

[AS REPORTED FROM THE JUSTICE AND LAW REFORM
COMMITTEE]

House of Representatives, 21 June 1990.

Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.

Hon. W. P. Jeffries

LAW REFORM (MISCELLANEOUS PROVISIONS)

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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

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(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.

New

(2) Sections 3 and 4 of this Act shall come into force on the 1st day of July 1990.

*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: 20

“(cc) Add to the High Court Rules any rules made for the purposes of Part 1A of this Act:”.

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

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“PART 1A

“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,—

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

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New

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“ ‘Australian proceeding’ means a proceeding in which a matter for determination arises under—

“(a) Any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or

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“(b) A provision of Part VI or Part XII of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act,—

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whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceeding 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:

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

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“‘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 of a judgment or order or injunction given or made or granted in such a proceeding.

New

“‘New Zealand proceeding’ means a proceeding in which a matter for determination arises under—
 “(a) Any of sections 36A, 98H, or 99A of the Commerce Act 1986; or
 “(b) A provision of Part VI or Part VII of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act,—
 whether or not any other matter arises for determination; and includes an interlocutory proceeding related to such a proceeding 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.

“56E. **High Court may order New Zealand proceedings to be heard in Australia**—(1) The High Court may, if it is 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 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:
 “(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.

5 “(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.

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10 **“56F. Australian counsel entitled to appear before High Court**—Every person who is entitled to appear as counsel in proceedings before the Federal Court is entitled—

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

15 “(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:

20 “(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.

New

25 **“56F. Australian counsel entitled to practise in High Court**—A person who is entitled to practise as a barrister, or solicitor, or both, in the Federal Court is entitled to—

“(a) Practise in relation to a New Zealand proceeding before the High Court sitting in Australia:

30 “(b) Examine, cross-examine, or re-examine 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) Make submissions by video link or telephone conference to the High Court in New Zealand in a New Zealand proceeding.

35 **“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.

“(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*. 5

“(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:

“(a) That the witness does not have, and could not reasonably be expected to obtain, the necessary travel documents: 10

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

“(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: 15

“(e) That the evidence of the witness could be obtained without significantly greater expense by other means: 20

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

“(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. 25

“(4) Every application to set aside an order of subpoena under **subsection (1)** of this section shall be made by affidavit. 30

“(5) The affidavit shall—

“(a) Be sworn by the applicant; and

“(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. 35

“(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. 40

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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 engaging in conduct, in Australia.

10 “(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 Australia.

New

15 “56H. **Injunctions and orders in New Zealand proceedings**—Notwithstanding any rule of law, the High Court may, in a New Zealand proceeding, make an order or grant an injunction that the Court is empowered to make or grant that requires a person to do an act, or refrain from engaging in conduct, in Australia.

20 “56HA. **Issue of subpoenas in New Zealand proceedings**—(1) An order of subpoena may, with the leave of a Judge, be obtained in a New Zealand proceeding requiring a person in Australia to testify, or produce documents or things, or both, to the High Court at a sitting of that Court in New Zealand or in Australia.

25 “(2) An order of subpoena issued for the purposes of a New Zealand proceeding that requires a witness in Australia to produce documents or things, but does not require the witness to testify, must permit the witness to comply with the order of subpoena by producing the documents or things to a specified registry of the Federal Court.

30 “56I. **Powers of Federal Court of Australia**—(1) The Federal Court of Australia may exercise all the powers of that Court—

35 “(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 submissions are made in New Zealand by counsel or a party to the proceedings by video link or telephone conference.

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“(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.

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“(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: 15

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

“(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— 20

“(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 25

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

“(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. 30

“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. 35
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5 “(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.

10 “**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 requiring any constable to arrest that person and bring that person before the Court.

15 “(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.

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

25 “(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

30 “(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

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

40 “(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:

“(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. 5

“(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. 10

“**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 15

“(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. 20

“(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. 25

“**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. 30

“**56N. Contempt of Federal Court of Australia**—(1) Every person commits an offence who, at any sitting of the Federal Court in New Zealand,— 35

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“(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 40

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5 “(a) Assaults, threatens, intimidates, or wilfully insults—
 “(i) A Judge of that Court; or
 “(ii) A registrar or officer of that Court; or
 “(iii) A person appearing as a barrister, or
solicitor, or both, before that Court; or
 “(iv) A witness in proceedings before that Court;
or

10 “(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.

15 “(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.

20 “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.

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

25 “(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:

30 “(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.

35 “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.

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

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

“(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.

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

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

New

“(3) A person appearing as a barrister, or solicitor, or both, in an Australian proceeding— 15

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

“(b) By video link or telephone conference at a sitting in Australia of the Federal Court—
has all the privileges and immunities of counsel in the High Court. 20

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“56PA. **High Court may take evidence at request of Federal Court**—(1) The High Court may, at the request of the Federal Court, take evidence in New Zealand for the Federal Court for the purposes of an Australian proceeding and may, by order, make any provision it considers appropriate for the purpose of taking that evidence. 25

“(2) An order may require a specified person to take such steps the High Court considers appropriate for taking the evidence. 30

“(3) Without limiting subsections (2) and (3) of this section, an order may, in particular, make provision—

“(a) For the examination of witnesses, either orally or in writing; or 35

“(b) For the production of documents or things, or

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“(c) for the inspection, photographing, preservation, custody or detention of any property; or

5 “(d) For taking samples of property and carrying out experiments on or with property.

“(4) The High Court may make an order requiring a person to give evidence either orally or by tendering a written document otherwise than on oath or affirmation if the Federal Court requests it to do so.

10 “(5) A person who has been served with an order made under 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 that person is required to comply with the order, allowances and travelling expenses or vouchers
15 sufficient to enable that person to comply with the order are tendered or paid to that person.

“(6) A person is not compellable to give evidence pursuant to an order under this section that he or she is not compellable to give in the Australian proceeding to which the request relates.

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“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.

25 “(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:

30 “(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
35 evidence in New Zealand proceedings in compliance with orders of subpoena:

“(d) The lodging of documents with the Federal Court in compliance with orders of subpoena issued in New

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- Zealand proceedings that require only the production of documents by witnesses:
- “(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: 5
- “(f) The transmission of documents for the purposes of Australian proceedings from the High Court to the Federal Court: 10
- “(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: 15
- “(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. 20

New

- “**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. 25
- “(2) Without limiting **subsection (1)** of this section, rules may be made that make provision for, or in relation to,—
- “(a) The giving of evidence and the making of submissions in New Zealand proceedings by video link or telephone conference: 30
- “(b) Receiving, for the purposes of the Evidence Amendment Act 1990, facsimiles as evidence of documents or things:
- “(c) The issuing of subpoenas for service in Australia for the purposes of New Zealand proceedings and the service of those subpoenas: 35
- “(d) The payment of witnesses required to comply with orders of subpoena served in Australia for the purposes of New Zealand proceedings of amounts in

New

- respect of expenses and loss of income occasioned by compliance with those orders:
- 5 “(e) The lodging of documents or things with the Federal Court in compliance with orders of subpoena issued in New Zealand proceedings that require only the production of documents or things by witnesses:
- 10 “(f) The transmission of documents or things 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:
- 15 “(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:
- “j) The form of certification of judgments, orders, and injunctions in New Zealand proceedings:
- 20 “(k) The taking of evidence under **section 56PA** of this Act:
- “l) Such other matters as are contemplated by or necessary for giving effect to this Part of this Act.”

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- 25 “56R. **Rules in related proceedings**—(1) In this section “specified proceedings” means—
- 30 “(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:
- 35 “(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

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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.

“(2) Rules may be made under section 51c of this Act that make provision, in relation to specified proceedings, for— 5

“(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. 10

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). 15

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(2) Section 6 of this Act shall come into force on a date to be appointed by the Governor-General by Order in Council. 20

New

(2) Section 6 of this Act shall come into force on the 1st day of July 1990.

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

6. New Part inserted—The principal Act is hereby amended by inserting after Part I, the following Part: 25

“PART IA

“ENFORCEMENT OF JUDGMENTS AND ORDERS OF FEDERAL COURT OF AUSTRALIA

“8A. **Interpretation**—In this Part of this Act, unless the context otherwise requires,— 30

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

5 “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;

but does not include an injunction:

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

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15 “(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

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20 “(a) A matter for determination arises under—
“(i) Any of sections 46A, 155A, or 155B of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia; or
25 “(ii) A provision of Part VI or Part XII of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia in so far as it relates to any of sections 46A, 155A, or 155B of that Act—
whether or not any other matter arises for determination 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.

“**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. 5

“(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. 10

“**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. 15

“(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 20

“(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— 25

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. 30

“(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. 40

“(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

5 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.

“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 80** 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
- 15 “(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

Struck Out

20 “(e) Relates to a claim for relief that has been finally dismissed by the Federal Court of Australia or the High Court of Australia.

New

25 “(e) Relates to a claim or claims for relief for a contravention, or 2 or more contraventions, of section 46A of the Trade Practices Act 1974 of the Parliament of the Commonwealth of Australia, whether or not it also relates to any other claim for relief, that has, or all of which have, been dismissed by the Federal Court of Australia or the High Court of Australia.

30 “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.

35 “(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 5 without the leave of the High Court.

“**8C. 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—

“(a) Has applied, or intends to apply, to the Federal Court of Australia to have the judgment or order or injunction set aside; or 10

“(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,— 15

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. 20 25

“(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. 30

“(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.

“**8H. Application of rules of private international law**— 35
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 40 policy.

“**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.

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

5

Struck Out

“(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

10

New

“(a) The registration and service of facsimiles of judgments, orders, and injunctions to which this Part of this Act applies; and

15

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

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).

Struck Out

(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.

New

(2) Sections 8 to 16 of this Act shall come into force on the 1st day of July 1990.

*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

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

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“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: 5

New

“Australian Act” means—

- (a) An Act of the Commonwealth of Australia:
- (b) An Act of a State of the Commonwealth of Australia: 10
- (c) An Act or an Ordinance of a Territory of the Commonwealth of Australia:

“Australian regulation” means a regulation, order, notice, proclamation, or instrument made, given, or issued under an Australian Act. 15

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

Struck Out

- (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
25

New

- (a) Proceedings commenced in the High Court in which a matter for determination arises under— 30
 - (i) Any of sections 36A, 98H, or 99A of the Commerce Act 1986; or
 - (ii) A provision of Part VI or Part VII of the Commerce Act 1986 in so far as it relates to any of sections 36A, 98H, or 99A of that Act:

New

- (ab) A interlocutory proceeding related to proceedings of the kind referred to in **paragraph (a)** of this section:
 - 5 (ac) An application for the issue of execution or enforcement of a judgment or order or injunction given or made or granted in a proceeding of the kind referred to in **paragraph (a)** of this section:
- (b) Every application under Part IA of the Reciprocal Enforcement of Judgments Act 1934—
 - 10 (i) To register a judgment or order or injunction:
 - (ii) To register a judgment or order varying a judgment or order or injunction registered under that Part of that Act:
 - 15 (iii) To set aside, or stay the execution of, a judgment or order or injunction registered under that Part of that Act:

Struck Out

- 20 (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 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.

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

Struck Out

35 **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

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or facsimile transmission of the impression of that seal or stamp.

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.

New

11. Facsimiles—Subject to any Rules of Court made under section 51c of the Judicature Act 1908, and to any contrary direction by the Court—

- (a) A facsimile of a document or thing that is admissible in evidence under this Act is admissible evidence of that document or thing; 15
- (b) Judicial notice shall be taken of a facsimile of a document or thing of which judicial notice is required to be taken under this Act. 20

12. Judicial notice of certain signatures, seals, and stamps—(1) Judicial notice shall be taken of—

- (a) The impression of the seal or stamp of the Federal Court of Australia and of the High Court of Australia; and
- (b) The signature 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; and 25
- (c) The official signature of a person who holds, or has held, an office in Australia to which the Governor-General, by Order in Council, declares this section to apply; and 30
- (d) The impression of the official seal or stamp of a person referred to in paragraph (b) or paragraph (c) of this subsection; and 35
- (e) If judicial notice is taken of a signature or the impression of a stamp or seal under paragraph (b) or paragraph (c) or

New

- paragraph (d) of this subsection, the fact that a person referred to in paragraph (b) or paragraph (c) holds, or has held, the office concerned—
- 5 if the signature or the impression appears on an official or judicial document.
- (2) An order may be made under paragraph (c) of subsection (1) of this section even though the office has ceased to exist.
- 10 (3) An order that is made under paragraph (c) of subsection (1) of this section continues to apply in relation to an office and to a person who held the office even though the office ceases to exist after the order is made.

- 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,
- 20 unless the contrary is proved, be deemed—
- (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.
- (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
- 35 (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
- 40 (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 appears to have power to issue or make the document.

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- 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. 15

New

- 15. Evidence of public documents by reference to Australian law**—(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. 20
- (2) Without limiting subsection (4) of this section, 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. 25
- (3) A certified copy of, or a certified extract from, a public document that is admissible in evidence pursuant to subsection (2) of this section is also admissible in evidence.
- (4) A public document that is admissible in evidence under Australian law, to any extent or for any purpose, without proof of— 30
- (a) The seal, stamp, or signature that authenticates it; or
- (b) The judicial or official character of the person who appears to have signed it— 35
- is admissible in evidence to the same extent and for the same purpose without such proof.

5 **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—

- (a) The copy or extract is proved to be an examined copy or extract; or
- 10 (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.

New

15 **16A. New section 41 substituted**—The principal act is hereby amended by repealing section 41, and substituting the following section:

“41. **‘Country’ defined**—In sections 37 to 40 of this Act ‘country’ includes a State, territory, province, or other part of a country.”

20 **16B. Other laws not affected**—Nothing in this Act limits or affects the provisions of any other Act or a rule of law relating to the admissibility of evidence or the taking of judicial notice of a matter or thing.

Overseas Investment

25 **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).

*1973, No. 14

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

Struck Out

30 **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

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the Commission for the purpose of, or in connection with, the obtaining of any consent, permission, or exemption in relation to any overseas investment.

“(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—

“(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

“(b) There is no other good reason for withholding that information under that Act.”

New

18. New sections inserted—The principal Act is hereby amended by inserting, after section 12, the following sections:

“**12A. Disclosure of certain information under Official Information Act 1982**—(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.

“(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—

“(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

“(b) There is no other good reason for withholding that information under that Act.”

New

5 “(3) **Subsection (2)** of this section shall cease to apply in respect of information relating to the obtaining of any consent, permission, or exemption in relation to an overseas investment—

“(a) Except where **paragraph (c)** of this subsection applies, when the Commission or, as the case may be, the Minister has made a final determination in respect of that consent, permission, or exemption; or

10 “(b) Without limiting **paragraph (a)** of this subsection, in the case of any contract, transaction, or arrangement that, in accordance with regulations made under this Act, may become effective if no notice of the granting or refusal of the consent, permission, or refusal is received within a specified period, when that contract, transaction, or arrangement becomes effective in that manner; or

15 “(c) Where the consent, permission, or exemption is granted subject to conditions, either—

20 “(i) When the consent, permission, or exemption becomes unconditional; or

25 “(ii) On the expiry of the period of 12 months from the date on which the consent, permission, or exemption was granted,—
whichever occurs first.

“**12B. Appeals against decisions under section 12A—**
(1) Where, pursuant to **section 12A** of this Act, the Minister or the Commission refuses to disclose any information to which that section applies, any person who is aggrieved by that refusal may, within 21 days after being notified of that refusal, or within such further period as the High Court may allow on application made for that purpose either before or after the expiry of those 21 days, appeal against that refusal to the High Court.

35 “(2) On hearing the appeal, the High Court may confirm the refusal, or may give such directions or make such determination in the matter as it thinks fit.”

New Zealand Horticulture Export Authority

40 **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).

*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”. 5

New

Public Finance

21. Sections to be read with Public Finance Act 1989— 10
This section and the next succeeding section shall be read together with and deemed part of the Public Finance Act 1989* (in that section referred to as the principal Act).

*1989, No. 44

22. Transitional provisions—Section 88 (3) of the principal Act is hereby amended by omitting the expression “1st day of July 1990”, and substituting the words “the close of the 30th day of June 1991”. 15