

RECIPROCAL ENFORCEMENT OF JUDGMENTS AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Reciprocal Enforcement of Judgments Act 1934. That Act makes provision for the registration and enforcement in New Zealand of judgments for the payment of money given in the superior Courts of the United Kingdom and other countries to which the Act is extended by the Governor-General by Order in Council.

A judgment for the payment of tax or other similar charges cannot, however, be enforced under that Act.

This Bill—

- (a) Enables money judgments given by certain inferior Courts to be enforced in New Zealand; and
- (b) Enables non-money judgments of superior Courts and certain inferior Courts to be enforced in New Zealand; and
- (c) Enables judgments given in superior and inferior Courts of Australia under which tax or other similar charges are payable to be enforced in New Zealand.

Clause 1 relates to the Short Title.

Clause 2 amends section 2 of the principal Act which defines terms used in the principal Act.

Subclause (1) inserts a definition of the expression “Australian tax”.

Subclause (2) should be noted as it extends the definition of the term “judgment” in the principal Act to include interlocutory judgments and orders.

Subclause (3) amends the definition of the expression “judgment creditor” to make it clear that it includes a person in whose favour a non-money judgment is given.

Subclause (4) amends the definition of the expression “judgment debtor” to make it clear that it includes a person against whom a non-money judgment is given.

Subclause (5) inserts definitions of the expressions “money judgment” and “non-money judgment”.

Clause 3 amends section 3 of the principal Act. That section defines the judgments to which Part I of the Act (which relates to enforcement) applies. Part I of the Act applies to judgments of the superior Courts of the United Kingdom and such courts of any other country as are declared to be superior Courts in any Order in Council that extends the Act to that country.

Subclauses (1) and (2) expressly confine section 3 to money judgments of superior Courts. The new *sections 3A* and *3B* deal with the application of Part I to money judgments of inferior Courts and non-money judgments of both superior and inferior Courts respectively.

Section 3 (3) excludes from the application of Part I judgments of superior Courts given on appeal from Courts that are not superior Courts.

Subclause (2) will allow Part I to apply to judgments of superior Courts given on appeal from inferior Courts the judgments of which may be enforced under Part I.

Subclause (3) will enable judgments of the superior Courts of Australia under which Australian tax is payable to be enforced.

Clause 4 inserts new *sections 3A* and *3B* into the principal Act.

The new *section 3A* makes provision for the enforcement in New Zealand of money judgments of inferior Courts of other countries.

Under the new section the Governor-General may, if satisfied that, by extending the benefits of enforcement under Part I to money judgments of the inferior Courts of another country to which that Part extends, substantial reciprocity of treatment will be given to the enforcement in that country of money judgments of the inferior Courts of New Zealand, by Order in Council, direct that such inferior Courts as are specified in the order are specified inferior Courts for the purposes of Part I.

A money judgment of such a court is a judgment to which Part I applies if—

- (a) The judgment is final and conclusive;
- (b) The sum payable under it is not in respect of tax or a similar charge or a fine or penalty;
- (c) Except in the case of judgments given in Australia, the judgment was given after the coming into force of the Order in Council.

The new section does not prevent the enforcement of a judgment of an inferior Court of Australia under which Australian tax is payable.

The new *section 3B* makes provision for the enforcement of non-money judgments of superior and inferior Courts of other countries.

Under subsection (1) the Governor-General may, if satisfied that, by extending the benefits of enforcement under Part I to non-money judgments of superior Courts of another country, substantial reciprocity of treatment will be given to the enforcement in that country of non-money judgments of the superior Courts of New Zealand, by Order in Council, direct that such non-money judgments of the superior Courts of that country as are specified are non-money judgments for the purposes of Part I.

Subsection (2) is a similar provision in relation to non-money judgments of inferior Courts of other countries.

Except in the case of non-money judgments given in Australia, Part I of the Act will apply to non-money judgments given after the coming into force of the order. In the case of Australian non-money judgments, Part I will apply to non-

money judgments given before as well as after the coming into force of the order.

Clause 5 makes a number of consequential amendments to section 4 of the principal Act which relates to the registration and enforcement of judgments of other countries. This section contains references to enforcement of judgments by execution. That is appropriate in the case only of money judgments. The references to execution are accordingly omitted.

Clause 6 makes a similar consequential amendment to section 5 of the principal Act which relates to the power to make rules of Court.

Clause 7 amends section 6 of the principal Act. That section specifies when the registration of a judgment must, or may, be set aside. Under paragraph (e) of subsection (1) of that section the registration of a judgment must be set aside if the enforcement of the judgment would be contrary to public policy in New Zealand.

Subclause (1) makes it clear that paragraph (e) does not apply to judgments of superior and inferior Courts of Australia under which Australian tax is payable.

Under paragraph (b) of subsection (1) the registration of a judgment must be set aside if the original court had no jurisdiction. Subsection (3) specifies circumstances where the original court is deemed to have had jurisdiction.

Subclause (2) adds a reference to judgments under which Australian tax is payable. The registration of such a judgment will thus not be able to be set aside on the ground that the original court did not have jurisdiction.

Clause 8 makes a similar consequential amendment to section 7 of the principal Act to those made by *clauses 5* and *6* of the Bill.

Clause 9 repeals section 9 of the principal Act and substitutes a new section. Section 9 relates to the recognition of judgments given by superior Courts outside New Zealand. The new section will apply to all judgments to which Part I of the principal Act applies, that is, money judgments of superior and inferior Courts and non-money judgments of superior and inferior Courts. The wording of subsection (1) has not been materially altered to achieve this result.

The wording of subsection (2) has, however, been altered to refer expressly to those judgments that may not be recognised.

Subsection (3) has also been recast but without altering its effect.

Section 8 of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (which is the equivalent of section 9 of the principal Act) was considered by the House of Lords in *Black-Clawson v Papierwerke* [1975] 1 All E.R. 810 where its interpretation gave rise to considerable difficulty. The case is authority for the proposition that a foreign judgment can be recognised as conclusive only as to the matters determined by it. It may also be cited as supporting the proposition that the section applies to both plaintiffs' and defendants' judgments.

It is not the purpose of this Bill to reform and restate the law relating to the recognition of foreign judgments. While decisions of the House of Lords are not binding on New Zealand courts, the re-enactment by Parliament of section 9 of the principal Act in substantially the same form should, however, be taken as confirming the interpretation placed upon the section in the *Black-Clawson case*.

Clause 10 amends section 10 of the principal Act. That section makes provision for prohibiting recovery of money under a judgment of a superior Court of

another country if substantial reciprocity of treatment is not accorded judgments of the superior Courts of New Zealand. *Clause 10* makes it clear that the section applies only in relation to money judgments of superior Courts.

Clause 11 repeals section 11 of the principal Act and substitutes a new section.

That section empowers the High Court to issue a certificate in relation to a judgment to a judgment creditor wishing to enforce the judgment in another country. The new section will enable any New Zealand court to give such a certificate in relation to any judgment given in that court.

Hon. D. A. M. Graham

RECIPROCAL ENFORCEMENT OF JUDGMENTS AMENDMENT

ANALYSIS

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A BILL INTITLED

An Act to amend the Reciprocal Enforcement of Judgments Act 1934

BE IT ENACTED by the Parliament of New Zealand as follows:

- 5 **1. Short Title**—This Act may be cited as the Reciprocal Enforcement of Judgments Amendment Act 1991 and shall be read together with and deemed part of the Reciprocal Enforcement of Judgments Act 1934* (hereinafter referred to as the principal Act).
- 10 **2. Interpretation**—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “appeal”, the following definition:
- 15 “‘Australian tax’ means tax or a charge of a similar nature payable under the laws of the Commonwealth of Australia or any State or Territory of Australia; and includes additional or other tax payable by way of penalty, interest, or otherwise by reason of a

*R.S. Vol. 4, p. 239
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contravention of any of those laws or of a requirement made under any of those laws:".

(2) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term "judgment", before the word "judgment", in the first place where it appears, the words "final or interlocutory". 5

(3) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term "judgment creditor", after the word "given", the words "(whether or not a sum of money is payable under the judgment)". 10

(4) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term "judgment debtor", after the word "given", the words "(whether or not a sum of money is payable under the judgment)".

(5) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the expression "judgments given in the superior Courts of New Zealand", the following definitions: 15

"Money judgment" means a judgment under which a sum of money is payable: 20

"Non-money judgment" means a judgment that is not a money judgment."

3. Application of this Part of Act—(1) Section 3 (2) of the principal Act is hereby amended by inserting before the word "judgments", in both places where it appears, the word "money". 25

(2) Section 3 (3) of the principal Act is hereby amended—

(a) By inserting before the word "judgment", in the first 2 places where it appears, the word "money":

(b) By inserting after the word "Court", in the third place where it appears, the words ", not being a specified inferior Court,". 30

(3) Section 3 of the principal Act is hereby amended by inserting, after subsection (3) (as amended by subsection (2) of this section), the following subsection: 35

"(3A) Nothing in paragraph (b) of subsection (3) of this section prevents a judgment given in a superior Court of Australia under which Australian tax is payable being a judgment to which this Part of this Act applies".

4. New sections inserted—The principal Act is hereby amended by inserting, after section 3, the following sections: 40

“3A. Application of this Part to judgments of inferior Courts—

(1) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to money judgments given in all or some inferior
5 Courts of a country to which this Part of this Act extends, substantial reciprocity of treatment will be assured as respects the enforcement in that country of money judgments given in all or some inferior Courts of New Zealand, the Governor-General may, by Order in Council, direct that such inferior
10 Courts of that country as are specified in the order, are specified inferior Courts for the purposes of this Part of this Act.

“(2) Any money judgment of a specified inferior Court shall be a judgment to which this Part of this Act applies if—

15 “(a) It is final and conclusive as between the parties to it; and

“(b) There is payable under the judgment a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and

20 “(c) It is given after the coming into operation of the Order in Council directing that the inferior Court is a specified inferior Court for the purposes of this Part of this Act.

“(3) Nothing in paragraph (b) of subsection (2) of this section
25 prevents a judgment given in an inferior Court of Australia under which Australian tax is payable being a judgment to which this Part of this Act applies.

“(4) Nothing in paragraph (c) of subsection (2) of this section applies to a judgment of an inferior Court of Australia.

30 “(5) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the Courts of the country of the original Court.

“(6) The Governor-General may by a subsequent Order in
35 Council vary or revoke any Order in Council previously made under this section.

“(7) A copy of the *Gazette* purporting to contain a copy of an Order in Council under this section shall be conclusive evidence of the validity, contents, making, and publication of such Order
40 in Council, and of the fulfilment of all conditions precedent to the valid making of the order.

“3B. Application of this Part to non-money judgments—(1) If the Governor-General is satisfied that, in the

event of the benefits conferred by this Part of this Act being extended to some or all non-money judgments given in any superior Courts of any country to which this Part of this Act extends substantial reciprocity of treatment will be assured as respects the enforcement in that country of all or some non-money judgments given in the superior Courts of New Zealand, the Governor-General may, by Order in Council, direct that such non-money judgments of the superior Courts of that country as are specified in the order are specified non-money judgments for the purposes of this Part of the Act. 5 10

“(2) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to all or some non-money judgments given in any inferior Courts of a country to which this Part of this Act extends, substantial reciprocity of treatment will be assured as respects the enforcement in that country of all or some non-money judgments given in the inferior Courts of New Zealand, the Governor-General may, by Order in Council, direct that such non-money judgments of such of the inferior Courts of that country as are specified in the order, are specified non-money judgments for the purposes of this Part of this Act. 15 20

“(3) Every Order in Council made under **subsection (1)** or **subsection (2)** of this section shall specify the non-money judgments by reference to—

“(a) The kinds of proceedings in which the non-money judgments are given; and 25

“(b) The kinds of non-money judgments.

“(4) A specified non-money judgment, not being a judgment of a superior Court or an inferior Court of Australia, shall be a judgment to which this Part of this Act applies if it was given after the coming into operation of an Order in Council made under **subsection (1)** or **subsection (2)**, as the case may be, of this section, in relation to that judgment. 30

“(5) A specified non-money judgment that is a judgment of a superior Court or an inferior Court of Australia shall be a judgment to which this Part of this Act applies whether it was given before or after the coming into operation of an Order in Council made under **subsection (1)** or **subsection (2)**, as the case may be, of this section in relation to that judgment.” 35

5. Application for, and effect of, registration of judgment—(1) Section 4(1) of the principal Act is hereby amended by omitting, from paragraph (b) of the proviso thereto, the words “by execution”. 40

(2) Section 4 (2) of the principal Act is hereby amended—

(a) By omitting from paragraph (a) the word “execution”,
and substituting the word “enforcement”:

5 (b) By omitting from paragraph (d) the word “execution”,
and substituting the word “enforcement”:

(c) By omitting from the proviso thereto the words
“execution shall not issue on the judgment”, and
substituting the words “the judgment shall not be
enforced”.

10 (3) Section 4 (3) of the principal Act is hereby amended by
omitting the words “the sum”, where they first appear, and
substituting the words “a sum”.

(4) Section 4 (4) of the principal Act is hereby amended by
inserting, after the word “registration”, the words “of a
15 judgment”.

(5) Section 4 (6) of the principal Act is hereby amended by
omitting the words “the sum”, and substituting the words “any
sum”.

20 **6. Rules of Court**—Section 5 of the principal Act is hereby
amended by repealing paragraph (e), and substituting the
following paragraph:

“(e) For prescribing the method by which any question
arising under this Act whether a judgment to which
this Part of this Act applies can be enforced in the
25 country of the original Court, or what interest is
payable under a judgment under the law of the
original Court, is to be determined:”.

**7. Cases in which registered judgments must, or may,
be set aside**—(1) Section 6 (1) (e) of the principal Act is hereby
30 amended by inserting, after the word “judgment,” the words “,
not being a judgment of a superior Court or an inferior Court
of Australia under which Australian tax is payable,”.

(2) Section 6 (3) (a) of the principal Act is hereby amended by
adding the following subparagraph:

35 “(vi) If Australian tax is payable under the
judgment:”.

**8. Powers of High Court on application to set aside
registration**—Section 7 (2) of the principal Act is hereby
40 amended by omitting the words “by execution” in both places
where they appear.

9. General effect of certain judgments—The principal Act is hereby amended by repealing section 9, and substituting the following section:

“9. (1) Subject to this section, a judgment to which Part I of this Act applies, or would apply if it was a money judgment, whether or not it is, or can be, registered, shall be recognised in any Court in New Zealand as conclusive between the parties to it in all proceedings founded on the same cause of action, and may be relied on by way of defence or counterclaim in any such proceedings. 5 10

“(2) This section does not apply to—

“(a) A judgment the registration of which has been set aside under paragraph (b) or paragraph (c) or paragraph (d) or paragraph (e) of subsection (1) or under subsection (2) of section 6 of this Act; or 15

“(b) A judgment, whether registrable or not, that has not been registered, the registration of which would, if it was registered, have been set aside under any one or more of those paragraphs of subsection (1) or subsection (2) of that section. 20

“(3) Nothing in this section limits or affects the application of any rule of law relating to the recognition of judgments by any Court in New Zealand.”

10. Power to make judgments unenforceable in New Zealand if no reciprocity—Section 10 (1) of the principal Act is hereby amended by inserting, before the word “judgments”, in both places where it appears, the word “money”. 25

11. Issue of certificates of judgments obtained in New Zealand—The principal Act is hereby amended by repealing section 11, and substituting the following section: 30

“11. (1) Subject to this section, a New Zealand Court shall, on application by a judgment creditor who wishes to enforce a judgment given in that Court in a country to which Part I of this Act extends, issue to that person—

“(a) A certified copy of the judgment; and 35

“(b) A certificate with respect to the judgment containing—
 “(i) Particulars of the causes of action to which the judgment relates; and
 “(ii) Particulars of the rate of interest, if any, payable on any amount payable under the judgment; and 40

“(iii) Such other particulars as may be prescribed.

“(2) Every application under **subsection (1)** of this section must be accompanied by payment of the prescribed fee.

5 “(3) No application shall be made under **subsection (1)** of this section in relation to a judgment until the expiry of any period during which the enforcement of the judgment is stayed.”