

**FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)
AMENDMENT ACT 1988 No. 65**

NEW SOUTH WALES



TABLE OF PROVISIONS

1. Short title
2. Commencement
3. Amendment of Foreign Judgments (Reciprocal Enforcement) Act 1973 No. 39

SCHEDULE 1—AMENDMENTS



**FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)
AMENDMENT ACT 1988 No. 65**

NEW SOUTH WALES



Act No. 65, 1988

An Act to amend the Foreign Judgments (Reciprocal Enforcement) Act 1973 to make provision for the restriction of the enforcement of certain judgments. [Assented to 21 November 1988]

Foreign Judgments (Reciprocal Enforcement) Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Amendment Act 1988.

Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Foreign Judgments (Reciprocal Enforcement) Act 1973 No. 39

3. The Foreign Judgments (Reciprocal Enforcement) Act 1973 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title—

After “State;” where secondly occurring, insert “to restrict the enforcement in the State of certain judgments given in other countries;”.

(2) Section 1 (**Short title**)—

Omit “(Reciprocal Enforcement)”.

(3) Section 3 (**Division of Act**)—

Omit the section.

(4) Section 8 (**Cases in which registered judgments must, or may, be set aside**)—

(a) Section 8 (2) (a) (i)—

Omit the subparagraph, insert instead:

(i) if the judgment debtor voluntarily submitted to the jurisdiction of the original court;

(b) Section 8 (4)—

After section 8 (3), insert:

(4) For the purposes of subsection (2) (a), a person does not voluntarily submit to the jurisdiction of a court by—

(a) entering an appearance in proceedings in the court; or

(b) participating in proceedings in the court only to such extent as is reasonably necessary,

*Foreign Judgments (Reciprocal Enforcement) Amendment 1988*SCHEDULE 1—AMENDMENTS—*continued*

for the purpose only of one or more of the following:

- (c) protecting, or obtaining the release of—
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal or in relation to which such an order is sought;
- (d) contesting the jurisdiction of the court;
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

(5) Part 4—

After Part 3, insert:

**PART 4—ENFORCEMENT OF JUDGMENTS TO WHICH
PART 2 DOES NOT APPLY**

Certain judgments not enforceable at common law etc.

18. (1) For the purposes of proceedings brought in the State for the recovery of a sum payable under a judgment given in an action in personam by a court of a Commonwealth country (other than Australia) or a foreign country, not being a judgment to which Part 2 applies, the court shall be deemed not to have had jurisdiction to give the judgment by reason only that the judgment debtor—

- (a) entered an appearance in proceedings in the court; or
- (b) participated in proceedings in the court only to such extent as was reasonably necessary,

for the purpose only of one or more of the following:

- (c) protecting, or obtaining the release of—
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal or in relation to which such an order was sought;
- (d) contesting the jurisdiction of the court;
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

(2) For the purposes of section 5 (2) (b) of the Administration of Justice Act 1924, a person does not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of a court by—

- (a) entering an appearance in proceedings in the court; or

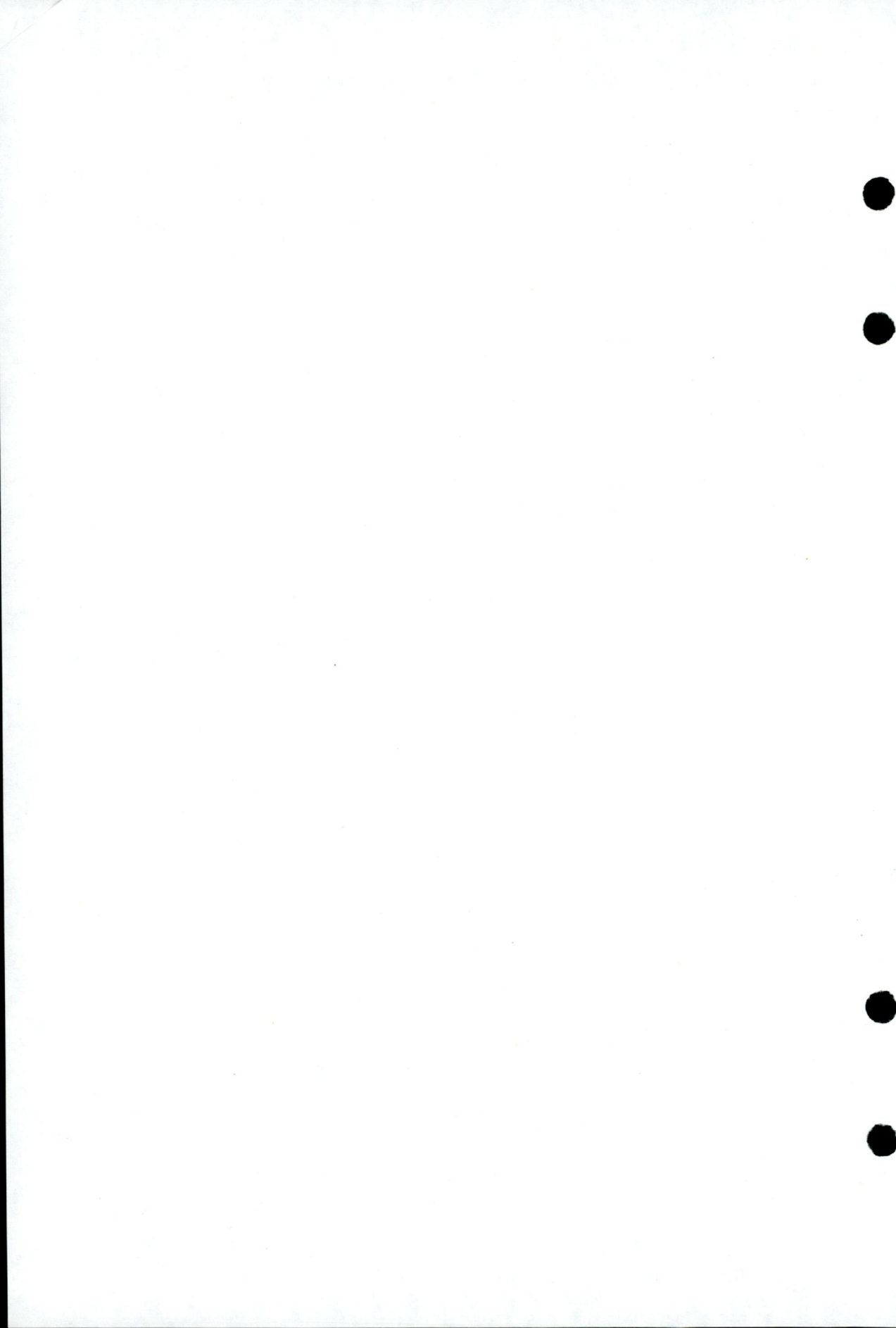
Foreign Judgments (Reciprocal Enforcement) Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

(b) participating in proceedings in the court only to such extent as is reasonably necessary,
for the purpose only of doing one or more things of the kind mentioned in subsection (1) (c), (d) or (e).

[*Minister's second reading speech made in—
Legislative Assembly on 30 August 1988
Legislative Council on 15 November 1988*]





**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.

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) AMENDMENT BILL 1988

NEW SOUTH WALES



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-



**FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)
AMENDMENT BILL 1988**

NEW SOUTH WALES



No. , 1988

A BILL FOR

An Act to amend the Foreign Judgments (Reciprocal Enforcement) Act 1973 to make provision for the restriction of the enforcement of certain judgments.

Foreign Judgments (Reciprocal Enforcement) Amendment 1988

The Legislature of New South Wales enacts:

Short title

1. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Amendment Act 1988.

5 Commencement

2. This Act commences on a day or days to be appointed by proclamation.

Amendment of Foreign Judgments (Reciprocal Enforcement) Act 1973 No. 39

10 3. The Foreign Judgments (Reciprocal Enforcement) Act 1973 is amended as set out in Schedule 1.

SCHEDULE 1—AMENDMENTS

(Sec. 3)

(1) Long title—

15 After “State;” where secondly occurring, insert “to restrict the enforcement in the State of certain judgments given in other countries;”.

(2) Section 1 (**Short title**)—

Omit “(Reciprocal Enforcement)”.

20 (3) Section 3 (**Division of Act**)—

Omit the section.

(4) Section 8 (**Cases in which registered judgments must, or may, be set aside**)—

(a) Section 8 (2) (a) (i)—

25 Omit the subparagraph, insert instead:

(i) if the judgment debtor voluntarily submitted to the jurisdiction of the original court;

(b) Section 8 (4)—

After section 8 (3), insert:

30 (4) For the purposes of subsection (2) (a), a person does not voluntarily submit to the jurisdiction of a court by—

(a) entering an appearance in proceedings in the court; or

(b) participating in proceedings in the court only to such extent as is reasonably necessary,

SCHEDULE 1—AMENDMENTS—*continued*

for the purpose only of one or more of the following:

- (c) protecting, or obtaining the release of—
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - 5 (ii) property subject to an order restraining its disposition or disposal or in relation to which such an order is sought;
- (d) contesting the jurisdiction of the court;
- 10 (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

(5) Part 4—

After Part 3, insert:

**PART 4—ENFORCEMENT OF JUDGMENTS TO WHICH
PART 2 DOES NOT APPLY**

15 **Certain judgments not enforceable at common law etc.**

18. (1) For the purposes of proceedings brought in the State for the recovery of a sum payable under a judgment given in an action in personam by a court of a Commonwealth country (other than Australia) or a foreign country, not being a judgment to which Part 2 applies, the court shall be deemed not to have had jurisdiction to give the judgment by reason only that the judgment debtor—

- (a) entered an appearance in proceedings in the court; or
- 25 (b) participated in proceedings in the court only to such extent as was reasonably necessary,

for the purpose only of one or more of the following:

- (c) protecting, or obtaining the release of—
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - 30 (ii) property subject to an order restraining its disposition or disposal or in relation to which such an order was sought;
- (d) contesting the jurisdiction of the court;
- 35 (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

(2) For the purposes of section 5 (2) (b) of the Administration of Justice Act 1924, a person does not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of a court by—

- 40 (a) entering an appearance in proceedings in the court; or

Foreign Judgments (Reciprocal Enforcement) Amendment 1988

SCHEDULE 1—AMENDMENTS—*continued*

(b) participating in proceedings in the court only to such extent as is reasonably necessary,
for the purpose only of doing one or more things of the kind mentioned in subsection (1) (c), (d) or (e).