

Attachment of Wages Limitation Act 1957 No 28

[1957-28]



New South Wales

Status Information

Currency of version

Historical version for 1 July 2003 to 30 September 2004 (accessed 31 December 2024 at 6:39)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
[Greyhound and Harness Racing Administration Act 2004 No 36](#) (not commenced — to commence on 1.10.2004)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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Attachment of Wages Limitation Act 1957 No 28



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An Act to make provision with respect to the attachment of wages and salaries of employees of certain employing authorities and of certain employees of the Crown; to limit the amount of wage or salary that may be attached in garnishee proceedings; for these and other purposes to amend the *Common Law Procedure Act 1899*, the *Public Service Act 1902* and certain other Acts; and for purposes connected therewith.

1 Name of Act and commencement

- (1) This Act may be cited as the *Attachment of Wages Limitation Act 1957*.
- (2) This Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.

2-9 (Repealed)

10 Attachment of money due to employees etc in the service of the Crown and of certain employing authorities

- (1) Where judgment has been given by any court against any employee for the payment of any sum of money, or against any contractor to an employer for the payment of any sum of money in respect of any dishonoured cheque or promissory note or upon any guarantee or bond or for rent of any land or for goods supplied or money lent or for wages due in connection with the contractor's contract with such employer, the person in whose favour the judgment is given may serve on the employer of such employee or the employer with whom the contract was made, as the case may be, a copy of the judgment certified under the hand of the registrar or other proper officer of the court by which the judgment was delivered or in which it was obtained and a statutory declaration stating that the judgment has not been satisfied by the judgment debtor and setting out the amount due by the judgment debtor under the judgment.
- (2) Upon the service upon the employer of a copy of a judgment and a statutory declaration in pursuance of this section, the employer shall, as soon as practicable, notify the judgment debtor in writing of the service of the copy judgment and statutory declaration and require the judgment debtor to state in writing, within a time to be specified by the employer, whether the judgment has been satisfied, and if so,

to furnish evidence in support thereof, and if the judgment has not been satisfied, to state the amount then due under it.

- (3) If the employee or contractor fails to prove to the satisfaction of the employer that the judgment has been satisfied, the employer may, from time to time, deduct from the net amount of any moneys payable to the employee or contractor such sums as are in the employer's opinion reasonable towards the satisfaction of the judgment, and shall apply those sums in the manner hereinafter in this section provided:

Provided that in no case shall a deduction be made which will reduce the amount to be received by an employee to less than a sum per week equivalent to the amount ascertained in accordance with subsection four of this section.

- (4) The amount that is to be ascertained in accordance with this subsection is to be ascertained by deducting \$8 from the basic wage in force under clause 15 of Schedule 4 to the *Industrial Relations Act 1996* immediately before the deduction under subsection (3) is made.
- (5) Where more than one judgment and statutory declaration are served upon the employer in respect of one judgment debtor, the judgments shall be dealt with under this section in the order of service thereof upon the employer.
- (6) Any deductions made by an employer under the provisions of subsection three of this section from moneys payable to an employee or contractor shall, as between the employer and the employee or contractor, be deemed to be a payment in full in money to the extent of such payment by the employer to the employee or contractor.
- (7) If any deduction made by an employer in pursuance of the provisions of subsection three of this section from moneys payable to a judgment debtor exceeds the amount due under the judgment against the judgment debtor, the excess shall be repayable by the employer to the judgment debtor and in default of payment, may be recovered by the judgment debtor from the employer in any court of competent jurisdiction.
- (8) Any person to whom a payment has been made in pursuance of this section who fails to notify the employer immediately a judgment debt in respect of which the payment was made is satisfied, or is deemed to be satisfied, shall upon conviction before a Local Court be liable to a penalty not exceeding 1 penalty unit.
- (9) The foregoing provisions of this section shall not apply in relation to any employee or contractor whose estate has been sequestrated either voluntarily or compulsorily for the benefit of the employee's or contractor's creditors and who has not obtained a certificate of discharge.
- (10) The remedy prescribed by this section shall not, as regards any employee or contractor, limit or affect any other remedy which may be open under the ordinary process of the law; but as regards the employer of such employee, or the employer

with whom the contract was made, as the case may be, such remedy shall be an exclusive one.

(11)

- (a) Out of the sums deducted under the provisions of subsection three of this section there shall be retained by the employer, to be paid by the employer into the appropriate account or fund kept by the employer for the receipt of moneys in the nature of revenue, an amount equal to five per centum (or such other percentage as the Governor may, by order, notify in the Gazette, which order the Governor is hereby authorised to make) of such sums, and the balance of such sums shall be paid to the judgment creditor.
- (b) When an employer makes a payment to a judgment creditor under the provisions of this subsection, the employer shall forward to the judgment creditor a statement showing:
 - (i) the sums deducted under the provisions of subsection three of this section in respect of the judgment from moneys payable to the employee or contractor concerned, and
 - (ii) the amount retained under the provisions of this subsection out of such sums by the employer, and
 - (iii) the balance of such sums paid under the provisions of this subsection to the judgment creditor.
- (c) Upon payment being made under the provisions of this subsection to the judgment creditor, the judgment creditor shall credit the employee or contractor concerned with the sums referred to in subparagraph (i) of paragraph (b) of this subsection, as shown in the statement forwarded by the employer to the judgment creditor, and the judgment in respect of which such payment was made shall for all purposes be deemed to be satisfied to the extent of those sums, as so shown.

(12) In this section:

employee means:

- (a) any officer of either House of Parliament or any person employed in either of the departments of the Legislature under the separate control of the President or Speaker, or under their joint control, or
- (b) any officer or employee in the service of an employing authority, or
- (c) any officer or employee in the service of the Crown (including the Public Service or the Police Service).

employer means:

- (a) in respect of any officer of either House of Parliament or any person employed in either of the departments of the Legislature under the separate control of the President or Speaker, or under their joint control, the person for the time being holding the office of Parliamentary Accountant,
- (b) in respect of an officer or employee in the service of, or a contractor to, an employing authority, that employing authority, and
- (c) in respect of an officer or employee in the service of the of the Crown (including the Public Service or the Police Service), the head of the department or other agency that pays the wages or salary of that officer or employee.

employing authority means, subject to subsection (12A), any person or body whose name appears in the Schedule to this section or is added to that Schedule in pursuance of this Act.

judgment includes a judgment against joint defendants.

- (12A) Where the name of a person appears in the Schedule in respect of a person or class of persons, the first mentioned person is, for the purposes of this Act, an employing authority only in respect of that other person or class of persons.
- (13) The Governor may, by order published in the Gazette, amend the Schedule to this section by inserting therein the name of any person, body or department by whom or by which persons are employed on behalf of the Crown, or the name of any body constituted by any Act.
- (14) Nothing in this section shall affect:
 - (a) the powers rights and privileges of the Legislative Council or the Legislative Assembly, or
 - (b) the powers rights and privileges of or prejudice the control exercised by the President and Speaker, or either of them, over any officer of either House of Parliament or any person employed in either of the departments of the Legislature under the separate control of the President or Speaker, or under their joint control.

Schedule

Board of Fire Commissioners of New South Wales

The Board of Management constituted by the *Taree-Wingham Water Supply Administration Act 1929* as amended by subsequent Acts

Commissioner of the Soil Conservation Service

Conservation Authority of New South Wales

The New South Wales Fish Authority

Dairy Industry Marketing Authority

The Electricity Authority of New South Wales

Forestry Commission

Grafton and South Grafton Water Board
The Grain Elevators Board of New South Wales
Greyhound Racing Authority
The Housing Commission of New South Wales
The Hunter Valley Conservation Trust
Local Government Superannuation Board
Lord Howe Island Board
The Metropolitan Meat Industry Board
Ambulance Service of New South Wales constituted under the [Ambulance Services Act 1990](#)
New South Wales Government Engineering and Shipbuilding Undertaking
Roads and Traffic Authority of New South Wales
State Brickworks
State Mines Control Authority
State Rail Authority of New South Wales
State Transit Authority of New South Wales
Water Administration Ministerial Corporation
Waterways Authority
Western Lands Commissioner