



# Foreign States Immunities Act 1985

No. 196, 1985

## Compilation No. 5

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## About this compilation

### This compilation

This is a compilation of the *Foreign States Immunities Act 1985* that shows the text of the law as amended and in force on 18 February 2022 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act relating to foreign State immunity**

## **Part I—Preliminary**

### **1 Short title**

This Act may be cited as the *Foreign States Immunities Act 1985*.

### **2 Commencement**

The provisions of this Act shall come into operation on such day as is, or such respective days as are, fixed by Proclamation.

### **3 Interpretation**

(1) In this Act, unless the contrary intention appears:

***agreement*** means an agreement in writing and includes:

- (a) a treaty or other international agreement in writing; and
- (b) a contract or other agreement in writing.

***Australia*** when used in a geographical sense, includes each of the external Territories.

***bill of exchange*** includes a promissory note.

***court*** includes a tribunal or other body (by whatever name called) that has functions, or exercises powers, that are judicial functions or powers or are of a kind similar to judicial functions or powers.

***Department of Foreign Affairs*** means the Department administered by the Minister who administers the *Diplomatic Privileges and Immunities Act 1967*.

***diplomatic property*** means property that, at the relevant time, is in use predominantly for the purpose of establishing or maintaining a diplomatic or consular mission, or a visiting mission, of a foreign State to Australia.

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**foreign award** means the following:

- (a) an arbitral award within the meaning of Part II of the *International Arbitration Act 1974*;
- (b) an award within the meaning of Part IV of that Act.

**foreign judgment** means a judgment to which Part 2 of the *Foreign Judgments Act 1991* applies.

**foreign State** means a country the territory of which is outside Australia, being a country that is:

- (a) an independent sovereign state; or
- (b) a separate territory (whether or not it is self-governing) that is not part of an independent sovereign state.

**initiating process** means an instrument (including a statement of claim, application, summons, writ, order or third party notice):

- (a) by which a proceeding is commenced; or
- (b) by reference to which a person becomes a party to a proceeding.

Note: Examples of an initiating process are:

- (a) a summons for the registration of a foreign judgment; and
- (b) an application for the recognition or enforcement of a foreign award.

**law of Australia** means:

- (a) a law in force throughout Australia; or
- (b) a law of or in force in a part of Australia;

and includes the principles and rules of the common law and of equity as so in force.

**military property** means:

- (a) a ship of war, a Government yacht, a patrol vessel, a police or customs vessel, a hospital ship, a defence force supply ship or an auxiliary vessel, being a ship or vessel that, at the relevant time, is operated by the foreign State concerned (whether pursuant to requisition or under a charter by demise or otherwise); or
- (b) property (not being a ship or vessel) that is:

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- (i) being used in connection with a military activity; or
- (ii) under the control of a military authority or defence agency for military or defence purposes.

***Minister for Foreign Affairs*** means the Minister who administers the *Diplomatic Privileges and Immunities Act 1967*.

***proceeding*** means a proceeding in a court but does not include a prosecution for an offence or an appeal or other proceeding in the nature of an appeal in relation to such a prosecution.

***property*** includes a chose in action.

***separate entity***, in relation to a foreign State, means a natural person (other than an Australian citizen), or a body corporate or corporation sole (other than a body corporate or corporation sole that has been established by or under a law of Australia), who or that:

- (a) is an agency or instrumentality of the foreign State; and
- (b) is not a department or organ of the executive government of the foreign State.

- (2) For the purposes of the definition of ***separate entity*** in subsection (1), a natural person who is, or a body corporate or a corporation sole that is, an agency of more than one foreign State shall be taken to be a separate entity of each of the foreign States.
- (3) Unless the contrary intention appears, a reference in this Act to a foreign State includes a reference to:
  - (a) a province, state, self-governing territory or other political subdivision (by whatever name known) of a foreign State;
  - (b) the head of a foreign State, or of a political subdivision of a foreign State, in his or her public capacity; and
  - (c) the executive government or part of the executive government of a foreign State or of a political subdivision of a foreign State, including a department or organ of the executive government of a foreign State or subdivision;but does not include a reference to a separate entity of a foreign State.

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- (4) A reference in this Act to a court of Australia includes a reference to a court that has jurisdiction in or for any part of Australia.
- (5) A reference in this Act to a commercial purpose includes a reference to a trading, a business, a professional and an industrial purpose.
- (6) A reference in this Act to the entering of appearance or to the entry of judgment in default of appearance includes a reference to any like procedure.

## 4 External Territories

This Act extends to each external Territory.

## 5 Act to bind Crown

This Act binds the Crown in all its capacities.

## 6 Savings of other laws

This Act does not affect an immunity or privilege that is conferred by or under the *Consular Privileges and Immunities Act 1972*, the *Defence (Visiting Forces) Act 1963*, the *Diplomatic Privileges and Immunities Act 1967* or any other Act.

## 7 Application

- (1) Part II (other than section 10) does not apply in relation to a proceeding concerning:
  - (a) a contract or other agreement or a bill of exchange that was made or given;
  - (b) a transaction or event that occurred;
  - (c) an act done or omitted to have been done; or
  - (d) a right, liability or obligation that came into existence;before the commencement of this Act.



- (2) Section 10 does not apply in relation to a submission mentioned in that section that was made before the commencement of this Act.
- (3) Part III and section 36 do not apply in relation to a proceeding instituted before the commencement of this Act.
- (4) Part IV only applies where, by virtue of a provision of Part II, the foreign State is not immune from the jurisdiction of the courts of Australia in the proceeding concerned.

## **8 Application to courts**

In the application of this Act to a court, this Act has effect only in relation to the exercise or performance by the court of a judicial power or function or a power or function that is of a like kind.

## Part II—Immunity from jurisdiction

### 9 General immunity from jurisdiction

Except as provided by or under this Act, a foreign State is immune from the jurisdiction of the courts of Australia in a proceeding.

### 10 Submission to jurisdiction

- (1) A foreign State is not immune in a proceeding in which it has submitted to the jurisdiction in accordance with this section.
- (2) A foreign State may submit to the jurisdiction at any time, whether by agreement or otherwise, but a foreign State shall not be taken to have so submitted by reason only that it is a party to an agreement the proper law of which is the law of Australia.
- (3) A submission under subsection (2) may be subject to a specified limitation, condition or exclusion (whether in respect of remedies or otherwise).
- (4) Without limiting any other power of a court to dismiss, stay or otherwise decline to hear and determine a proceeding, the court may dismiss, stay or otherwise decline to hear and determine a proceeding if it is satisfied that, by reason of the nature of a limitation, condition or exclusion to which a submission is subject (not being a limitation, condition or exclusion in respect of remedies), it is appropriate to do so.
- (5) An agreement by a foreign State to waive its immunity under this Part has effect to waive that immunity and the waiver may not be withdrawn except in accordance with the terms of the agreement.
- (6) Subject to subsections (7), (8) and (9), a foreign State may submit to the jurisdiction in a proceeding by:
  - (a) instituting the proceeding; or
  - (b) intervening in, or taking a step as a party to, the proceeding.

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- (7) A foreign State shall not be taken to have submitted to the jurisdiction in a proceeding by reason only that:
- (a) it has made an application for costs; or
  - (b) it has intervened, or has taken a step, in the proceeding for the purpose or in the course of asserting immunity.
- (8) Where the foreign State is not a party to a proceeding, it shall not be taken to have submitted to the jurisdiction by reason only that it has intervened in the proceeding for the purpose or in the course of asserting an interest in property involved in or affected by the proceeding.
- (9) Where:
- (a) the intervention or step was taken by a person who did not know and could not reasonably have been expected to know of the immunity; and
  - (b) the immunity is asserted without unreasonable delay;
- the foreign State shall not be taken to have submitted to the jurisdiction in the proceeding by reason only of that intervention or step.
- (10) Where a foreign State has submitted to the jurisdiction in a proceeding, then, subject to the operation of subsection (3), it is not immune in relation to a claim made in the proceeding by some other party against it (whether by way of set-off, counter-claim or otherwise), being a claim that arises out of and relates to the transactions or events to which the proceeding relates.
- (11) In addition to any other person who has authority to submit, on behalf of a foreign State, to the jurisdiction:
- (a) the person for the time being performing the functions of the head of the State's diplomatic mission in Australia has that authority; and
  - (b) a person who has entered into a contract on behalf of and with the authority of the State has authority to submit in that contract, on behalf of the State, to the jurisdiction in respect of a proceeding arising out of the contract.

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### 11 Commercial transactions

- (1) A foreign State is not immune in a proceeding in so far as the proceeding concerns a commercial transaction.
- (2) Subsection (1) does not apply:
  - (a) if all the parties to the proceeding:
    - (i) are foreign States or are the Commonwealth and one or more foreign States; or
    - (ii) have otherwise agreed in writing; or
  - (b) in so far as the proceeding concerns a payment in respect of a grant, a scholarship, a pension or a payment of a like kind.
- (3) In this section, **commercial transaction** means a commercial, trading, business, professional or industrial or like transaction into which the foreign State has entered or a like activity in which the State has engaged and, without limiting the generality of the foregoing, includes:
  - (a) a contract for the supply of goods or services;
  - (b) an agreement for a loan or some other transaction for or in respect of the provision of finance; and
  - (c) a guarantee or indemnity in respect of a financial obligation; but does not include a contract of employment or a bill of exchange.

### 12 Contracts of employment

- (1) A foreign State, as employer, is not immune in a proceeding in so far as the proceeding concerns the employment of a person under a contract of employment that was made in Australia or was to be performed wholly or partly in Australia.
- (2) A reference in subsection (1) to a proceeding includes a reference to a proceeding concerning:
  - (a) a right or obligation conferred or imposed by a law of Australia on a person as employer or employee; or
  - (b) a payment the entitlement to which arises under a contract of employment.

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- (3) Where, at the time when the contract of employment was made, the person employed was:
- (a) a national of the foreign State but not a permanent resident of Australia; or
  - (b) an habitual resident of the foreign State;
- subsection (1) does not apply.
- (4) Subsection (1) does not apply where:
- (a) an inconsistent provision is included in the contract of employment; and
  - (b) a law of Australia does not avoid the operation of, or prohibit or render unlawful the inclusion of, the provision.
- (5) Subsection (1) does not apply in relation to the employment of:
- (a) a member of the diplomatic staff of a mission as defined by the Vienna Convention on Diplomatic Relations, being the Convention the English text of which is set out in the Schedule to the *Diplomatic Privileges and Immunities Act 1967*; or
  - (b) a consular officer as defined by the Vienna Convention on Consular Relations, being the Convention the English text of which is set out in the Schedule to the *Consular Privileges and Immunities Act 1972*.
- (6) Subsection (1) does not apply in relation to the employment of:
- (a) a member of the administrative and technical staff of a mission as defined by the Convention referred to in paragraph (5)(a); or
  - (b) a consular employee as defined by the Convention referred to in paragraph (5)(b);
- unless the member or employee was, at the time when the contract of employment was made, a permanent resident of Australia.
- (7) In this section, permanent resident of Australia means:
- (a) an Australian citizen; or

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- (b) a person resident in Australia whose continued presence in Australia is not subject to a limitation as to time imposed by or under a law of Australia.

**13 Personal injury and damage to property**

A foreign State is not immune in a proceeding in so far as the proceeding concerns:

- (a) the death of, or personal injury to, a person; or
  - (b) loss of or damage to tangible property;
- caused by an act or omission done or omitted to be done in Australia.

**14 Ownership, possession and use of property etc.**

- (1) A foreign State is not immune in a proceeding in so far as the proceeding concerns:
  - (a) an interest of the State in, or the possession or use by the State of, immovable property in Australia; or
  - (b) an obligation of the State that arises out of its interest in, or its possession or use of, property of that kind.
- (2) A foreign State is not immune in a proceeding in so far as the proceeding concerns an interest of the State in property that arose by way of gift made in Australia or by succession.
- (3) A foreign State is not immune in a proceeding in so far as the proceeding concerns:
  - (a) bankruptcy, insolvency or the winding up of a body corporate; or
  - (b) the administration of a trust, of the estate of a deceased person or of the estate of a person of unsound mind.

**15 Copyright, patents, trade marks etc.**

- (1) A foreign State is not immune in a proceeding in so far as the proceeding concerns:

- (a) the ownership of a copyright or the ownership, or the registration or protection in Australia, of an invention, a design or a trade mark;
  - (b) an alleged infringement by the foreign State in Australia of copyright, a patent for an invention, a registered trade mark or a registered design; or
  - (c) the use in Australia of a trade name or a business name.
- (2) Subsection (1) does not apply in relation to the importation into Australia, or the use in Australia, of property otherwise than in the course of or for the purposes of a commercial transaction as defined by subsection 11(3).

## **16 Membership of bodies corporate etc.**

- (1) A foreign State is not immune in a proceeding in so far as the proceeding concerns its membership, or a right or obligation that relates to its membership, of a body corporate, an unincorporated body or a partnership that:
  - (a) has a member that is not a foreign State or the Commonwealth; and
  - (b) is incorporated or has been established under the law of Australia or is controlled from, or has its principal place of business in, Australia;being a proceeding arising between the foreign State and the body or other members of the body or between the foreign State and one or more of the other partners.
- (2) Where a provision included in:
  - (a) the constitution or other instrument establishing or regulating the body or partnership; or
  - (b) an agreement between the parties to the proceeding;is inconsistent with subsection (1), that subsection has effect subject to that provision.

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### 17 Arbitrations

- (1) Where a foreign State is a party to an agreement to submit a dispute to arbitration, then, subject to any inconsistent provision in the agreement, the foreign State is not immune in a proceeding for the exercise of the supervisory jurisdiction of a court in respect of the arbitration, including a proceeding:
  - (a) by way of a case stated for the opinion of a court;
  - (b) to determine a question as to the validity or operation of the agreement or as to the arbitration procedure; or
  - (c) to set aside the award.
- (2) Where:
  - (a) apart from the operation of subparagraph 11(2)(a)(ii), subsection 12(4) or subsection 16(2), a foreign State would not be immune in a proceeding concerning a transaction or event; and
  - (b) the foreign State is a party to an agreement to submit to arbitration a dispute about the transaction or event;then, subject to any inconsistent provision in the agreement, the foreign State is not immune in a proceeding concerning the recognition as binding for any purpose, or for the enforcement, of an award made pursuant to the arbitration, wherever the award was made.
- (3) Subsection (1) does not apply where the only parties to the agreement are any 2 or more of the following:
  - (a) a foreign State;
  - (b) the Commonwealth;
  - (c) an organisation the members of which are only foreign States or the Commonwealth and one or more foreign States.

### 18 Actions *in rem*

- (1) A foreign State is not immune in a proceeding commenced as an action *in rem* against a ship concerning a claim in connection with



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the ship if, at the time when the cause of action arose, the ship was in use for commercial purposes.

- (2) A foreign State is not immune in a proceeding commenced as an action *in rem* against a ship concerning a claim against another ship if:
  - (a) at the time when the proceeding was instituted, the ship that is the subject of the action *in rem* was in use for commercial purposes; and
  - (b) at the time when the cause of action arose, the other ship was in use for commercial purposes.
- (3) A foreign State is not immune in a proceeding commenced as an action *in rem* against cargo that was, at the time when the cause of action arose, a commercial cargo.
- (4) The preceding provisions of this section do not apply in relation to the arrest, detention or sale of a ship or cargo.
- (5) A reference in this section to a ship in use for commercial purposes or to a commercial cargo is a reference to a ship or a cargo that is commercial property as defined by subsection 32(3).

## 19 Bills of exchange

Where:

- (a) a bill of exchange has been drawn, made, issued or indorsed by a foreign State in connection with a transaction or event; and
  - (b) the foreign State would not be immune in a proceeding in so far as the proceeding concerns the transaction or event;
- the foreign State is not immune in a proceeding in so far as the proceeding concerns the bill of exchange.

## 20 Taxes

A foreign State is not immune in a proceeding in so far as the proceeding concerns an obligation imposed on it by or under a provision of a law of Australia with respect to taxation, being a

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provision that is prescribed, or is included in a class of provisions that is prescribed, for the purposes of this section.

**21 Related proceedings**

Where, by virtue of the operation of the preceding provisions of this Part, a foreign State is not immune in a proceeding in so far as the proceeding concerns a matter, it is not immune in any other proceeding (including an appeal) that arises out of and relates to the first-mentioned proceeding in so far as that other proceeding concerns that matter.

**22 Application of Part to separate entities**

The preceding provisions of this Part (other than subparagraph 11(2)(a)(i), paragraph 16(1)(a) and subsection 17(3)) apply in relation to a separate entity of a foreign State as they apply in relation to the foreign State.

## **Part III—Service and judgments**

### **23 Service of initiating process by agreement**

Service of initiating process on a foreign State or on a separate entity of a foreign State may be effected in accordance with an agreement (wherever made and whether made before or after the commencement of this Act) to which the State or entity is a party.

### **24 Service through the diplomatic channel**

- (1) Initiating process that is to be served on a foreign State may be delivered to the Attorney-General for transmission by the Department of Foreign Affairs to the department or organ of the foreign State that is equivalent to that Department.
- (2) The initiating process shall be accompanied by:
  - (a) a request in accordance with Form 1 in the Schedule;
  - (b) a statutory declaration of the plaintiff or applicant in the proceeding stating that the rules of court or other laws (if any) in respect of service outside the jurisdiction of the court concerned have been complied with; and
  - (c) if English is not an official language of the foreign State:
    - (i) a translation of the initiating process into an official language of the foreign State; and
    - (ii) a certificate in that language, signed by the translator, setting out particulars of his or her qualifications as a translator and stating that the translation is an accurate translation of the initiating process.
- (3) Where the process and documents are delivered to the equivalent department or organ of the foreign State in the foreign State, service shall be taken to have been effected when they are so delivered.

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- (4) Where the process and documents are delivered to some other person on behalf of and with the authority of the foreign State, service shall be taken to have been effected when they are so delivered.
- (5) Subsections (1) to (4) (inclusive) do not exclude the operation of any rule of court or other law under which the leave of a court is required in relation to service of the initiating process outside the jurisdiction.
- (6) Service of initiating process under this section shall be taken to have been effected outside the jurisdiction and in the foreign State concerned, wherever the service is actually effected.
- (7) The time for entering an appearance begins to run at the expiration of 2 months after the date on which service of the initiating process was effected.
- (8) This section does not apply to service of initiating process in a proceeding commenced as an action *in rem*.

### 25 Other service ineffective

Purported service of an initiating process upon a foreign State in Australia otherwise than as allowed or provided by section 23 or 24 is ineffective.

### 26 Waiver of objection to service

Where a foreign State enters an appearance in a proceeding without making an objection in relation to the service of the initiating process, the provisions of this Act in relation to that service shall be taken to have been complied with.

### 26A Judgments and orders in ex parte proceedings

#### *Judgments*

- (1) A judgment (other than an interlocutory judgment) must not be entered against a foreign State in ex parte proceedings.

- (2) A judgment (other than an interlocutory judgment) must not be entered against a separate entity of a foreign State in ex parte proceedings unless the court is satisfied that, in the proceedings, the separate entity is not immune.

*Orders*

- (3) An order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, must not be made against a foreign State in ex parte proceedings.
- (4) An order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, must not be made against a separate entity of a foreign State in ex parte proceedings unless the court is satisfied that, in the proceedings, the separate entity is not immune.

## **27 Judgments or orders in default of appearance**

- (1) A judgment in default of appearance must not be entered against a foreign State, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance must not be made against a foreign State, unless:
- (a) it is proved that service of the initiating process was effected in accordance with this Act and that the time for appearance has expired; and
  - (b) the court is satisfied that, in the proceeding, the foreign State is not immune.
- (2) A judgment in default of appearance must not be entered against a separate entity of a foreign State, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance must not be made against a separate entity of a foreign State, unless the court is satisfied that, in the proceeding, the separate entity is not immune.

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**28 Enforcement of judgments and orders in default of appearance**

- (1) Subject to subsection (6), a judgment in default of appearance, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance, is not capable of being enforced against a foreign State until the expiration of 2 months after the date on which service of:
- (a) a copy of the judgment or order, sealed with the seal of the court or, if there is no seal, certified by an officer of the court to be a true copy of the judgment or order; and
  - (b) if English is not an official language of the foreign State:
    - (i) a translation of the judgment or order into an official language of the foreign State; and
    - (ii) a certificate in that language, signed by the translator, setting out particulars of his or her qualifications as a translator and stating that the translation is an accurate translation of the judgment or order;
- has been effected in accordance with this section on the department or organ of the foreign State that is equivalent to the Department of Foreign Affairs.
- (2) Where a document is to be served as mentioned in subsection (1), the person in whose favour the judgment was given, or the order made, must give the document, together with a request in accordance with Form 2 in the Schedule, to the Attorney-General for transmission by the Department of Foreign Affairs to the department or organ of the foreign State that is equivalent to that Department.
- (3) Where the document is delivered to the equivalent department or organ of the foreign State in the foreign State, service shall be taken to have been effected when it is so delivered.
- (4) Where the document is delivered to some other person on behalf of and with the authority of the foreign State, service shall be taken to have been effected when it is so delivered.
- (5) The time, if any, for applying to have the judgment or order set aside shall be at least 2 months after the date on which the

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document is delivered to or received on behalf of that department or organ of the foreign State.

- (6) Where a judgment in default of appearance has been given, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance has been made, by a court against a foreign State, the court may, on the application of the person in whose favour the judgment was given or order was made, permit, on such terms and conditions as it thinks fit, the judgment or order to be enforced in accordance with this Act against the foreign State before the expiration of the period mentioned in subsection (1).

**29 Power to grant relief**

- (1) Subject to subsection (2), a court may make any order (including an order for interim or final relief) against a foreign State that it may otherwise lawfully make unless the order would be inconsistent with an immunity under this Act.
- (2) A court may not make an order that a foreign State employ a person or re-instate a person in employment.

## Part IV—Enforcement

### 30 Immunity from execution

Except as provided by this Part, the property of a foreign State is not subject to any process or order (whether interim or final) of the courts of Australia for the satisfaction or enforcement of a judgment, order or arbitration award or, in Admiralty proceedings, for the arrest, detention or sale of the property.

### 31 Waiver of immunity from execution

- (1) A foreign State may at any time by agreement waive the application of section 30 in relation to property, but it shall not be taken to have done so by reason only that it has submitted to the jurisdiction.
- (2) The waiver may be subject to specified limitations.
- (3) An agreement by a foreign State to waive its immunity under section 30 has effect to waive that immunity and the waiver may not be withdrawn except in accordance with the terms of the agreement.
- (4) A waiver does not apply in relation to property that is diplomatic property or military property unless a provision in the agreement expressly designates the property as property to which the waiver applies.
- (5) In addition to any other person who has authority to waive the application of section 30 on behalf of a foreign State or a separate entity of the foreign State, the person for the time being performing the functions of the head of the State's diplomatic mission in Australia has that authority.



**32 Execution against commercial property**

- (1) Subject to the operation of any submission that is effective by reason of section 10, section 30 does not apply in relation to commercial property.
- (2) Where a foreign State is not immune in a proceeding against or in connection with a ship or cargo, section 30 does not prevent the arrest, detention or sale of the ship or cargo if, at the time of the arrest or detention:
  - (a) the ship or cargo was commercial property; and
  - (b) in the case of a cargo that was then being carried by a ship belonging to the same or to some other foreign State—the ship was commercial property.
- (3) For the purposes of this section:
  - (a) commercial property is property, other than diplomatic property or military property, that is in use by the foreign State concerned substantially for commercial purposes; and
  - (b) property that is apparently vacant or apparently not in use shall be taken to be being used for commercial purposes unless the court is satisfied that it has been set aside otherwise than for commercial purposes.

**33 Execution against immovable property etc.**

Where:

- (a) property:
  - (i) has been acquired by succession or gift; or
  - (ii) is immovable property; and
- (b) a right in respect of the property has been established as against a foreign State by a judgment or order in a proceeding as mentioned in section 14;

then, for the purpose of enforcing that judgment or order, section 30 does not apply to the property.

## Section 34

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### 34 Restrictions on certain other relief

A penalty by way of fine or committal shall not be imposed in relation to a failure by a foreign State or by a person on behalf of a foreign State to comply with an order made against the foreign State by a court.

### 35 Application of Part to separate entities

- (1) This Part applies in relation to a separate entity of a foreign State that is the central bank or monetary authority of the foreign State as it applies in relation to the foreign State.
- (2) Subject to subsection (1), this Part applies in relation to a separate entity of the foreign State as it applies in relation to the foreign State if, in the proceeding concerned:
  - (a) the separate entity would, apart from the operation of section 10, have been immune from the jurisdiction; and
  - (b) it has submitted to the jurisdiction.

## **Part V—Miscellaneous**

### **36 Heads of foreign States**

- (1) Subject to the succeeding provisions of this section, the *Diplomatic Privileges and Immunities Act 1967* extends, with such modifications as are necessary, in relation to the person who is for the time being:
  - (a) the head of a foreign State; or
  - (b) a spouse of the head of a foreign State;as that Act applies in relation to a person at a time when he or she is the head of a diplomatic mission.
- (2) This section does not affect the application of any law of Australia with respect to taxation.
- (3) This section does not affect the application of any other provision of this Act in relation to a head of a foreign State in his or her public capacity.
- (4) Part III extends in relation to the head of a foreign State in his or her private capacity as it applies in relation to the foreign State and, for the purpose of the application of Part III as it so extends, a reference in that Part to a foreign State shall be read as a reference to the head of the foreign State in his or her private capacity.

### **37 Effect of agreements on separate entities**

An agreement made by a foreign State and applicable to a separate entity of that State has effect, for the purposes of this Act, as though the separate entity were a party to the agreement.

### **38 Power to set aside process etc.**

Where, on the application of a foreign State or a separate entity of a foreign State, a court is satisfied that a judgment, order or process of the court made or issued in a proceeding with respect to the

## Section 39

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foreign State or entity is inconsistent with an immunity conferred by or under this Act, the court shall set aside the judgment, order or process so far as it is so inconsistent.

### 39 Discovery

- (1) A penalty by way of fine or committal shall not be imposed in relation to a failure or refusal by a foreign State or by a person on behalf of a foreign State to disclose or produce a document or to furnish information for the purposes of a proceeding.
- (2) Such a failure or refusal is not of itself sufficient ground to strike out a pleading or part of a pleading.

### 40 Certificate as to foreign State etc.

- (1) The Minister for Foreign Affairs may certify in writing that, for the purposes of this Act:
  - (a) a specified country is, or was on a specified day, a foreign State;
  - (b) a specified territory is or is not, or was or was not on a specified day, part of a foreign State;
  - (c) a specified person is, or was at a specified time, the head of, or the government or part of the government of, a foreign State or a former foreign State; or
  - (d) service of a specified document as mentioned in section 24 or 28 was effected on a specified day.
- (2) The Minister for Foreign Affairs may, either generally or as otherwise provided by the instrument of delegation, delegate by instrument in writing to a person his or her powers under subsection (1) in relation to the service of documents.
- (3) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister.
- (4) A delegation under subsection (2) does not prevent the exercise of the power by the Minister.

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Section 41

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- (5) A certificate under this section is admissible as evidence of the facts and matters stated in it and is conclusive as to those facts and matters.

**41 Certificate as to use**

For the purposes of this Act, a certificate in writing given by the person for the time being performing the functions of the head of a foreign State's diplomatic mission in Australia to the effect that property specified in the certificate, being property:

- (a) in which the foreign State or a separate entity of the foreign State has an interest; or
- (b) that is in the possession or under the control of the foreign State or of a separate entity of the foreign State;

is or was at a specified time in use for purposes specified in the certificate is admissible as prima facie evidence of the facts stated in the certificate.

**42 Restrictions and extensions of immunities and privileges—  
general**

- (1) Where the Minister is satisfied that an immunity or privilege conferred by this Act in relation to a foreign State is not accorded by the law of the foreign State in relation to Australia, the Governor-General may make regulations modifying the operation of this Act with respect to those immunities and privileges in relation to the foreign State.
- (2) Where the Minister is satisfied that the immunities and privileges conferred by this Act in relation to a foreign State differ from those required by a treaty, convention or other agreement to which the foreign State and Australia are parties, the Governor-General may make regulations modifying the operation of this Act with respect to those immunities and privileges in relation to the foreign State so that this Act as so modified conforms with the treaty, convention or agreement.

Section 42

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- (3) Regulations made under subsection (1) or (2) that are expressed to extend or restrict an immunity from the jurisdiction may be expressed to extend to a proceeding that was instituted before the commencement of the regulations and has not been finally disposed of.
- (4) Regulations made under subsection (1) or (2) that are expressed to extend or restrict an immunity from execution or other relief may be expressed to extend to a proceeding that was instituted before the commencement of the regulations and in which procedures to give effect to orders for execution or other relief have not been completed.
- (5) Regulations in relation to which subsection (3) or (4) applies may make provision with respect to the keeping of property, or for the keeping of the proceeds of the sale of property, with which a proceeding specified in the regulations is concerned, including provision authorising an officer of a court to manage, control or preserve the property or, if, by reason of the condition of the property, it is necessary to do so, to sell or otherwise dispose of the property.
- (6) Regulations under this section have effect notwithstanding that they are inconsistent with an Act (other than this Act) as in force at the time when the regulations came into operation.
- (7) Jurisdiction is conferred on the Federal Court of Australia and, to the extent that the Constitution permits, on the courts of the Territories, and the courts of the States are invested with federal jurisdiction, in respect of matters arising under the regulations but a court of a Territory shall not exercise any jurisdiction so conferred in respect of property that is not within that Territory or a Territory in which the court may exercise jurisdiction and a court of a State shall not exercise any jurisdiction so invested in respect of property that is not within that State.

**42A Extension of immunities—emergency prevention and management**

- (1) This section applies if the Minister is satisfied that a foreign State (or a separate entity of a foreign State) is providing, or is to provide, assistance or facilities:
- (a) to the Australian Government, or the government of a State or Territory; and
  - (b) for the purposes of preparing for, preventing or managing emergencies or disasters (whether natural or otherwise) in Australia.
- (2) The Governor-General may make regulations excluding or modifying the application of section 13 (personal injury and damage to property) with respect to the foreign State (or the separate entity of the foreign State) in relation to acts or omissions done or omitted to be done by the foreign State (or the entity) in the course of the provision of the assistance or facilities.

Note: Section 22 applies section 13 to a separate entity of a foreign State.

**43 Regulations**

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.

## Schedule

### Form 1

Section 24

*Request For Service Of Originating Process On A Foreign State*

TO: The Attorney-General of the Commonwealth

A proceeding has been commenced in (*name of court, tribunal, etc.*) against (*here insert name of foreign State*).

The proceeding concerns (*short particulars of the claim against the foreign State*).

In accordance with section 24 of the *Foreign States Immunities Act 1985*, enclosed are:

- (a) the initiating process in the proceeding;
- (b) a statutory declaration;
- (c) \*a translation of the initiating process into (*name of language*), an official language of the foreign State; and
- (d) \*a certificate signed by the translator,

and it is requested that this Form, the initiating process, the statutory declaration, \*the translation and the certificate be transmitted by the Department of Foreign Affairs to the department or organ of the foreign State that is equivalent to that Department.

It is further requested that, when service of the initiating process and other documents has been effected on the foreign State in accordance with that Act, the Minister for Foreign Affairs certify accordingly under section 40 of that Act, and forward the certificate to (*name and address of person to whom certificate of service should be forwarded*).

DATED this                      day of                      19

(*signature of plaintiff or applicant*)

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\* delete if not applicable.

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## Form 2

### Section 28

#### *Request For Service Of Default Judgment Or Order On A Foreign State*

TO: The Attorney-General of the Commonwealth

In a proceeding in (*name of court, tribunal, etc.*), a judgment in default of appearance has been given, or an order for the registration of a foreign judgment, or for the recognition or enforcement of a foreign award, in default of appearance has been made, against (*name of foreign State*).

The proceeding concerns (*short particulars of the claim against the foreign State*).

In accordance with section 28 of the *Foreign States Immunities Act 1985*, enclosed are:

- (a) a copy of the judgment or order, authenticated as required by that Act;
- (b) \*a translation of the judgment or order into (*name of language*), an official language of the foreign State; and
- (c) \*a certificate signed by the translator,

and it is requested that the judgment or order, \*the translation and the certificate be transmitted by the Department of Foreign Affairs to the department or organ of the foreign State that is equivalent to that Department.

It is further requested that, when service of the judgment or order and other documents has been effected on the foreign State in accordance with that Act, the Minister for Foreign Affairs certify accordingly under section 40 of that Act, and forward the certificate to (*name and address of person to whom certificate of service should be forwarded*).

DATED this                      day of                      19

(*signature of person in whose favour the judgment was given or the order was made*)

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\* delete if not applicable.

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## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Foreign States Immunities Act 1985	196, 1985	16 Dec 1985	s 18(2): 1 Jan 1989 (s 2 and gaz 1988, No S359) Remainder: 1 Apr 1986 (s 2 and gaz 1986, No S128)	
Statute Law (Miscellaneous Provisions) Act 1987	141, 1987	18 Dec 1987	s 5(1) and Sch 1: 18 Dec 1987 (s 2(1))	s 5(1)
Foreign States Immunities Amendment Act 2009	89, 2009	18 Sept 2009	19 Sept 2009 (s 2)	—
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 1 (items 30, 31): 1 Mar 2010 (s 2(1) item 4)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 3 (item 21): 21 Oct 2016 (s 2(1) item 1)	—
Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022	3, 2022	17 Feb 2022	Sch 1 (items 75–95): 18 Feb 2022 (s 2(1) item 3)	Sch 1 (item 95)

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Part I</b>	
s 3 .....	am No 8, 2010; No 3, 2022
<b>Part II</b>	
s 22 .....	am No 141, 1987
<b>Part III</b>	
s 26A .....	ad No 3, 2022
s 27 .....	am No 3, 2022
s 28 .....	am No 3, 2022
<b>Part V</b>	
s 41 .....	am No 61, 2016
s 42 .....	am No 89, 2009
s 42A .....	ad No 89, 2009
<b>Schedule</b>	
Form 1 .....	am No 3, 2022
Form 2 .....	am No 3, 2022