

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) AMENDMENT BILL 1988

NEW SOUTH WALES



EXPLANATORY NOTE

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

Part 2 of the Foreign Judgments (Reciprocal Enforcement) Act 1973 provides for the enforcement in the State of judgments given in certain other countries which accord reciprocal treatment to judgments given in the State.

Such a judgment is enforceable in the State if the person against whom the judgment was given ("the judgment debtor") has submitted to the jurisdiction of the court by voluntarily appearing before the court. At present, the Principal Act provides that the judgment debtor is not to be regarded as submitting by voluntarily appearing, if the appearance was merely for the purpose of protecting property or contesting the jurisdiction of the court.

The object of this Bill is to amend the Principal Act, so as—

- (a) to extend the circumstances in which a foreign judgment may not be enforced in the State under the reciprocal arrangements in Part 2, by enlarging the grounds on which a voluntary appearance before a foreign court is not to be regarded as a submission to the jurisdiction; and
- (b) to provide that the existing and new limitations on enforcement mentioned above are also to apply where enforcement is sought otherwise than under the reciprocal arrangements in Part 2.

The substance of the Bill is uniform with legislation introduced, or proposed to be introduced, in other States and Territories.

Clause 1 specifies the short title of the proposed Act.

Clause 2 provides that the proposed Act is to commence on a proclaimed day or days.

Clause 3 is a formal provision that gives effect to the Schedule of amendments.

Foreign Judgments (Reciprocal Enforcement) Amendment 1988

SCHEDULE 1—AMENDMENTS

Schedule 1 (1) and (2) amend the long and short titles of the Principal Act. These are consequential amendments, as the Principal Act will (following its amendment by the proposed Act) no longer be limited to enforcement based on reciprocity.

Schedule 1 (3) omits section 3 (Division of Act). Current practice is for details of the arrangement of an Act to be comprehensively set out in the Table of Provisions.

Schedule 1 (4) amends section 8 of the Principal Act, so that a foreign judgment is not enforceable in the State under the reciprocal arrangements, if a voluntary appearance was entered merely for the purpose of—

- (a) protecting property that is covered by an actual or threatened order (e.g. a *Mareva* injunction) preventing the property being disposed of; or
- (b) inviting the court not to exercise its jurisdiction.

Schedule 1 (5) inserts a new section 18 into the Principal Act, to deal with the enforcement of foreign judgments by methods other than the reciprocal arrangements under Part 2 of the Principal Act. These other methods involve enforcement of a foreign judgment at common law or under the Administration of Justice Act 1924. The new section applies the existing and new limitations on enforcement mentioned above to cover enforcement by these other methods.
