

Western Australia

Foreign Judgments Act 1963

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Foreign Judgments Act 1963

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Western Australia

Foreign Judgments Act 1963

An Act to provide for the enforcement in this State of judgments given in the United Kingdom or in other countries that accord reciprocal treatment to judgments given in this State, to facilitate the enforcement in other countries of judgments given in this State, to restrict the enforcement in this State of certain judgments, and for incidental and other purposes.

[Long title amended by No. 62 of 1986 s. 4.]

Part I — Preliminary

1. Short title

This Act may be cited as the *Foreign Judgments Act 1963*¹.
[Section 1 amended by No. 62 of 1986 s. 5.]

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

[3. Repealed by No. 62 of 1986 s. 6.]

4. Repeal and savings

- (1) Part VIII — Reciprocity in The Enforcement of Judgments, containing section 146 to section 153 inclusive of the *Supreme Court Act 1935*, is repealed.
- (2) Every Order in Council made under section 147 of the *Supreme Court Act 1935*, or under any Act repealed by that Act, and in force immediately before the coming into operation of this Act, shall continue in force as if it were an order to the same effect made under section 6 and may be varied or cancelled in accordance with the provisions of subsection (6) of that section.
- (3) Any judgment registered in the Supreme Court under the repealed Part before the coming into operation of this Act shall be deemed to have been registered in that Court under Part II and anything done in relation thereto under the repealed Part or any Rules of Court or other provisions applicable to that Part shall be deemed to have been done under Part II or the corresponding Rules of Court or other provisions applicable to Part II and that Part has operation and effect in relation thereto accordingly.

[Section 4 amended by No. 71 of 1965 s. 2.]

5. Interpretation

- (1) In this Act, unless the contrary intention appears, —
- “appeal”** includes any proceeding by way of discharging or setting aside a judgment and an application for a new trial or a stay of execution;
- “Commonwealth country”** means a country that is a member of the British Commonwealth of Nations and includes every territory for whose international relations the Government of that country is responsible;
- “country of the original court”** means the country in which the original court is situated;
- “foreign country”** means a country that is not a Commonwealth country;
- “judgment”** means a judgment or order given or made by a court in civil proceedings, or a judgment or order given or made by a court in criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party, whether before or after the coming into operation of this Act, and includes an award in proceedings on an arbitration (other than a “foreign award” within the meaning of section 56(1) of the *Commercial Arbitration Act 1985*) if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;
- “judgment creditor”** means the person in whose favour a judgment is given and includes a person in whom the rights under the judgment become vested by succession or assignment or otherwise;
- “judgment debtor”** means the person against whom a judgment is given and includes a person against whom the judgment is enforceable under the law of the original court;
- “judgments given in the Supreme Court”** includes judgments given on appeals against judgments given in the Supreme Court, and judgments that have become enforceable as

judgments of the Supreme Court although not given therein;

“non-recoverable tax” means tax other than recoverable tax;

“Order” means an Order made by the Governor with the advice and consent of the Executive Council published in the *Gazette*;

“original court” used in relation to a judgment means the court by which the judgment was given;

“Part” means Part of this Act;

“prescribed” means prescribed by Rules of Court;

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

- (a) additional or other tax payable, by way of penalty, interest or otherwise, because of a contravention or failure to comply with any of those laws or of a requirement made under any of those laws; or
- (b) tax of a class or description for the time being specified in an Order in force under subsection (3);

“registration” means registration under Part II;

“repealed Part” means Part VIII of the *Supreme Court Act 1935*.

- (2) For the purposes of this Act, the expression “action *in personam*” shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters, namely —
- (a) matrimonial matters;
 - (b) administration of the estates of deceased persons;
 - (c) bankruptcy;
 - (d) winding up of companies;
 - (e) lunacy; or
 - (f) guardianship of infants.

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

[Section 5 amended by No. 61 of 1980 s. 4; No. 109 of 1985 s. 3(1).]

Part II — Reciprocal enforcement of judgments

6. Application of this Part of Act

- (1)
 - (a) This Part extends to the United Kingdom.
 - (b) In relation to the United Kingdom, the term “**superior Court**” means the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, or such other court as the Governor may by Order specify for the purposes of this Part.
- (2) Where the Governor is satisfied that, if the benefits conferred by this Part are extended to judgments given in the superior Courts of any Commonwealth country not including the United Kingdom and the Commonwealth, or given in the superior Courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement within that Commonwealth country or in that foreign country, as the case may be, of judgments given in the Supreme Court, he may by Order direct —
 - (a) that this Part shall extend to that Commonwealth country or to that foreign country; and
 - (b) that such courts as are specified in the Order shall be deemed to be superior Courts of that Commonwealth country or of that foreign country for the purposes of this Part.
- (3) A judgment of a superior Court of a country to which this Part extends, including any judgment of that superior Court for the payment of the costs of an appeal to that superior Court from a court that is not a superior Court but not including any other judgment of such a court given on appeal from a court that is not a superior Court, is a judgment to which this Part applies, if —
 - (a) it is final and conclusive as between the parties thereto; and
 - (b) there is payable thereunder —

- (i) a sum of money, not being (except as referred to in subparagraph (ii)) a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; or
 - (ii) a sum of money payable in respect of a recoverable tax;
 - and
 - (c) it is given after the coming into operation of the Order directing that this Part shall extend to that country.
- (4) Nothing in subsection (3)(c) applies with respect to judgments given in the United Kingdom or in any other Commonwealth country, not including the Commonwealth, to which the repealed Part applied immediately before the coming into operation of this Act.
- (5) For the purposes of this section a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.
- (6) The Governor may by a subsequent Order vary or cancel any Order previously made under this section.
- (7) A copy of the *Gazette* purporting to contain a copy of an Order under this section is conclusive evidence of the validity, contents, making and publication of the Order and of the fulfilment of all conditions precedent to the valid making thereof.

[Section 6 amended by No. 71 of 1965 s. 3; No. 61 of 1980 s. 5; No. 62 of 1986 s. 7.]

7. Application for, and effect of, registration of foreign judgment

- (1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the Supreme Court at any time —

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- (a) in the case of a judgment given before the coming into operation of this Act in the United Kingdom or in any other Commonwealth country (not including the Commonwealth) to which the repealed Part applied immediately before the coming into operation of this Act, within 12 months from the date of the judgment or such longer period as may be allowed by the Supreme Court;
- (b) in any other case, within 6 years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in the proceedings,

to have the judgment registered in the Supreme Court, and on such an application being made the Court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered.

- (2) A judgment shall not be registered if at the date of the application —
 - (a) it has been wholly satisfied; or
 - (b) it is of such a nature that it may not be enforced by execution in the country of the original court.
- (3) Subject to the provisions of this Act with respect to the setting aside of registration —
 - (a) a registered judgment is, for the purposes of execution, of the same force and effect;
 - (b) proceedings may be taken on a registered judgment;
 - (c) the sum for which a judgment is registered shall carry interest;
 - (d) the Supreme Court has the same control over the execution of a registered judgment,

as if the judgment had been a judgment originally given in the Supreme Court and entered on the date of registration.

- (4) Execution shall not issue on a registered judgment so long as —
 - (a) under this Part and the Rules of Court made thereunder, it is competent for any party to make application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined; or
 - (b) there is in force in the original court any order staying execution of the judgment in the original court.
- (5) Where the sum payable under a judgment that is to be registered is expressed in a currency other than the currency of the Commonwealth, the judgment shall be registered as if it were a judgment for such sum in the currency of the Commonwealth as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.
- (6) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.
- (6a) Without affecting subsection (7), where, on an application for the registration of a judgment, it appears to the Supreme Court that —
 - (a) a judgment is in respect of a sum of money payable in respect of both recoverable tax and non-recoverable tax;
 - (b) the judgment could have been registered if it had been in respect of recoverable tax only, the judgment may be registered in respect of the sum less so much as relates to non-recoverable tax, but may not be registered in respect of so much of the sum as relates to non-recoverable tax.
- (7) If, on an application for the registration of a judgment, it appears to the Supreme Court that the judgment is in respect of different matters and that some, but not all, of the provisions of

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the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the registrable provisions but not in respect of any other provisions contained therein.

- (8) In addition to the sum of money payable under the judgment of the original court, including any interest that by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

[Section 7 amended by No. 61 of 1980 s. 6.]

8. Rules of Court

- (1) Subject to this section, the power to make Rules of Court under section 167 of the *Supreme Court Act 1935*, includes power to make rules for the following purposes, namely —
- (a) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
 - (b) for prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
 - (c) for providing for the service on the judgment debtor of notice of the registration of a judgment;
 - (d) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed;
 - (e) for prescribing the method by which any question arising under this Act as to whether a judgment given in any Commonwealth country, not including the Commonwealth, or in any other country to which this

Part extends can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined;

- (f) for prescribing all matters and things that under this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for giving effect to this Act.
- (2) Rules of Court made for the purposes of this Part shall be expressed to have, and are to have, effect subject to any such provisions contained in orders made under section 6 as are declared by those orders to be necessary for giving effect to any agreement made by or on behalf of Her Majesty in relation to matters with respect to which there is power to make Rules of Court for the purposes of this Part.

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

- (1) On an application in that behalf made by any party against whom a registered judgment may be enforced, the registration of the judgment —
 - (a) shall be set aside if the Supreme Court is satisfied —
 - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the provisions of this Act;
 - (ii) that the courts of the country of the original court has no jurisdiction in the circumstances of the case;
 - (iii) that the judgment debtor did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;

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- (iv) that the judgment was obtained by fraud;
 - (v) that the enforcement of the judgment would be contrary to public policy in this State; or
 - (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;
- and
- (b) may be set aside if the Supreme Court is satisfied that the matter in dispute in the proceedings in the original court has, before the date of the judgment in the original court, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.
- (2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3), be deemed to have had jurisdiction —
- (a) in the case of a judgment given in an action *in personam* —
 - (i) if the judgment debtor voluntarily submitted to the jurisdiction of the original court;
 - (ii) if the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court;
 - (iii) if the judgment debtor had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court;
 - (vi) if the judgment debtor was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or
 - (v) if the judgment debtor had an office or place of business in the country of that court and the proceedings in that court were in respect of a

- transaction effected through or at that office or place;
- (b) in the case of a judgment given in an action of which the subject-matter was immovable property or in an action *in rem* of which the subject-matter was movable property, if the property was at the time of the proceedings in the original court situate in the country of that court; and
 - (c) in the case of a judgment given in an action other than an action mentioned in paragraph (a) or paragraph (b), if the jurisdiction of the original court is recognized by the law of this State.
- (3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction —
- (a) if the subject-matter of the proceedings was immovable property outside the country of the original court;
 - (b) except in the cases mentioned in subsection (2)(a)(i), (ii) and (iii) and (c), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute to which the proceedings related was to be settled otherwise than by proceedings in the courts of the country of that court; or
 - (c) if the judgment debtor was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.
- (4) For the purposes of subsection (2)(a), a person does not voluntarily submit to the jurisdiction of a court by —
- (a) entering an appearance in proceedings in the court; or
 - (b) participating in proceedings in the court only to such extent as is reasonably necessary,

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

- (aa) protecting, or obtaining the release of —
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal or in relation to which such an order is sought;
- (bb) contesting the jurisdiction of the court;
- (cc) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

[Section 9 amended by No. 62 of 1986 s. 8.]

10. Powers of Supreme Court on application to set aside registration

- (1) If, on the application to set aside the registration of a judgment, the applicant satisfies the Supreme Court that an appeal is pending, or that he is entitled to appeal and intends to appeal, against the judgment, the Court, if it thinks fit, may, on such terms as it may think just, set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by a competent tribunal.
- (2) Where the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration does not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.
- (3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date

of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the Supreme Court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

11. Foreign judgments which can be registered not to be enforceable otherwise

No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any court in this State.

Part III — Miscellaneous

12. General effect of certain foreign judgments

- (1) Subject to this section, a judgment to which Part II applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognized in any court in this State as conclusive between the parties thereto in all proceedings founded on the same cause of action, and may be relied on by way of defence or counterclaim in any such proceedings.
- (2) This section does not apply in the case of any judgment —
 - (a) where the judgment has been registered and the registration thereof has been set aside on some ground other than —
 - (i) that a sum of money was not payable under the judgment;
 - (ii) that the judgment had been wholly or partly satisfied; or
 - (iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court;or
 - (b) where the judgment has not been registered, and it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a).
- (3) Nothing in this section prevents any court in this State recognizing a judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognized before the coming into operation of this Act.

13. Power to make judgments unenforceable in this State if no reciprocity

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

14. Issue of certificates of judgments obtained in this State

- (1) Where a judgment under which a sum of money is payable has been entered in the Supreme Court against a person and the judgment creditor is desirous of enforcing the judgment in a country to which Part II applies, the Court shall, on an application made by the judgment creditor and on payment of such fee as may be prescribed for the purposes of this section, issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the causes of action, and the rate of interest, if any, payable on the sum payable under the judgment, as may be prescribed.
- (2) Where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

[Section 14 amended by No. 61 of 1980 s. 7.]

15. Savings re Orders cancelled or varied

- (1) In this section, “**relevant Order**” means —
- (a) an Order cancelling or varying an Order under section 6(2); or
 - (b) an Order under section 5(3).
- (2) Subject to subsection (3), this Act continues to apply to and in respect of judgments given before the coming into operation of a relevant Order as if the Order had not been made.
- (3) Where, by reason of the coming into operation of a relevant Order —
- (a) Part II ceases to apply to a country;
 - (b) a court of a country ceases to be a superior court for the purposes of Part II; or
 - (c) a recoverable tax becomes a non-recoverable tax,

the Governor may, in the relevant Order or a subsequent Order, direct that this Act shall not apply to or in respect of —

- (d) all judgments (other than a judgment referred to in subsection (4)) given before the coming into operation of the relevant Order, being —
 - (i) judgments given in the courts of the country referred to in paragraph (a);
 - (ii) judgments given in the courts referred to in paragraph (b); or
 - (iii) judgments so far as sums of money are payable in respect of a tax referred to in paragraph (c);
- or
- (e) such class or description of the judgments referred to in paragraph (d) as is specified in the Order,

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

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

[Section 15 inserted by No. 61 of 1980 s. 8.]

Part IV — Enforcement of judgments to which Part II does not apply

[Heading inserted by No. 62 of 1986 s. 9.]

16. Certain judgments not enforceable at common law

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

- (a) entered an appearance in proceedings in that court; or
- (b) participated in proceedings in that court only to such extent as was reasonably necessary,

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

- (aa) protecting, or obtaining the release of —
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal or in relation to which such an order is sought;
- (bb) contesting the jurisdiction of the court;
- (cc) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

[Section 16 inserted by No. 62 of 1986 s. 9.]

Notes

¹ This is a compilation of the *Foreign Judgments Act 1963* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Foreign Judgments (Reciprocal Enforcement) Act 1963</i> ²	12 of 1963	5 Nov 1963	1 Sep 1969 (see s. 2 and <i>Gazette</i> 22 Aug 1969 p. 2379)
<i>Foreign Judgments (Reciprocal Enforcement) Act Amendment Act 1965</i>	71 of 1965	25 Nov 1965	25 Nov 1965
<i>Foreign Judgments (Reciprocal Enforcement) Amendment Act 1980</i>	61 of 1980	24 Nov 1980	1 Jul 1982 (see s. 2 and <i>Gazette</i> 25 Jun 1982 p. 2114)
Reprint of the <i>Foreign Judgments (Reciprocal Enforcement) Act 1963</i> approved 19 Nov 1984 (includes amendments listed above)			
<i>Commercial Arbitration Act 1985</i> s. 3(1)	109 of 1985	7 Jan 1986	1 Apr 1986 (see s. 2 and <i>Gazette</i> 28 Feb 1986 p. 605)
<i>Foreign Judgments (Reciprocal Enforcement) Amendment Act 1986</i>	62 of 1986	26 Nov 1986	1 Mar 1987 (see s. 2 and <i>Gazette</i> 23 Jan 1987 p. 179)
Reprint of the <i>Foreign Judgments Act 1963</i> as at 8 Feb 2002 (includes amendments listed above)			

² Now known as the *Foreign Judgments Act 1963*; short title changed (see note under s. 1).