

1985

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

FOREIGN STATES IMMUNITIES BILL 1985

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Honourable Lionel Bowen,
M.P., Deputy Prime Minister and Attorney-General)

14566/85 Cat. No. 85 4611 1

OUTLINE

The purpose of the Foreign States Immunities Bill 1985 is to set out in clear and accessible form the law relating to the jurisdiction of Australian courts over foreign States, their agencies and instrumentalities. The Bill defines the extent of immunity from jurisdiction of foreign States, the proper scope of enforcement measures against them in civil proceedings, and related issues of procedure including service of process. The Bill does not affect the ordinary law relating to the jurisdiction of Australian courts over persons and property. Like the common law it imposes additional requirements where foreign States are parties.

The proposed legislation is based upon a report and recommendations of the Law Reform Commission (ALRC 24, Foreign State Immunity (1984)) which involved a thorough review of developments in other countries and at the international level, including the work of the International Law Commission.

Under the Bill foreign States and their 'separate entities' (as defined in cl. 3) are conferred with immunity from the jurisdiction of Australian courts subject to specified exceptions including where the case concerns a commercial transaction.

Where a foreign State is not immune from the jurisdiction of Australian courts, it will be possible to enforce judgments against it by execution against its commercial property as defined in Part IV of the Bill.

The Bill provides a secure and accepted method of service of process on foreign States (in the absence of specific agreement as to service) through the Department of Foreign Affairs. It also regulates a number of related matters, including default judgments and the immunity of foreign heads of State in their private capacity.

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

NOTES ON CLAUSES

Clauses 1 and 2 - Short title and Commencement

These clauses set out the short title and commencement of the Bill. The provisions of the Bill will come into operation on a date or dates to be fixed by the Governor-General by Proclamation.

Clause 3 - Interpretation

Sub-cl. 3(1) defines a number of expressions used generally throughout the Bill:

- . 'agreement': Besides ordinary contracts, this includes international treaties and other agreements to which the foreign State is a party.
- . 'Australia': Ordinarily, geographical references to Australia do not include the external Territories (e.g. Norfolk Island). This definition of 'Australia' avoids having to refer to 'Australia and the external Territories' in each case.
- . 'bill of exchange': This definition is necessary primarily for the purposes of cl.19.
- . 'court': This definition (together with sub-cl. (4)) covers all Federal, State and Territory bodies with adjudicatory powers which are broadly of a judicial kind and which involve the determination of disputes or proceedings between parties. It is not restricted to courts exercising judicial power in the narrower sense of Ch. III of the Commonwealth Constitution.
- . 'foreign State': The proposed legislation adopts a broad definition of 'foreign State', so as to include any country

outside Australia which is an independent sovereign State, or which is a separate territory (whether or not fully self-governing) that is not part of the territory of any foreign State. Such a definition makes it clear that other countries of the Commonwealth are included in 'foreign States'. Sub-cl.(3) includes in the definition of 'foreign State':

- .. its political subdivisions or component units (e.g. the provinces of Canada, the Swiss cantons). The effect is to extend the immunities conferred by the Bill to these bodies, thus assisting Australian States to claim reciprocal treatment abroad;
- .. the head of the foreign State or of a political subdivision, in his or her public capacity; and
- .. the executive government (including departments and organs) of the foreign State or a political subdivision (e.g. the United States Department of State).

Separate entities (as defined) are excluded. See also cl.40 (certification of status as foreign State by Minister for Foreign Affairs).

- . 'initiating process': This includes all statements of claim, summonses etc that commence proceedings in court. It also includes other instruments by reason of which or by reference to which a person becomes a party to proceedings such as third party notices.
- . 'law of Australia': This includes all laws, regulations etc in force in Australia, including the common law, State and Territory laws and Imperial statutes that continue to have effect.
- . 'military property': This extends to:

- .. warships and other 'public' ships. It includes ships that have been requisitioned;
- .. military property, that is, property (other than ships) that is being used by a military authority or defence agency for military or defence purposes.
- . 'proceeding': This includes any proceeding, of whatever kind, in a court. However, it specifically excludes criminal proceedings. These are not dealt with by the Bill, which is concerned only with immunity in civil proceedings.
- . 'separate entity': A separate entity of a foreign State is a person or body corporate (not being an Australian national or corporation) acting as an agency or instrumentality of the foreign State. It may include State-owned corporations where these act as agencies for the State. Australian examples might include the Law Reform Commission, CSIRO, OTC, or the Australian Meat and Live-stock Corporation. Sub-cl.(3) provides that an entity which acts as an agency or instrumentality of more than one State is to be treated as a separate entity of each of them.

Sub-cl.(5) is an inclusive, but not exhaustive, definition of the expression 'commercial purpose'. It is included for greater certainty.

Sub-cl.(6) is included to ensure that all methods of entering appearance and entering judgments in default of appearance that are in use in Australia are covered.

Clause 4 - External Territories

Because this Bill makes provision in respect of an important aspect of Australia's international relations, its operation extends to all the external Territories, including Norfolk Island.

Clause 5 - Act to bind Crown

An Act is presumed not to bind the Crown unless there is specific provision in the Act to that effect. This clause provides that the legislation is to bind the Crown in all its capacities.

Clause 6 - Savings of other laws

This clause provides that the immunities provided by the Bill are not to derogate from specific immunities conferred by or under other Acts.

Particular attention is drawn to the Diplomatic Privileges and Immunities Act 1967, the Consular Privileges and Immunities Act 1972 and the Defence (Visiting Forces) Act 1963. No particular reference is made to the International Organizations (Privileges and Immunities) Act 1963 as the position of public international organisations is clearly distinct from that of the States which jointly establish them. As to those international organisations that act as agents of foreign States, see cl. 3(2).

Clause 7 - Application

The legislation will only apply in respect of contracts, agreements, transactions or events that are made or occur after its commencement. The immunities of foreign States in respect of matters arising before the commencement of the Bill will continue to be dealt with by the common law.

Clause 8 - Application to courts

This clause limits the application of the Act to the exercise by courts (as defined - see sub-cl. 3(1)) of judicial powers and functions and powers and functions that are similar to judicial powers and functions.

PART II - IMMUNITY FROM JURISDICTION

This Part sets out the circumstances in which foreign States will be immune from the jurisdiction of the courts of Australia, that is, the circumstances in which proceedings may or may not be maintained against foreign States. The general rule declaring a foreign State's immunity appears in cl.9. Clauses 10-21 set out exhaustively the circumstances in which the general rule of immunity is to be relaxed.

Clause 9 - General immunity from jurisdiction

As a general rule, a foreign State is to be immune from the jurisdiction of Australian courts. This is subject to various exceptions listed in cl. 10-21. This approach - an underlying rule of immunity plus enumerated exceptions - is appropriate in principle and is consistent with recent legislation in similar common law jurisdictions and International Law Commission proposals.

Clause 10 - Submission to jurisdiction

This clause removes the immunity from jurisdiction of a foreign State that has submitted by agreement or otherwise to the jurisdiction of the courts of Australia. Sub-cl.(2) permits submission in a number of ways:

- . by written agreement (which includes a treaty - cl.3(1));
- . 'or otherwise' (which allows for some flexibility - it could include, e.g. submission by the foreign State in the face of the court).

Submission does not occur simply because the agreement is to be governed by a law of Australia; something more is required.

Sub-cl.(3) allows the foreign State to attach limitations, conditions or exclusions to a submission by agreement. But the court is given power to decline to act upon a conditional

submission as to jurisdiction if it is appropriate to do so (cl.10(4)).

Sub-cl.(5) provides that the standard clause, often found in loan or other agreements, under which the foreign State agrees to submit to the jurisdiction of specified courts in respect of disputes under the agreement, itself operates as a submission without more. This reverses the unsatisfactory common law rule.

Sub-cl.(6)-(9) deal with cases where the foreign State takes a step in the proceeding (including instituting the proceedings). If it does so, it will normally be held to have submitted to the jurisdiction, unless:

- . the step is taken for the purpose or in the course of asserting that it is immune;
- . the step is taken to assert an interest in property the subject of proceeding and the foreign State is not a party to the proceeding;
- . the step is taken in ignorance of the State's immunity and immunity is claimed without unreasonable delay;
- . the step is simply to claim costs.

Sub-cl.(10) covers the case where a foreign State has submitted to the jurisdiction and some other party seeks to bring a counter-claim or assert a set-off against it. In such a case, it is not immune in relation to a set-off, counter-claim, etc (these are variously described in the different Australian jurisdictions), provided it arises from the same transactions or events as the foreign State's claim. The provision is not limited to 'defensive' counter-claims or set-offs but would allow recovery against the foreign State where the counter-claim exceeds the foreign State's claim.

Sub-cl.(11) provides that, in addition to other persons who may have authority to submit,

- . a person contracting on behalf of and with authority of the foreign State has authority to submit in the contract to proceedings arising out of the contract; and
- . the head of the foreign State's diplomatic mission in Australia has authority to submit in any proceeding.

Clause 11 - Commercial transactions

This clause provides that foreign States are not immune from the jurisdiction of the courts of Australia in proceedings that concern a 'commercial transaction'. The definition of 'commercial transaction' (sub-cl. 3) expressly includes trading, business, professional and industrial or like transactions and activities. It does not include:

- . a contract of employment (as to which, see cl.13);
- . a bill of exchange (as to which see cl.19).

The clause does not apply (and the foreign State remains immune) -

- . if the commercial transaction is one to which only foreign States and/or Australia are parties;
- . where so provided by agreement in writing between the parties to the proceeding; or
- . where the proceeding concerns payments in the nature of government grants, social security pensions, scholarships, etc.

Clause 12 - Contracts of employment

Under this clause, a foreign State, in its capacity as

employer, is not immune in a proceeding concerning a contract of employment that was made in Australia or to be performed in Australia.

The provision does not apply:

- . if the contract was made with a person who, when the contract was entered into, was a national of the foreign State and not a national or permanent resident of Australia, or who was habitually resident in that State (sub-cl. (3)). A permanent resident of Australia is an Australian citizen or an Australian resident whose continued residence in Australia is not subject to any limitation of time imposed by Australian law: see sub-cl.(7).
- . if the contract of employment otherwise lawfully provides (sub-cl. (4));
- . if the proceedings concern certain kinds of diplomatic and consular employees, viz:
 - .. (in all cases) members of the diplomatic staff of a mission and consular officers, as defined in the relevant international conventions; and
 - .. members of the administrative and technical staff of a mission and consular employees, as so defined, unless when the contract was entered into they were nationals or permanent residents of Australia (Sub-cl. (5) and (6)).

Clause 13 - Personal injury and damage to property

A foreign State is not immune in a proceeding concerning:

- . death or personal injury;

. loss of or damage to tangible property;

caused by an act or omission in Australia. This extends to motor vehicle accidents (where the foreign State is vicariously liable for the negligent driver's acts), and other torts. It does not cover purely 'economic' torts or torts such as defamation.

Clause 14 - Ownership, possession and use of property

Sub-cl.(1) removes the immunity of a foreign State in proceedings concerning immovable property (such as land). It includes proceedings concerning a foreign State's obligations as owner or occupier of land (e.g proceedings for nuisance).

Sub-cl(2) removes immunity in proceedings concerning a foreign State's interest in property that it acquired -

- . by gift made in Australia; or
- . under a will or intestacy.

Sub-cl.(3) removes the immunity of foreign States in bankruptcy and related proceedings and in proceedings concerning trusts or the administration of deceased estates.

Clause 15 - Copyright, patents, trade marks, &c.

This clause removes the immunity of foreign States in actions concerning the ownership, registration or protection in Australia of an invention, trade mark, or design, the ownership of a copyright or of the rights to use a trade or business name, or in proceedings relating to an alleged infringement in Australia of a copyright, patent, registered trade mark or registered design. But the provision does not apply to the mere importation into or use of property in Australia otherwise than in the course of or for the purposes of a commercial transaction as defined above: see sub-cl.15(2).

Clause 16 - Membership of bodies corporate, &c.

This provision removes the immunity of foreign States in proceedings arising out of the foreign State's membership of a body corporate, partnership or similar entity. The entity must be established under Australian law or be controlled from or have its principal place of business in Australia.

The clause does not apply to entities that are solely comprised of foreign States or the Commonwealth.

Foreign States can 'contract out' of this clause by including a suitable provision in the constitution of the entity, or by agreement between the parties to the dispute.

Clause 17 - Arbitrations

Sub-cl.(1) removes immunity in proceedings with respect to the 'supervisory jurisdiction' of courts in relation to local arbitrations to which the foreign State is a party. This would include proceedings:

- . to determine a question as to the validity or operation of the arbitration agreement, or as to the arbitration procedure;
- . by way of a case stated for the opinion of the court; or
- . to set aside the award.

In addition, sub-cl.(2) provides for enforcement of arbitral awards if the arbitration concerns a transaction or event and, by virtue of one of the other provisions of this Part, the foreign State would not have been immune in court proceedings with respect to that transaction or event (apart from an agreed stipulation to the contrary). In such cases, in proceedings for the enforcement of the arbitration award the foreign State is not immune (sub-cl.(2)). These enforcement proceedings are not confined to awards made in Australia.

The clause does not apply where the only parties to the arbitration agreement are foreign States, the Commonwealth, or public international organisations such as the United Nations.

Clause 18 - Actions in rem

Sub-cl.(1) removes a foreign State's immunity in actions in rem against a ship, provided the ship in question was in use for commercial purposes when the cause of action arose.

Sub-cl. (2) concerns 'sister ship' or 'associated ship' arrest. In this case not only must the ship that is arrested be in use for commercial purposes at the time the action was commenced; the ship that caused the damage on which the claim is based must, at the time when the cause of action arose, have been in use for commercial purposes. At present, Australian Admiralty jurisdiction, dependent on the Colonial Courts of Admiralty Act 1890 (UK), does not allow for such arrest. Sub-cl. (2) is drafted on the assumption that it may do so in future and the commencement provision of the Bill allows this provision to be brought into operation upon such event.

If the action is against cargo, it must, at the time of arrest, be commercial cargo (sub-cl.(3)). The definitions of 'ship in use for commercial purposes' and 'commercial cargo' are linked to cl.32, which deals with execution against property. In brief, a ship is in use for commercial purposes or the cargo is commercial cargo if it is capable of being executed against under this Bill.

This proposal applies only to actions commenced as actions in rem. Admiralty actions in personam are left to be dealt with under the other provisions of the Bill.

This clause does not deal with the actual arrest, detention or sale of a ship or cargo but only with the commencement of the proceedings (sub-cl.(4)): arrest, detention and sale are dealt with in Part IV.

Clause 19 - Bills of exchange

Where a foreign State has given a bill of exchange in connection with a non-immune transaction or event it is not immune if it is sued on the bill of exchange rather than on the underlying transaction or event.

Clause 20 - Taxes

This clause provides that a foreign State is not immune in proceedings concerning an obligation imposed on it by a provision of a law of Australia that relates to taxation, if the provision is prescribed by the Governor-General. This will allow consistency to be maintained between the proposed legislation and the substantive taxation law and policy of Australia with respect to foreign States. The provision does not affect any question of substantive liability to taxation, which depends on the interpretation of the relevant tax Act. Certain diplomatic and consular premises are exempt from taxation under the Diplomatic Privileges and Immunities Act 1967 and the Consular Privileges and Immunities Act 1972.

Clause 21 - Related proceedings

This clause provides that, if a foreign State is not immune in a proceeding, it is similarly not immune in appeals and other proceedings that flow from it.

Clause 22 - Application of Part to separate entities

This clause extends the immunities from jurisdiction conferred on foreign States by Part II to separate entities of foreign States (for definition, see cl.3(1)) in the same circumstances. However the special provisions for transactions between States (cl.11(2)(a)(i), 16(1)(a), 17(3)) do not extend to separate entities.

In practice, it is unlikely that claims to immunity by separate entities will succeed, as most entities do not perform in

Australia the sort of activities that entitle foreign States to immunity.

PART III - SERVICE AND JUDGMENTS

In addition to the immunities from jurisdiction conferred by Part II, it is appropriate to extend certain procedural immunities to foreign States, and to make provision for service of process and for the entry of, and service of notice of default judgments.

Clause 23 - Service of initiating process by agreement

This clause makes provision for the service of initiating process only (for definition, see cl.3(1)). Some agreements and treaties include special procedures for serving court process. Where service of initiating process is effected in accordance with such an agreement, this clause makes the service effective. This will be so even though particular rules of court that would otherwise apply make no such provision. This provision applies both to foreign States and their separate entities. But the other provisions of this Part dealing with service (except cl.28(2)) apply only to foreign States as such.

Clause 24 - Service through the diplomatic channel

This clause makes provision for the service of initiating process (for definition, see cl.3(1)) by delivery to the Attorney-General and then through the Department of Foreign Affairs to the foreign State (the 'diplomatic channel') as the basic method of service on a foreign State. It does not apply in actions in rem (as to which, see cl.18, 32).

The clause operates as follows:

- . A plaintiff who wishes to serve the foreign State, having first obtained any necessary leave of the court to serve outside the jurisdiction, delivers the process to the Attorney-General (through his Department) together with -

- .. a request for service (Form 1 of the Schedule);
 - .. a statutory declaration stating that all relevant rules of court have been complied with (these rules must be complied with by virtue of sub-cl. (5) and (6));
 - .. where English is not an official language of the State to be served, there must also be included the translation of the original process and the certificate of the translator.
- . The Attorney-General's Department transmits the documents to the Foreign Affairs Department which will arrange for service on the foreign State through the diplomatic channel.

The provision is flexible enough to allow service by the Department upon the foreign State's mission in Australia, upon a mission of a third State looking after the interests of the defendant State in Australia, or by the Australian mission in the foreign State on its Foreign Ministry, as appropriate in the particular case. Sub-cl.(3) and (4) provide for the date of service in these cases.

Sub-cl. (7) provides a period of grace of two months for the foreign State before the time limited by the relevant rules of court for entering in appearance starts to run.

Clause 25 - Other service ineffective

To avoid harassment of visiting State officials, heads of State and local embassies etc (which may be embarrassing to Australia), and for reasons of reciprocity, the methods of service on a foreign State in Australia provided by cl. 23 and 24 are to be exclusive.

Clause 26 - Waiver of objection to service

This provision applies to all cases of service on a foreign

State whether in Australia or elsewhere. It allows a foreign State to appear in a proceeding in order to object to the validity of service. However, if the State does not object to the validity of service, it cannot thereafter object that this Bill's requirements were not complied with. It may, however, object that other requirements as to service (e.g. the need to obtain leave of the court, required by rules of court) were not complied with and that therefore service of the originating process is ineffective.

Clause 27 - Judgment in default of appearance

At present, where a summons has been issued out of a court, the defendant has a stated length of time within which to make an appearance. If he fails to do so, judgment may be given for the plaintiff in default of appearance. This clause imposes extra requirements on the entry of a judgment in default of appearance against foreign States. They are that:

- . the court must be satisfied that the originating process was served in accordance with this Act and that the time for appearance (extended by two months) has in fact expired (para (1)(a)); and
- . the court must satisfy itself that the foreign State is not immune in the proceeding (para (1)(b)).

Where a separate entity of a foreign State fails to appear the court should satisfy itself that the separate entity is not immune (sub-cl. (2)).

Clause 28 - Enforcement of default judgments

At present, there is generally no bar to a plaintiff who has obtained a judgment in default of appearance enforcing that judgment immediately. This clause requires that notice of the default judgment on the foreign State be served in much the same way as, under cl. 26, service of initiating process. There

is an additional requirement that a copy of the judgment, suitably authenticated, be served on the foreign State.

The diplomatic channel is the only means of service of judgments in default of appearance.

Sub-cl. (1) and (6) provide that, unless the court that gave the judgment gives leave, there will be a two month period after service of the default judgment has been effected under the clause before the judgment may be enforced.

Clause 29 - Power to grant relief

This clause reaffirms the common law rule that, where a foreign State is not immune from the jurisdiction, the court has power to make orders of an interim or final character, and whether procedural or substantive, which the court otherwise has power to make and which are not inconsistent with an immunity under this Bill. However orders for the employment or reinstatement of persons are excluded, in view of the undesirability of requiring a foreign State to employ or re-employ a particular person (as distinct from, for example, compensating someone for wrongful dismissal).

PART IV - ENFORCEMENT

This Part is concerned with the enforcement of judgments, orders or the like that are obtained in litigation against foreign States. It deals with the extent to which execution of a judgment can be levied against property of foreign States and separate entities of foreign States.

Clause 30 - Immunity from execution

Consistent with the approach taken to immunity from jurisdiction (cl.9), this clause provides that, in general, the property of a foreign State is to be immune from execution to satisfy judgments obtained against it. In Admiralty proceedings (see cl.18), the foreign State's vessels are also immune from

arrest, detention or sale. Exceptions to this rule are provided by cl.31-33.

Clause 31 - Waiver of immunity from execution

Under this clause, a foreign State may waive its immunity with respect to property of any description. But simple submission to the jurisdiction of the courts is not sufficient to constitute a waiver under this clause.

Sub-cl. (3) provides that an agreement by a foreign State to waive its immunity from execution itself operates as a waiver.

Under sub-cl. (4), a waiver with respect to 'all property', or in similarly general language, will not apply to the specially protected categories of military or diplomatic property (see the definition in sub-cl. 3(2)).

By sub-cl. 31(5), the head of the foreign State's diplomatic mission in Australia is deemed to have the authority to waive immunity from execution as well as jurisdictional immunity.

Clause 32 - Execution against commercial property

The immunity from execution conferred on foreign State property does not apply to commercial property of the foreign State. Commercial property is property being used by the foreign State substantially for commercial purposes (for definition see sub-cl. 3(5)), but exemption is not possible in any event against military or diplomatic property (for definition see sub-cl. 3(1)).

Sub-cl. (2) removes the immunity from arrest, detention and sale of ships in commercial use and cargo that is commercial property. In the case of cargo, there is an additional restriction that any ship in which the cargo is loaded, if it is in State ownership, should also be in commercial use at the time of arrest or detention.

Para. (3)(b) provides a rebuttable presumption that property which is apparently vacant or apparently not being used is being used for commercial purposes.

Clause 33 - Execution against immovable property, &c.

This clause is a corollary to cl. 14 (which asserts jurisdiction with respect to immovable property and property acquired by succession or gift). Where a foreign State has been successfully sued in respect of such property and a right in relation to the property is established, the property loses its immunity from execution for the purpose of enforcing the judgment in the proceeding.

Clause 34 - Restrictions on certain other relief

Although orders of various kinds can be made against foreign States (see cl. 29) it is inappropriate to enforce them by way of fine or committal of persons such as foreign State officials. Clause 34 excludes such personal penalties.

Clause 35 - Application of part to separate entities

Foreign central banks and monetary authorities, which may be separate entities of the foreign State, should be treated for the purposes of enforcement of judgments in the same way as the foreign State itself: sub-cl. (1) achieves this.

Other Separate Entities will only be entitled to immunity from execution where the judgment upon which execution is sought was given in a case in which the separate entity was entitled to immunity but had waived this entitlement. In such situations the separate entity will be accorded the same immunity as the foreign State (sub-cl. (2)).

PART V - MISCELLANEOUS

Clause 36 - Heads of foreign States

The status of heads of foreign States in their private capacity at common law is unclear. The point will not arise often but, for the sake of certainty, cl. 36 provides that a foreign head of State acting in a private capacity should have the same immunities as a head of diplomatic mission similarly so acting. These immunities are extended to the spouse of such a head of State but no further. Service on a head of State in a private capacity is through the diplomatic channel: see sub-cl. (4).

Clause 37 - Effect of agreements on separate entities

This clause makes it clear that an agreement made by a foreign State and applicable to a separate entity of that State binds the separate entity.

Clause 38 - Power to set aside process, etc.

This clause empowers courts (as defined in cl. 3(1)) to set aside any process which is inconsistent with an immunity under this Bill. It is in substance consequential upon cl. 9 and 27.

Clause 39 - Discovery

This clause excludes committal or fine, or the striking out of a defence, by way of penalty for failure to disclose documents or information. However the court will be entitled to draw whatever inference is proper from the failure to produce such a document or information.

Clause 40 - Certificate as to foreign State &c.

Under this clause a certificate by the Minister for Foreign Affairs as to the status of a foreign State or government, as to the location of an entity on the territory of another foreign State, and as to service of a document under the Bill, is conclusive as to the matters stated in it. Provision is made for delegation of the powers of certification in relation only to service of documents (sub-cl (2)-(4)).

Clause 41 - Certificate as to use

Under this clause a certificate of a foreign State's head of mission is admissible as evidence of the purpose to which the foreign State's property is being put, but it is not conclusive.

Clause 42 - Restrictions and extensions of immunities and privileges

This clause allows regulations to be made altering the rules about immunity laid down by this Bill in two distinct cases:

- . where the Governor-General is satisfied that the immunities and privileges conferred by the proposed legislation exceed those allowed to Australia by the laws of a foreign State, the Governor-General may by regulation modify the operation of the legislation in relation to that foreign State with respect to the immunities in question;
- . where a treaty is concluded to which Australia is a party in which different provisions (whether giving greater or lesser immunity than the proposed Bill) have been agreed, the Governor-General may modify the general regime by regulation so as to give effect to that treaty in relation to the privileges and immunities of the foreign State or States party to the treaty.

Sub-cl. (2)-(6) makes it clear that the regulations can affect proceedings already commenced. They allow property of the foreign State in the hands of a court to be 'frozen' or otherwise dealt with in accordance with an international agreement.

Clause 43 - Regulations

This clause empowers the Governor-General to make regulations prescribing matters required or permitted to be prescribed by the Act.

