

**DISTRICT COURT (GARNISHEE PROCEEDINGS)
AMENDMENT BILL 1987**

NEW SOUTH WALES



EXPLANATORY NOTE

(This Explanatory Note relates to this Bill as introduced into Parliament)

The Local Courts (Civil Claims) (Garnishee Proceedings) Amendment Bill 1987 is cognate with this Bill.

The object of this Bill is to give effect to recommendations (in relation to the District Court) of the Law Reform Commission of New South Wales in its report on Attachment of Moneys Deposited with Building Societies and Credit Unions (L.R.C. 46).

The principal reform effected by the Bill is to enable certain money deposited with building societies and credit unions (as well as banks) to be attached by means of garnishee orders for the purpose of satisfying judgment debts of the District Court. A garnishee order is designed to enable a judgment creditor to satisfy the judgment debt from money due to the judgment debtor from a third party, the garnishee. The Bill effects other reforms with respect to garnishee proceedings generally.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act will, with minor exceptions, commence on a day to be appointed by the Governor-in-Council.

Clause 3 is a formal provision that gives effect to the Schedule of amendments to the District Court Act 1973.

District Court (Garnishee Proceedings) Amendment 1987

Clause 4 provides that the amendments to be effected by the proposed Act are not to apply to garnishee orders made under section 97 of the Principal Act before the commencement of the proposed Act.

Schedule 1 (1) amends section 97 of the Principal Act, which provides for the making and service of garnishee orders. The amendment effected by Schedule 1 (1) (a) is intended to make it clear that a garnishee order served under the section extends to all debts due or accruing from the garnishee to the judgment debtor at the time of the service of the order even though they were not due or accruing when the order was made. Schedule 1 (1) (b) and (c) make consequential amendments to the section.

Schedule 1 (2) inserts into the Principal Act new sections 97A–97E.

Proposed section 97A will enable a garnishee who believes that, at the time of service of the relevant garnishee order, there was no debt due or accruing to the judgment debtor, to serve on the judgment creditor an affidavit to that effect. Under the proposed section, the garnishee will be relieved of all liability in respect of any reasonable disclosure of information in the affidavit.

Proposed section 97B sets out the obligations of a garnishee as to the times within which amounts that are the subject of the relevant garnishee order must be paid.

Proposed section 97C will oblige a garnishee to notify the judgment creditor of certain particulars in the case of a garnishee order which attaches a debt due for payment to the judgment debtor more than 21 days after the service of the order on the garnishee.

Proposed section 97D will enable a garnishee to retain as costs an amount not exceeding that prescribed by the District Court Rules.

Proposed section 97E will enable the District Court to protect a garnishee who has acted with due diligence but has nevertheless made a payment to the judgment debtor contrary to the garnishee order.

Schedule 1 (3) makes a minor consequential amendment to section 98 of the Principal Act.

Schedule 1 (4) makes a minor consequential amendment to section 100 of the Principal Act.

Schedule 1 (5) amends section 102 of the Principal Act, which deals with the procedure to be followed in a case where a garnishee order is not complied with. The amendment will enlarge the District Court's powers under the section by enabling it to hear and determine any question in dispute concerning the obligations of the garnishee under a garnishee order.

District Court (Garnishee Proceedings) Amendment 1987

Schedule 1 (6) replaces section 103 of the Principal Act which at present provides that amounts standing to the credit of a judgment debtor in a bank account are to be regarded as debts that are liable to attachment under a garnishee order. The substituted section provides that amounts standing to the credit of a judgment debtor in an account in a building society (including a Starr-Bowkett society and a non-terminating building society) or a credit union will be liable to attachment under a garnishee order as well as amounts held in a bank account. Amounts held in a building society or credit union as withdrawable shares will also be attachable under a garnishee order except as regards such shares as are necessary to enable the judgment debtor to retain membership of the building society or credit union. Amounts held in bank, building society or credit union accounts will be attachable even though their payment by the garnishee to the judgment debtor would, but for the garnishee order, have been subject to special conditions that the judgment debtor would have had to have complied with (such as minimum periods of notice before withdrawal).

Schedule 1 (7) makes a minor consequential amendment to section 105 of the Principal Act.
