SUPREME COURT OF QUEENSLAND

CITATION:	*VietJet Aviation Joint Stock Company v FW Aviation (Holdings) 1 Limited* [2026] QCA 180
PARTIES:	**VIETJET AVIATION JOINT STOCK COMPANY** ABN 76 736 605 980 Vietnamese Enterprise Code No. 0102325399 (appellant) **v** **FW AVIATION (HOLDINGS) 1 LIMITED** Jersey Company No. 138927 (respondent)
FILE NO/S:	Appeal No 1878 of 2026 SC No 2974 of 2025
DIVISION:	Court of Appeal
PROCEEDING:	General Civil Appeal
ORIGINATING COURT:	Supreme Court at Brisbane – [2026] QSC 71 (McCafferty J)
DELIVERED ON:	22 September 2026
DELIVERED AT:	Brisbane
HEARING DATE:	14 September 2026
JUDGES:	Mullins P, Thomson AJA, Crowley J
ORDERS:	**1. Appeal dismissed with costs.** **2. It is declared that, properly construed, order 3(b) of the orders made by Sullivan J on 20 August 2025 should be construed as meaning "US$35,138,009 pursuant to paragraph 2(a) above".**
CATCHWORDS:	PRIVATE INTERNATIONAL LAW – RECOGNITION, EFFECT AND ENFORCEMENT OF FOREIGN JUDGMENTS – UNDER LEGISLATION – ENFORCEMENT OF FOREIGN JUDGMENTS – REGISTRATION – SETTING ASIDE – where the respondent obtained judgment against the appellant for the payment of money in the High Court of Justice of England and Wales – where the English court subsequently ordered the judgment amount be paid in three instalments, and further ordered that default interest on the judgment be paid with those instalments – where the appellant made part payment of the judgment debt but has not advanced any further payment – where the respondent applied to register the English judgment in the Supreme Court of Queensland pursuant to s 6 *Foreign Judgments Act 1991* (Cth) – where at the time of the application the date for payment of only two of the instalments had passed – where the Supreme Court registered the English

judgment for the total amount of the three instalments, less the amount already paid by the appellant – where the appellant applied to set aside registration under s 7(2)(a)(ii) *Foreign Judgments Act* on the basis that the judgment was registered for an amount greater than the amount payable under it at the date of registration – where the primary judge dismissed the application – where the primary judge held that s 7(2)(a)(ii) did not apply as the total amount for which the judgment was registered was payable under the English judgment at the date of registration – where the appellant contends that the primary judge erred in finding s 7(2)(a)(ii) did not apply – where the appellant contends the proper construction of "amount payable under" in s 7(2)(a)(ii) is "immediately payable" – whether the full amount of the English judgment was payable at the time of registration – whether the primary judge erred in construing "payable" as "payable now or in the future"

PRIVATE INTERNATIONAL LAW – RECOGNITION, EFFECT AND ENFORCEMENT OF FOREIGN JUDGMENTS – UNDER LEGISLATION – ENFORCEMENT OF FOREIGN JUDGMENTS – REGISTRATION – SETTING ASIDE – where order 3(b) of the orders registering the English judgment erroneously overstated the interest payable by US $1000 – where the correct amount of US $35,138,009 was correctly stated in order 2(a), which was the operative order registering the judgment pursuant to s 6 *Foreign Judgments Act* – where the appellant brought a new argument on appeal that the English judgment be set aside as the error attracts the operation of s 7(2)(a)(ii) – where the respondent applied for the overstatement to be corrected by the application of the slip rule in r 388 *Uniform Civil Procedure Rules 1999* (Qld) – whether the English judgment should be set aside – whether the overstatement should be corrected by r 388 UCPR

Foreign Judgments Act 1991 (Cth), s 3, s 5, s 6, s 7, s 9
Foreign Judgments Regulations 1992 (Cth), r 3, r4
Uniform Civil Procedure Rules 1999 (Qld), r 388

BP Exploration Co (Libya) Ltd v Hunt [1980] 1 NSWLR 496, considered
CPB Contractors Pty Ltd v JKC Australia LNG Pty Ltd [No 2] [2017] WASCA 123, considered
Deputy Commissioner of Taxation (Cth) v Peacock [1980] 2 NSWLR 130, considered
Fitzgerald v Masters (1956) 95 CLR 420; [1956] HCA 53, considered
Josephson v Walker (1914) 18 CLR 691; [1914] HCA 68, considered
Mack v Commissioner of Stamp Duties (NSW) (1920) 28 CLR 373; [1920] HCA 76, considered
Palmanova Pty Ltd v Commonwealth (2025) 99 ALJR 1362; [2025] HCA 35, cited

Palmer v Western Australia (2021) 272 CLR 505; [2021] HCA 5, considered
PT Bayan Resources TBK v BCBC Singapore Pte Ltd (2015) 258 CLR 1; [2015] HCA 36, considered
Strategic Technologies Pte Ltd v Procurement Bureau of the Republic of China Ministry of National Defence [2020] 1 WLR 3388; [2020] EWHC 362, considered

COUNSEL: P J Dunning KC, with B M O McKenna, for the appellant
C P Jennings KC, with H E P Clift, for the respondent

SOLICITORS: Clayton Utz for the appellant
Arnold Bloch Leibler for the respondent

[1] **MULLINS P:** I agree with Thomson AJA.

[2] **THOMSON AJA:** This case raises a short point about the registration of foreign judgments under the *Foreign Judgments Act 1991* (Cth) (**Act**). The respondent obtained a judgment from the High Court of Justice of England and Wales against the appellant, which required the appellant to pay a total judgment of US $181.5 million. The appellant applied for a stay of execution, but this was denied. Instead the English High Court extended the time for payment, so that the total due was split into three equal tranches which required payment by staggered times over 6 months. The respondent applied (ex parte) to register this judgment in the Supreme Court of Queensland, and an order to this effect was made under Part 2 of the Act. At the time when the registration order was made, the date for payment of only two tranches had passed. Yet the order in the Supreme Court of Queensland registered the English judgment for the total amount payable pursuant to the three tranches. The appellant applied, under s 7(2)(a)(ii) of the Act, to set aside the registration order upon the basis that "the judgment was registered for an amount greater than the amount payable under it at the date of registration". The primary judge dismissed this application upon the basis that the total amount for which the judgment was registered was "payable" under the English judgment at the date of registration. The question is whether the learned primary judge was correct in dismissing the application.

Background

[3] The appellant operates an airline. It leased four Airbus A321 aircraft for use in this business. As a result of restrictions imposed upon the operation of the airline by the Vietnamese government during 2020 and 2021, when the COVID-19 pandemic affected international travel, the appellant was unable to make the necessary payments due in respect of the aircraft leases. The respondent was assigned the rights to take action in respect of the aircraft leases. It brought proceedings against the appellant in the High Court in England, and a liability trial occurred. The respondent was successful. The appellant's subsequent appeal failed, and it was refused leave to appeal to the Supreme Court of the United Kingdom.

[4] A trial of quantum then proceeded in January 2025. On 17 April 2025, judgment was delivered and orders were made requiring the appellant to pay four amounts (in respect of each aircraft) to the respondent. When combined, these four amounts totalled US $181,529,550. The appellant was ordered to pay this total amount by 4 pm on 15 May 2025. The operative orders were Orders 1 and 2 made on 17 April 2025, which provided:

> "1. There be judgment for the Claimant[1] in the Second Trial in the following amounts:
>
> a. US $54,327,764 by way of outstanding A Line Termination Value and US $8,315,992 by way of Clause 20.4 Liquidated Damages payable in respect of the 8906 Aircraft;
>
> b. US $53,380,272 by way of outstanding A Line Termination Value and US $8,421,213 by way of Clause 20.4 Liquidated Damages payable in respect of the 8937 Aircraft;
>
> c. US $28,552,823 by way of outstanding Termination Value A payable in respect of the 8577 Aircraft;
>
> d. US $28,531,486 by way of outstanding Termination Value A payable in respect of the 8592 Aircraft.
>
> 2 The Defendant[2] shall make payment of the sums set out in paragraph 1 above by 4 pm BST on 15 May 2025. Liberty to the Defendant to apply to extend this deadline."

[5] The appellant applied for a stay of the orders made on 17 April 2025. The stay was refused, but on 2 May 2025 the English trial judge varied his previous orders allowing the appellant an extension of time to pay the total amount of US$181,529,550. Order 4 of the orders provided that:

> "4. Paragraph 2 of the Order of Mr Justice Picken dated 17 April 2025 be varied such that the Defendant shall have an extension of time to make payment of the sums set out in paragraph 1 of that Order, totalling US $181,529,550, as follows:
>
> a. US $60,509,850 shall be paid by 4pm on 15 May 2025;
>
> b. US $60,509,850 shall be paid by 4pm on 31 July 2025; and
>
> c. US $60,509,850 shall be paid by 4pm on 28 November 2025."

[6] On 19 May 2025, the appellant made a payment of US $2,000,000 in partial satisfaction of the English judgment, but has not made any further payments.

[7] On 10 June 2025, further orders concerning interest payable by the appellant were made in the English proceedings. The appellant was ordered to pay US $35,138,009 comprising default interest to the respondent. Consistent with the previous orders made on 2 May 2025, the orders for payment of default interest required the total amount to be paid in three tranches:

> "2. The Defendant[3] shall make payment of the sums set out in paragraph 1 above as follows:

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1 The respondent in the present appeal.
2 The appellant in the present appeal.
3 The appellant in the present appeal.

a. US $11,712,669.66 by 24 June 2025;

b. US $11,712,669.67 by 31 July 2025; and

c. US $11,712,669.67 by 28 November 2025."

[8] On 11 July 2025, the respondent applied in the Supreme Court of Queensland to register the total amounts of the English judgments (US $181,529,550 and US $35,138,009), less the amount of US $2,000,000 which had been paid.

[9] On 20 August 2025, as a result of this application, the Supreme Court of Queensland ordered that:

> "1. The judgment of the High Court of England and Wales dated 17 April 2025 and the judgment of the High Court of England and Wales dated 2 May 2025 (which varied the 17 April 2025 judgment), whereby it was ordered that [the appellant] pay US$181,529,550 to [the respondent] be registered under Part 2 of the *Foreign Judgments Act 1991* (Cth).
>
> 2. The judgment of the High Court of England and Wales dated 10 June 2025 whereby it was ordered that [the appellant] pay:
>
> (a) US$35,138,009 on account of interest to [the respondent];
>
> (b) interest on the amounts ordered to be paid by [the appellant] pursuant to the 17 April 2025 judgment accruing at the rate of 8% from 11 June 2025 until the date of payment; and
>
> (c) costs in the sum of £1,861,251.00 to [the respondent],
>
> be registered under Part 2 of the *Foreign Judgments Act 1991* (Cth).
>
> 3. The amount payable by [the appellant] as the judgment debtor to [the respondent] as the judgment creditor is:
>
> (a) US$179,529,550 pursuant to paragraph 1 above;
>
> (b) US$35,139,009 pursuant to paragraph 2(a) above;
>
> (c) interest on the sum of US$179,529,550 accruing at the rate of 8% from 11 June 2025 until the date of payment, pursuant to paragraph 2(b) above; and
>
> (d) £1,796,251.00, pursuant to paragraph 2(c) above.
>
> 4. The reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgments, to be assessed, are payable by [the appellant] to [the respondent].
>
> 5. [The appellant] may, within 14 days after the day on which service of these orders is made, apply to have the registration set aside."

[10] On 8 September 2025, the appellant applied in the Trial Division to set aside the registration of the English judgments. The application was made upon two grounds.

First, as explained, the application was made upon the basis of s 7(2)(a)(ii) of the Act, because it overstated the amount payable under it at the date of registration. Secondly, the appellant claimed that enforcement of the English judgments would be contrary to public policy.

[11] The primary judge dismissed the appellant's application to set aside the registration of the English judgments. The appellant has appealed that decision, but now only upon the basis of s 7(2)(a)(ii) of the Act.

Relevant Provisions of the Act

[12] The long title of the Act is an Act relating to the enforcement of foreign judgments in the Commonwealth, and for related purposes. Part 2 of the Act concerns reciprocal enforcement of judgments.

[13] Section 5(1) provides that if the Governor-General is satisfied that, in the event of the benefits conferred by Part 2 of the Act being applied to money judgments given in the superior courts of a country, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of money judgments given in all Australian superior courts, the regulations may provide that Part 2 extends in relation to that country. That has occurred in respect of the United Kingdom.[4]

[14] The introductory definitions in the Act define a "judgment" to mean a final or interlocutory judgment or order given or made by a court in civil proceedings; or a judgment or order given or made by a court in criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party; or certain enforceable arbitration awards.

[15] The definitions then distinguish between a "money judgment" and a "non-money judgment". A "money judgment" means a judgment under which money is payable.[5] A "non-money" judgment means a judgment that is not a money judgment.[6]

[16] The definition of "enforceable money judgment" relevantly means a money judgment under which is payable an amount of money, but it excludes taxes or other like charges and a fine or other penalty.[7] The term "enforcement" means, where there is an amount of money payable under the judgment, enforcement by execution.[8]

[17] Section 6(1) provides that a judgment creditor under a judgment to which Part 2 applies may apply to the appropriate court at any time within 6 years after the date of the judgment – or where there is an appeal – the date of the last judgment, to have the judgment registered in the court.

[18] Section 6(6) provides that a judgment is not to be registered if at the date of the application it has been wholly satisfied; or it could not be enforced in the country of the original court.

[19] Section 6(7) provides as follows:

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4 *Foreign Judgments Regulations 1992* (Cth), regs 3 and 4, item 23 of Schedule-Superior Courts.
5 Act, s 3(1).
6 Act, s 3(1).
7 Act, s 3(1).
8 Act, s 3(1).

> "Subject to sections 7 and 14:
>
> (a) a registered judgment has, for the purposes of enforcement, the same force and effect; and
>
> (b) proceedings may be taken on a registered judgment; and
>
> (c) the amount for which a judgment is registered carries interest; and
>
> (d) the registering court has the same control over the enforcement of a registered judgment;
>
> as if the judgment had been originally given in the court in which it is registered and entered on the date of registration."

[20] Section 6(12) limits the amount for which a judgment may be registered, if it has been partially discharged at the date of registration. The judgment is not to be registered in respect of the whole amount payable under the judgment of the original court, but is only to be registered in respect of the balance remaining payable on that day.

[21] Section 7(1) materially provides that a party against whom a registered judgment is enforceable, or would be enforceable but for an order under s 8 (which applies where a judgment is subject to appeal), may seek to have the registration of the judgment set aside by duly applying to the court in which the judgment was registered.

[22] Section 7(2)(a) sets out grounds for making an application to set aside registration of a judgment. If the grounds are established, the court must set aside the registration of the judgment. The grounds set out in s 7(2)(a) apply if a court is satisfied that:

> "(i) the judgment is not, or has ceased to be, a judgment to which this Part applies; or
>
> (ii) the judgment was registered for an amount greater than the amount payable under it at the date of registration; or
>
> (iii) the judgment was registered in contravention of this Act; or
>
> (iv) the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
>
> (v) the judgment debtor, being the defendant in the proceedings in the original court, did not (whether or not process had been duly served on the judgment debtor in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear; or
>
> (vi) the judgment was obtained by fraud; or
>
> (vii) the judgment has been reversed on appeal or otherwise set aside in the courts of the country of the original court; or
>
> (viii) the rights under the judgment are not vested in the person by whom the application for registration was made; or
>
> (ix) the judgment has been discharged; or

> (x) the judgment has been wholly satisfied; or
>
> (xi) the enforcement of the judgment, not being a judgment under which an amount of money is payable in respect of New Zealand tax, would be contrary to public policy."

[23] Lastly, s 9 provides for re-registration of certain registered judgments which have been set aside pursuant to s 7(2)(a)(ii) or s 7(2)(a)(iii). In relation to s 7(2)(a)(ii), s 9(1) provides:

> "If the registration of a judgment is set aside under subparagraph 7(2)(a)(ii), the court in which the judgment was registered must, on the application of the judgment creditor, order that the judgment be registered in respect of the amount payable under the judgment at the date of the application."

[24] In relation to s 7(2)(a)(iii), s 9(2) provides:

> "If the registration of a judgment has been set aside under subparagraph 7(2)(a)(iii) solely because it was not at the date of the application for registration enforceable in the country of the original court, the setting aside of the registration does not prejudice a further application to register the judgment if and when the judgment becomes enforceable in that country."

Decision of Primary Judge

[25] The primary judge distinguished between the concepts of registration of a judgment and enforcement of a judgment.[9] He considered that s 7(2)(a)(ii) concerned the registration of a judgment, and was to prevent "a situation where the amount registered by the Australian court exceeds the total sum awarded as finally determined by the foreign court".[10] It was not concerned with the timing of payment pursuant to a money judgment. This was a question of enforcement. He said that:[11]

> "if an attempt were made to enforce the English judgment before the date for compliance falls due there would be compelling arguments available to resist, or indeed, stay, the enforcement. But the process of enforcement is, as I have explained, a different process. It is not the focus of s 7(2)(a)(ii) which looks to the judgment as 'registered'. This may be contrasted with, for example, s 7(2)(a)(xi) which focuses upon 'the enforcement' of the judgment."

[26] As the judgment which was registered here was equal to the total sum awarded by the English High Court, less the amount paid by the date of registration, the primary judge held that s 7(2)(a)(ii) did not apply. There was no warrant for reading the words "amount payable under", contained in s 7(2)(a)(ii), to mean the amount "presently payable" or the amount "payable immediately".[12] In effect, this would elide the concept of registration with the notion of enforcement.

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9 ***FW Aviation (Holdings) 1 Ltd v VietJet Aviation Joint Stock Co*** [2026] QSC 63 (**Primary Judgment**) [31]-[33].

10 Primary Judgment [36].

11 Primary Judgment [38].

12 Primary Judgment [35].

[27] The primary judge also said that while the question of whether s 7(2)(a)(ii) applied was "conceptually interesting", it was of little practical importance.[13] That was due to s 9(1) of the Act. The primary judge pointed out that, by the time he heard the application to set aside registration of the English judgments, the time for paying the third instalment (ie, 28 November 2025) had passed. Consequently, even if he set aside the judgment which had been registered pursuant to s 7(2)(a)(ii), then provided there was an application from the respondent, he would need to re-register judgments in the same amount as previously registered.[14]

Appeal ground

[28] The appellant has lodged a notice of appeal against the decision of the primary judge to dismiss its application to set aside the registration of the English judgments. The appeal ground is in the following terms:

> "In circumstances where:
>
> (a) the High Court of England and Wales made orders dated 17 April 2025, 2 May 2025 and 13 June 2025 respectively (collectively the **foreign judgment**) for the payment by the appellant (**VietJet**) to the respondent (**FWA**) of various sums;
>
> (b) pursuant to the 2 May 2025 orders, US $60,509,850 of the principal sum due under the 17 April 2025 orders was not payable until 28 November 2025;
>
> (c) pursuant to the 13 June 2025 orders, US $11,712,669.67 of the interest on the principal sum due under the 17 April 2025 orders was not payable until 28 November 2025;
>
> (d) by orders of the Honourable Justice Sullivan made on 20 August 2025, the foreign judgment was registered in the Supreme Court of Queensland under the *Foreign Judgments Act 1991* (Cth) (**Act**) and VietJet was ordered to pay:
>
> (i) the entire sum of US $179,529,550 representing the balance of the principal sum due under the 17 April 2025 orders, following a payment made by VietJet;
>
> (ii) interest on the principal sum due under the 17 April 2025 orders at 8% per annum from 11 June 2025;
>
> (iii) US $35,138,009 representing the amount of interest accruing on the sum due under the 13 June 2025 orders; and
>
> (iv) £1,796,251 as costs (under the 13 June 2025 orders), and
>
> (e) VietJet applied to the primary judge to set aside the registration pursuant to section 7(2)(a)(ii) of the Act,
>
> the primary judge erred in law in finding that the foreign judgment had not been registered for an amount greater than the amount payable at the date of registration (that is to say, 20 August 2025) in disregard of s.7(2)(a)(ii) of the Act and should have so found."

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13 Primary Judgment [39].

14 Primary Judgment [40].

Proper construction of the orders of the English High Court

[29] There is a question about the meaning and effect of the orders of the English High Court. Order 1 made on 17 April 2025 entered judgment for the respondent against the appellant. As a result, the appellant became subject to a liability to pay US $181,529,550 to the respondent. Order 2 made on 17 April 2025 stipulated the date by which this payment was to be made. That did not mean that the appellant was not liable for the full amount under Order 1.

[30] Order 2 was varied by the orders made on 17 May 2025. The effect was to alter the time for payment of amounts due under Order 1. However, changing these timeframes under Order 2 did not purport to change the judgment entered by Order 1 made on 17 April 2025 in any way. It was still effective to impose an immediate liability to pay the full amount for which judgment was entered. That is evident from the fact that on 10 June 2025 the English High Court ordered post-judgment interest in respect of the amounts ordered to be paid by the appellant in Order 1 on 17 April 2025. Plainly, then, the appellant was subject to an immediate liability to pay the full amount from this date.

[31] Based upon the terms of the judgments themselves, I conclude that from 17 April 2025, the appellant became subject to an immediate liability to pay the full amount of the judgment amount, but this liability could not be enforced by court processes until after the time specified for payment of each instalment had passed. I do not consider that the liability to pay each instalment of the judgment amount was contingent upon the date for payment of the instalment having occurred.

[32] In reaching this conclusion, I note that both parties were asked by the Court at the oral hearing about whether they had any submissions to make about the proper construction of the judgments of the English High Court. Neither side had any particular submissions beyond asserting contrary positions. Neither side referred the Court to any rule contained in the English *Civil Procedure Rules 2024*. Consequently, it would not be appropriate for this Court to consider the operation of these rules, unassisted by the parties.

Construction of s 7(2)(a)(ii) – Whole judgment amount is immediately owing but not immediately enforceable

[33] If my analysis of the proper construction of the English judgments is correct, the question is whether the total amount of the English judgments (less the US $2,000,000 paid in satisfaction of those judgments) was “payable” for the purposes of s 7(2)(a)(ii) of the Act where the total amount was immediately owing, but only enforceable to the extent of each of the three instalments as each instalment date passed.

[34] As the primary judge pointed out, the Act distinguishes between registration and enforcement of a judgment. In that context, it is significant that s 7(2)(a)(ii) is only concerned with the registration of a foreign judgment. It does not stipulate that the registration of a judgment may be set aside if the judgment is registered for an amount greater than the amount “payable and enforceable” under the judgment at the date of registration. By contrast, s 7(2)(a)(xi) refers to setting aside the registration of a judgment if “enforcement of the judgment” would be contrary to public policy. It may be inferred that s 7(2)(a)(ii) is not concerned with questions of enforcement.

[35] That conclusion is reinforced by the consideration that questions of enforcement of a registered judgment are addressed by other provisions of the Act. An Australian court has control over the enforcement of a registered judgment: s 6(7)(d). This means that an Australian court, such as the Supreme Court of Queensland, may control any action to enforce the English judgments in Australia before the time to pay for each instalment has occurred. Likewise, an Australian court may stay enforcement of the judgment registered in Australia if there is an appeal in England: s 8.

[36] In these circumstances, I consider that an amount is "payable" under a judgment, for the purposes of s 7(2)(a)(ii), to the extent that a judgment creates an immediate liability to pay the judgment amount, even if that obligation to make payment is not immediately enforceable. This gives "payable" a meaning which, in context, contrasts with "enforceable".

[37] It follows that, in the present case, the full amount of the English judgments was "payable" for the purposes of s 7(2)(a)(ii) from 17 April 2025. Accordingly, the primary judge was correct not to set aside registration of the English judgments upon the basis that they were registered for an amount greater than the amount payable at the date of registration.

Alternative construction of s 7(2)(a)(ii) – Payment of judgment amount is contingent upon instalment dates

[38] The appellant framed its case upon the basis that the effect of the English judgments was that they subjected the appellant to a series of contingent liabilities which only obliged the appellant to make payment of an amount under the English judgments as each instalment date occurred.

[39] For reasons which I have explained, I do not consider that this is a correct view of the operation of the English judgments. However, if I am wrong about that, I will consider the construction of s 7(2)(a)(ii) upon the basis of the appellant's contention about the operation of the English judgments. In my view, even on that basis, the appeal should be dismissed.

[40] There are several matters of statutory context which are relevant in considering s 7(2)(a)(ii), and whether the total amount of a judgment should be regarded as "payable" for the purposes of this provision, even if the liability to pay the judgment is contingent upon a future date. The importance of statutory context was emphasised in ***Palmanova Pty Ltd v Commonwealth***,[15] where the plurality said:

> "Statutory construction is the process of attributing meaning to statutory text. The construction of a statutory provision begins and ends with the statutory text understood in context and in light of the statutory purpose – being what the provision is designed to achieve in fact – insofar as that purpose is discernible from the statutory text and context. In the construction of a provision of a Commonwealth statute, the meaning that would best achieve the statutory purpose so discerned is to be preferred to each alternative meaning." (citations omitted)

[41] First, the Act defines "judgment" broadly, really only excluding non-money judgments in criminal matters. Against that background, it distinguishes between

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15 [2025] HCA 35; (2025) 99 ALJR 1362 [4].

a "money judgment" and a "non-money judgment". These two categorisations are intended to cover the universe of possible "judgments". That is evident from the definition of a "non-money judgment", which means a judgment that is not a money judgment. Further, there is no sub-categorisation by the Act which distinguishes between a money judgment which is immediately payable, and a money judgment which involves deferred payment obligations. That suggests that such a distinction is not regarded as relevant for the purposes of the Act.

[42] Secondly, an "enforceable money judgment" includes a money judgment under which an amount of money is payable. That term defines the applicability of Part 2 of the Act. Section 5(4) provides that Part 2 applies to an "enforceable money judgment" that is final and conclusive and was given by a court to which Part 2 extends. In other words, Part 2 extends to cover a money judgment under which an amount of money is payable. That is capable of describing a money judgment where the obligation to make payment is immediate and where it may be deferred for a period. There is no indication that Part 2 is not intended to cover all money judgments.

[43] Thirdly, an underlying theme to the grounds in s 7(2)(a) is that they describe the circumstances in which the judgment which has been registered does not exist, is not legally valid or has been legally vitiated or overturned.

[44] Subparagraph (i) operates where there is no judgment to which Part 2 applies. Subparagraph (iv) is where the original court had no jurisdiction to give the judgment. Subparagraph (v) applies where the judgment debtor did not have a proper opportunity to defend the proceedings producing the judgment, that is to say, the judgment was produced by an improper process. Subparagraph (vi) is where the judgment was obtained by fraud, ie it is legally vitiated. Subparagraph (vii) applies where the original judgment has been reversed on appeal or set aside. Subparagraph (ix) concerns a situation where the original judgment has been discharged. Subparagraph (x) operates if the judgment has been wholly satisfied, ie there is nothing left of the judgment to enforce.[16]

[45] An application may also be made under s 7(2)(a) where there is a legal problem with the registration process rather than with the original judgment. Subparagraph (iii) describes a situation where registration of the judgment was in contravention of the Act, ie was done illegally. Subparagraph (viii) applies where the rights under the original judgment are not vested in the person who has applied for registration.

[46] In addition, where it would be contrary to public policy to allow the enforcement process to occur, subparagraph (xi) provides for the registration of a judgment to be set aside.

[47] It is in the context of these three matters that s 7(2)(a)(ii) falls to be construed. In my view, they lead to the view that a judgment amount is "payable" where it is to be paid in instalments, and the liability to pay each instalment is contingent until the instalment date arrives.

[48] The Act contemplates that it will operate upon only two types of judgment: money and non-money judgments. Plainly, the English judgments in this case are money judgments. They are judgments under which money is payable. That qualifies them

[16] Where the judgment has been wholly satisfied at the date of the application for registration, it cannot be registered in the first place: s 6(6)(a).

as "money judgments" whether one views "payable" as meaning "immediately payable" or "payable now or in the future". Further, they are also "enforceable money judgments" according to the definition of that term. There can be no debate about that, as both parties accept that Part 2 applies to these judgments. That is only possible if they are "enforceable money judgments" for the purposes of s 5(4).

[49] In a context where a judgment for payment of money by instalments must be regarded as an "enforceable money judgment", there is a particular prohibition against registering the judgment for any amount which has been paid as at the date of the application for registration: s 6(12). There is no equivalent prohibition in s 6 against registering a judgment in respect of an amount which is payable, but not immediately due, as at the date of the application for registration. Rather, s 6(12) provides that the "the judgment is not to be registered in respect of the whole amount payable under the judgment of the original court, but only in respect of the balance remaining payable on that day". The reference to the "balance remaining payable on that day" suggests that registration is concerned with the remainder of the "enforceable money judgment", namely the whole amount which would be payable after registration, whether immediately due or due at a subsequent point in time.

[50] All of this is consistent with s 6(6). That provides that a judgment is not to be registered if at the date of the application it has been wholly satisfied, or it could not be enforced in the country of the original court. Plainly, at the date of Australian registration, the judgment could be enforced, at least partially, in England, as the dates for the payment of the first two instalments had passed.

[51] The question whether s 7(2)(a)(ii) means that registration of the judgments must be limited only to amounts which are immediately owing is also illuminated by the purpose of the surrounding provisions in s 7(2)(a)(ii). As explained, most of these are activated where the original judgment no longer exists, is legally vitiated or the product of an improper process. Alternatively, the other provisions in s 7(2)(a) apply where the registration process occurs in breach of the Act, where the registration process purports to confer new rights on an unentitled person, or where it would be a breach of public policy to allow enforcement.

[52] None of the other grounds in s 7(2)(a) are concerned with permitting registration of a judgment to be set aside where the original judgment is legally valid, and the registration process has occurred in the manner prescribed by the Act.

[53] Furthermore, there is no prospect that the enforcement process will be permitted to occur in respect of an instalment prior to the date for each instalment to be paid, because s 6(7)(d) of the Act provides that the registering court has the same control over the enforcement of a registered judgment as if it had granted the judgment.

[54] In these circumstances, s 7(2)(a)(ii) should be confined to a situation where the amount which is payable immediately or in the future is greater than the amount payable under the original judgment at the date of registration. It is only in this case that the registration process has gone wrong. Further, in such a situation, the Act apparently accepts that errors of amount are easily made, and these should be swiftly rectified. That is why s 9(1) exists.

Appellant's arguments

[55] The appellant's submissions were concerned with the alternative construction set out above. It made a number of arguments about this alternative construction, which are addressed below.

[56] The appellant submitted that the primary judge failed to appreciate that the purpose of s 7(2)(a)(ii) is to be a "safeguard"[17] which ensures precise reciprocity between the foreign judgment and the registered judgment. The appellant submitted that, unless the word "payable" is construed to mean "immediately payable", the registered judgment may operate inconsistently with the foreign judgment and permit enforcement of the payment of a greater amount than is immediately due in the original jurisdiction.[18]

[57] This submission raises, by implication, a conceptual issue about the effect of registration of a foreign judgment. Is it the registered foreign judgment, or the terms of registration, which create new rights and obligations and which are enforced in the registering jurisdiction?

[58] On the one hand, the terms of the registration might be regarded as creating new obligations as a judgment of the registering jurisdiction, which are themselves enforceable in the jurisdiction where registration occurs. After registration, the foreign judgment becomes irrelevant, and the terms of the registration become the judgment in the registering jurisdiction which are enforced. On the other hand, the registration process identifies the foreign judgment as the source of new obligations in the registering jurisdiction. It is still the foreign judgment which is enforced in the registering jurisdiction. However, it is only in the former case that the terms of the registration would need to correspond precisely to the amounts due under the judgment which is registered. On the alternative view, registration identifies the foreign judgment as the continuing source of new obligations in the jurisdiction where registration occurs.

[59] As far as I am aware, the precise conceptual issue just described has not been considered previously. Most likely, that is because the issue would only have significance in a case such as the present, where a judgment sum is to be paid in instalments.

[60] As a matter of first principle, I consider that the alternative view is the correct conceptual analysis. That is, the registration process leads to registration of the foreign judgment, which has a continuing force and effect in the registering jurisdiction. What is enforced are the terms of the judgment registered, as if those terms had been originally given by the Supreme Court of Queensland. That is consistent with the language of s 6(7) which provides that the registered judgment has the same force and effect as if the judgment had been originally given in the court of the registering jurisdiction. It is the registered judgment, not the terms of the registration, which have continued force and effect. There are judicial comments which generally align with this analysis.[19]

[61] This view is also supported by the fact that registration of a foreign judgment may be set aside once the judgment has been discharged (s 7(2)(a)(ix)) or has been wholly satisfied (s 7(2)(a)(x)). If the registration itself operates as a new judgment in Australia, there would be no need to set it aside once discharged or satisfied. That does not occur to other Australian judgments. However, if registration is that of

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17 Appellant's Outline of Submissions, 19 June 2026, [1].

18 Appellant's Outline of Submissions [10].

19 ***BP Exploration Co (Libya) Ltd v Hunt*** [1980] 1 NSWLR 496 [51]; ***Strategic Technologies Pte Ltd v Procurement Bureau of the Republic of China Ministry of National Defence*** [2020] EWHC 362; [2020] 1 WLR 3388 [136].

a foreign judgment which provides the continuing source of obligations in Australia, it follows that once the foreign judgment is no longer relevant, there is no purpose in it remaining registered in Australia.

[62] Furthermore, this position is consistent with comments of Professor Briggs KC in respect of the English statutory system for registration of foreign judgments, which formed the basis for the uniform legislation in Australia concerning registration of foreign judgments.[20] In contrast to the common law, Professor Briggs KC has described the operation of the English statutory enforcement of foreign judgments as follows:[21]

> "Where this procedure is available, there is no need to bring an action at common law, and good reason not to. And where this procedure is available, it is correct to say that the foreign judgment itself is enforced in England. For this reason, the schemes depend on legislation having identified and specified the countries and their court judgments."

[63] It follows from this analysis that the registration of the English judgments in this case, by stating the total amount payable in instalments under these judgments, does not itself have the effect of creating an obligation in Queensland which means that the total amount payable becomes immediately due in Queensland if the English judgments are contingently payable in instalments. The appellant's submission to this effect should not be accepted. The process of enforcement in the Supreme Court of Queensland is controlled by the terms of the registered judgment, not the terms of the registration. That is indicated by s 6(7)(d), which stipulates that the registering court has the same control over the enforcement of a registered judgment as if the judgment had been originally given in the court in which it is registered and entered on the date of registration. It follows that there could be no execution in Queensland to enforce payment of an instalment amount which is not immediately due under the English judgments.[22]

[64] Once the purpose which the appellant has identified for s 7(2)(a)(ii) is rejected, the appellant's position essentially reduces to an argument that, as a matter of language, "payable" means "immediately payable". That is certainly one possible meaning, often arising in the context of a phrase such as "due and payable". The appellant has referred to cases arising in other contexts, particularly taxation, to demonstrate this point.[23] However, it is not the only possible meaning. In my view, the context and purpose of the legislation means that the constructional choice which should be adopted, assuming that the English judgments only create a series of contingent liabilities to pay instalments by particular dates, is that "payable" in s 7(2)(a)(ii) means payable immediately or at some point in the future. That is for the reasons explained previously.

An additional point – overstatement by $1,000

[65] Finally, the appellant seeks to raise a new issue on the appeal, which was only appreciated after the primary judgment was delivered. It is that paragraph 3(b) of the

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20 Explanatory Memorandum for the Foreign Judgments Bill 1991, [2].

21 Adrian Briggs, *Civil Jurisdiction and Judgments*, 7th ed, [35.01].

22 Compare ***PT Bayan Resources TBK v BCBC Singapore Pte Ltd*** [2015] HCA 36; (2015) 258 CLR 1 [30], [63].

23 ***Mack v Commissioner of Stamp Duties (NSW)*** (1920) 28 CLR 373, 382-383; ***Deputy Commissioner of Taxation (Cth) v Peacock*** [1980] 2 NSWLR 130, [12], [31]; ***CPB Contractors Pty Ltd v JKC Australia LNG Pty Ltd [No 2]*** [2017] WASCA 123, [122].

orders made registering the English judgments overstates the interest payable for the appellant to the respondent by US$1000. The amount should be US $35,138,009, not US $35,139,009.

[66] There has obviously been a slip, because the correct amount of US $35,138,009 is stated in order 2(a) of the same orders. This is in fact the operative order which "registers" the English judgment pursuant to Part 2 of the *Foreign Judgments Act*. Order 3(b) states that the amount payable in Queensland is US $35,139,009 "pursuant to paragraph 2(a) above". The amount of US $35,138,009 is apparent from Order 1 of the English High Court made on 10 June 2025.

[67] The respondent contends that Order 3(b) should be corrected by the application of the slip rule in rule 388,[24] and orally applied for this at the hearing of the appeal. The appellant says that the slip rule does not arise because of the mandatory operation of s 7(2)(a)(ii), and because where the Act creates a new right, such as the right to register a judgment, and specifies the mode of enforcement, that remedy is exclusive.[25] The appellant says that the appropriate remedy is to set aside registration of the English judgment and for s 9(1) to be applied to remedy the error.[26]

[68] In my view, the first question is to construe the orders of the Supreme Court of Queensland which registered the English judgments. Court orders are construed in the same way as other documents.[27] There is a principle that obvious errors may be corrected as a matter of construction. This regularly occurs in the contractual setting, without rectification of the contracts.[28] In my view, properly construed, order 3(b) means US$35,138,009 (as set out in order 2(a)). It is therefore unnecessary to apply the slip rule or to set aside the orders of the Sullivan J as overstating the amount payable. Properly construed, the orders do not overstate the amount payable.

[69] Having reached this view, as a matter of construction, I do not need to consider whether the existence of s 7(2)(a)(ii) and s 9 in the Act impliedly excludes the power of this Court under rule 388 of the *Uniform Civil Procedure Rules 1999* (Qld). The UCPR are made under the rule-making power conferred by s 85(1) of the *Supreme Court of Queensland Act 1991* (Qld). The correct analysis would be to consider whether s 7(2)(a)(ii) and s 9 of the Act, properly construed, affect the power of the Governor in Council to make rules pursuant to s 85 of the *Supreme Court of Queensland Act*, concerning the practices and procedures of the Supreme Court. The question must be addressed at the level of empowering legislation.[29] Posed in this way, I have difficulty in seeing any interaction between the Commonwealth and State legislation. However, the appellant said that it had not provided any notices concerning this issue pursuant to s 78B of the *Judiciary Act 1903* (Cth) to any Attorneys General who might be interested in the resolution of this issue. I do not propose to embark upon it.

Conclusion

[70] For these reasons, I would uphold the primary judge's conclusion and dismiss the appeal. I would also declare that, properly construed, order 3(b) of the orders made

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24 Respondent's Outline of Argument, [51].

25 The appellant relied upon ***Josephson v Walker*** [1914] HCA 68; (1914) 18 CLR 691.

26 Appellant's Outline of Submissions in Reply, [32].

27 See Herzfeld and Prince, *Interpretation* (3rd ed), [36.70].

28 Eg, ***Fitzgerald v Masters*** [1956] HCA 53; (1956) 95 CLR 420 at 426-427, 437-438.

29 Compare ***Palmer v Western Australia*** [2021] HCA 5; (2021) 272 CLR 505.

by Sullivan J on 20 August 2025 should be construed as meaning “US$35,138,009 pursuant to paragraph 2(a) above”. Costs should follow the event.

[71] **CROWLEY J:** I agree with the orders proposed by Thomson AJA for the reasons given by his Honour.