

vppv

September 10 2014

Legislative Services
Attorney General's Department
GPO Box 464
ADELAIDE SA 5001
LLPSubmissions@agd.sa.gov.au

Dear Anna

Submission to the Enforcement of Judgements (Garnishee Orders) Amendment Bill 2014

The South Australian Financial Counsellors Association (SAFCA) provides resources and support to financial counsellors in South Australia. Our members assist those in financial difficulty by providing advocacy, information and support at no cost to the client.

SAFCA thanks you for the opportunity to make a submission on the above Amendment Bill. The Association does not support the Bill and would like to make the following comments:

1. Our first comment is around the need for such an amendment to the Act. The current legislation provides a good process around investigation and examination, and this takes into account the debtor's capacity to pay. Often, in practice, financial counsellors are called on to assist in determining this capacity.

The Court already has a number of means by which an Order to Pay can be carried out, with penalties in place for noncompliance with the Order. It is our information that this process generally works well, and we see no need for the extreme measure of garnishing a person's wages without their consent;

2. Garnishee orders would prove an extra administrative burden on employers and particularly on small business. In practice, the Court would order an employer to deduct amounts from the debtor's wages and send those monies to the creditor. Employers would therefore be acting as debt collectors for debt recovery agencies.

Further questions around responsibility to inform the Courts / creditors of insufficient wages from which to deduct or the debtor leaving that place of employment arise. SAFCA contends that this that this is an onerous burden on business and asks if it is something that employers should be involved in?

GPO Box 988 | Adelaide SA 5001 | 0427 823 656

Email wendy@safca.org.au www.safca.org.au

3. SAFCA is concerned that an Order may force people into bankruptcy where their reduced income means that they can't pay their debts ie other debts such as fines that might be incurred after the order is made. Some people, once understanding that a garnishing of wages is a possibility, might prefer to voluntarily go bankrupt rather than have their employer know their financial position. This could create inappropriate incentives;
4. Further to this, a debtor may prefer to leave employment and go onto benefits to avoid the employer knowing about their financial position. The garnishee order also has a risk of prejudicing a person's employment. The Amendment Bill raises questions around privacy and proportionality;
5. Where the debtor could apply to have the garnishee order varied (possibly because of reduced income for whatever reason) or overturned, there would be a cost incurred, making it difficult to do so;
6. We asked our interstate colleagues as to their experience with this type of Order. Whilst some states do have this, in practice it is not commonly used. Around 40% of debtors are on Centrelink benefits and cannot have their income garnished in the debtor's court. Again we question whether it is worth the legislative effort for a process that we believe would not often be used.

In summary, The South Australian Financial Counsellors Association does not support the Amendment Bill, questioning the of need for such a draconian measure, and having concerns regarding administrative burden on employers, negative effects of voluntary bankruptcy or unemployment, privacy and proportionality, and costs to vary or overturn.

Once again, thank you for the opportunity to comment on this Amendment Bill.

Yours sincerely



Wendy Shirley