

District Court (Protecting Judgment Debtors on Main Benefit) Amendment Bill

Member's Bill

Explanatory note

General policy statement

Attachment orders are a means of enforcing civil debt through which the debtor's employer or Work and Income are essentially told to directly transfer money from the debtor's wages or benefit to the creditor. In New Zealand, there are no prohibitions on attachment orders being made against beneficiaries, despite the inherently limited nature of their income and ability to pay. This is despite the fact that in many cases, the civil debt is only accrued as a result of private lending practices designed to profit from individuals in a challenging financial situation.

Following changes made to the civil debt enforcement system in April 2014, there has been a significant rise in the number of such orders granted, especially in the case of orders granted against beneficiaries. The Commerce Commission noted in 2015 that the number of orders per month increased approximately 400% after the change, from approximately 200 to approximately 1,000. Public reporting has further highlighted that in 2018, over 24,000 attachment orders for civil debt were granted against beneficiaries, whilst just 5,527 were granted against employed debtors. According to information obtained by the Salvation Army, furthermore, in 2020, "only 14% of attachment orders were placed on people receiving wages, leaving a massive 86% of attachment orders being imposed on beneficiaries."

The increase in the number of attachment orders granted against beneficiaries has flow on social consequences due to the disproportionate impact that income garnishment has on people with inherently limited incomes. In these instances, the impacts of these orders can contribute to financial hardship, stress, poor physical and mental health, stigma, and social exclusion. Furthermore, evidence shows that many people who experience problem debt have children, and that such issues are a contributor to New Zealand's child poverty levels.

Inspired by similar provisions in Victoria, this Bill proposes to address this issue by protecting judgment debtors on main benefits from being subject to excessive attachment orders. It does this by amending the District Court Act 2016 to ensure that an attachment order on its own (that is, discounting the impact of any deduction notice that may apply to the judgment debtor's earnings) cannot lead to a deduction of more than 5% of the net earnings a judgment debtor who is in receipt of a main benefit. The Bill defines a **main benefit** by reference to the definition of that term in Schedule 2 of the Social Security Act 2018.

This protection is in addition to the existing restriction provided by the protected earning rate provided for in section 257(3) of the Act.

Clause by clause analysis

Clause 1 is the Title clause.

Clause 2 is the commencement clause and provides for this Bill to come into force on the day after it receives Royal assent.

Clause 3 identifies the District Court Act 2016 (the **principal Act**) as the Act being amended by the Bill.

Clause 4 amends section 157 (Effect of attachment order) of the principal Act to provide that an attachment order, on its own, cannot have the effect of deducting more than 5% of the net earnings a judgment debtor who is in receipt of a main benefit.

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the District Court (Protecting Judgment Debtors on Main Benefit) Amendment Act **2023**.
- 2 Commencement** 5
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Principal Act**
This Act amends the District Court Act 2016.
- 4 Section 157 amended (Effect of attachment orders)** 10
 - (1) Replace section 157(3), with:
 - (3) Despite subsections (1) and (2), no attachment order is to operate so as to have an effect described in **subsection (3A)** and, if an attachment order would one of those effects, the amount to be deducted from the judgment debtor's salary

or wages for the earnings period is treated as being reduced or cancelled to the extent necessary to avoid that effect. (4)

(3A) The effects are—

(a) if the judgment debtor is at any time during the earnings period receiving a main benefit, the amount to be deducted under the attachment order is more than 5% of net earnings for the earnings period of the judgment debtor: 5

(b) the net amount paid to the judgment debtor, when reduced under the attachment order and any other item described in subsection (5), is less than the protected earnings rate for the earnings period. 10

(2) In section 157(6), insert the following definition in its appropriate alphabetical order:

main benefit has the meaning given in Schedule 2 of the Social Security Act 2018