

Foreign States Immunities Regulations (Amendment) 1996 No. 222

EXPLANATORY STATEMENT

STATUTORY RULES 1996 No. 222

Issued by the authority of the Attorney-General and Minister for Justice

Foreign States Immunities Act 1985

Foreign States Immunities Regulations (Amendment)

Paragraph 43(b) of the *Foreign States Immunities Act 1985* (the Act) empowers the Governor-General to make regulations, not inconsistent with the Act, prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 9 of the Act provides that, except as provided by or under the Act, a foreign State is immune from the jurisdiction of the courts of Australia in a proceeding.

Section 20 of the Act further provides that a foreign State is not immune in a proceeding in so far as the proceeding concerns an obligation imposed on it by or under provision of a law of Australia with respect to taxation, being a provision that is prescribed, or is included in the class of provisions that is prescribed, for the purposes of section 20 of the Act.

The prescribing of legislation for the purposes of section 20 of the Act does not affect the substantive liability of a foreign State to pay particular taxes. It merely enables a foreign State to be sued in an Australian court in order to recover a tax for which it is liable.

The Schedule to the Foreign States Immunities Regulations currently prescribes, for the purposes of section 20 of the Act, various laws with regard to taxation. These laws are listed under different Parts according to whether the laws are Commonwealth laws, State or Territory laws, or Laws of Norfolk Island.

The Regulations effect changes to the citations of the Acts listed at Item 4 of Part 1 (Laws of the Commonwealth); Items 1 and 2 of Part II (Laws of New South Wales); Items 1, 2, 3 of Part IV (Laws of Queensland); Items 1-8 of Part IX (Laws of the A.C.T); and Item 1 of Part X (Laws of Norfolk Island). These changes were designed to reflect the current citation of the laws so listed.

In addition, the Regulations add two new Acts to the Schedule. These are the (NSW) *Debts Tax Act 1990* and the (NI) *Land Administration Fees Act 1996*. Both of these Acts were added at the specific request of the New South Wales Government and the Norfolk Island Government, respectively.

While the (NSW) *Debts Tax Act 1990* and the (NI) *Land Administration Fees Act 1996* will enable proceedings to be instituted against a foreign State for the recovery of taxes on a basis not hitherto available, the other amendments to the Regulations do not effect any substantive changes but were intended only to correct the citations of the Act so prescribed.

Apart from the above additions and changes of citations, the legislation previously prescribed for the benefit of the Commonwealth, the States and the Territories, as reflected in the Schedule, remains unaltered.

The changes to the Regulations were made in consultation with the relevant Departments of the Commonwealth Government and State and Territory Governments.