

## Chapter 7

# The Development of Australian Private International Law

*Mary Keyes*

### Introduction

The Federal Court of Australia has made important contributions to the development of Australian private international law. During the relatively short lifetime of the court, Australian private international law has been transformed; in some areas, particularly in relation to jurisdiction, the transformation has been radical. This transformation has principally been caused by two factors. First, as a consequence of globalisation, private international law has become increasingly practically important, in Australia as in other legal systems. Whereas, in 1977, it was unusual for Australian firms and individuals to be directly involved in international transactions, by 2017 this was commonplace. An increase in the number of international transactions inevitably leads to a greater amount of litigation. The number of international disputes coming before the Australian courts has grown dramatically since the Federal Court first sat, and a substantial proportion of these cases are heard by the Federal Court. Australian courts, including the Federal Court, have in the last 40 years been called upon to determine many legal issues for which there was no Australian precedent, and some novel issues for which there was no precedent at all.

Second, as for other areas of law, Australian private international law has become increasingly independent from the English law on which it is founded.<sup>1</sup> This newfound independence has been keenly felt in the field of private international law. Pryles suggested that '[p]erhaps in no subject did the Australian rules more closely correspond to the English rules than in Private International Law'.<sup>2</sup> As late as 1989, he expressed the view that an analysis of Australian private international law was 'hardly distinguishable' from an analysis of the English law.<sup>3</sup> The paucity of Australian cases, in an area which has always been dominated by case law, and the heavy dependence of Australian law

---

1 M Davies, A S Bell and P L G Brereton, *Nygh's Conflict of Laws in Australia* (LexisNexis Butterworths, 9th ed, 2014) xxii-xxiii (noting that Australian private international law is 'increasingly divergent from its parent in the United Kingdom').

2 Michael C Pryles, 'Internationalism in Australian Private International Law' (1989) 12 *Sydney Law Review* 96, 108.

3 *Ibid* 109. He went on to say that '[u]ntil recently, the only point of departure was the existence in Australia of certain special provisions to deal with problems of conflict of laws between the Australian states': at 108.

This is a preview. Not all pages are shown.