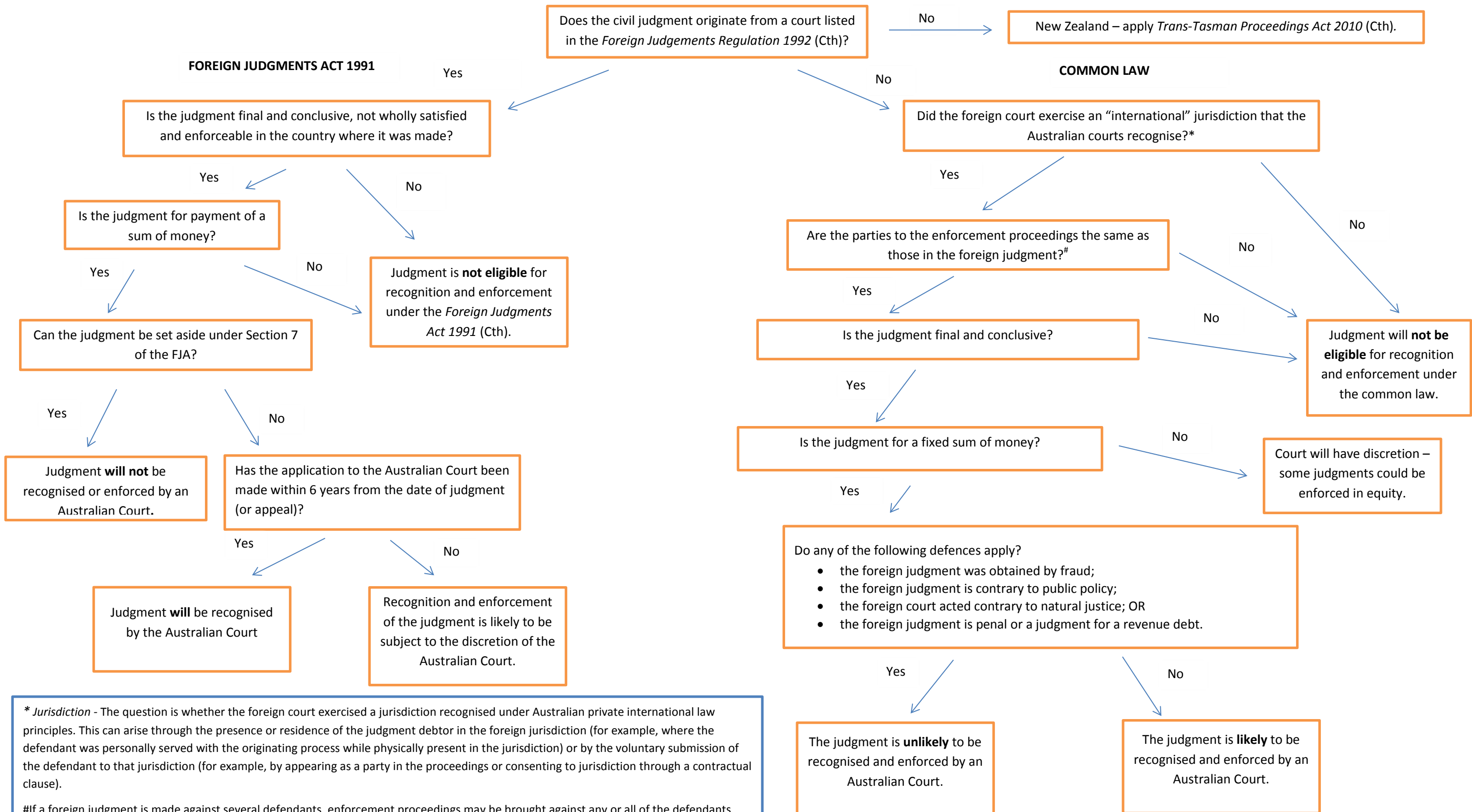


## ATTACHMENT B – FLOWCHART FOR THE FJA AND COMMON LAW

‘Is this judgment eligible for recognition and enforcement in Australia under current law?’



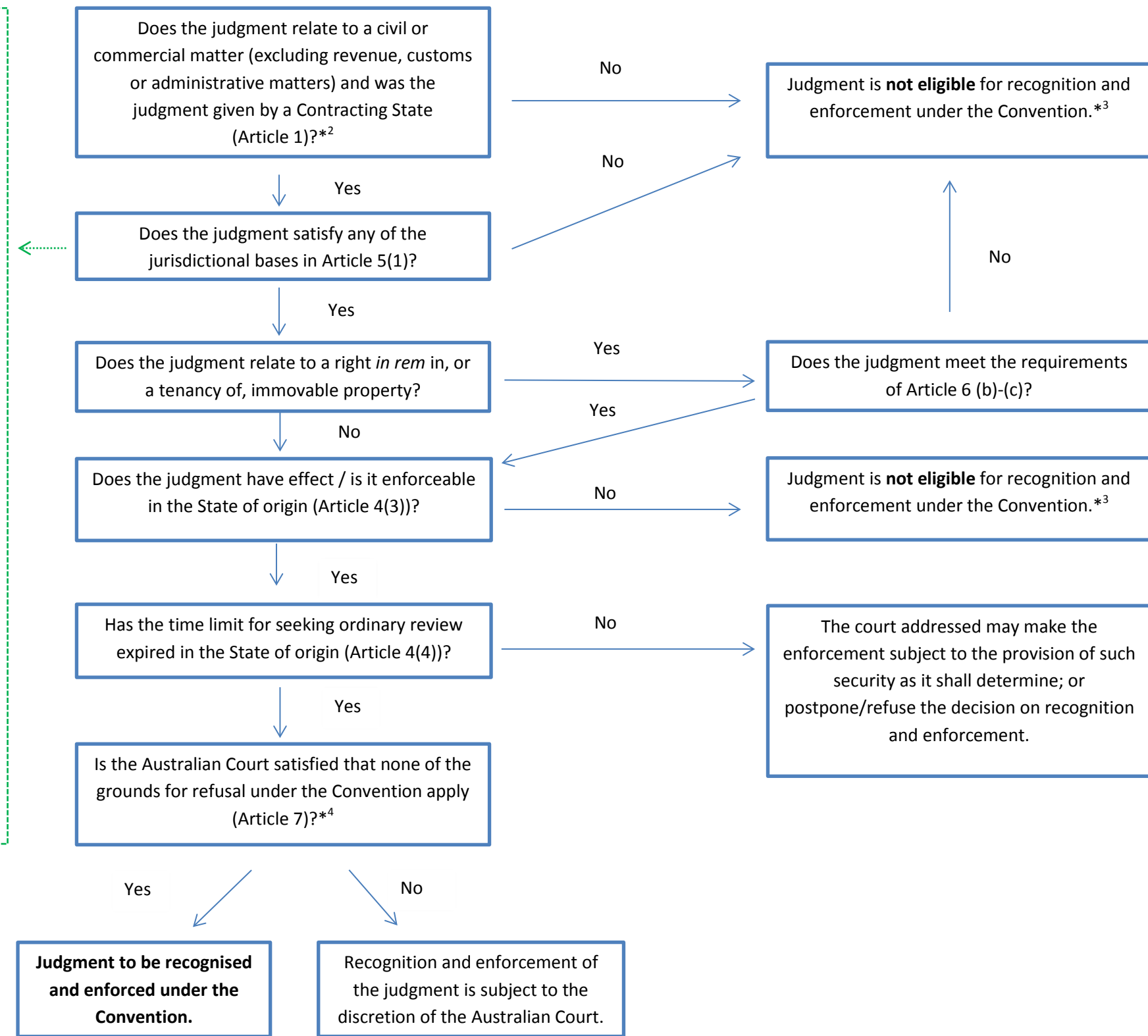
\* *Jurisdiction* - The question is whether the foreign court exercised a jurisdiction recognised under Australian private international law principles. This can arise through the presence or residence of the judgment debtor in the foreign jurisdiction (for example, where the defendant was personally served with the originating process while physically present in the jurisdiction) or by the voluntary submission of the defendant to that jurisdiction (for example, by appearing as a party in the proceedings or consenting to jurisdiction through a contractual clause).

#If a foreign judgment is made against several defendants, enforcement proceedings may be brought against any or all of the defendants.

## ATTACHMENT C – FLOWCHART FOR DRAFT CONVENTION OF NOVEMBER 2017

‘Is this judgment eligible for recognition and enforcement under the proposed Convention?’\*<sup>1</sup>

- The person against whom recognition or enforcement is sought:
  - is habitually resident in the State of origin at the time of proceedings in the court of origin (Art. 5(1)(a))
  - had his or her principal place of business in the State of origin and the claim arose out of the activities of that business (Art. 5(1)(b)), or
  - brought the claim, other than a counterclaim (Art. 5(1)(c)).
- The defendant:
  - maintained a branch, agency, or other establishment without separate legal personality in the state of origin, and the claim on which the judgment is based arose out of the activities of that branch (Art. 5(1)(d))
  - expressly consented to the jurisdiction of the court of origin or argued on the merits without contesting jurisdiction (Art. 5(1)(e)-(f)).
- The judgment:
  - ruled on a contractual obligation, given in the State in which performance of that obligation took place, in accordance with the parties’ agreement or the law applicable to the contract, unless the defendant’s activities did not constitute a purposeful and substantial connection to the State (Art. 5(1)(g))
  - ruled on a tenancy of immovable property located in the State of origin (Art. 5(1)(h))
  - subject to certain conditions, ruled on a contractual obligation secured by a right *in rem* in immovable property located in the State of origin (Art. 5(1)(i))
  - ruled on a non-contractual obligation arising from death, physical injury, damage to or loss of tangible property, when the act or omission occurred in the state of origin (Art. 5(1)(j))
  - concerns the validity, construction, effects, administration or variation of a trust created voluntarily and evidenced in writing (Art. 5(1)(k))
  - subject to certain conditions, ruled on counterclaim (Art. 5(1)(l)), or
  - was given by a court designated in an agreement other than an exclusive choice of court agreement (Art. 5(1)(m)).



\*<sup>1</sup> This flowchart does not apply to IP judgments (which are considered in the flowchart at Attachment D).

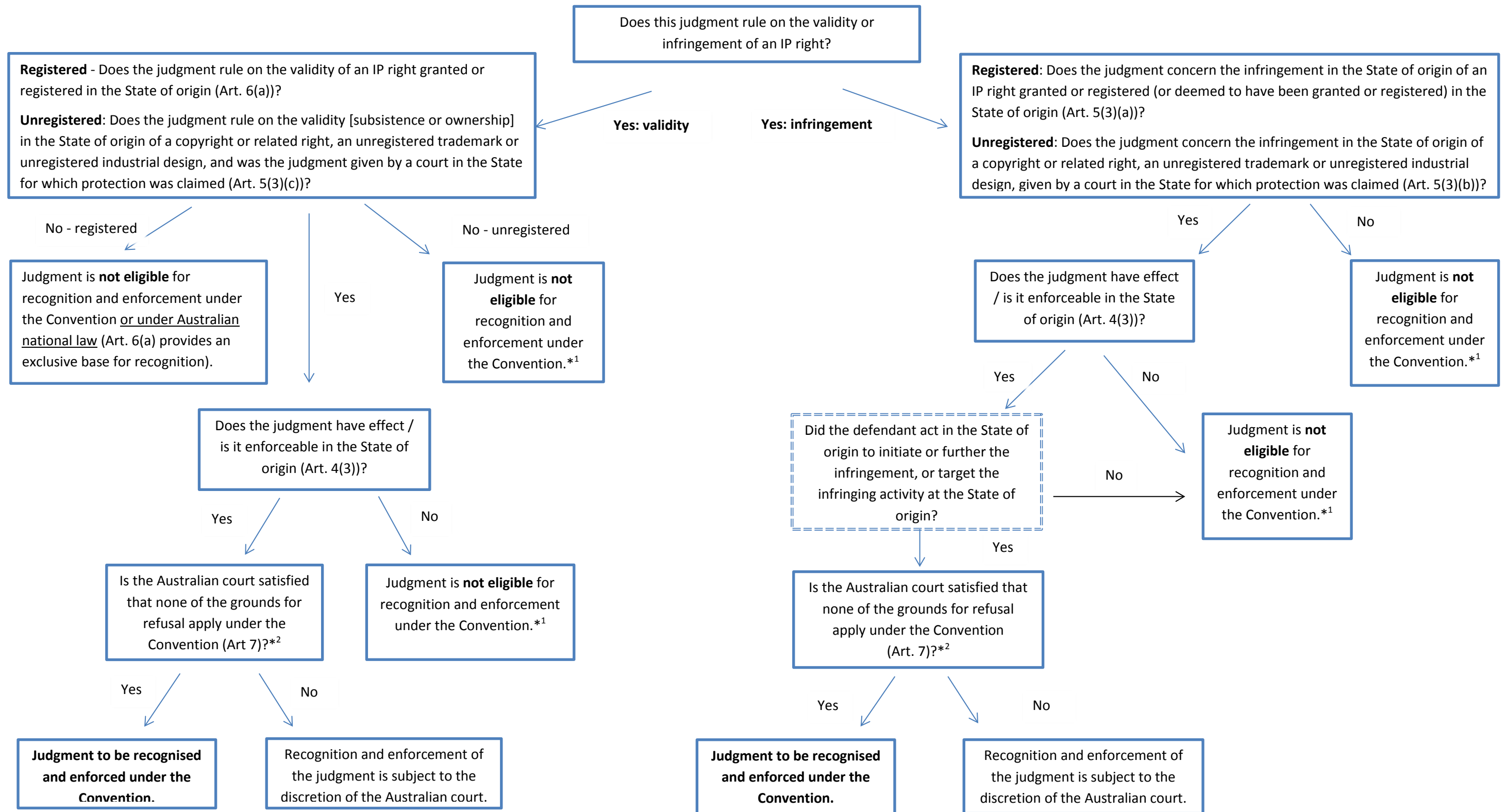
\*<sup>2</sup> Judicial settlements approved by a court of a Contracting State shall be enforced in the same manner as a judgment.

\*<sup>3</sup> Depending on if and how the Convention is implemented domestically in Australia, the judgment may be eligible for recognition and enforcement under Australian common law or Australian statute (e.g. the *Foreign Judgments Act 1991*).

\*<sup>4</sup> E.g. the judgment was obtained by fraud; or recognition and enforcement would be manifestly incompatible with the public policy of the requested State.

## ATTACHMENT D – FLOWCHART FOR IP MATTERS UNDER THE DRAFT CONVENTION OF NOVEMBER 2017

‘Is this IP judgment eligible for recognition and enforcement under the Judgments Convention?’



\*<sup>1</sup> Depending on if and how the Convention is implemented domestically in Australia, the judgment may be eligible for recognition and enforcement under Australian common law or Australian statute (e.g. the *Foreign Judgments Act 1991*).

\*<sup>2</sup> Note the protection available under Article 7 (1)(g) – recognition and enforcement may be refused if the judgment ruled on an infringement of an IP right, applying to that right a law other than the law of the State of origin.