

LAW REFORM (MISCELLANEOUS PROVISIONS)

EXPLANATORY NOTE

THIS Bill amends the following Acts:

- (a) The Judicature Act 1908:
- (b) The Reciprocal Enforcement of Judgments Act 1934:
- (c) The Evidence Act 1908:
- (d) The Overseas Investment Act 1973:
- (e) The New Zealand Horticulture Export Authority Act 1987.

The amendments to the Judicature Act 1908, the Reciprocal Enforcement of Judgments Act 1934, and the Evidence Act 1908 arise from the agreement between the New Zealand and Australian Governments to extend the application of the competition laws of each country to conduct in the other that adversely affects markets for goods and services. These amendments should be considered in conjunction with the provisions of the Commerce Law Reform Bill 1989 that is now before Parliament. The proposed new section 36A of the Commerce Act 1986 will prohibit persons with a dominant position in Australia or in New Zealand, or in both countries, from using that position to affect adversely markets in New Zealand. The High Court of New Zealand will have jurisdiction under that Act in relation to contraventions of that provision.

A corresponding provision is to be enacted in the Australian Trade Practices Act 1974. The Federal Court of Australia will have jurisdiction in relation to contraventions of the Australian legislation. The amendments to these 3 Acts will give the High Court of New Zealand power to sit in Australia in cases that involve contraventions of the new section 36A, will enable the Federal Court of Australia to sit in New Zealand in corresponding cases under the Australian legislation, and will enable orders of the Federal Court to be enforced here.

The amendments to these Acts will come into force on a date to be appointed by Order in Council.

Similar legislation is to be enacted by the Commonwealth Parliament.

The other amendments made by the Bill are unrelated.

Judicature

Clause 3 relates to the addition to the High Court Rules of rules made for the purposes of the new Part IA of the principal Act.

Clause 4 inserts a new Part IA into the principal Act and relates to proceedings in the High Court in respect of contraventions of the proposed section 36A of the

Commerce Act 1986 and in the Federal Court of Australia in respect of contraventions of the proposed section 46A of the Trade Practices Act 1974.

The new *section 56D* defines the terms “Australian proceeding” and “New Zealand proceeding”.

An “Australian proceeding” is a proceeding in the Federal Court in respect of a contravention of section 46A of the Trade Practices Act 1974.

A “New Zealand proceeding” is a proceeding in the High Court in respect of a contravention of section 36A of the Commerce Act 1986.

The new *section 56E* will allow the High Court to sit in Australia to hear and determine a New Zealand proceeding if it is satisfied that the action could be more conveniently or fairly heard in that country.

The new *section 56F* will enable Australian counsel who are entitled to appear in the Federal Court to appear before the High Court when it sits in Australia. Those counsel will also be entitled to act as counsel before the High Court when the High Court, sitting in New Zealand, receives evidence from a witness in Australia by video link or telephone conference or receives submissions. In addition to sitting in Australia, the High Court will be empowered, when sitting in New Zealand, to hear evidence from witnesses in Australia by video link or telephone conference and to hear submissions of the parties or their counsel by the same means.

The new *section 56G* relates to the setting aside by the High Court of subpoenas issued by that Court requiring persons in Australia to testify or produce documents to the Court and sets out the grounds on which an order of subpoena may be set aside.

The new *section 56H* empowers the High Court to make an order or grant an injunction in a New Zealand proceeding affecting conduct in Australia. It also enables an order of subpoena to be obtained that requires a person in Australia to give evidence or produce documents, or both, to the High Court sitting either in Australia or New Zealand.

This section overcomes the common law rule that prevents the granting of an injunction directed to conduct outside the jurisdiction.

The new *section 56I* empowers the Federal Court of Australia, in Australian proceedings, to sit in New Zealand and, at sittings of the Court in Australia, to receive evidence and submissions by video link or telephone conference from witnesses or counsel in New Zealand.

The Federal Court will not have power to punish for contempt, prosecute witnesses, or enforce judgments, injunctions, or orders of that Court. Responsibility for these matters rests with the High Court.

The new *section 56J* provides for the service in New Zealand of orders of subpoena issued by the Federal Court of Australia requiring the attendance of witnesses in New Zealand to testify or produce documents to that Court. The order of subpoena must be served personally on the witness together with a statement that sets out the rights and obligations of the witness including information as to the manner in which application may be made to set the subpoena aside. The new section also provides that a witness is not compellable to appear unless, at the time of service or at some other reasonable time before the hearing, allowances and travelling expenses are tendered or paid to the witness.

The new *section 56K* relates to the punishment by the High Court of a witness who fails to comply with an order of subpoena issued by the Federal Court.

The new *section 56L* enables the Federal Court to administer an oath or affirmation and provides that evidence given on oath or affirmation before that Court is deemed for the purpose of section 108 of the Crimes Act 1961 (which relates to perjury) to have been given in a judicial proceeding on oath.

The new *section 56M* provides that orders and judgments of the Federal Court are not subject to judicial review.

The new *section 56N* gives the High Court the power to punish for contempt of the Federal Court in an Australian proceeding.

The new *section 56O* requires the Chief Justice of New Zealand and the Chief Justice of the Federal Court to make arrangements to give effect to the new Part 1A, and in particular,—

- (a) To enable the High Court to sit in Australia in New Zealand proceedings in the courtrooms of the Federal Court or in other places in Australia;
- (b) To enable the Federal Court to sit in New Zealand in the courtrooms of the High Court or in other places in New Zealand;
- (c) To enable evidence to be given and the submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by video link or telephone conference;
- (d) For the provision of registry facilities and Court staff.

The new *section 56P* relates to the protection of Judges of the Federal Court and witnesses and counsel in Australian proceedings. Judges of the Federal Court who sit in New Zealand will have the same protections, privileges, and immunities as Judges of the High Court. Witnesses who give evidence before the Federal Court in New Zealand or who give evidence by video link or telephone conference at sittings of that Court in Australia will have the same privileges and immunities as witnesses in the High Court. Counsel who appear before that Court in New Zealand or who act as counsel by video link or telephone conference at sittings of the Court in Australia will have the same privileges and immunities as counsel in the High Court.

The new *section 56Q* enables rules to be made under section 51c of the principal Act in relation to New Zealand proceedings and Australian proceedings.

The new *section 56R* relates to the making of rules under section 51c of the principal Act in relation to proceedings for judicial review of decisions of the Commerce Commission under the proposed new section 98H of the Commerce Act 1986. The proposed new section will enable the Commerce Commission to require persons ordinarily resident in Australia or who carry on business in Australia to furnish information or documents in connection with the exercise of the Commission's powers in relation to the new section 36A of that Act.

Rules may also be made in relation to similar proceedings in Australia in respect of decisions of the Trade Practices Commission under a provision to be enacted that will correspond with the proposed new section 98H of the Commerce Act 1986.

Reciprocal Enforcement of Judgments

Clause 6 inserts a new *Part 1A* into the Reciprocal Enforcement of Judgments Act 1934. The new *Part 1A* will enable judgments, orders, and injunctions given or made or granted by the Federal Court of Australia in proceedings relating to alleged contraventions of the proposed new section 46A of the Trade Practices Act 1974 to be registered and enforced in New Zealand.

The new *section 8A* defines terms used in the new *Part 1A*. The definition of "specified proceeding" should be noted. A "specified proceeding" is a proceeding in the Federal Court of Australia in which—

- (a) Relief is sought for an alleged contravention of section 46A of the Trade Practices Act 1974 whether or not relief is also sought in respect of other matters; or
- (b) Any other kind of relief specified by the Governor-General by Order in Council for the purposes of the new *Part 1A* is sought; or

- (c) An interlocutory order is sought in relation to a proceeding of the kind described in paragraph (a) or paragraph (b); or
- (d) The enforcement is sought of a judgment, order or injunction given or made or granted in a proceeding of the kind described in paragraph (a) or paragraph (b).

The new *section 8B* provides that *Part IA* applies to judgments, orders, and injunctions made or given or granted by the Federal Court in specified proceedings. Part I of the principal Act does not apply to those judgments, orders, or injunctions.

The new *section 8C* provides for the service in New Zealand of orders made or injunctions granted by the Federal Court in specified proceedings.

The new *section 8D* enables judgments, orders, and injunctions given or made or granted by the Federal Court in those proceedings to be registered. A registered judgment, order, or injunction,—

- (a) For the purpose of execution, has the same force and effect; and
- (b) In the case of a judgment or order under which a sum of money is payable, carries interest on that sum; and
- (c) Is subject to the same control over its execution by the High Court— as if it had been a judgment or order or injunction originally given or made or granted by the High Court.

The new *section 8E* sets out the grounds on which the registration of a judgment or order or injunction is to be set aside.

The new *section 8F* requires a copy of a judgment or order that varies a registered judgment or order or injunction to be registered and prohibits a registered judgment or order or injunction from being enforced before the variation is itself registered unless leave of the High Court is obtained.

The new *section 8G* sets out the grounds on which the High Court may grant a stay of execution of a registered judgment or order or injunction.

The new *section 8H* excludes the application of certain common law rules relating to the enforcement of foreign judgments.

The new *section 8I* enables rules to be made under section 51C of the Judicature Act 1908 for the purposes of the new Part.

Evidence

Clauses 8 to 16 relate to evidence of Australian law, documents, and other specific matters in proceedings in the High Court in respect of contraventions of the proposed new section 36A of the Commerce Act 1986, in relation to applications under the new *Part IA* of the Reciprocal Enforcement of Judgments Act 1934, and in proceedings for judicial review of decisions by the Commerce Commission under the proposed new section 98H of the Commerce Act 1986.

These clauses will be enacted as a separate Act amending the Evidence Act 1908 and relating solely to evidence in such proceedings.

Clause 8 relates to the interpretation of terms used in *clauses 10, 13, 14, and 15* of the Bill.

Clause 9 relates to the application of the provisions.

Clause 10 requires judicial notice to be taken of all Australian Acts and regulations.

Clause 11 provides that judicial notice is to be taken of the seal or stamp of the Federal Court of Australia and of the High Court of Australia and of copies, including facsimile copies, of that seal or stamp.

Clause 12 provides that judicial notice is to be taken of the signatures, and of copies including facsimile copies of the signatures, of Judges and Registrars and other officers of the Federal Court and High Court of Australia.

Clause 13 relates to proof of Australian Acts and regulations.

Clause 14 relates to proof of official documents.

Clause 15 relates to proof of documents that are admissible in Australia under Australian Acts and provides that such documents are admissible in New Zealand to the same extent and for the same purpose.

Clause 16 relates to evidence of copies of, or extracts from, certain documents that are admissible in Australia by reason of their public nature.

Overseas Investment

Clause 18 amends the Overseas Investment Act 1973 by inserting a new *section 12A*.

The new section relates to the disclosure, under the Official Information Act 1982, of information supplied to the Overseas Investment Commission for the purpose of, or in connection with, the obtaining of any consent, permission, or exemption in relation to any overseas investment. It provides that any such information, or information derived from any such information, does not have to be disclosed under the Official Information Act 1982 unless—

- (a) The Minister or, as the case requires, the Commission considers that the disclosure of that information would not be likely to prejudice the commercial position of any person; and
- (b) There is no other good reason for withholding that information under that Act.

New Zealand Horticulture Export Authority

Clause 20 amends the definition of the term “processed” in section 2 of the New Zealand Horticulture Export Authority Act 1987. The effect of the amendment is to allow berryfruit that have been concentrated or pureed to be brought under the Act as prescribed products along with unprocessed berryfruit.

The amendment will not apply to bring within the ambit of the Act concentrated or pureed berryfruit that are further processed in some way, for example by canning.

Hon. W. P. Jeffries

LAW REFORM (MISCELLANEOUS PROVISIONS)

ANALYSIS

Title

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3. Power to make rules

4. New Part inserted

PART IA

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56R. Rules in related proceedings

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- 5. Sections to be read with Reciprocal Enforcement of Judgments Act 1934
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ENFORCEMENT OF JUDGMENTS AND ORDERS OF FEDERAL COURT OF AUSTRALIA

- 8A. Interpretation
- 8B. Application
- 8C. Service in New Zealand
- 8D. Registration
- 8E. Cases in which registration must be set aside
- 8F. Variation
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Evidence

- 7. Sections to be read with Evidence Act 1908
- 8. Interpretation
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- 10. Judicial notice of Australian Acts and regulations
- 11. Judicial notice of seal of Federal Court of Australia and High Court of Australia
- 12. Judicial notice of signatures of Judges and Registrar of Federal Court of Australia and High Court of Australia
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14. Evidence of official Australian documents	18. Disclosure of certain information under Official Information Act 1982
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17. Sections to be read with Overseas Investment Act 1973	

A BILL INTITULED

An Act to make various amendments to the law

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Law Reform (Miscellaneous Provisions) Act 1990. 5

Judicature

2. Sections to be read with Judicature Act 1908—(1) This section and the next 2 succeeding sections shall be read together with and deemed part of the Judicature Act 1908* (in those sections referred to as the principal Act). 10

(2) Sections 3 and 4 of this Act shall come into force on a date to be appointed for the commencement of those sections by the Governor-General by Order in Council.

*R.S. Vol. 22, p. 107

3. Power to make rules—Section 51c (2) of the principal Act is hereby amended by inserting, after paragraph (c), the following paragraph: 15

“(cc) Add to the High Court Rules any rules made for the purposes of Part Ia of this Act.”.

4. New Part inserted—The principal Act is hereby amended by inserting, after Part I, the following Part: 20

“PART IA

“SPECIAL PROVISIONS APPLYING TO CERTAIN PROCEEDINGS IN THE HIGH COURT AND THE FEDERAL COURT OF AUSTRALIA

“56D. **Interpretation**—In this Part of this Act, unless the context otherwise requires,— 25

“‘Australian proceeding’ means a proceeding commenced in the Federal Court of Australia in respect of an alleged contravention of section 46A of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; and includes an interlocutory application related to such a proceeding and an application for the issue of execution or 30

enforcement of a judgment or order or injunction given or made or granted in such a proceeding:

“ ‘Federal Court’ means the Federal Court of Australia:

5 “ ‘New Zealand proceeding’ means a proceeding commenced in the High Court in respect of an alleged contravention of section 36A of the Commerce Act 1986; and includes an interlocutory application related to such a proceeding and an application for the issue of execution or enforcement
10 of a judgment or order or injunction given or made or granted in such a proceeding.

“56E. **High Court may order New Zealand proceedings to be heard in Australia**—(1) The High Court may, if it is
15 satisfied that a New Zealand proceeding could more conveniently or fairly be tried or heard by the High Court in Australia or that the evidence in a New Zealand proceeding could more conveniently be given in Australia, as the case may be, order that the proceeding be tried or heard in Australia, or that the evidence be taken in Australia, and may sit in Australia
20 for that purpose.

“(2) The order shall specify—

“(a) The place in Australia where the proceeding will be tried or heard or the evidence taken, as the case may be:

25 “(b) The date or dates of the trial or hearing or on which the evidence will be taken, as the case may be:

“(c) Such other matters relating to the trial or the hearing or the taking of the evidence, as the case may be, as the Court thinks fit.

30 “(3) Without limiting the powers of the High Court in relation to the proceeding, the High Court may give judgment in, or make any determination for the purposes of, a New Zealand proceeding in Australia.

“56F. **Australian counsel entitled to appear before High Court**—Every person who is entitled to appear as counsel in
35 proceedings before the Federal Court is entitled—

“(a) To appear as counsel in a New Zealand proceeding before the High Court in Australia:

40 “(b) To act as counsel for the purpose for examining or cross-examining or re-examining a witness in Australia whose evidence is being taken by video link or telephone conference in a New Zealand proceeding before the High Court in New Zealand:

“(c) To act as counsel for the purpose of making submissions by video link or telephone conference to the High Court in New Zealand in a New Zealand proceeding.

“56G. **High Court may set aside subpoena issued in New Zealand proceeding**—(1) The High Court may set aside an order of subpoena issued by the High Court requiring the attendance of a person in Australia to testify or to produce documents to the High Court for the purposes of a New Zealand proceeding. 5

“(2) An application under **subsection (1)** of this section shall be made by the person served with the order of subpoena and may be made *ex parte*. 10

“(3) Without limiting the grounds on which the order of subpoena may be set aside, the High Court may set the order aside on any of the following grounds: 15

“(a) That the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents:

“(b) That the witness is liable to be detained for the purpose of serving a sentence: 20

“(c) That the witness is liable to prosecution for an offence:

“(d) That the witness is liable to the imposition of a penalty in civil proceedings, not being proceedings for a pecuniary penalty under section 80 of the Commerce Act 1986: 25

“(e) That the evidence of the witness could be obtained without significantly greater expense by other means:

“(f) That compliance with the order of subpoena would cause hardship or serious inconvenience to the witness: 30

“(g) In the case of an order of subpoena that requires a witness to produce documents, whether or not it also requires the witness to testify, that the Court is satisfied that the documents should not be taken out of Australia and that evidence of the contents of the documents can be given by other means. 35

“(4) Every application to set aside an order of subpoena under **subsection (1)** of this section shall be made by affidavit.

“(5) The affidavit shall—

“(a) Be sworn by the applicant; and 40

“(b) Set out the facts on which the applicant relies; and

“(c) Be filed in the office of the Court that issued the order of subpoena.

“(6) The Registrar of the Court shall cause a copy of the affidavit to be served on the solicitor on the record for the party to the proceedings who obtained the order of subpoena, or if there is no solicitor on the record, on that party.

5 “**56H. Injunctions, orders, and subpoenas in New Zealand proceedings**—(1) Notwithstanding any rule of law, the High Court may, in a New Zealand proceeding, make any order or grant an injunction that the Court is empowered to make or grant requiring a person to do any act, or refrain from
10 engaging in conduct, in Australia.

 “(2) Notwithstanding any rule of law, an order of subpoena may be obtained in a New Zealand proceeding that requires a person in Australia to testify or produce documents, or both, to the High Court at a sitting of that Court in New Zealand or in
15 Australia.

 “**56I. Powers of Federal Court of Australia**—(1) The Federal Court of Australia may exercise all the powers of that Court—

20 “(a) At a sitting of that Court in New Zealand held for the purposes of an Australian proceeding:

 “(b) At a sitting of that Court in Australia held for the purposes of an Australian proceeding at which the evidence of a witness in New Zealand is taken by video link or telephone conference or at which
25 submissions are made in New Zealand by counsel or a party to the proceedings by video link or telephone conference.

 “(2) Without limiting **subsection (1)** of this section, the Federal Court of Australia Act 1976 and the Rules of Court made under that Act that are applicable in relation to Australian proceedings generally shall apply to the practice and procedure of the Federal Court at any sitting of that Court of the kind referred to in that subsection.

30 “(3) Without limiting **subsection (1)** of this section, the Federal Court may, at any such sitting of the Court in New Zealand or in Australia, by order—

 “(a) Direct that the hearing or any part of the hearing be held in private:

 “(b) Require any person to leave the Court:

40 “(c) Prohibit or restrict the publication of evidence or the name of any party or any witness.

 “(4) Nothing in **subsection (1)** or **subsection (2)** of this section applies in relation to—

“(a) The power of the Court to punish any person for contempt; or

“(b) The prosecution of any person for an offence committed as a witness; or

“(c) The enforcement or execution of any judgment, order, injunction, writ, or declaration given, made, or granted by the Court. 5

“(5) An order made under **subsection (3)** of this section may be enforced by a Judge of the High Court who, for that purpose, shall have and may exercise the powers, including the power to punish for contempt, that would be available to enforce the order if it had been made by that Judge. 10

“56j. **Issue of subpoenas in Australian proceedings—**

(1) An order of subpoena that is issued by the Federal Court with the leave of a Judge of that Court requiring the attendance of a person in New Zealand to testify or to produce documents for the purposes of an Australian proceeding may be served on that person in New Zealand by leaving a sealed copy of the subpoena with that person personally together with a statement setting out the rights and obligations of that person, including information as to the manner in which application may be made to that Court to have the subpoena set aside. 15 20

“(2) A person who has been served with an order of subpoena under **subsection (1)** of this section is not compellable to comply with the order unless, at the time of service of the order or at some other reasonable time before the hearing, allowances and travelling expenses or vouchers sufficient to enable that person to comply with the order are tendered or paid to that person. 25

“56k. **Failure of witness to comply with subpoena issued in Australian proceeding—**(1) The Court may, on receiving a certificate under the seal of the Federal Court stating that a person named in the certificate has failed to comply with an order of subpoena requiring that person to attend as a witness for the purposes of an Australian proceeding, issue a warrant to arrest that person and bring that person before the Court. 30 35

“(2) The Court may, on the appearance of that person before the Court, impose a fine not exceeding \$1,000 unless the Court is satisfied, the onus of proof of which shall lie with that person, that the failure to comply with the order of subpoena should be excused. 40

“(3) In determining whether the failure to comply with the order of subpoena should be excused, the High Court may have regard to—

5 “(a) Any matters that were not brought to the attention of the Federal Court, if the High Court is satisfied that—

“(i) The Federal Court would have been likely to have set aside the order of subpoena if those matters had been brought to the attention of that Court; and

10 “(ii) The failure to bring those matters to the attention of the Federal Court was not due to any fault on the part of the person alleged to have failed to comply with the order of subpoena or was due to an omission by that person that should be excused; and

15 “(b) Any matters to which the High Court would have regard if the order of subpoena had been issued by the High Court.

20 “(4) For the purposes of this section, but subject to **subsection (3)** of this section, a certificate under the seal of the Federal Court stating—

“(a) That the order of subpoena was issued by that Court:

“(b) That the witness failed to comply with the order of subpoena:

25 “(c) In relation to any application made to that Court to have the order of subpoena set aside, the decision of that Court or any orders or findings of fact made by that Court—

shall be conclusive evidence of the matters stated in it.

30 “(5) Subject to **subsection (3)** of this section, no findings of fact made by the Federal Court on an application to that Court to have the order of subpoena set aside may be challenged by any person alleged to have failed to comply with the order unless the Court was deliberately misled in making those findings of fact.

35 “56L. **Federal Court of Australia may administer oaths in New Zealand**—(1) The Federal Court may—

“(a) At any sitting of that Court in New Zealand held for the purposes of an Australian proceeding; or

40 “(b) For the purposes of obtaining the testimony of a person in New Zealand by video link or telephone conference at a sitting of that Court in Australia— administer an oath or affirmation in accordance with the practice and procedure of that Court.

“(2) Evidence given by a person on oath or affirmation administered by the Federal Court under **subsection (1)** of this section shall, for the purposes of section 108 of the Crimes Act 1961 (which relates to perjury), be deemed to have been given as evidence in a judicial proceeding on oath. 5

“**56M. Orders made by Federal Court of Australia not subject to review**—No application for review under Part I of the Judicature Amendment Act 1972 and no application for an order of mandamus or prohibition or certiorari or for a declaration or injunction may be brought in respect of any judgment or order or determination of the Federal Court made or given at a sitting of that Court in New Zealand in an Australian proceeding. 10

“**56N. Contempt of Federal Court of Australia**—(1) Every person commits an offence who, at any sitting of the Federal Court in New Zealand,— 15

“(a) Assaults, threatens, intimidates, or wilfully insults a Judge of that Court or any person acting as a registrar or officer of that Court or any witness in the proceedings; or 20

“(b) Wilfully interrupts or obstructs the proceedings; or

“(c) Wilfully and without lawful excuse disobeys any order or direction of the Court in the course of the proceedings.

“(2) Every person who commits an offence against this section is liable on conviction on indictment to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$1,000. 25

“**56O. Arrangements to facilitate sittings**—(1) The Chief Justice of New Zealand may make arrangements with the Chief Justice of the Federal Court for the purposes of giving effect to this Part of this Act. 30

“(2) Without limiting **subsection (1)** of this section arrangements may be made—

“(a) To enable the High Court to sit in Australia in New Zealand proceedings in the courtrooms of the Federal Court or in other places in Australia: 35

“(b) To enable the Federal Court to sit in New Zealand in the courtrooms of the High Court or in other places in New Zealand: 40

“(c) To enable evidence to be given and the submissions of counsel to be made in New Zealand proceedings or in Australian proceedings by video link or telephone conference:

“(d) For the provision of registry facilities and Court staff.

“56P. **Privileges and immunities of Judges, counsel, and witnesses in Australian proceedings**—(1) A Judge of the Federal Court sitting as a Judge of that Court in New Zealand in an Australian proceeding has all the protections, privileges, and immunities of a Judge of the High Court.

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“(2) Every witness who gives evidence in an Australian proceeding—

“(a) At a sitting in New Zealand of the Federal Court; or

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“(b) By video link or telephone conference at a sitting in Australia of the Federal Court—

has all the privileges and immunities of a witness in the High Court.

“(3) Every person who, in relation to an Australian proceeding,—

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“(a) Appears as counsel at a sitting in New Zealand of the Federal Court; or

“(b) Acts as counsel in a video link or telephone conference at a sitting in Australia of the Federal Court—

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has all the privileges and immunities of counsel in the High Court.

“56Q. **Power to make rules for purposes of this Part**—

(1) Rules may be made under section 51c of this Act for, or in relation to, Australian proceedings and New Zealand proceedings.

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“(2) Without limiting subsection (1) of this section, rules may be made that make provision for—

“(a) Filing and serving documents and orders in Australian proceedings in New Zealand by facsimile transmission:

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“(b) The giving of evidence and the making of submissions in New Zealand proceedings by video link or telephone conference:

“(c) The reimbursement of expenses incurred by witnesses in travelling from Australia to New Zealand to give evidence in New Zealand proceedings in compliance with orders of subpoena:

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“(d) The lodging of documents with the Federal Court in compliance with orders of subpoena issued in New Zealand proceedings that require only the production of documents by witnesses:

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“(e) The transmission of documents lodged with the High Court in Australian proceedings in compliance with orders of subpoena issued by the Federal Court or

- certified copies of such documents to the Federal Court:
- “(f) The transmission of documents for the purposes of Australian proceedings from the High Court to the Federal Court: 5
- “(g) The hearing of applications for orders under **section 56g** of this Act:
- “(h) Sittings of the High Court in Australia:
- “(i) Giving effect to arrangements made under **section 56o** of this Act: 10
- “(j) The form of certification of judgments, orders, and injunctions in New Zealand proceedings:
- “(k) Such other matters as are contemplated by or necessary for giving effect to this Part of this Act.
- “**56R. Rules in related proceedings**—(1) In this section 15
“specified proceedings” means—
- “(a) Proceedings in the High Court by way of application for review under Part I of the Judicature Amendment Act 1972 of the exercise or proposed exercise by the Commerce Commission of a power conferred on that Commission by section 98H of the Commerce Act 1986; and includes proceedings in that Court by way of application for orders for mandamus, injunction, prohibition, and certiorari in relation to the exercise or proposed exercise by the Commerce Commission of such a power: 20
- “(b) Proceedings in the Federal Court in relation to the exercise or proposed exercise by the Trade Practices Commission of a power conferred on that Commission by section 155A of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia that correspond with proceedings of the kind referred to in **paragraph (a)** of this subsection. 25
- “(2) Rules may be made under **section 51c** of this Act that make provision, in relation to specified proceedings, for— 35
- “(a) The filing and service of documents by facsimile transmission:
- “(b) The giving of evidence and the making of submissions by the parties and their counsel by video link or telephone conference. 40

Reciprocal Enforcement of Judgments

5. Sections to be read with Reciprocal Enforcement of Judgments Act 1934—(1) This section and the next succeeding

section shall be read together with and deemed part of the Reciprocal Enforcement of Judgments Act 1934* (in that section referred to as the principal Act).

5 (2) Section 6 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

*R.S. Vol. 4, p.239

6. **New Part inserted**—The principal Act is hereby amended by inserting after Part I, the following Part:

“PART IA

10 “ENFORCEMENT OF JUDGMENTS AND ORDERS OF FEDERAL COURT OF AUSTRALIA

“8A. **Interpretation**—In this Part of this Act, unless the context otherwise requires,—

“ ‘Injunction’ includes an interim or interlocutory injunction whether obtained *inter partes* or *ex parte*:

15 “ ‘Order’ means a direction under which a person is required to perform an act, or to make a payment, including a payment of a pecuniary penalty, or to observe a condition or to refrain from performing an act or from engaging in specified conduct, whether the order is interlocutory or final;
20 but does not include an injunction:

“ ‘Specified proceeding’ means a proceeding in the Federal Court of Australia in which—

25 “(a) Relief is sought in respect of an alleged contravention of section 46A of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia as amended or substituted by that Parliament from time to time whether or not relief is also sought in respect of other matters; or

30 “(b) Any other kind of relief specified by the Governor-General by Order in Council for the purposes of this Part of this Act is sought; or

35 “(c) An interlocutory order is sought in relation to a proceeding of the kind mentioned in paragraph (a) or paragraph (b) of this definition; or

“(d) The enforcement is sought of a judgment or order or injunction given or made or granted in a proceeding of the kind mentioned in paragraph (a) or paragraph (b) of this definition.

40 “8B. **Application**—(1) This Part of this Act applies to a judgment or order or injunction given or made or granted in a specified proceeding.

“(2) Nothing in Part I of this Act applies to a judgment or order or injunction to which this Part of this Act applies.

“8C. **Service in New Zealand**—An order or injunction to which this Part of this Act applies may be served in New Zealand on the person expressed to be bound by it. 5

“8D. **Registration**—(1) On production of a copy of a judgment or order or injunction to which this Part of this Act applies in accordance with Rules made under section 51c of the Judicature Act 1908, the High Court shall, on being satisfied that the judgment or order or injunction is one to which this Part of this Act applies, order that the judgment or order or injunction be registered. 10

“(2) A registered judgment or order or injunction to which this Part of this Act applies shall—

“(a) For the purposes of execution, be of the same force and effect; and 15

“(b) In the case of a judgment or order under which a sum of money is payable, carry interest on that sum; and

“(c) Be subject to the same control over its execution by the High Court— 20

as if it had been a judgment or order or injunction originally given or made or granted in the High Court and entered on the date of registration.

“(3) A judgment or order to which this Part of this Act applies that is to be registered under this Part of this Act under which a sum is payable that is expressed in Australian currency shall be registered as if it were a judgment or order in New Zealand currency that at the rate of exchange applying at the date of the judgment or order is equivalent to that sum. 25

“(4) If, at the date of the application for registration of a judgment or order to which this Part of this Act applies under which a sum of money is payable the judgment or order has been partly satisfied, the judgment or order shall not be registered in respect of the whole sum payable under the judgment or order, but shall be registered only in respect of the balance remaining payable at that date. 30 35

“(5) In addition to any sum of money payable under the judgment or order, including any interest which by the law of the Commonwealth of Australia becomes due under the judgment or order up to the time of registration, the judgment or order 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 Federal Court of Australia. 40

5 “8E. **Cases in which registration must be set aside**—The High Court shall set aside the registration of a judgment or order or injunction that is registered under **section 8D** of this Act on the application of any person against whom it may be enforced if the High Court is satisfied that the judgment or order or injunction—

- “(a) Is unenforceable in Australia; or
- “(b) Has been wholly satisfied; or
- 10 “(c) Was registered in contravention of this Part of this Act or that this Part of this Act does not apply to it; or
- “(d) Has been reversed or set aside by the Federal Court of Australia or the High Court of Australia; or
- 15 “(e) Relates to a claim for relief that has been finally dismissed by the Federal Court of Australia or the High Court of Australia.

20 “8F. **Variation**—(1) A copy of every judgment or order of the Federal Court of Australia varying a judgment or order or injunction registered under this Part of this Act shall be registered in the High Court and the provisions of this Part of this Act shall apply to the judgment or order or injunction as so varied.

25 “(2) No execution of a judgment registered under this Part of this Act that has been varied by the Federal Court of Australia or by the High Court of Australia shall be issued and no proceedings to enforce an order or injunction registered under this Part of this Act that has been varied by the Federal Court of Australia or by the High Court of Australia, as the case may be, shall be commenced before the registration of the variation of the judgment or order under **subsection (1)** of this section
30 without the leave of the High Court.

“8G. **Stay of execution**—(1) The High Court may, if it is satisfied that a person against whom a judgment or order or injunction has been registered under this Part of this Act—

- 35 “(a) Has applied, or intends to apply, to the Federal Court of Australia to have the judgment or order or injunction set aside; or
- “(b) Has appealed, or intends to appeal, to the High Court of Australia against the judgment or the making of the order or the granting of the injunction,—

40 the High Court may order that enforcement of the judgment or order or injunction be stayed pending the determination of the application or appeal, as the case may be, or until a specified date, or for a specified period.

“(2) If the High Court makes an order on the ground that a person intends to apply to the Federal Court of Australia to have the judgment or order or injunction set aside or intends to appeal to the High Court of Australia against the judgment or the making of the order or the granting of the injunction, the High Court shall impose, as a condition of the order, a condition that the person makes the application or brings the appeal, as the case may be, by a specified date or within a specified period. 5

“(3) Every order made under subsection (1) of this section shall be made on the condition that the application or appeal, as the case may be, is proceeded with in an expeditious manner. 10

“(4) An order under subsection (1) of this section may be made on such other conditions, including conditions relating to the giving of security, as the High Court thinks fit. 15

“8H. **Application of rules of private international law**—
The provisions of this Part of this Act shall have effect in relation to the execution and enforcement of judgments, orders, and injunctions registered under this Part of this Act notwithstanding any rule of law relating to the jurisdiction of the courts of countries other than New Zealand or to public policy. 20

“8I. **Rules of Court**—(1) Rules may be made under section 51C of the Judicature Act 1908 for, or in relation to, the registration of judgments, orders, and injunctions to which this Part of this Act applies. 25

“(2) Without limiting subsection (1) of this section, rules may be made that make provision for—

“(a) The registration and service by facsimile transmission of copies of judgments, orders, and injunctions to which this Part of this Act applies and of notices of registration; and 30

“(b) The service of notice of registration of judgments, orders, and injunctions to which this Part of this Act applies.” 35

Evidence

7. Sections to be read with Evidence Act 1908—(1) This section and the next 9 succeeding sections shall be read together with and deemed part of the Evidence Act 1908* (in those sections referred to as the principal Act). 40

*R.S. Vol. 2, p. 339; 1980, No. 6; 1980, No. 27; 1982, No. 48; 1985, No. 54; 1985, No. 161; 1986, No. 74; 1986, No. 87; 1987, No. 138; 1988, No. 116; 1988, No. 222; 1989, No. 104

(2) Sections 8 to 16 of this Act shall come into force on a date to be appointed for the commencement of those sections by the Governor-General by Order in Council.

8. Interpretation—In sections 10, 13, 14, and 15 of this Act—

5 “Australian Act” means—

(a) An Act of the Parliament of the Commonwealth of Australia:

(b) An Act of the Parliament of a State of Australia:

10 “Australian regulation” means a regulation, order, notice, proclamation, or instrument made, given, or issued under an Australian Act.

9. Application—Sections 10 to 16 of this Act apply in relation to—

15 (a) Proceedings commenced in the High Court in respect of an alleged contravention of section 36A of the Commerce Act 1986 including an interlocutory application related to such proceedings and an application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in such a proceeding:

20 (b) Every application under Part IA of the Reciprocal Enforcement of Judgments Act 1934—

(i) To register a judgment or order or injunction:

25 (ii) To register a judgment or order varying a judgment or order or injunction registered under that Part of that Act:

(iii) To set aside, or stay the execution of, a judgment or order or injunction registered under that Part of that Act:

30 (c) Proceedings in the High Court by way of application for review under Part I of the Judicature Amendment Act 1972 of the exercise or proposed exercise by the Commerce Commission of a power conferred on that Commission by section 98H of the Commerce Act
35 1986 including proceedings in that Court by way of application for orders for mandamus, injunction, prohibition or certiorari in relation to the exercise or proposed exercise by the Commerce Commission of such a power.

40 **10. Judicial notice of Australian Acts and regulations**—Judicial notice shall be taken of Australian Acts and Australian regulations.

11. Judicial notice of seal of Federal Court of Australia and High Court of Australia—Judicial notice shall be taken of the impression of the seal or stamp of the Federal Court of Australia and of the High Court of Australia and of a true copy or facsimile transmission of the impression of that seal or stamp. 5

12. Judicial notice of signatures of Judges and Registrar of Federal Court of Australia and High Court of Australia—Judicial notice shall be taken of the signature on a document, or of a true copy or facsimile transmission of the signature on a document, of a Judge, a Registrar, a District Registrar, a Deputy Registrar or a Deputy District Registrar of the Federal Court of Australia or of the High Court of Australia. 10

13. Copies of Australian Acts and regulations to be evidence—Every copy of an Australian Act and every copy of any Australian regulations appearing to have been printed or published, whether before or after the commencement of this section, by the Government Printer of the Government of the Commonwealth of Australia or of the Government of a State of Australia or under the authority of such Government shall, unless the contrary is proved, be deemed— 15 20

- (a) To be a correct copy of the Australian Act or Australian regulations; and
- (b) To have been so printed and published.

14. Evidence of official Australian documents—(1) In this section “official Australian document” means a document that appears to be made or issued by a person who appears to have, under an Australian Act, the authority or power to make or issue it. 25

(2) Prima facie evidence of the making or issue of an official Australian document may be given by producing— 30

- (a) An original of the document; or
- (b) A copy of an Australian Government *Gazette* that contains a copy of the document; or
- (c) A copy of the document that appears to have been printed by the Government Printer of the Government of the Commonwealth of Australia or of the Government of a State of Australia or under the authority of such Government; or 35
- (d) A written copy of, or extract from, the document that appears to have been certified by the person who made or issued the document or by a person who 40

appears to have power to issue or make the document.

15. Evidence of public documents by reference to Australian Acts—(1) In this section “public document” means an official or public document; and includes a certificate, an entry in a register, and a record of any proceedings.

5

(2) A public document that is admissible in evidence under an Australian Act is admissible in evidence to the same extent and for the same purpose if it appears to be sealed, stamped, signed, signed and sealed, or signed and stamped in accordance with that Act.

10

(3) A certified copy of, or a certified extract from, a public document that is admissible in evidence pursuant to subsection (1) of this section is also admissible in evidence.

16. Evidence of other public documents—A copy of, or extract from, an Australian document that is, by reason of its public nature, admissible in evidence in Australia merely on its production from the proper custody, is admissible in evidence if—

15

(a) The copy or extract is proved to be an examined copy or extract; or

20

(b) The copy or extract appears to be signed or certified as a true copy or extract by the person who has custody of the document and that person also certifies that he or she has custody of it.

25

Overseas Investment

17. Sections to be read with Overseas Investment Act 1973—This section and the next succeeding section shall be read together with and deemed part of the Overseas Investment Act 1973* (in that section referred to as the principal Act).

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*1973, No. 14

Amendments: 1977, No. 67; 1986, No. 62

18. Disclosure of certain information under Official Information Act 1982—The principal Act is hereby amended by inserting, after section 12, the following section:

“12A. (1) This section applies to any information supplied to the Commission, or any information derived from information so supplied, where the information so supplied is supplied to the Commission for the purpose of, or in connection with, the obtaining of any consent, permission, or exemption in relation to any overseas investment.

35

“(2) Notwithstanding anything in the Official Information Act 1982, where any person requests the Minister or the Commission to disclose any information to which this section applies, the Minister or, as the case may require, the Commission shall not be required to disclose that information under the Official Information Act 1982 unless— 5

- “(a) The Minister or, as the case may require, the Commission considers that the disclosure of that information would not be likely to prejudice the commercial position of any person; and 10
- “(b) There is no other good reason for withholding that information under that Act.”

New Zealand Horticulture Export Authority

19. Sections to be read with New Zealand Horticulture Export Authority Act 1987—This section and the next succeeding section shall be read together with and deemed part of the New Zealand Horticulture Export Authority Act 1987* (in that section referred to as the principal Act). 15

*1987, No. 93
Amendment: 1990, No. 11

20. Interpretation—Section 2 of the principal Act is hereby amended by omitting from paragraph (b) (i) of the definition of the term “processed” the words “or frozen”, and substituting the words “frozen, concentrated, or pureed”. 20