



## INFORMATION PAPER

### Operation of the *Foreign States Immunities Act 1985*

The Attorney-General is responsible for the administration of the *Foreign States Immunities Act 1985 (Cth)*<sup>1</sup>, which applies in relation to all litigation in Australian courts involving 'foreign states' as defined in the Act. The Act provides a general immunity for foreign states from the jurisdiction of the courts of Australia in civil proceedings (section 9), with limited and generally accepted exceptions (sections 10-21).

Under the Act, a reference to a foreign state includes a reference to the executive government or part of the executive government of a foreign state or a political subdivision of a foreign state (subsection 3(3)(c)). Thus it can include the heads of state, heads of government, ministers and certain government officials at both the national and sub-national level.

### *Service of initiating process on a foreign state*

Part III of the Act sets out the legislative requirements for the service of initiating process on a foreign state. These service provisions apply whether or not the claim in fact relates to a matter in relation to which the foreign state enjoys immunity.

Section 23 of the Act provides that service of initiating process on a foreign state may be effected in accordance with an agreement to which the foreign State is a party. Alternatively, Subsection 24(1) provides that service of initiating process on a foreign state may be effected by delivering the documents that are to be served to the Attorney-General, for transmission by the Department of Foreign Affairs and Trade to the equivalent body in the foreign state (service through the 'diplomatic channel'). Subsection 24(2) sets out further documentation that must accompany the initiating process. Section 25 provides that service on a foreign state which is not in accordance with these provisions is ineffective.

The purpose of these provisions was described in the Australian Law Reform Commission Report on *Foreign State Immunity* (Report No 24), on which the Act was directly based. Paragraph 150 states: "To avoid the risk of plaintiffs attempting private service in Australia and thereby harassing diplomats or visiting State representatives, all other local service should be excluded".

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<sup>1</sup> The Foreign States Immunities Act can be accessed on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)) or at URL <http://www.comlaw.gov.au/ComLaw/Management.nsf/current/bytitle/F985FB0BD8450B31CA256F710006F2CC?OpenDocument&mostrecent=1>.

*Procedures for service through the diplomatic channel*

For service under section 24, the initiating process must be accompanied by:

- (a) a request in accordance with Form 1 in the Schedule to the Act (for ease of reference, a copy of Form 1 is attached below)
- (b) a statutory declaration of the plaintiff or applicant in the proceeding stating that the rules of court or other laws (if any) in respect of service outside the jurisdiction of the court concerned have been complied with, and
- (c) If English is not an official language of the foreign State:
  - (i) a translation of the initiating process into the official language of the foreign State, and
  - (ii) a certificate in that language, signed by the translator, setting out particulars of his/her qualifications as a translator and stating that the translation of the initiating process is an accurate translation.

*Contact details*

An application for service through the diplomatic channel should be sent to the Attorney-General, Parliament House, Canberra ACT 2600 (in accordance with section 24(1) of the Act). However, for convenience a copy of the application and enclosures could be sent to the following address in order to facilitate service:

Assistant Secretary  
International Law and Trade Branch  
Office of International Law  
Attorney-General's Department  
Robert Garran Offices  
National Circuit  
Barton ACT 2600

Any questions concerning the operation of the FSI Act may be directed to the Office of International Law by telephone (02) 6250 6086.

4 December 2007

# Form 1

Section 24

## *Request For Service Of Originating Process On A Foreign State*

TO: The Attorney-General of the Commonwealth

A proceeding has been commenced in (*name of court, tribunal, etc.*) against (*here insert name of foreign State*).

The proceeding concerns (*short particulars of the claim against the foreign State*).

In accordance with section 24 of the *Foreign States Immunities Act 1985*, enclosed are:

- (a) the initiating process in the proceeding;
- (b) a statutory declaration;
- (c) \*a translation of the initiating process into (*name of language*), an official language of the foreign State; and
- (d) \*a certificate signed by the translator,

and it is requested that the initiating process, \*the translation and the certificate be transmitted by the Department of Foreign Affairs to the department or organ of the foreign State that is equivalent to that Department.

It is further requested that, when service of the initiating process and other documents has been effected on the foreign State in accordance with that Act, the Minister for Foreign Affairs certify accordingly under section 40 of that Act, and forward the certificate to (*name and address of person to whom certificate of service should be forwarded* ).

DATED this                      day of                      19  
*(signature of plaintiff or applicant)*

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\* delete if not applicable.