

**FOREIGN STATES IMMUNITIES BILL 1985\***

Bill presented by **Mr Lionel Bowen**, and read a first time.

**Second Reading**

**MR LIONEL BOWEN** (Kingsford-Smith — Attorney-General) (4.36) — I move:

That the Bill be now read a second time.

The purpose of the Foreign States Immunities Bill 1985 is to set out in clear and accessible form the law relating to the jurisdiction of Australian courts over foreign states, their agencies and instrumentalities. This matter is currently determined according to the common law. The legislation will implement the recommendations of the Law Reform Commission in report No. 24 on foreign state immunity; which was tabled in the Parliament on 10 October 1984. The report was prepared after thorough examination of similar legislation in other countries and extensive consultation with relevant organisations and individuals. The matter was referred to the Commission by the previous Government. It is non-contentious and we expect bi-partisan support. The Bill is concerned only with immunity from suit and related matters such as the proper scope of enforcement measures and service of process. It does not confer immunity from substantive laws nor does it concern liability to criminal proceedings. The Bill is strictly prospective in effect.

Since the early nineteenth century it has been recognised that foreign states are at least in some ways in a special position when action against them is brought before the courts of other states. The basic justification for immunity is the notion of sovereign equality of states. Until the early 1970s, it was generally thought that at common law foreign states and their agencies were entitled to absolute immunity from jurisdiction. The civil law countries, by contrast, have long distinguished governmental and private transactions of foreign states, according immunity only to the former. In a series of recent decisions United Kingdom courts applied a restrictive immunity approach and decline to accord immunity in respect of commercial transactions. The United Kingdom, the United States of America, Canada, Singapore and other common law countries have legislated to apply this restrictive immunity approach. There have been no recent Australian cases on the matter. Although it is likely that Australian courts would adopt the restrictive approach taken in the United Kingdom prior to enactment of legislation, there are many areas of uncertainty. Because other common law countries have now legislated on the matter there will be little case law to develop and clarify these areas of uncertainty.

The main argument for the restrictive theory of foreign state immunity is that commercial or trading activities conducted by or on behalf of foreign governments should not attract the special jurisdictional immunity enjoyed by foreign states. Australia's increasing involvement in international trading and financial activities, including the involvement of foreign state agencies in investment and banking or other trading or financial activities in Australia, make the subject of increasing importance to Australia. The proposed legislation follows the United Kingdom State Immunity Act 1978 in laying down a general rule of immunity for foreign states which is made subject to the following exceptions:

*Commercial transactions will not be immune. This includes all contracts for the supply of goods or services or for loans or guarantees. This will bring Australian law into line with the law of other major financial centres such as New York, London and Singapore. It is an essential step if Australia is to develop as an international banking centre conducting sovereign risk lending.*

*Torts resulting in death, physical injury or damage to tangible property will not be immune if committed in Australia by the foreign state or by its servants acting in the course of their employment. As an example of such a case, a person injured in a road accident involving diplomatic personnel acting in the course of their employment will be able to sue the state for damages. The diplomat personally will continue to be protected by diplomatic or consular immunity in accordance with internationally agreed rules. The foreign state will retain its immunity where only economic loss is suffered — that is for torts such as defamation, misrepresentation, deceit, and negligent misstatement unless the tort occurs in the course of a commercial transaction.*

*Employment contracts entered into by foreign governments will not be immune from suits unless the contract is made with a person who is a foreign national and not a permanent resident or national of Australia.*

*Disputes concerning immovable property — for example, land — will not be immune. This lack of immunity will apply accordingly to claims that the foreign state is using its property here in such a way as to constitute a nuisance.*

*Other matters for which immunity to some extent will be removed include disputes involving industrial and intellectual property, membership by the foreign state in a locally formed partnership, company or body corporate, and the conduct of arbitrations.*

Apart from these circumstances prescribed by the legislation, a foreign state also is able to submit voluntarily to the jurisdiction. This may be done, amongst other ways, by a written agreement in advance or by submission in the face of the court.

'Foreign States' are defined to include political subdivisions or component units, such as provinces or states, and hence the Bill extends immunities to them. This could assist the Australian States to claim similar treatment in foreign states on the grounds of reciprocity. The proposed legislation will deal also with the immunities of 'separate entities' such as state trading corporations or investment commissions that are agencies or instrumentalities of the foreign state but have a separate legal existence. 'Separate entities' are given, in most respects, the same immunity as the state. In practice, this means that entities with exclusively commercial functions — the majority of those involved in dealings with Australia — will lack immunity. Consistent with the approach taken to immunity from jurisdiction, the property of foreign states is made immune from execution to satisfy judgments obtained against it, subject to specified exceptions. This is defined as property being used by the foreign state substantially for commercial purposes and can never be military or diplomatic property. Consistently with the lack of immunity of immovable property, such property loses its immunity from execution consequent upon successful suit against that property. A foreign State also may waive its immunity from execution with respect to any property.

The third area of major reform which the bill implements is an area about which currently there is considerable uncertainty; that is, the appropriate way to serve court documents on a foreign state. The new legislation will also enable service of writs on foreign states to be carried out by the Department of Foreign Affairs using diplomatic channels. It also makes service of an initiating process effective where it is in accordance with an agreement or treaty.

Certain procedural requirements additional to those imposed by the general law will apply where foreign states are parties to a suit. For example, there is an extension of time for entering an appearance before judgment in default of appearance can be entered against foreign states.

The legislation does not affect any immunity or privilege conferred by the Diplomatic Privileges and Immunities Act 1967, the Consular Privileges and Immunities Act 1972, and the Defence (Visiting Forces) Act 1963. Nor does it affect immunities conferred on foreign states by or under other Commonwealth legislation. Where the immunities and privileges under the Bill exceed those allowed to Australia by the laws of a foreign state, regulations may be made modifying the operation of the legislation where a treaty is concluded between Australia and a foreign state in which different provisions have been agreed. An additional matter covered is the immunity of a head of state acting in a private capacity. The position at common law is unclear. The legislation provides that a foreign head of state acting in a private capacity has the same immunities as a head of a diplomatic mission similarly acting. These immunities extend to the spouse of the head of State. This is the approach of the United Kingdom legislation and has the advantage of bringing a rarely litigated issue under a well-developed body of law which has been specifically developed to satisfy the needs of both the sending state and the receiving state.

The financial impact of this legislation is likely to be minimal. Any additional administrative workload resulting from my Department's role as recipient of process to be served on foreign states, or from the role imposed on the Department of Foreign Affairs to secure service through diplomatic channels, is not expected to impose any significant financial costs.

Finally, I take this opportunity again to congratulate the Law Reform Commission on its excellent work on this reference. It is an outstanding example of legal scholarship and of the continuing relevance and importance of the Law Reform Commission. The report will prove, I am sure, of lasting importance and of use not just in relation to this legislation, but also to other countries and international bodies like the International Law Commission which are continuing to work in this area. I commend the Bill to the House.

Debate (on motion by Mr N. A. Brown) adjourned.

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- "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; 5  
 "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; 10  
 "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; 15  
 "initiating process" means an instrument (including a statement of claim, application, summons, writ, order or third party notice) by reference to which a person becomes a party to a proceeding; 20  
 "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; 25  
 "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— 30  
     (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; 35  
 "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— 40  
 (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.



## Foreign States Immunities Act 1985

No. 196 of 1985

### An Act relating to foreign State immunity

[Assented to 16 December 1985]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### PART I—PRELIMINARY

##### Short title

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

##### Commencement

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

##### Interpretation

3. (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;

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(2) For the purposes of the definition of "separate entity" in sub-section (1), a natural person who is, or a body corporate or a corporation is, an agency of more than one foreign State shall be taken to be an agency 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, or 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.

(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 a procedure in default of appearance includes a reference to a procedure.

**External Territories**

4. This Act extends to each external Territory.

5. This Act binds the Crown in all its capacities.

**Savings of other laws**

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

**Application**

7. (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 entered into 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, or was created, before the commencement of this Act.

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2) Section 10 does not apply in relation to a submission mentioned in section 36 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 a proceeding concerned.

**Application to courts**

5. 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**

**General immunity from jurisdiction**

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

**Immunity to jurisdiction**

10. (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 submitted by reason only that it is a party to an agreement the proper effect of which is the law of Australia.

(3) A submission under sub-section (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, or otherwise decline to hear and determine a proceeding if it is satisfied 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 section has effect to waive that immunity and the waiver may not be withdrawn or varied in accordance with the terms of the agreement.

(6) Subject to sub-sections (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 claim 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 sub-section (3), it shall be immune in relation to a claim made in the proceeding by some other person against it (whether by way of set-off, counter-claim or otherwise), if the 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 sue on behalf of a foreign State, to the jurisdiction—

(a) the person for the time being performing the functions of a member 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 authority of the State has authority to submit in that contract a claim on behalf of the State, to the jurisdiction in respect of a proceeding arising out of the contract.

**Commercial transactions**

11. (1) A foreign State is not immune in a proceeding in so far as the proceeding concerns a commercial transaction.

(2) Sub-section (1) does not apply—

(a) if all the parties to the proceeding—  
 (i) are 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 transaction in business, professional or industrial or like transaction into which the

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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, does not include a contract of employment or a bill of exchange.

**Contracts of employment**

12. (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 sub-section (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.

(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,  
 sub-section (1) does not apply.

(4) Sub-section (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) Sub-section (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) Sub-section (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).

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

**Personal injury and damage to property**

- 13. A foreign State is not immune in a proceeding in so far as it 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.

**Ownership, possession and use of property, &c.**

- 14. (1) A foreign State is not immune in a proceeding in so far as it 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 the possession or use of, property of that kind.
- (2) A foreign State is not immune in a proceeding in so far as it concerns an interest of the State in property that arose out of a gift made in Australia or by succession.

- (3) A foreign State is not immune in a proceeding in so far as it 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.

**Copyright, patents, trade marks, &c.**

- 15. (1) A foreign State is not immune in a proceeding in so far as it 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; or
  - (b) an alleged infringement by the foreign State in Australia of a copyright, a patent for an invention, a registered trade mark or a design; or
  - (c) the use in Australia of a trade name or a business name.

- (2) Sub-section (1) does not apply in relation to the importation of goods into Australia, or the use in Australia, of property otherwise than in connection with a commercial transaction or for the purposes of a commercial transaction as defined by section 11 (3).

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**Membership of bodies corporate, &c.**

16. (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.

- (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.
17. 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 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, inconsistent with sub-section (1), that sub-section has effect subject to that provision.

**Arbitration**

- 17. (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 sub-paragraph 11 (2) (a) (ii), sub-section 12 (4) or sub-section 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,
- the foreign State is not immune in a proceeding concerning the recognition as binding of any award made pursuant to the arbitration, wherever the award was made.

- (3) Sub-section (1) does not apply where the only parties to the proceeding are any 2 or more of the following:
  - (a) a foreign State;
  - (b) the Commonwealth;

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(c) an organisation the members of which are only foreign States; Commonwealth and one or more foreign States.

**Actions in rem**

18. (1) A foreign State is not immune in a proceeding commenced an action *in rem* against a ship concerning a claim in connection with a ship if, at the time when the cause of action arose, the ship was in commercial purposes.

(2) A foreign State is not immune in a proceeding commenced an action *in rem* against a ship concerning a claim against another ship (a) at the time when the proceeding was instituted, the ship that 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 use for commercial purposes.

(3) A foreign State is not immune in a proceeding commenced 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 of commercial property as defined by sub-section 32 (3).

**Bills of exchange**

19. Where---

(a) a bill of exchange has been drawn, made, issued or indorsed in 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.

**Taxes**

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

**Related proceedings**

21. Where, by virtue of the operation of the preceding provisions of Part 1, 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.

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**Initiation of Part to separate entities**

2. The preceding provisions of this Part (other than sub-paragraph 1) (a) (i), sub-section 16 (1) and sub-section 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**

**Service of initiating process by agreement**

23. 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 in writing made and whether made before or after the commencement of the proceeding (the Act) to which the State or entity is a party.

**Service through the diplomatic channel**

24. (1) Initiating process that is to be served on a foreign State may be effected through the diplomatic channel 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.

(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) Sub-sections (1) to (4) (inclusive) do not exclude the operation of the rule of court or other law under which the leave of a court is required for 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, whether the service is actually effected.

(7) The time for entering an appearance begins to run at the expiration of 30 days after the date on which service of the initiating process was effected.

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(8) This section does not apply to service of initiating process proceeding commenced as an action *in rem*.

**Other service ineffective**

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

**Waiver of objection to service**

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

**Judgment in default of appearance**

27. (1) A judgment in default of appearance shall not be entered 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 shall not be entered against a separate entity of a foreign State unless the court is satisfied that, in the proceeding, the separate entity is not immune.

**Enforcement of default judgments**

28. (1) Subject to sub-section (6), a judgment 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, sealed with the seal of the court in which there is no seal, certified by an officer of the court to be a true copy of the judgment; and
- (b) if English is not an official language of the foreign State—
  - (i) a translation of the judgment into an official language of the foreign State; and
  - (ii) a certificate in that language, signed by the translator, stating that the translation is an accurate translation of the judgment.

has been effected in accordance with this section on the part of the 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 sub-section (1) the person in whose favour the judgment was given shall give it, 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 the Department.

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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 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 set aside shall be at least 2 months after the date on which the document is delivered to the equivalent department or organ of the foreign State.

6) Where a judgment in default of appearance has been given by a court against a foreign State, the court may, on the application of the person who has obtained the judgment, permit, on such terms and conditions as the court thinks fit, the judgment to be enforced in accordance with this Act against the foreign State before the expiration of the period mentioned in section (1).

**Power to grant relief**

29. (1) Subject to sub-section (2), a court may make any order (including an order for interim or final relief) against a foreign State that it may think fit, provided that the order would not be inconsistent with any lawfully made under this Act.

2) A court may not make an order that a foreign State employ a person to perform a service in employment.

**PART IV—ENFORCEMENT****Immunity from execution**

30. Except as provided by this Part, the property of a foreign State is immune from execution by a court in Australia for the satisfaction or enforcement of a judgment, order or award made or, in Admiralty proceedings, for the arrest, detention or seizure of the property.

**Waiver of immunity from execution**

31. (1) A foreign State may at any time by agreement waive the immunity from execution 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 is subject to the condition that the waiver may not be withdrawn at any time 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 states that the property is property to which the waiver applies.



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(5) In addition to any other person who has authority to waive 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 function of the head of the State's diplomatic mission in Australia has that authority.

**5 Execution against commercial property**

32. (1) Subject to the operation of any submission that is effective in 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 a 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—

- (a) the ship or cargo was commercial property; and
- (b) in the case of a cargo that was then being carried by a vessel 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, military property, that is in use by the foreign State or is 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 contrary is satisfied that it has been set aside otherwise than for commercial purposes.

**25 Execution against immovable property, &c.**

33. 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 the 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.

**35 Restrictions on certain other relief**

34. 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 of law.

**Application of Part to separate entities**

35. (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 if it applies in relation to the foreign State.

*Foreign States Immunities No. 196, 1985*

(2) Subject to sub-section (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 a 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**

**Heads of foreign States**

36. (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,
- 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.

**Effect of agreements on separate entities**

37. 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.

**Power to set aside process, &c.**

38. 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 foreign State or its property 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.

**Discovery**

39. (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.

*Foreign States Immunities No. 196, 1985*

(2) Such a failure or refusal is not of itself sufficient ground to  
out a pleading or part of a pleading.

**Certificate as to foreign State, &c.**

40. (1) The Minister for Foreign Affairs may certify in writing 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, government or part of the government of, a foreign State or former foreign State; or
- (d) service of a specified document as mentioned in section 24 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 sub-section (1) in relation to the 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 sub-section (2) does not prevent the exercise of the power by the Minister.

(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.

**Certificate as to use**

41. For the purposes of this Act, a certificate in writing given to a person for the time being performing the functions of the head of a 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 evidence of the facts stated in the certificate.

**Restrictions and extensions of immunities and privileges**

42. (1) Where the Governor-General 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 the Act with respect to those immunities and privileges in relation to the foreign State.

*Foreign States Immunities No. 196, 1985*

(2) Where the Governor-General 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.

(3) Regulations made under sub-section (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 sub-section (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 sub-section (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.

**Regulations**

43. 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.

- "This Bill was subsequently enacted and came into effect on 2 April, 1986."