

**LOCAL COURTS (CIVIL CLAIMS) (GARNISHEE
PROCEEDINGS) AMENDMENT ACT 1987 No. 21**

NEW SOUTH WALES



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1970

**LOCAL COURTS (CIVIL CLAIMS) (GARNISHEE PROCEEDINGS)
AMENDMENT ACT 1987 No. 21**

NEW SOUTH WALES



Act No. 21, 1987

An Act to amend the Local Courts (Civil Claims) Act 1970 with respect to the attachment of money deposited with banks, building societies and credit unions, and for other purposes. [Assented to 24 April 1987]

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BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

Short title

1. This Act may be cited as the "Local Courts (Civil Claims) (Garnishee Proceedings) Amendment Act 1987".

Commencement

2. (1) Sections 1 and 2 shall commence on the date of assent to this Act.

(2) Except as provided by subsection (1), this Act shall commence on such day as may be appointed by the Governor and notified by proclamation published in the Gazette.

Amendment of Act No. 11, 1970

3. The Local Courts (Civil Claims) Act 1970 is amended in the manner set forth in Schedule 1.

Savings and transitional provisions

4. (1) The amendments effected by this Act do not apply to or in respect of a garnishee order made under section 47 of the Local Courts (Civil Claims) Act 1970 before the commencement of this Act.

(2) Subject to subsection (1), the Local Courts (Civil Claims) Act 1970, as amended by this Act, applies to and in respect of a judgment debt arising before the commencement of this Act as well as to and in respect of a judgment debt arising after that commencement.

SCHEDULE 1

(Sec. 3)

AMENDMENTS TO THE LOCAL COURTS (CIVIL CLAIMS) ACT
1970

(1) Section 37 (**Professional costs—limitation**)—

Omit “or 36A (1)”, insert instead “, 36A (1) or 52 (6)”.

(2) Section 47 (**Garnishee orders**)—

(a) Section 47 (1)—

Omit “. owing,”.

(b) Section 47 (2) (a)—

Omit the paragraph, insert instead:

- (a) except in a case to which paragraph (b) applies or except in the case of an order to which section 48 applies, shall operate to attach in the hands of the garnishee, to the extent of the amount specified in the order, all debts which are due or accruing from the garnishee to the judgment debtor at the time of service of the order (whether or not they were so due or accruing at the time when the order was made);

(c) Section 47 (2) (b)—

After “attach”, insert “, to the extent of the amount specified in the order,”.

(d) Section 47 (4)—

Omit the subsection, insert instead:

(4) A garnishee order shall—

- (a) specify the unpaid amount of the judgment debt owing to the judgment creditor; and

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- (b) require the garnishee to pay, in accordance with this Act and the rules, the debt, wage or salary attached or so much of it as may be sufficient to satisfy that unpaid amount after deducting such amount (if any) as may be notified in writing to the garnishee by the judgment creditor or the registrar as having been paid or credited to the judgment creditor on account of that unpaid amount otherwise than under the order.

(3) Sections 47A–47E—

After section 47, insert:

Affidavit that no debt due or accruing

47A. (1) A garnishee who believes that, at the time of service of the garnishee order, there was no debt due or accruing from the garnishee to the judgment debtor may serve on the judgment creditor an affidavit which is to that effect and contains a summary of the grounds on which that belief is based.

(2) A disclosure of any information in an affidavit served pursuant to subsection (1) shall not, if the disclosure was reasonable in the circumstances, subject the garnishee to any action, liability, claim or demand.

Time for payment by garnishee

47B. (1) Payment by a garnishee in accordance with a garnishee order not expressed to be for the attachment of any wage or salary shall be made—

- (a) within the period of 21 days after service of the order on the garnishee; or
- (b) in the case of any debt attached which is due for payment to the judgment debtor after the expiration of that period—not later than the date on which that debt is due for payment to the judgment debtor.

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(2) Payment by a garnishee in accordance with a garnishee order expressed to be for the attachment of any wage or salary shall be made within the period of 14 days after the wage or salary is due for payment to the judgment debtor.

(3) This section does not affect the operation of section 53.

Notice required for certain attached debts accruing

47c. (1) Where a garnishee order not expressed to be for the attachment of any wage or salary attaches a debt which is due for payment to the judgment debtor after the expiration of the period of 21 days after service of the order on the garnishee, the garnishee shall, before the expiration of that period, serve on the judgment creditor a notice which complies with subsection (2).

(2) A notice under subsection (1) in respect of a debt shall specify—

- (a) the date on which the debt is, or is likely to be, due for payment to the judgment debtor; and
- (b) if the amount of the debt is less than the unpaid amount of the judgment debt specified in the garnishee order—the amount of the debt.

(3) A person shall not make in a notice served pursuant to subsection (1) a statement which, to the person's knowledge, is false.

Penalty: \$200.

Garnishee's costs

47d. If a garnishee complies with a garnishee order (other than a garnishee order to which section 48 applies) within the time prescribed by section 47b and, where applicable, complies with section 47c (1)—

- (a) the garnishee may retain out of the debt attached for the garnishee's own use an amount not exceeding that prescribed by the rules; and

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- (b) any amount so retained shall, for the purposes of the debt attached, be deemed to have been paid by the garnishee to the judgment debtor.

Reduction of attached debt by court

47E. If, after service of a garnishee order on the garnishee, the garnishee acts with reasonable diligence for the purpose of giving effect to the attachment but nevertheless pays to the judgment debtor the whole or any part of the debt attached or otherwise deals with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached, the court may order that, for the purposes of the garnishee proceedings, the debt attached be reduced to the extent of the payment or satisfaction.

(4) Section 48 (**Continuous operation of garnishee orders**)—

Section 48 (3)—

After “attach”, insert “, to the extent of the amount specified in the order.”.

(5) Section 50 (**Payment under certain garnishee orders**)—

Section 50 (3)—

Omit “section 54 be deemed to have been paid by the garnishee”, insert instead “the wage or salary attached be deemed to have been paid by the garnishee to the judgment debtor”.

(6) Section 52 (**Procedure where garnishee order not complied with**)—

(a) Section 52 (3) (c)—

After “judgment debtor”, insert “or the unpaid amount of the judgment debt, whichever is the lesser.”.

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(b) Section 52 (4)—

Omit the subsection, insert instead:

(4) Where a garnishee appears to show cause as mentioned in subsection (3) and satisfies the court that the debt alleged by the judgment creditor to be owing by the garnishee to the judgment debtor is bona fide in dispute, the court shall—

(a) where it is satisfied that it would not have jurisdiction under this Act in an action relating to the debt—by its order, discharge the garnishee order which shall thereupon cease to have any force or effect; or

(b) in any other case—order that the question as to whether the garnishee is liable to pay the debt or any part of the debt to the judgment debtor be set down for hearing in the court at a time and on a date specified in the order.

(c) Section 52 (5)—

Omit “an amount equal to so much of the debt alleged to be owing by the garnishee to the judgment debtor as will satisfy the judgment debt in whole or in part”, insert instead “the amount of the debt alleged to be owing by the garnishee to the judgment debtor or the unpaid amount of the judgment debt, whichever is the lesser,”.

(d) Section 52 (6), (7)—

After section 52 (5), insert:

(6) The court may, in an order under subsection (4) (a) or in a judgment under subsection (5), order the payment of such amount as may be specified in the order or judgment by one party to the other—

(a) for or towards the reasonable professional costs incurred by that other party in connection with proceedings under this section;

(b) for or towards the reasonable expenses incurred by that other party in connection with the garnishee order; and

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(c) for or towards witnesses' expenses incurred by that other party.

(7) Costs or expenses allowed as referred to in subsection (6)—

(a) in the case of an order under subsection (4) (a)—are a judgment against the party liable to pay the costs or expenses; or

(b) in the case of a judgment under subsection (5)—form part of the judgment.

and are enforceable accordingly.

(7) Section 52A—

Omit the section, insert instead:

Bank, building society and credit union accounts

52A. (1) In this section, except in so far as the context or subject-matter otherwise indicates or requires—

“account” includes—

- (a) a deposit account or withdrawable share account; and
- (b) any record of deposit or of subscription for withdrawable shares,

but does not include an account or a record which is prescribed by the rules as exempt from the operation of this section;

“bank” means—

- (a) a bank within the meaning of the Banking Act 1959 of the Commonwealth, as amended and in force for the time being; or
- (b) a person who carries on State banking within the meaning of section 51 (xiii) of the Constitution of the Commonwealth;

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“building society” means—

- (a) a society registered under the Permanent Building Societies Act 1967;
- (b) a Starr-Bowkett society or a non-terminating building society registered under the Co-operation Act 1923;
- (c) a society mentioned in the Second Schedule to the Co-operation Act 1923; or
- (d) a body in respect of which an exemption is in force—
 - (i) under section 35 of the Permanent Building Societies Act 1967; or
 - (ii) in the case of a Starr-Bowkett society or a non-terminating building society, under section 61 of the Co-operation Act 1923;

“credit union” means—

- (a) a credit union registered under the Credit Union Act 1969; or
- (b) a body in respect of which an exemption is in force under section 28 of that Act;

“deposit-taking institution” means a bank, building society or credit union.

(2) For the purpose of determining whether an amount standing to the credit of a judgment debtor in an account in a deposit-taking institution is attachable as a debt due or accruing to the judgment debtor, the following conditions shall be disregarded:

- (a) a condition that a demand must be made before any money or share is withdrawn;
- (b) a condition relating to the manner in which or the place at which any such demand is to be made;

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- (c) a condition that a passbook, receipt or other document must be produced before any money or share is withdrawn;
- (d) a condition that notice is required before any money or share is withdrawn;
- (e) except in the case of an account in a Starr-Bowkett society, a condition that any money or share must not be withdrawn for any specified period;
- (f) a condition prescribing a minimum amount in respect of any withdrawal from the account;
- (g) a condition that a minimum balance must be maintained in the account;
- (h) a condition relating to the account prescribed by the rules for the purposes of this subsection.

(3) So much of the amount standing to the credit of a judgment debtor in a withdrawable share account in a building society or credit union as is the minimum amount that must be maintained in the account in order that the judgment debtor retains membership of the building society or credit union is not attachable.

(4) Where an amount standing to the credit of a judgment debtor in an account in a deposit-taking institution is attached, the garnishee order shall be deemed to operate as a notice of withdrawal or demand for payment under the contract between the garnishee and judgment debtor in respect of the account, and that notice or demand is, while the order remains in force, irrevocable and shall be deemed to have been received by the garnishee—

- (a) on the date of service of the order; or
- (b) where the judgment debtor is not entitled under the contract to give a notice of withdrawal or make a demand for payment on the date of service of the order—on the date on which the judgment debtor would, but for the order, have become so entitled.

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(5) Any charge on an amount standing to the credit of a judgment debtor in an account in a building society or credit union (being a charge created by an Act under which the building society or credit union is registered or regulated or by the rules of the building society or credit union) shall be disregarded for the purposes of a garnishee order, but nothing in the foregoing affects the rights of the building society or credit union to set off or appropriate the whole or any part of that amount.

(6) Where—

- (a) before the expiration of the period of 21 days after service of a garnishee order on a deposit-taking institution with respect to an amount standing to the credit of a judgment debtor in an account, the garnishee pays to the registrar the debt attached to the extent of the attachment; and
- (b) one of the conditions applicable to the account is that a passbook must be produced before any money or share is withdrawn,

the garnishee may, at the time of payment of that amount to the registrar, by instrument in writing signed by an officer of the deposit-taking institution, require the registrar to retain the amount so paid for any specified period not exceeding 2 months commencing on the date of that payment.

(7) Where—

- (a) a registrar is required under subsection (6) by a garnishee to retain an amount for a period specified under that subsection; and

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- (b) the garnishee during that period makes an application for an order under this subsection on the ground that the garnishee has acted with reasonable diligence in relation to the garnishee order but nevertheless, because of the production of a current passbook relating to that amount or any part of that amount, has (whether during or before that period) paid to the judgment debtor the whole or any part of the debt attached or otherwise dealt with the debt attached so as to satisfy, as between the garnishee and the judgment debtor, the whole or any part of the debt attached,

the court may, if it thinks fit, order the registrar to repay that amount or any part of that amount to the garnishee.

(8) Where a registrar is required under subsection (6) by a garnishee to retain an amount for a period specified under that subsection, the registrar shall not pay that amount or any part of that amount to the judgment creditor—

(a) until after—

- (i) the garnishee, by instrument in writing signed by an officer of the deposit-taking institution, informs the registrar, or the registrar is otherwise satisfied, that a current passbook relating to that amount or any part of that amount has, during that period, come into the possession of the garnishee at the place of keeping of the account to the credit of which that amount was standing; or

(ii) the expiration of that period,

whichever first occurs; and

- (b) unless the registrar is satisfied, on such information as is available to the registrar, that no application made during that period by the garnishee for an order under subsection (7) in relation to that amount or any part of that amount is still pending.

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(9) If an amount referred to in subsection (8) or any part of such an amount is ordered to be repaid to the garnishee under subsection (7), the balance (if any) only is payable to the judgment creditor.

(8) Section 55 (**Payments by garnishee to judgment creditor**)—

Section 55 (2)—

Omit “52A (5)”, insert instead “52A (7)”.