
- (a) it is final and conclusive as between the parties thereto,
 - (b) there is payable thereunder:
 - (i) a sum of money, not being (except as referred to in subparagraph (ii)) a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, or
 - (ii) a sum of money payable in respect of a recoverable tax, and
 - (c) subject to subsection (5), it is given after the coming into operation of the order directing that this Part shall apply to that country.

- (5) Nothing in subsection (4) (c) applies with respect to judgments given in any Commonwealth country to which Part 2 of the *Administration of Justice Act 1924* applied immediately before the coming into operation of the order directing that this Part shall apply to that country.
- (6) 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.
- (7) A copy of the Gazette purporting to contain a copy of an order under this section is, in the absence of evidence that it has been revoked, altered or varied, conclusive evidence of the validity, contents, making and publication of the order and of the fulfilment of all conditions precedent to the valid making thereof.

6 Application for, and effect of, registration of judgment

- (1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the Supreme Court at any time:
 - (a) in the case where the judgment was given in a Commonwealth country before the coming into operation of the order directing that this Part shall apply to that country and that country was a country to which Part 2 of the *Administration of Justice Act 1924* applied immediately before the coming into operation of that order—within twelve months after the date of the judgment or such longer period as may be allowed by the Supreme Court, or
 - (b) in any other case—within six 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 the proceedings,to have the judgment registered in the Supreme Court, and on such an application the Supreme Court shall, subject to proof of the prescribed matters and to the provisions of this Act, order the judgment to be registered.
- (2) 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.
- (3) 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 shall carry interest, and

(d) the Supreme Court shall have 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.

- (4) Execution shall not issue on a registered judgment:
- (a) if under this Part and the rules of court made for the purposes of this Act, it is competent for any party to make 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, or
 - (b) if there is in force in the original court any order staying execution of the judgment in the original court.
- (5) Where the sum payable under a judgment that is to be registered is expressed in a currency other than the currency of the Commonwealth of Australia, the judgment shall be registered as if it were a judgment for such sum in the currency of the Commonwealth of Australia 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.
- (6) If at the date of the application for registration 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.
- (6A) Without affecting subsection (7), where, on an application for the registration of a judgment, it appears to the Supreme Court that:
- (a) a judgment is in respect of a sum of money payable in respect of both recoverable tax and non-recoverable tax, and
 - (b) the judgment could have been registered if it had been in respect of recoverable tax only,
- the judgment may be registered in respect of the sum less so much as relates to non-recoverable tax, but may not be registered in respect of so much of the sum as relates to non-recoverable tax.
- (7) 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 the registrable provisions but not in respect of any other provisions contained therein.

- (8) In addition to the sum of money payable under the judgment of the original court, including any interest that 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.

7 Rules of court

- (1) Rules of court may be made under the *Supreme Court Act 1970* for the following purposes:
- (a) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments,
 - (b) for 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) for providing for the service on the judgment debtor of notice of the registration of a judgment,
 - (d) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed,
 - (e) for prescribing the method by which any question arising under this Act whether a judgment given in any country to which this Part applies can be enforced by execution in the country of the original court, or what interest is payable under any judgment under the law of the original court, is to be determined,
 - (f) for prescribing all matters which by this Part are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Part.
- (2) Rules made for the purposes of this Part shall be expressed to have, and shall have, effect subject to any such provisions contained in orders made under section 5 as are declared by those orders to be necessary for giving effect to any agreement made by or on behalf of the Government of the State in relation to matters with respect to which there is power to make rules for the purposes of this Part.

8 Cases in which registered judgments must, or may, be set aside

- (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment:
- (a) shall be set aside if the Supreme 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 did not (notwithstanding that process may have been duly served on the judgment debtor in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear,
 - (iv) that the judgment was obtained by fraud,
 - (v) that the enforcement of the judgment would be contrary to public policy in the State, or
 - (vi) 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 Supreme Court is satisfied that the matter in dispute in the proceedings in the original court has, before the date of 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 the provisions of 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 voluntarily submitted to the jurisdiction of the original court,
 - (ii) if the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court,
 - (iii) if the judgment debtor 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 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 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 situated in the country of that court, and

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

(3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall be deemed not 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 subsection (2) (a) (i), (ii) and (iii) and in subsection (2) (c), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute to which the proceedings related was to be settled otherwise than by proceedings in the courts of the country of that court, or

(c) if the judgment debtor 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.

(4) For the purposes of subsection (2) (a), a person does not voluntarily submit to the jurisdiction of a court by:

(a) entering an appearance in proceedings in the court, or

(b) participating in proceedings in the court only to such extent as is reasonably necessary,

for the purpose only of one or more of the following:

(c) protecting, or obtaining the release of:

(i) property seized, or threatened with seizure, in the proceedings, or

(ii) property subject to an order restraining its disposition or disposal or in relation to which such an order is sought,

(d) contesting the jurisdiction of the court,

(e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

9 Power of Supreme Court on application to set aside registration

(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 the applicant is entitled and intends to appeal, against the judgment, the Supreme Court, if it thinks fit, may, on such terms as it may think just, set aside the registration or adjourn the application

to set aside the registration until after the expiration of such period as appears to the Supreme Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by a 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 thereunder, the Supreme Court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

10 Judgments which can be registered under this Act not to be enforceable otherwise

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 any court in the State.

Part 3 Miscellaneous

11 General effect of judgments given by superior courts outside Australia

- (1) Subject to this section, a judgment to which Part 2 applies or would have applied if a sum of money had been payable thereunder, 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 the State as conclusive between the parties thereto in all proceedings founded on the same cause of action, and may be relied on by way of defence or counterclaim 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 thereof has been set aside on some 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 for registration of the judgment, the judgment could not be enforced by execution in the country of the original court, or
 - (b) where the judgment has not been registered and it is shown (whether it could

have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a) (i), (ii) and (iii).

- (3) Nothing in this section prevents any court in the State recognising a judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the commencement of this Act.

12 Power to make judgments unenforceable in the State if no reciprocity

- (1) If it appears to the Governor that the treatment in respect of recognition and enforcement accorded by the courts of any country to judgments given in the Supreme Court is substantially less favourable than that accorded in the Supreme Court to judgments of the superior courts of that country, the Governor may by order apply this section to that country.
- (2) Except in so far as the Governor may by order under this section otherwise direct, no proceedings shall be entertained in any court in the State for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

13 Issue of certificates of judgments obtained in the State

- (1) Where a judgment under which a sum of money is payable has been entered in the Supreme Court against any person and the judgment creditor is desirous of enforcing the judgment in a country to which Part 2 applies, the Supreme Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed for the purposes of this section, 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 may be prescribed.
- (2) Where 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.
- (3) Rules of court may be made under the *Supreme Court Act 1970*, prescribing all matters which by this section are required or permitted to be prescribed.

14 Generality of rule-making power not affected

Nothing in section 7 or 13 limits the rule-making powers conferred by the *Supreme Court Act 1970*.

15 Transitional: judgments registered under Part 2 of the *Administration of Justice Act 1924*

- (1) In this section:

the new Part 2 means Part 2 of this Act.

the old Part 2 means Part 2 of the *Administration of Justice Act 1924*.

- (2) Where an order is made directing that the new Part 2 shall apply to a Commonwealth country to which the old Part 2 applied immediately before the coming into operation of the order:
- (a) any judgment given in that country and registered under the old Part 2 before the coming into operation of the order shall be deemed to have been registered under the new Part 2,
 - (b) anything done in relation to that judgment under the old Part 2 or any rules of court applicable in respect of the old Part 2 shall be deemed to have been done under the new Part 2 or the corresponding rules of court applicable in respect of the new Part 2, and
 - (c) the new Part 2 shall have operation and effect in relation to that judgment accordingly.

16 Savings re orders

- (1) In this section, **relevant order** means:
- (a) an order revoking, altering or amending an order under section 5 (3), or
 - (b) an order under section 4 (3).
- (2) Subject to subsection (3), this Act continues to apply to and in respect of judgments given before the coming into operation of a relevant order as if the order had not been made.
- (3) Where, by reason of the coming into operation of a relevant order:
- (a) Part 2 ceases to apply to a country,
 - (b) a court of a country ceases to be a superior court for the purposes of Part 2, or
 - (c) a recoverable tax becomes a non-recoverable tax,
- the Governor may, in the relevant order or a subsequent order, direct that this Act shall not apply to or in respect of:
- (d) all judgments (other than a judgment referred to in subsection (4)) given before the coming into operation of the relevant order, being:
 - (i) judgments given in the courts of the country referred to in paragraph (a),
 - (ii) judgments given in the courts referred to in paragraph (b), or

(iii) judgments so far as sums of money are payable in respect of a tax referred to in paragraph (c), or

(e) such class or description of the judgments referred to in paragraph (d) as is specified in the order,

and the direction shall, subject to subsection (4), have effect according to its terms.

(4) A direction under subsection (3) does not have effect in relation to a judgment if an application for the registration of the judgment was made in accordance with this Act before the order in which the direction was given came into operation.

17 Amendment of Act No 42, 1924

Editorial note—

The amending provision relating to the [Administration of Justice Act 1924](#) is not reprinted: [Reprints Act 1972](#), section 6.

Part 4 Enforcement of judgments to which Part 2 does not apply

18 Certain judgments not enforceable at common law etc

(1) For the purposes of proceedings brought in the State for the recovery of a sum payable under a judgment given in an action in personam by a court of a Commonwealth country (other than Australia) or a foreign country, not being a judgment to which Part 2 applies, the court shall be deemed not to have had jurisdiction to give the judgment by reason only that the judgment debtor:

(a) entered an appearance in proceedings in the court, or

(b) participated in proceedings in the court only to such extent as was reasonably necessary,

for the purpose only of one or more of the following:

(c) protecting, or obtaining the release of:

(i) property seized, or threatened with seizure, in the proceedings, or

(ii) property subject to an order restraining its disposition or disposal or in relation to which such an order was sought,

(d) contesting the jurisdiction of the court,

(e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

(2) For the purposes of section 5 (2) (b) of the [Administration of Justice Act 1924](#), a person does not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of a court by:

(a) entering an appearance in proceedings in the court, or

(b) participating in proceedings in the court only to such extent as is reasonably necessary,

for the purpose only of doing one or more things of the kind mentioned in subsection (1) (c), (d) or (e).