



Australian Capital Territory

Court Procedures Act 2004

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Court Procedures Act 2004* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 10 January 2005. It also includes any amendment, repeal or expiry affecting the republished law to 10 January 2005.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
- unauthorised republications.

The status of this republication appears on the bottom of each page.

Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication includes amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Australian Capital Territory

Court Procedures Act 2004

An Act to provide for certain matters relating to courts and tribunals, and for other purposes

Part 1 Preliminary

1 Name of Act

This Act is the *Court Procedures Act 2004*.

3 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere.

For example, the signpost definition ‘*fee*, for part 3 (Court and tribunal fees)—see section 12.’ means that the term ‘*fee*’ is defined in that section for part 3.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Objects of Act

- (1) The objects of this Act include—
 - (a) recognising the importance of court procedures in our system of justice; and
 - (b) facilitating cooperation between ACT courts in the common goals of—

- (i) improved access to justice through the development of procedures that are, as far as practicable, the same for all ACT courts; and
 - (ii) better court procedures.
- (2) In this section:
- court* includes a tribunal that is a prescribed tribunal under section 6.

Part 2 Court rules and forms

6 Definition for pt 2 and sch 1

In this part and schedule 1:

prescribed tribunal means a tribunal prescribed by regulation for this part.

7 Rule-making power

- (1) The rule-making committee may make rules in relation to the following:
 - (a) the practice and procedure of ACT courts, prescribed tribunals and their registries;
 - (b) anything else mentioned in schedule 1 (Subject matter for rules).

Note 1 The power to make rules for a court or tribunal includes power to make rules in relation to any matter necessary or convenient to be prescribed for carrying out or giving effect to the jurisdiction of the court or tribunal under any law of the Territory or Commonwealth that authorises or requires anything to be done in or in relation to the court or tribunal (see Legislation Act, s 45 (Power to make court rules)).

Note 2 A rule must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A rule is taken to be made by the rule-making committee if it is signed by 3 or more committee members, 1 of whom must be the member mentioned in section 9 (2) (a) and another of whom must be the member mentioned in section 9 (2) (d) or (e).
- (3) This section does not limit any inherent or other power of a court, judge or magistrate to control proceedings.

8 Approved forms

- (1) The rule-making committee may, in writing, approve forms—
 - (a) for this Act; or
 - (b) for use in or in relation to ACT courts, prescribed tribunals and their registries.

- (2) If the rule-making committee approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) A form is taken to be approved by the rule-making committee if it is approved by 3 or more committee members, 1 of whom must be the member mentioned in section 9 (2) (a) and another of whom must be the member mentioned in section 9 (2) (d) or (e).

- (4) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

9 Rule-making committee

- (1) A rule-making committee is established.
- (2) The rule-making committee consists of the following members:

- (a) the Chief Justice;

Note The Chief Justice may delegate this function to a resident judge (see s 10).

- (b) the President of the Court of Appeal or, if the President and Chief Justice are the same person, a resident judge appointed by the Chief Justice;

Note 1 The President may delegate this function to a resident judge (see s 10).

Note 2 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

(c) another resident judge appointed by the Chief Justice or, if no appointment is made, the master;

(d) the Chief Magistrate;

Note The Chief Magistrate may delegate this function to a magistrate (see s 10).

(e) another magistrate appointed by the Chief Magistrate.

- (3) The rule-making committee may conduct its proceedings in the way it decides, whether by holding meetings or in any other way.
- (4) The Chief Justice is the chairperson of the rule-making committee.
- (5) However, if the Chief Justice is not personally present at a meeting of the rule-making committee, the President is to chair the meeting if personally present at the meeting.
- (6) Also, if the Chief Justice and the President are not personally present at a meeting of the rule-making committee, the member present chosen by the committee is to chair the meeting.
- (7) The Chief Justice must approve a public servant as secretary of the rule-making committee.

10 Delegation by Chief Justice, President and Chief Magistrate

- (1) The Chief Justice may delegate a function under this part to a resident judge.
- (2) The President of the Court of Appeal may delegate a function under this part to a resident judge.
- (3) The Chief Magistrate may delegate a function under this part to a magistrate.

- (4) However, the Chief Justice, the President or the Chief Magistrate may not delegate the function of being a member of the rule-making committee to a person who is already a member of the committee because of an appointment under section 9 (2).

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4. In particular, the delegation may have effect only in stated circumstances, eg if the appointer is away from the ACT.

11 Advisory committee

- (1) An advisory committee is established.
- (2) The advisory committee consists of the following members:

- (a) a resident judge appointed by the Chief Justice;

Note For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

- (b) the master;
- (c) 2 magistrates appointed by the Chief Magistrate;
- (d) the registrar of the Supreme Court;
- (e) the registrar of the Magistrates Court;
- (f) a person appointed by the Australian Capital Territory Bar Association to represent the association;
- (g) a person appointed by the Law Society of the Australian Capital Territory to represent the society;
- (h) the director of public prosecutions;
- (i) the parliamentary counsel;
- (j) a public servant appointed by the chief executive;
- (k) the secretary of the rule-making committee.

- (3) The functions of the advisory committee are to—
 - (a) initiate, consider, develop, and advise the rule-making committee on, proposals for making rules and approving forms under this Act; and
 - (b) make recommendations to the rule-making committee about the making of rules and approving of forms under this Act.
- (4) The advisory committee must consider, and advise the rule-making committee on, proposals for making rules and approving forms under this Act that are referred to it by the rule-making committee.
- (5) The advisory committee may conduct its proceedings in the way it decides, whether by holding meetings or in any other way.
- (6) The resident judge mentioned in subsection (2) (a) is the chairperson of the advisory committee.
- (7) However, if the resident judge is not present at a meeting of the advisory committee, the master is to chair the meeting if present at the meeting.
- (8) Also, if the resident judge and the master are not present at a meeting of the advisory committee, the member present chosen by the committee is to chair the meeting.

Part 3 Court and tribunal fees

12 Definitions for pt 3

In this part:

determined fee means a fee determined under this part.

essential services consumer council means the Essential Services Consumer Council established under the *Utilities Act 2000*, section 169.

fee includes a charge and a tax.

relevant legislation means any of the following:

- (a) the *Administrative Appeals Tribunal Act 1989*;
- (b) the *Consumer and Trader Tribunal Act 2003*;
- (c) the *Consumer Credit (Administration) Act 1996*;
- (d) the *Coroners Act 1997*;
- (e) this Act;
- (f) the *Discrimination Act 1991*;
- (g) the *Leases (Commercial and Retail) Act 2001*;
- (h) the *Magistrates Court Act 1930*;
- (i) the *Residential Tenancies Act 1997*;
- (j) the *Supreme Court Act 1933*;
- (k) the *Utilities Act 2000*, part 11;

- (l) any other legislation prescribed by regulation for this definition.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations (see Legislation Act, s 104).

tribunal means any of the following:

- (a) the administrative appeals tribunal;
- (b) the consumer and trader tribunal;
- (c) the credit tribunal;
- (d) the discrimination tribunal;
- (e) the essential services consumer council;
- (f) the residential tenancies tribunal.

13 Determination of fees

- (1) The Minister may, in writing, determine fees for any of the following purposes:
- (a) proceedings in a court or tribunal, and matters incidental to the proceedings, including—
 - (i) for the Supreme Court—the admission and enrolment of lawyers; and
 - (ii) the service and execution of the process of a court or tribunal; and
 - (iii) the taxation of costs by the registrar or other officers of a court or tribunal;
 - (b) facilities and services provided by the court or tribunal, including the service and execution of the process of a court of the Commonwealth, a State, another Territory or a foreign country;

(c) the general purposes of relevant legislation.

Note 1 The Legislation Act contains provisions about the making of determinations and regulations relating to fees and charges (see pt 6.3).

Note 2 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including regulations and rules (see Legislation Act, s 104).

(2) A determination under subsection (1) may provide for any of the following matters:

(a) exempting people from liability to pay determined fees, completely or partly, in all or particular circumstances;

(b) remitting, refunding or waiving, by a registrar of a court or tribunal, determined fees, completely or partly, in particular circumstances;

(c) deferring, by a registrar of a court or tribunal, liability to pay determined fees, completely or partly, in particular circumstances.

(3) A determination under subsection (1) is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

14 Payment of fees

(1) A determined fee is payable, in advance, in accordance with the determination that determined the fee, but subject to this section.

(2) A determined fee is payable on notice from the registrar of the court or tribunal if it is worked out by reference to expenses actually incurred in exercising the function, or in providing the facility or service, for which the fee is payable.

15 Remission, refund, deferral, waiver and exemption of fees

- (1) A determined fee may be remitted or refunded, or liability for its payment deferred, in accordance with the determination that determined the fee.
- (2) A determined fee is not payable—
 - (a) if the person otherwise liable to pay the fee or charge is—
 - (i) exempt from liability to pay the fee under the determination that determined the fee; or
 - (ii) exempt from paying the fee under the *Legal Aid Act 1977*, section 93 (1) (Exemption from fees and taxes); or
 - (iii) legally assisted under a scheme or service provided or approved by the Attorney-General; or
 - (b) if the registrar of the court or tribunal waives payment by a person of the fee completely or partly because the registrar considers that payment of the fee would impose hardship on the person—to the extent of the waiver; or
 - (c) for lodging a document, or for the service and execution of process, in relation to a proceeding in the Supreme Court—
 - (i) in a criminal matter, including an appeal; or
 - (ii) under the *Coroners Act 1997*; or
 - (iii) under the *Legal Practitioners Act 1970*, part 8 (Discipline); or
 - (iv) under any of the following Acts:
 - (A) the *Adoption Act 1993*;
 - (B) the *Children and Young People Act 1999*;
 - (C) the *Protection Orders Act 2001*;

- (D) the *Guardianship and Management of Property Act 1991*;
- (E) the *Mental Health (Treatment and Care) Act 1994*;
- (F) the *Testamentary Guardianship Act 1984*;
- (v) on appeals in relation to the following matters:
 - (A) a matter under the *Children and Young People Act 1999*;
 - (B) a matter under the *Mental Health (Treatment and Care) Act 1994*;
 - (C) a decision of the Guardianship and Management of Property Tribunal; or
- (vi) on a matter that has been remitted to the court by the High Court under the *Judiciary Act 1903* (Cwlth), section 44; or
- (vii) in relation to which a convention to which Australia is a party provides that a fee is not to be payable; or
- (viii) on an application to the court for an extension of the time within which a proceeding may be begun; or
- (ix) on an application mentioned in the *Juries Act 1967*, section 24 (10), section 26A (2) or section 51A (3); or
- (d) for the laying of an information in the Magistrates Court—
 - (i) by the director of public prosecutions acting in the exercise of an official function under a territory law; or
 - (ii) by a police officer acting in the exercise of an official function under a territory law; or
 - (iii) for an offence against the *Magistrates Court Act 1930*, section 290 (Contempt in face of court); or

- (e) if it is not payable under another provision of this Act or another territory law.

Note The Territory Crown is not liable to pay a determined fee in a civil proceeding (see s 28 (Court fees and charges)).

- (3) If the administrative appeals tribunal is satisfied that a proceeding ends in a way that is favourable to an applicant for a review by the tribunal of a decision, it may order another party to the proceeding to pay the amount of the application fee to the applicant.
- (4) This section is subject to section 16 and section 17.

16 Recovery of fees in civil proceedings if fees not otherwise payable

- (1) This section applies in relation to a civil proceeding in the Supreme Court or the Magistrates Court, or a proceeding in a tribunal, between at least 2 parties (the *first party* and the *second party*), if—
- (a) a filing fee, or a fee for the service and execution of process, otherwise payable by the first party is—
- (i) not payable, completely or partly, because of the exemption of the first party under this part; or
- (ii) remitted, refunded or waived, completely or partly, under this part; and
- (b) judgment is given or entered, or an order is made, in favour of the first party; and
- (c) the first party's costs are payable by the second party.
- (2) If this section applies, the second party must pay to the registrar of the court or tribunal the amount of the fee exempted, remitted, refunded or waived.

17 Recovery of fees in criminal proceedings if fees not otherwise payable

- (1) This section applies in relation to a criminal proceeding in the Magistrates Court if—
 - (a) the fee (the *information fee*) that would otherwise be payable by the informant for the laying of the information in the proceeding is not payable, completely or partly, under this part; and
 - (b) the defendant is convicted of the offence alleged in the information and ordered to pay a fine.
- (2) If this section applies, the defendant must pay to the registrar of the Magistrates Court, in addition to the fine—
 - (a) if payment of the fee is waived in part under this part—the amount of the fee waived; or
 - (b) in any other case—the information fee.

18 Review of decisions

- (1) This section applies to any of the following decisions made under this part by the registrar of a court or tribunal in relation to a person (the *eligible person*):
 - (a) a decision refusing to remit, completely or partly, a determined fee payable by the person;
 - (b) a decision refusing to refund, completely or partly, a determined fee paid by the person;
 - (c) a decision refusing to defer, completely or partly, the person's liability to pay a determined fee;
 - (d) a decision refusing to waive, completely or partly, payment of a determined fee by the person;

- (e) a decision refusing to allow the person the benefit of an exemption to pay a determined fee.
- (2) If the registrar makes a decision to which this section applies, the registrar must give written notice of the decision to the eligible person.
- (3) The notice must tell the eligible person that the person may—
 - (a) apply to the registrar for a statement of reasons for the decision; and
 - (b) apply for review of the decision under this section.
- (4) The eligible person may apply to the registrar for a statement of reasons for the decision within 28 days after the day when the person is given notice of the decision by the registrar.
- (5) The eligible person may apply to the court or tribunal for review of the decision within—
 - (a) 28 days after the day the person is given notice of the decision by the registrar; or
 - (b) if the person applies within the 28 days for a statement of reasons for the decision—28 days after the day when the person is given the statement of reasons.
- (6) For the review, the court or tribunal—
 - (a) must be constituted by—
 - (i) for the Supreme Court—a judge or the master; or
 - (ii) for the Magistrates Court—a magistrate; or
 - (iii) for a tribunal—a member of the tribunal; and
 - (b) may make the orders the court or tribunal considers appropriate.
- (7) A fee is not payable for an application under this section.

Part 4 **Crown proceedings**

Division 4.1 **Preliminary**

20 **Definitions for pt 4**

In this part:

corresponding law means a law of a State or another Territory that is declared by regulation to be a law that corresponds to this part.

Crown includes a Minister, instrumentality or agency of the Crown and a person prescribed by regulation.

judgment means any judgment or order of a court.

proceeding means civil proceeding.

Territory Crown means the Crown in right of the Territory.

the Territory includes a Minister, instrumentality or agency of the Territory and a person prescribed by regulation.

Division 4.2 **Proceedings by and against Crown generally**

21 **Proceedings by and against the Crown generally**

- (1) Subject to this Act and any relevant rules of court and subject to the *Judiciary Act 1903* (Cwlth)—
 - (a) proceeding may be brought by or against the Crown in the same way as a proceeding between subjects; and
 - (b) the same procedural and substantive law applies to such a proceeding as in a proceeding between subjects.
- (2) Subject to the regulations, a proceeding may be brought by or against the Crown—

- (a) for the Territory Crown—under the name of the ‘Australian Capital Territory’; or
 - (b) in any other case—under the name in which the Crown could sue or be sued in the courts of its own jurisdiction.
- (3) In this section:
- proceeding*, against the Crown, includes a proceeding to attach earnings or other debts due or accruing from the Territory Crown to someone else.

22 Immunities and limitations of liability

This division does not affect any immunity from, or limitation on, liability that the Crown enjoys by statute.

23 Corresponding laws of States and other Territories

The corresponding law of each State and other Territory binds the Crown in right of the Australian Capital Territory.

24 Injunctive relief

- (1) Injunctive relief may be granted against the Crown.
- (2) However, subject to the *Administrative Decisions (Judicial Review) Act 1989*, section 17 (1), a mandatory injunction cannot be made against the Crown.

25 Protection of confidentiality on grounds of public interest

This division does not affect any rule of law under which a person may refuse to discover or produce documents, or to answer an interrogatory or other question, on the ground that to do so would be prejudicial to the public interest.

26 Right of Attorneys-General of other jurisdictions to appear in proceedings

- (1) The Attorney-General of the Commonwealth may, on behalf of the Commonwealth, represent the Crown in right of the Commonwealth in any action, proceeding or matter (whether civil or criminal) in which the Crown in right of the Commonwealth is a party.
- (2) The Attorney-General of a State or another Territory may, on behalf of the State or other Territory, represent the Crown in right of the State or other Territory in any action, proceeding or matter in which the Crown in right of the State or other Territory is a party.

27 Right of Attorney-General to intervene in proceedings

- (1) The Attorney-General may intervene, on behalf of the Crown, in any proceeding—
 - (a) in which the interpretation or validity of a law of the Territory or the Commonwealth is in issue; or
 - (b) in which—
 - (i) legislation or executive powers of the Territory or the Commonwealth, or an instrumentality or agency of the Territory or the Commonwealth, are in issue; or
 - (ii) judicial powers of a court or tribunal established under the law of the Territory or the Commonwealth are in issue;for the purpose of submitting argument on the issue.
- (2) The Attorney-General has the same right of appeal in a proceeding in which the Attorney-General intervenes under subsection (1) as a party to the proceeding.
- (3) If the Attorney-General intervenes in a proceeding under this section, and there are in the opinion of the court special reasons for making an order under this subsection, the court may make an order

for costs against the Crown to reimburse the parties to the proceeding for costs occasioned by the intervention.

(4) In this section:

Attorney-General includes the Attorney-General for the Commonwealth, the Attorney-General for each State and the Attorney-General for each other Territory.

Crown includes the Crown in right of the Commonwealth, the Crown in right of each State and the Crown in right of each other Territory.

28 Court fees and charges

(1) The Territory Crown is not required to pay any court fee or charge in any proceeding.

(2) Any costs to which the Territory Crown is entitled must be calculated as if the Territory Crown were liable to pay, and had in fact paid, fees and charges from which it is exempt under subsection (1).

(3) In this section:

carries on business does not include imposing or collecting—

- (a) taxes; or
- (b) levies; or
- (c) fees for licences, permits or any other form of authority.

territory authority means a corporation established under an Act, but does not include a body declared under the *Financial Management Act 1996*, section 3B not to be a territory authority.

Territory Crown does not include a territory authority so far as the authority carries on business.

29 Enforcement of judgments against Territory Crown

- (1) A writ or similar process must not be issued out of any court to enforce a judgment against the Territory Crown.
- (2) If—
 - (a) a final judgment is given against the Territory Crown; and
 - (b) the judgment has not been paid; and
 - (c) the judgment has not been appealed against or stayed (or, if it has, the appeal has been disallowed or discontinued or the stay has been removed); and
 - (d) at least 21 days have elapsed since the judgment was given;the party in whose favour the judgment was given may give a copy of the judgment to the Treasurer.
- (3) If the Treasurer receives a copy of a final judgment under subsection (2), the Treasurer must give directions about how the judgment is to be paid unless the Treasurer is satisfied that the judgment can be, or has been, paid in another way.
- (4) A direction under this section that requires payment of public money of the Territory operates to authorise payment of the money.
- (5) The *Financial Management Act 1996*, section 6 (Necessity for appropriation) does not apply to a payment made in accordance with a direction under this section.
- (6) A direction under this section that requires payment of an amount from the funds of a territory authority or instrumentality provides sufficient authority for the payment.
- (7) In this section:
Territory Crown—see section 28 (3).

30 Enforcement of judgments against Crown in right of a State or another Territory

- (1) A writ or similar process must not be issued out of any ACT court to enforce a judgment against the Crown in right of a State or another Territory.
- (2) If a final judgment is given by an ACT court against the Crown in right of a State or another Territory, the court must give a copy of the judgment to the Governor or Administrator of the State or Territory.

31 Enforcement of judgments by the Crown

Subject to this part and any relevant rules of court, a judgment recovered by the Crown may be enforced in the same way as a judgment in a proceeding between subjects, and not in any other way.

Division 4.3 Provisions applying only to the Territory

32 Endorsement etc of originating process

- (1) If a proceeding is brought against the Territory, a statement containing the information prescribed by regulation (if any) must be endorsed on, or annexed to, the process by which the proceeding is begun.
- (2) A failure to comply with subsection (1) does not render a proceeding void unless the court is of the opinion that the Territory has been prejudiced by that failure.

33 Service generally

- (1) Any process or document relating to a proceeding must be served on the Territory by serving the process or document on the chief solicitor.

- (2) However—
- (a) if this part makes special provision about service of the process or document—the process or document must be served in accordance with the special provision; and
 - (b) if the party serving the process or document has notice that a lawyer other than the government solicitor is acting for the Territory in relation to the proceeding—the process or document must be served on that lawyer.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

34 Service of subpoenas etc on Ministers

- (1) A subpoena or other process issued by a court, tribunal or authority requiring a Minister to appear, in the Minister's official capacity, to give evidence, or to produce documents, must be given to the chief solicitor for service on the Minister.
- (2) The chief solicitor must, on receiving a subpoena or other process mentioned in subsection (1), make reasonable endeavours to serve it on the Minister and must provide proof of service to the court, tribunal or other authority.
- (3) The chief solicitor, if unable to serve a subpoena or other process within a reasonable time, must tell the court, tribunal or other authority of the reasons for not being able to effect service and, in that case, the court, tribunal or other authority may direct that service be effected in some other way.

35 Representation if right to legal representation restricted

- (1) This section applies to a proceeding if—
 - (a) the Territory or Attorney-General is a party to the proceeding; and

- (b) an Act removes or restricts the right of a party to the proceeding to be represented by a lawyer.
- (2) The Territory or Attorney-General may be represented by a public servant (other than a lawyer, articled clerk or person who holds legal qualifications under a territory law or the law of another place) who is authorised to conduct the proceeding on behalf of the Territory or Attorney-General.
- (3) In the proceeding, a document apparently signed by a relevant person that appears to be an authorisation under subsection (2) must be accepted as an authorisation in the absence of evidence to the contrary.
- (4) In this section:
- relevant person* means—
- (a) a Minister; or
 - (b) a chief executive; or
 - (c) the chief executive officer of a territory agency or instrumentality.

Division 4.4 Other provisions

36 Exclusion of certain proceedings

This part does not affect—

- (a) any proceeding for the recovery or enforcement of a fine, penalty or forfeiture (including the escheatment of a recognisance) imposed in a criminal proceeding; or
- (b) any law, custom or procedure under which the Attorney-General is entitled or liable to sue, or be sued, or intervene in a proceeding, on behalf of the Crown, on the relation, or on behalf of, any other person or people or in any other capacity or for any other purposes.

37 Regulations for pt 4

A regulation may make provision in relation to—

- (a) the details to be stated or to accompany process served on the Territory; and
- (b) the service of process or other documents under this part.

Part 5 Court security

40 Definitions for pt 5

In this part:

assistant sheriff means a person who is appointed under the *Supreme Court Act 1933*, section 53 (Sheriff's assistants).

court means—

- (a) the Supreme Court; or
- (b) the Magistrates Court; or
- (c) the Childrens Court; or
- (d) the Coroner's Court; or
- (e) the administrative appeals tribunal; or
- (f) the consumer and trader tribunal; or
- (g) the credit tribunal; or
- (h) the discrimination tribunal; or
- (i) the guardianship tribunal; or
- (j) the mental health tribunal; or
- (k) the residential tenancies tribunal; or
- (l) the tenancy tribunal established under the *Tenancy Tribunal Act 1994*; or
- (m) a board of inquiry established under the *Inquiries Act 1991*; or
- (n) a royal commission established under the *Royal Commissions Act 1991*; or

- (o) a judicial commission established under the *Judicial Commissions Act 1994*; or
- (p) a court prescribed by regulation; or
- (q) any other tribunal or entity that is authorised to hear, receive and examine evidence and is prescribed by regulation.

court premises means the premises or place where a court is held or that is used in relation to the operations of a court, and includes—

- (a) a forecourt, courtyard, yard or area used with court premises; and
- (b) a part of premises or a place used as an entrance to or exit from court premises.

deputy sheriff means a person who is appointed as a deputy sheriff of the Territory under the *Supreme Court Act 1933*, section 46 (Appointment).

explosive—see the *Dangerous Substances Act 2004*, section 73.

firearm—see the *Firearms Act 1996*, section 4.

judge means a judge, or the master, of the Supreme Court, and includes a person prescribed by regulation for this definition.

magistrate includes a person prescribed by regulation for this definition.

offensive weapon means—

- (a) anything made or adapted for use, or capable of being used, for causing injury to or incapacitating a person; or
- (b) anything intended for that use by the person who is carrying it or otherwise has it in the person's possession;

and includes an imitation or replica of an offensive weapon.

screening search means—

- (a) for a search of a person—a search by equipment designed to conduct the search without touching the person; and
- (b) for a search of a thing—a search by equipment designed to conduct the search without touching the thing or requiring it to be opened.

security officer means—

- (a) a police officer; or
- (b) a sheriff's officer; or
- (c) a person who is appointed as a security officer under section 51.

sheriff means the person appointed as the sheriff of the Territory under the *Supreme Court Act 1933*, section 46 (Appointment).

sheriff's officer means the sheriff, an assistant sheriff or a deputy sheriff.

41 Right of entry etc to court premises

- (1) A person has a right to enter and remain in an area of court premises that is open to the public if—
 - (a) the person complies with all orders made by a judge or magistrate, whether under this Act or otherwise; and
 - (b) the person complies with all the requirements made under this part by a security officer; and
 - (c) if the person wishes to enter or remain in a courtroom where a court is sitting or about to sit—there is seating for the person in the courtroom.
- (2) This section is subject to—

- (a) the *Children and Young People Act 1999*, section 61 (Proceedings not open to public); and
- (b) the *Consumer Credit (Administration) Act 1996*, section 85 (2) (Hearings); and
- (c) the *Discrimination Act 1991*, section 92 (2) (Procedure); and
- (d) the following sections of the *Evidence (Miscellaneous Provisions) Act 1991*:
 - section 9 (Consequential orders);
 - section 39 (Evidence given in closed court);
 - section 44 (Consequential orders under div 4.3);
 - section 52 (c) (Application for leave under s 51);
 - section 61 (5) (Preliminary examination of protected confidence evidence);
 - section 63 (2) (a) (Ancillary orders for protection of person who made protected confidence); and
- (e) the *Inquiries Act 1991*, section 21 (3) (Power to hold); and
- (f) the *Magistrates Court Act 1930*, section 310 (Hearings generally to be in public); and
- (g) the *Mental Health (Treatment and Care) Act 1994*, section 95 (Proceedings to be in private); and
- (h) the *Royal Commissions Act 1991*, section 28 (3) (Power to hold); and
- (i) the inherent jurisdiction of a court to regulate its proceedings; and
- (j) any other law in force in the ACT about the people who may be present in a court or on court premises.

42 Powers under part additional to other powers

The powers under this part are additional to any other powers that a court, judge, magistrate, police officer, sheriff's officer or anyone else has apart from this part.

43 Security officer to be identified before exercising powers

- (1) A security officer who is not a police officer or sheriff's officer may exercise a power under this part in relation to a person only if—
 - (a) the officer first identifies himself or herself as a security officer if it is practicable to do so; and
 - (b) the officer produces his or her identity card for inspection by the person if the person asks the officer to do so.
- (2) A security officer who is a police officer or sheriff's officer and is not in uniform may exercise a power under this part in relation to a person only if—
 - (a) the officer first identifies himself or herself as a police officer or sheriff's officer if it is practicable to do so; and
 - (b) the officer produces evidence that he or she is a police officer or sheriff's officer if the person asks the officer to do so.
- (3) If a security officer fails to comply with this section in relation to a person, the person is not obliged to comply with a requirement made by the officer.

44 Person may be required to state name etc

- (1) If a security officer believes on reasonable grounds that a person entering or on court premises is behaving unlawfully, is behaving in a disorderly or menacing way or is a threat to court security, the security officer may require the person to tell the officer—
 - (a) the person's name; and
 - (b) the person's reason for entering or being on the premises.

- (2) A person must not, without reasonable excuse, fail to tell a security officer the person's name, or the person's reason for entering or being on the court premises, when required to do so under subsection (1).

Maximum penalty: 5 penalty units.

- (3) A person must not give a name, or other information, that is false or misleading in a material particular in purported compliance with a requirement under subsection (1).

Maximum penalty: 20 penalty units.

45 Searches

- (1) A security officer may require a person entering or on court premises to do any of the following:
- (a) to undergo a screening search;
 - (b) to allow anything in the person's possession to be subjected to a screening search;
 - (c) to open and empty out the person's pockets;
 - (d) to open or empty a briefcase, bag or container (for example, a box or carton) the person is carrying or is otherwise in the person's possession or allow the security officer to search anything the person is carrying or is otherwise in the person's possession.
- (2) A security officer may make a requirement under this section only if the officer believes on reasonable grounds that it is necessary to make the requirement in the interests of court security for the purpose of detecting firearms, explosives or offensive weapons.

- (3) If a security officer makes a requirement of a person under this section, the person must immediately comply with the requirement or leave the court premises.

Maximum penalty: 50 penalty units.

- (4) A security officer who conducts a search under this section must not use more force, or subject a person to greater indignity, than is necessary to conduct the search.

46 Seizure and forfeiture of firearms etc

A security officer may seize a firearm, explosive or offensive weapon that a person entering or on court premises is carrying or otherwise has in the person's possession.

47 Security officer may require thing that may hide firearms etc to be left

- (1) A security officer may require a person entering or on court premises with anything to leave the thing with the officer if the officer believes on reasonable grounds that the thing may contain a firearm, explosive or offensive weapon or be used as an offensive weapon.

- (2) If a security officer makes a requirement of a person under this section, the person must immediately comply with the requirement or leave the court premises.

Maximum penalty: 50 penalty units, 6 months imprisonment or both.

- (3) If a person leaves something with a security officer under this section, the person is entitled, on request to a security officer, to the return of the thing when the person leaves the court premises.

48 Unlawful, disorderly conduct etc

- (1) If a security officer believes on reasonable grounds that a person entering or on court premises is behaving unlawfully or in a

disorderly or menacing way, the officer may require the person not to enter, or to leave, the court premises.

- (2) However, if the person tells the security officer that the person is required to attend the court, the officer may only make the requirement with the court's leave or if the officer is satisfied on reasonable grounds that the person is not required to attend the court.
- (3) For this section, a person is required to attend a court if—
 - (a) the person is a lawyer who is to appear before the court; or
 - (b) the person is a party to a proceeding being heard, or about to be heard, by the court; or
 - (c) the person is required to attend the court by a summons, subpoena or other court process or order; or
 - (d) the person is accompanying a person mentioned in paragraph (a) to (c).
- (4) A person must not contravene a requirement under this section.

Maximum penalty: 50 penalty units, 6 months imprisonment or both.

49 Contravention of requirement of security officer

- (1) If a person contravenes a requirement of a security officer under section 44 (Person may be required to state name etc), section 45 (Searches) or section 47 (Security officer may require thing that may hide firearms etc to be left), a security officer may require the person—
 - (a) not to enter the court premises or a part of the court premises; or
 - (b) to immediately leave the court premises or a part of the court premises.

- (2) However, if the person tells the security officer that the person is required to attend the court, the officer may only make the requirement with the court's leave or if the officer is satisfied on reasonable grounds that the person is not required to attend the court.
- (3) For this section, a person is required to attend a court if—
 - (a) the person is a lawyer who is to appear before the court; or
 - (b) the person is a party to a proceeding being heard, or about to be heard, by the court; or
 - (c) the person is required to attend the court by a summons, subpoena or other court process or order; or
 - (d) the person is accompanying a person mentioned in paragraph (a) to (c).
- (4) A person must not contravene a requirement under this section.
Maximum penalty: 50 penalty units.
- (5) A security officer may prevent a person from entering court premises or a part of court premises in contravention of a requirement under this section or section 48.
- (6) If a person on court premises contravenes a requirement under this section or section 48, a security officer may require the person to leave the court premises and, if the person does not immediately leave the court premises, remove the person from the court premises using reasonable force.

50 Judge or magistrate may close court premises

- (1) If a judge or magistrate considers it necessary for securing order and safety in court premises or a part of court premises, the judge or magistrate may—

- (a) order members of the public generally, or stated members of the public, to leave the court premises or a part of the court premises; or
 - (b) order members of the public generally, or stated members of the public, not to be admitted to the court premises or a part of the court premises.
- (2) A person must not contravene an order of a judge or magistrate under this section.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) A security officer may prevent a person from entering court premises or a part of court premises in contravention of an order under this section.
- (4) If a person on court premises contravenes an order under this section, a security officer may require the person to leave the court premises and, if the person does not immediately leave the court premises, remove the person from the court premises using reasonable force.

51 Security officers

- (1) The chief executive may appoint a person (other than a police officer or sheriff's officer) to be a security officer.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

Note 3 Each police officer and sheriff's officer is a security officer (see s 40, def *security officer*).

- (2) The chief executive may appoint a person as a security officer only if the chief executive is satisfied the person—

- (a) holds a security licence; and
 - (b) has not committed an offence against this part or has not been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons; and
 - (c) is capable of competently exercising the functions of a security officer under this part.
- (3) The chief executive may end the appointment of a person as a security officer if—
- (a) the person ceases to hold a security licence; or
 - (b) the person is not employed by a person holding a master licence under the *Security Industry Act 2003*; or
 - (c) the person commits an offence against this part or has been convicted or found guilty of an offence involving fraud, dishonesty, violence, drugs or weapons; or
 - (d) the person is not capable of competently exercising the functions of a security officer under this part; or
 - (e) the chief executive and the person agree to the revocation.

Note A security officer's appointment also ends if the officer resigns (see Legislation Act, s 210).

- (4) In this section:

security licence means a licence under the *Security Industry Act 2003* that authorises the licensee to patrol, protect, watch or guard property (including cash in transit), whether or not it authorises the licensee to do anything else.

52 Identity cards for security officers

- (1) The chief executive must issue an identity card to each security officer who is not a police officer or sheriff's officer.
- (2) The identity card must—

- (a) state that the person to whom the card is issued is a security officer for this part; and
 - (b) show—
 - (i) a recent photograph of the person; and
 - (ii) the name of the person; and
 - (iii) the date of issue of the card; and
 - (iv) a date of expiry of the card; and
 - (v) anything else prescribed by regulation.
- (3) A security officer who is not a police officer or sheriff's officer must—
- (a) at all times while on duty at court premises wear the officer's identity card so it is clearly visible; and
 - (b) produce it for inspection by a person if the person asks the security officer to do so.

Maximum penalty: 1 penalty unit.

- (4) A person appointed as a security officer who ceases to be a security officer must return the officer's identity card to the chief executive as soon as practicable, but within 21 days after ceasing to be a security officer.

Maximum penalty: 1 penalty unit.

Part 6 Miscellaneous

53 Assignment of earnings not enforceable

- (1) An assignment of earnings is not enforceable.
- (2) Subsection (1) has effect regardless of—
 - (a) the nature of the instrument effecting the assignment; or
 - (b) the nature of the transaction that gave rise to the assignment.
- (3) In this section:

earnings means a sum payable to a person—

- (a) by way of wages or salary, including any fee, bonus, commission, overtime pay or other emolument payable in addition to wages or salary; or
- (b) by way of pension, including—
 - (i) an annuity in relation to past services, whether or not the services were rendered to the person paying the annuity; and
 - (ii) periodical payments in relation to compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment; and
 - (iii) periodical payments in relation to compensation for the loss of wages or salary because of illness or injury.

54 Regulation-making power

The Executive may make regulations for this Act.

Note A regulations must be notified, and presented to the Legislative Assembly, under the Legislation Act.

Part 7 **Temporary provisions**

Division 7.1 **General**

60 **Expiry of existing rules**

- (1) The following rules expire on 1 July 2006:
 - (a) the *Supreme Court Rules 1937*;
 - (b) the *Supreme Court (Admission of Legal Practitioners) Rules 1998*;
 - (c) the *Magistrates Court Rules 1932*;
 - (d) the *Magistrates Court (Civil Jurisdiction) Rules 2004*.
- (2) However, a regulation may change the expiry date.
- (3) This section expires on the day the last of the rules mentioned in subsection (1) expire (the *existing rules expiry day*).

61 **References to Magistrates Court (Civil Jurisdiction) Act etc**

- (1) In an Act, statutory instrument or document, a reference to the *Magistrates Court (Civil Jurisdiction) Act 1982*, the *Magistrates Court (Civil Jurisdiction) Regulation 1987* or the *Magistrates Court (Civil Jurisdiction) (Solicitors' Costs) Regulation 1982* is—
 - (a) in relation to anything to which the *Magistrates Court Act 1930* applies—a reference to that Act; and
 - (b) in relation to anything to which the *Magistrates Court (Civil Jurisdiction) Rules 2004* applies—a reference to those rules.
- (2) In an Act, statutory instrument or document, a reference to a provision of the *Magistrates Court (Civil Jurisdiction) Act 1982*, the *Magistrates Court (Civil Jurisdiction) Regulation 1987* or the

Magistrates Court (Civil Jurisdiction) (Solicitors' Costs) Regulation 1982 is—

- (a) in relation to anything to which the *Magistrates Court Act 1930* applies—a reference to the corresponding provision of that Act; and
 - (b) in relation to anything to which the *Magistrates Court (Civil Jurisdiction) Rules 2004* applies—a reference to the corresponding provision of those rules.
- (3) In an Act, statutory instrument or document, a reference to the *Magistrates Court Act 1930* is, in relation to anything to which the *Magistrates Court Rules 1932* applies, a reference to those rules.
- (4) In an Act, statutory instrument or document, a reference to a provision of the *Magistrates Court Act 1930* is—
- (a) in relation to anything to which the *Magistrates Court Rules 1932* applies—a reference to the corresponding provision of those rules; and
 - (b) in relation to a provision relocated or renumbered as another provision of that Act by this Act—a reference to the corresponding provision of that Act.
- (5) In an Act, statutory instrument or document, a reference to the *Magistrates Court Act 1930*, part 13A or the *Supreme Court Act 1933*, section 37, section 37A, section 37B, section 37C or section 37D is, in relation to anything to which this Act, part 3 applies, a reference to the corresponding provision of part 3.
- (6) In an Act, statutory instrument or document, a reference to any of the following Acts is, in relation to anything to which this Act applies, a reference to this Act:
- *Arrest on Mesne Process Act 1902*
 - *Court Security Act 2001*
 - *Crown Proceedings Act 1992*
 - *Earnings (Assignment and Attachment) Act 1966*

- *Judgment Creditors Remedies Act 1901*
 - *Judiciary (Stay of Proceedings) Act 1933.*
- (7) In an Act, statutory instrument or document, a reference to a provision of an Act mentioned in subsection (6) is, in relation to anything to which this Act applies, a reference to the corresponding provision of this Act.
- (8) This section expires on the existing rules expiry day.
- (9) In this section:
existing rules expiry day—see section 60 (3).

Division 7.2 Arrest on mesne process

62 Meaning of *capias* for div 7.2

In this division:

capias means *capias ad respondendum*.

63 No arrest on mesne process except under div 7.2

No person shall be arrested on mesne process in any civil action in any court except in the cases and in the way provided in this division.

64 Order to hold to bail

In any action in the Supreme Court, if a judge is satisfied by affidavit disclosing the facts constituting the ground of the plaintiff's claim, or by evidence on oath before the judge, that the plaintiff has prima facie a good cause of action in relation to the plaintiff's claim against the defendant and is also satisfied by the affidavit of the plaintiff or some other person—

- (a) that the cause of action is to the amount of \$40 or upwards, or that the plaintiff has sustained damage to that amount; and

- (b) that any defendant is about to remove or is making preparations to remove out of the jurisdiction of the court; and
- (c) that the action will be defeated unless the defendant is forthwith apprehended; and
- (d) that the application is made within a reasonable time after the fact of the defendant's intention so to remove came to the knowledge of the plaintiff or might have become known to him or her by reasonable diligence on his part;

the judge may by a special order direct that the defendant shall be held to bail for the sum that the judge considers appropriate, not exceeding the amount of the debt or damages.

65 Issue of writ of capias

Thereupon the plaintiff, within the time expressed in the order but not afterwards, may sue out 1 or more writ or writs of capias against the defendant.

66 Execution of writ

- (1) The sheriff of the Territory or other officer to whom any such writ is directed shall, before the return of the writ but not afterwards, proceed to arrest the defendant on it.
- (2) A writ may be lawfully executed on a Sunday.

67 Order and arrest to be during pendency of action

The order may be made and the defendant arrested under it at any time after the beginning of the action and before final judgment is obtained in it.

68 Defendant to remain in custody until bail bond given or deposit made

The defendant when arrested shall remain in custody until the defendant has given a bail bond to the sheriff or other officer, or has

made deposit of the sum endorsed on the writ of *capias*, together with \$20 costs.

69 Subsequent proceedings subject to rules of court

All subsequent proceedings about putting in and perfecting special bail shall be subject to, and in accordance with, the practice and procedure of the court.

70 Application for order nisi for discharge

Any person arrested on a writ of *capias* may apply to a judge at any time after the arrest for an order on the plaintiff to show cause why the person should not be discharged out of custody.

71 Proceedings on order nisi

Any judge may make absolute or discharge the order, and may direct the costs of the application to be paid by either party, and may make any other order that he or she considers appropriate.

72 Appeal

On the application of either party dissatisfied with any such order, the Supreme Court may discharge or vary it.

73 Discharge on bankruptcy

- (1) Any person in the custody of any sheriff, gaoler, or officer under any such writ shall on the sequestration of the person's estate under the law in force for the time being relating to bankruptcy, be entitled to his or her discharge from the custody on the order of a judge of a court exercising jurisdiction in bankruptcy, and shall be forthwith discharged from the custody either absolutely or on any conditions that the judge may impose.
- (2) No such sheriff, gaoler, or officer shall incur any liability in relation to the discharge to any person for anything done by him or her under this section.

74 Expiry of div 7.2

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.
- (2) In this section:
existing rules expiry day—see section 60 (3).

Division 7.3 Attachment of earnings

76 Definitions for div 7.3

In this division:

court includes a person competent to make an order for the attachment of a debt.

dependant, in relation to a judgment debtor, means a person to whose maintenance the judgment debtor contributes or is liable to contribute.

earnings—see section 53 (3).

judgment debtor means a person liable under a judgment or order (whether obtained before or after the commencement of this Act) for the recovery or payment of money or costs.

Metal Trades Award means the Metal Trades (Australian Capital Territory) Award 1982 as originally made and as varied from time to time.

77 Limitation on attachment of wages

A court shall not make an order for the attachment of earnings of a judgment debtor that would, if enforced, reduce those earnings to an amount that is less than an amount calculated—

- (a) if the judgment debtor has any dependants—at the rate of such amount per week as is equal to the amount of the minimum

weekly wage for the time being payable under the Metal Trades Award to adult employees; or

- (b) if the judgment debtor does not have any dependants—at the rate of such amount per week as is equal to $\frac{3}{4}$ of the amount of the minimum weekly wage for the time being payable under the Metal Trades Award to adult employees.

78 Expiry of div 7.3

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.
- (2) In this section:
existing rules expiry day—see section 60 (3).

Division 7.4 Stay of proceedings

80 Stay of proceedings

- (1) If it is shown to the satisfaction of a court that a person, against whom any proceeding has been begun in the court for the payment of a sum of money—
- (a) has suffered a loss; or
- (b) is in the circumstances;
- that a judgment given or an order made for the immediate payment of the sum of money or any substantial part of it would entail serious hardship, the court may, at any time before judgment is given or an order is made in the proceeding, on the application of that person, in its discretion, if in all the circumstances it considers it desirable so to do, direct a stay of proceedings or further proceedings until the time and on the conditions that the court considers appropriate.
- (2) An application made under the subsection (1) shall not be taken or construed as an admission of liability by the applicant.

81 Stay of execution

- (1) If it is shown to the satisfaction of a court that a person, against whom the court has given judgment or made an order for the payment of a sum of money—

- (a) has suffered such a loss; or
(b) is in such circumstances;

that the immediate payment of the whole or any part of the sum will entail serious hardship, the court may, at the time of giving the judgment or the making of the order, or subsequently, on the application of the person adjudged or ordered to pay the sum of money, in its discretion, if in all the circumstances it considers it desirable so to do, order that the payment of the whole or part of the sum shall be deferred until the time and on the conditions that the court considers appropriate.

- (2) An application under this section shall operate as a stay of proceedings on the judgment or order until the hearing of the application.

82 Rescission or variation of previous direction or order

- (1) A court may, on the application of any party, rescind or vary any direction or order previously made by it under this division.

- (2) In this section:

party means party to the proceeding in connection with which the direction or order was made.

83 Expiry of div 7.4

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.

- (2) In this section:

existing rules expiry day—see section 60 (3).

Division 7.5 Set-off of debts

84 Mutual debts to be set one against the other

If there are mutual debts between the plaintiff and defendant, or if either party sue or be sued as executor or administrator, if there are mutual debts between the testator or intestate and either party, one debt may be set against the other, and the matter may be given in evidence on the general issue, or pleaded in bar, as the nature of the case shall require, so as at the time of his or her pleading the general issue, if any such debt of the plaintiff, his or her testator or intestate, is intended to be insisted on in evidence, notice shall be given of the particular sum or debt so intended to be insisted on, and on what account it became due, or otherwise the matter shall not be allowed in evidence on such general issue.

85 Exception

By virtue of section 84, mutual debts may be set against each other, either by being pleaded in bar, or given in evidence on the general issue, in the way mentioned in the section, notwithstanding that the debts are deemed in law to be of a different nature;

unless in cases where either of the debts shall accrue because of a penalty contained in any bond or specialty;

and in all cases where either the debt for which the action has been or shall be brought, or the debt intended to be set against it has accrued, or shall accrue, by reason of any such penalty, the debt intended to be set off shall be pleaded in bar, in which plea shall be shown how much is truly and justly due on either side;

and in case the plaintiff shall recover in any such action or suit, judgment shall be entered for no more than shall appear to be truly justly due to the plaintiff, after one debt being set against the other.

86 Expiry of div 7.5

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.
- (2) In this section:
existing rules expiry day—see section 60 (3).

Division 7.6 Judgment creditors remedies

87 Limitation of arrest under *ca. sa.*

Except as provided in this division, no person shall be arrested on any writ of *capias ad satisfaciendum* issuing out of the Supreme Court.

88 Fraudulent concealment or intended departure

If a judge of the Supreme Court is satisfied by affidavit that the defendant—

- (a) has fraudulently concealed money, goods or valuable securities from his or her judgment creditor; or
- (b) is about to leave the ACT either permanently or for an indefinite period, without satisfying the judgment;

the judge may order a writ of *capias ad satisfaciendum* to issue, and the defendant may be arrested on the writ.

89 Exception for certain actions

Section 87 and section 88 do not apply to a writ issued for libel, slander or any malicious injury.

90 *Ca. sa.* to fix bail

If a defendant has been arrested or has given bail on a writ of *capias ad respondendum*, a writ of *capias ad satisfaciendum* may be issued to fix the bail or charge the defendant in execution as of course.

91 Liability for escape

If any debtor in execution escapes out of legal custody, the sheriff, bailiff, or other person having the custody of the debtor shall be liable only to an action on the case for damages sustained by the person at whose suit the debtor was taken or imprisoned, and shall not be liable to any action of debt in consequence of the escape.

92 Discharge of judgment debtor on authority of lawyer

- (1) A written order signed by the lawyer in the cause by whom any writ of *capias ad satisfaciendum* has been issued shall justify the sheriff, gaoler, or person in whose custody the party may be in discharging the party unless the party for whom the lawyer professes to act has given written notice to the contrary to the sheriff, gaoler, or person.
- (2) The discharge shall not be a satisfaction of the debt unless made by the authority of the creditor.
- (3) Nothing in this section shall justify any lawyer in giving an order for discharge without the consent of his or her client.

93 Ca. sa. may be executed on Sunday

Any writ of *capias ad satisfaciendum* issued out of the Supreme Court may be lawfully executed on Sunday.

94 Expiry of div 7.6

- (1) This division expires on the existing rules expiry day or, if the rules fix an earlier expiry day for this division, that day.
- (2) In this section:
existing rules expiry day—see section 60 (3).

Part 8 Transitional

100 New Magistrates Court (Civil Jurisdiction) Rules

- (1) The provisions in schedule 2 (as amended by the *Court Procedures (Consequential Amendments) Act 2004*) are taken, on the commencement of this section, to be rules (the *interim rules*) made under this Act, part 2.
- (2) To remove any doubt and without limiting subsection (1), the interim rules may be amended or repealed as if they had been made as rules by the rule-making committee under this Act, part 2.
- (3) To remove any doubt, the interim rules are taken—
 - (a) to have been notified under the Legislation Act on the day this Act is notified; and
 - (b) to have commenced on the day this section commences; and
 - (c) not to be required to be presented to the Legislative Assembly under the Legislation Act, section 64 (1).
- (4) Subsections (1) to (3) are laws to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (5) This section expires on the day it commences.

101 Rules and forms in force under Supreme Court Act

- (1) The *Supreme Court Rules 1937* (other than schedule 1), as in force immediately before the commencement of this section, are taken to have been made under this Act, part 2.
- (2) The *Supreme Court (Admission of Legal Practitioners) Rules 1998*, as in force immediately before the commencement of this section, are taken to have been made under this Act, part 2.

- (3) A form in the *Supreme Court Rules 1937*, schedule 1, as in force immediately before the commencement of this section, is taken to be a form approved under this Act, part 2.
- (4) A form approved under the *Supreme Court Act 1933*, section 75 immediately before the commencement of this section is taken to be a form approved under this Act, part 2.
- (5) This section expires on the day it commences.

102 Rules and forms in force under Magistrates Court Act

- (1) The *Magistrates Court Rules 1932*, as in force immediately before the commencement of this section, are taken to have been made under this Act, part 2.
- (2) A form approved under the *Magistrates Court Act 1930*, section 256 immediately before the commencement of this section is taken to be a form approved under this Act, part 2.
- (3) This section expires on the day it commences.

103 Forms in force under Magistrates Court (Civil Jurisdiction) Act etc

- (1) A form approved under a relevant provision immediately before the commencement of this section is taken to be a form approved under this Act, part 2.
- (2) In this section:

relevant provision means any of the following provisions:

- *Children and Young People Act 1999*, section 58
- *Common Boundaries Act 1981*, section 29
- *Coroners Act 1997*, section 101
- *Magistrates Court (Civil Jurisdiction) Act 1982*, section 471
- *Protection Orders Act 2001*, section 96.

- (3) A form approved under the *Crimes Act 1900*, section 443 for the following is taken to be a form approved under this Act, part 2:
- a warrant under section 252 (When case not to be proceeded with gaoler to discharge prisoner on certificate from Attorney-General etc)
 - section 357 (Outstanding charges may be taken into account when passing sentence)
 - section 408 (Directions to perform work).
- (4) This section expires on the day it commences.

104 Modification of pt 8's operation

A regulation may modify the operation of this part (including in its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or is not adequately, dealt with in this part.

105 Expiry of pt 8

This part expires 2 years after the day it commences.

Schedule 1 **Subject matter for rules**

(see s 7)

Part 1.1 **General**

1 **Jurisdiction**

- (1) the jurisdiction of ACT courts, including civil, criminal and any appellate jurisdiction
- (2) the jurisdiction of prescribed tribunals
- (3) the jurisdiction of the master, registrars and deputy registrars, including review of their decisions

2 **Service of documents**

service of documents, including, for example, the following:

- (a) the kinds of service, including personal service and electronic service;
- (b) service outside the ACT or Australia;
- (c) service of foreign legal process in the ACT

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

3 **Evidence**

taking evidence generally, including, for example, the following:

- (a) the way evidence may be given;
- (b) dispensing with the rules of evidence;
- (c) taking evidence out of court;
- (d) taking of evidence for future claims;

- (e) subpoenas;
- (f) affidavits and exchange of correspondence instead of affidavit evidence;
- (g) obtaining evidence, including calling witnesses;
- (h) taking evidence outside the ACT or Australia;
- (i) taking evidence in the ACT for foreign courts and tribunals

4 Certain proceedings

- (1) review of Magistrates Court decisions by order nisi
- (2) cases stated and questions reserved to the Supreme Court
- (3) cases stated and questions reserved from the Supreme Court to the Court of Appeal

5 Admission of lawyers

the admission of lawyers

6 Miscellaneous

the following matters:

- (a) case management;
- (b) documents filed in registries, including electronic filing;
- (c) the receipt, issue or transmission electronically of forms and other documents and material for use in, or in relation to, proceedings;
- (d) functions of registries generally;
- (e) exhibits and other things held by an ACT court or prescribed tribunal for a proceeding, including, for example, disposal or destruction of unclaimed things;
- (f) rules relating to lawyers acting for parties in proceedings;

- (g) rules about the reckoning of time and anything else about time;
- (h) the conduct of business in chambers;
- (i) transitional arrangements

Part 1.2 Civil proceedings

7 Beginning proceedings

beginning proceedings, including, for example, the following:

- (a) originating process, including duration, renewal and setting aside;
- (b) where to begin proceedings;
- (c) preliminary discovery, including discovery to identify defendants

8 Transfer between courts

transfer of proceedings between courts, including, for the Supreme Court, cross-vesting of jurisdiction

9 Parties and proceedings

parties and proceedings, including, for example, the following:

- (a) several causes of action and parties in civil proceedings, including reconstitution of proceedings and representative parties;
- (b) multiple civil proceedings;
- (c) interpleader proceedings;
- (d) proceedings by or against businesses or people with a legal disability;
- (e) third-party procedure

10 Appearance

appearances, including, for example, the following:

- (a) entering appearances;

- (b) conditional appearances

11 Pleadings

pleadings, including, for example, the following:

- (a) matters in pleadings and particulars;
- (b) progress of pleadings;
- (c) particular pleadings, including statements of claim, defences and counterclaims;
- (d) striking out pleadings and particulars

12 Disclosure

disclosure, including, for example, the following:

- (a) disclosure by parties, including discovery and inspection of documents and interrogatories;
- (b) non-party disclosure;
- (c) admissions;
- (d) disclosure of experts reports and hospital reports;
- (e) disclosure of other material to which legal professional privilege may attach, including by direction or order of the court or tribunal

13 Preservation of rights and property

preservation of rights and property, including, for example, the following:

- (a) inspection, detention and preservation of property;
- (b) injunctions, including, for the Supreme Court, Mareva injunctions and Anton Piller orders;
- (c) for the Supreme Court—receivers and sales by court order

14 Ending proceedings early

ending proceedings early, including, for example, the following:

- (a) ending proceedings because of default;
- (b) summary decisions;
- (c) discontinuance and withdrawal;
- (d) offers to settle and payments by defendants;
- (e) the referral of cases to arbitration;
- (f) alternative dispute resolution processes

15 Court supervision

court supervision, including, for example, the following:

- (a) directions about conducting proceedings;
- (b) consequences of failing to comply with rules, directions or court orders;
- (c) amendments, with and without leave;
- (d) continuation of proceedings after delay;
- (e) pre-trial matters, including pre-trial directions and rulings

16 Expert evidence

expert evidence generally, including, for example, the following:

- (a) giving immunity from action to experts in relation to reports tendered in evidence;
- (b) matters relating to court experts, including—
 - (i) how the court is to choose an expert; and
 - (ii) how experts may give evidence and be questioned;
- (c) defining the duty of expert witnesses in relation to the court and the parties;

- (d) prescribing the basis of, and conditions for, admissibility of expert evidence

17 Trials and other hearings

trials and other hearings, including, for example, the following:

- (a) practice lists;
- (b) list applications for hearing and setting trial dates;
- (c) conduct of trials;
- (d) decisions without pleadings or without hearings;
- (e) separate decisions on questions;
- (f) assessors and special referees;
- (g) assessment of damages;
- (h) simplified procedures for minor debt claims and other claims

18 Judgments

judgments, including, for example, the following:

- (a) effect of judgments;
- (b) setting aside judgments

19 Particular proceedings

particular proceedings, including, for example, the following:

- (a) taking of accounts;
- (b) proceedings for damages for personal injury or death;
- (c) the payment of amounts into court;
- (d) for the Supreme Court—judicial review proceedings;
- (e) for the Supreme Court—prerogative remedy proceedings

20 Interest

interest, including, for example, the following:

- (a) interest up to judgment;
- (b) interest on judgments

21 Administration and probate

for the Supreme Court, administration and probate, including, for example, the following:

- (a) applications for grants of probate or letters of administration and the documents required;
- (b) resealing grants;
- (c) caveats objecting to grants, orders to administer or resealing grants;
- (d) contested proceedings

22 Adoption

for the Supreme Court, adoption, including, for example, applications for adoptions

23 Arbitration

for the Supreme Court, arbitration, including, for example, the use of court-appointed referees

24 Contempt of court

for the Supreme Court, contempt of court, including, for example, the following:

- (a) contempt of the court as constituted other than by a judge;
- (b) proceedings for failure to comply with orders, other than orders to pay an amount

25 Trusts

for the Supreme Court, trusts

26 Costs

costs, including, for example, the following:

- (a) security for costs;
- (b) entitlement to recover costs;
- (c) costs of parties in proceedings;
- (d) assessment of costs;
- (e) taxation of costs

27 Appeals

appeals, including, for example, the following:

- (a) for the Magistrates Court and prescribed tribunals—appeals to the Supreme Court;
- (b) for the Supreme Court—
 - (i) appeals to the Supreme Court other than to the Court of Appeal; and
 - (ii) appeals to the Court of Appeal

28 Enforcement of judgments

enforcement of judgments, including, for example, the following:

- (a) enforcement hearings, including examination procedures;
- (b) enforcement orders, including the following:
 - (i) enforcement orders for entry onto, and delivery of possession of, land;
 - (ii) enforcement orders for seizure and sale of property;

- (iii) enforcement orders for seizure and delivery of particular goods;
 - (iv) enforcement orders for seizure and detention of property;
 - (v) enforcement orders for the attachment or redirection of debts, income and other money;
 - (vi) for the Supreme Court—enforcement orders for charging orders and stop orders;
- (c) instalment orders;
 - (d) powers of enforcement officers

29 Reciprocal enforcement of foreign judgments
reciprocal enforcement of foreign judgments

Part 1.3 Criminal proceedings

30 Practice and procedure in criminal jurisdiction

practice and procedure in the criminal jurisdiction of the Magistrates Court and Supreme Court (including any appellate jurisdiction) generally, including, for example, the following:

- (a) forms for proceedings;
- (b) beginning criminal proceedings, including indictments and informations;
- (c) appearance;
- (d) arraignments;
- (e) applications;
- (f) pleadings;
- (g) duties of lawyers and the court;
- (h) pre-trial matters, including pre-trial directions and rulings;
- (i) regulating hearings and trial proceedings;
- (j) expert evidence;
- (k) custody and inspection of exhibits;
- (l) recording of proceedings and access to records;
- (m) costs payable to defendants in particular circumstances;
- (n) inspecting registry files;
- (o) appeals, including appeals to the Supreme Court and Court of Appeal;

- (p) listing trials, sentences, applications and appeals for hearing, and setting hearing dates;
- (q) enforcement of decisions

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- administrative appeals tribunal
- chief executive (see s 163)
- consumer and trader tribunal
- credit tribunal
- custodial escort
- discrimination tribunal
- government solicitor
- Magistrates Court
- public servant
- residential tenancies tribunal
- Supreme Court
- territory authority.

advisory committee means the advisory committee established under section 11.

assistant sheriff, for part 5 (Court security)—see section 40.

corresponding law, for part 4 (Crown proceedings)—see section 20.

court, for part 5 (Court security)—see section 40.

court premises, for part 5 (Court security)—see section 40.

Crown, for part 4 (Crown proceedings)—see section 20.

deputy sheriff, for part 5 (Court security)—see section 40.

determined fee, for part 3 (Court and tribunal fees)—see section 12.

explosive, for part 5 (Court security)—see the *Dangerous Substances Act 2004*, section 73.

fee, for part 3 (Court and tribunal fees)—see section 12.

firearm, for part 5 (Court security)—see the *Firearms Act 1996*, section 4.

judge, for part 5 (Court security)—see section 40.

judgment, for part 4 (Crown proceedings)—see section 20.

magistrate, for part 5 (Court security)—see section 40.

master means the Master of the Supreme Court.

offensive weapon, for part 5 (Court security)—see section 40.

prescribed tribunal, for part 2 (Court rules and forms) and schedule 1 (Subject matter for rules)—see section 6.

proceeding, for part 4 (Crown proceedings)—see section 20.

relevant legislation, for part 3 (Court and tribunal fees)—see section 12.

rule-making committee means the rule-making committee established under section 9.

screening search, for part 5 (Court security)—see section 40.

security officer, for part 5 (Court security)—see section 40.

sheriff, for part 5 (Court security)—see section 40.

sheriff's officer, for part 5 (Court security)—see section 40.

Territory Crown, for part 4 (Crown proceedings)—see section 20.

the Territory, for part 4 (Crown proceedings)—see section 20.

tribunal, for part 3 (Court and tribunal fees)—see section 12.

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

| | |
|--|--|
| am = amended | ord = ordinance |
| amdt = amendment | orig = original |
| ch = chapter | par = paragraph/subparagraph |
| def = definition | pres = present |
| dict = dictionary | prev = previous |
| disallowed = disallowed by the Legislative Assembly | (prev...) = previously |
| div = division | pt = part |
| exp = expires/expired | r = rule/subrule |
| Gaz = gazette | renum = renumbered |
| hdg = heading | reloc = relocated |
| IA = Interpretation Act 1967 | R[X] = Republication No |
| ins = inserted/added | RI = reissue |
| LA = Legislation Act 2001 | s = section/subsection |
| LR = legislation register | sch = schedule |
| LRA = Legislation (Republication) Act 1996 | sdiv = subdivision |
| mod = modified/modification | sub = substituted |
| o = order | SL = Subordinate Law |
| om = omitted/repealed | <u>underlining</u> = whole or part not commenced or to be expired |

Endnotes

3 Legislation history

3 Legislation history

Court Procedures Act 2004 A2004-59

notified LR 2 September 2004

s 1, s 2 commenced 2 September 2004 (LA s 75 (1))

remainder commenced 10 January 2005 (s 2 and CN2004-29)

as amended by

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.4, pt 1.16, pt 1.19, pt 1.24, pt 1.31, pt 1.32, pt 1.68, pt 1.69

notified LR 2 September 2004

s 1, s 2 commenced 2 September 2004 (LA s 75 (1))

sch 1 pt 1.4, pt 1.16, pt 1.19, pt 1.24, pt 1.31, pt 1.32, pt 1.68, pt 1.69
commenced 10 January 2005 (s 2 and see Court Procedures Act 2004
A2004-59, s 2 and CN2004-29)

4 Amendment history

Commencement

s 2 om LA s 89 (4)

Proceedings by and against the Crown generally

s 21 reloc from Crown Proceedings Act 1992 s 5 by A2004-60
amdt 1.118

Immunities and limitations of liability

s 22 reloc from Crown Proceedings Act 1992 s 6 by A2004-60
amdt 1.118

Corresponding laws of States and other Territories

s 23 reloc from Crown Proceedings Act 1992 s 7 by A2004-60
amdt 1.118

Injunctive relief

s 24 reloc from Crown Proceedings Act 1992 s 8 by A2004-60
amdt 1.118

Protection of confidentiality on grounds of public interest

s 25 reloc from Crown Proceedings Act 1992 s 9 by A2004-60
amdt 1.118

Right of Attorneys-General of other jurisdictions to appear in proceedings

s 26 reloc from Crown Proceedings Act 1992 s 10 by A2004-60
amdt 1.118

Right of Attorney-General to intervene in proceedings

s 27 reloc from Crown Proceedings Act 1992 s 11 by A2004-60
 amdt 1.118

Court fees and charges

s 28 reloc from Crown Proceedings Act 1992 s 12 by A2004-60
 amdt 1.118

Enforcement of judgments against Territory Crown

s 29 reloc from Crown Proceedings Act 1992 s 13 by A2004-60
 amdt 1.118

Enforcement of judgments against Crown in right of a State or another Territory

s 30 reloc from Crown Proceedings Act 1992 s 13A by A2004-60
 amdt 1.118

Enforcement of judgments by the Crown

s 31 reloc from Crown Proceedings Act 1992 s 14 by A2004-60
 amdt 1.118

Endorsement etc of originating process

s 32 reloc from Crown Proceedings Act 1992 s 15 by A2004-60
 amdt 1.121

Service generally

s 33 reloc from Crown Proceedings Act 1992 s 16 by A2004-60
 amdt 1.125

Service of subpoenas etc on Ministers

s 34 reloc from Crown Proceedings Act 1992 s 17 by A2004-60
 amdt 1.128

Representation if right to legal representation restricted

s 35 reloc from Crown Proceedings Act 1992 s 19 by A2004-60
 amdt 1.133

Exclusion of certain proceedings

s 36 reloc from Crown Proceedings Act 1992 s 20 by A2004-60
 amdt 1.136

Regulations for pt 4

s 37 reloc from Crown Proceedings Act 1992 s 21 by A2004-60
 amdt 1.136

Definitions for pt 5

s 40 def **assistant sheriff** reloc from Court Security Act 2001 dict
 by A2004-60 amdt 1.102
 def **court** reloc from Court Security Act 2001 dict by A2004-60
 amdt 1.102
 def **court premises** reloc from Court Security Act 2001 dict by
 A2004-60 amdt 1.102

Endnotes

4 Amendment history

def **deputy sheriff** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **explosive** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **firearm** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **judge** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **magistrate** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **offensive weapon** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **screening search** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **security officer** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **sheriff** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

def **sheriff's officer** reloc from Court Security Act 2001 dict by A2004-60 amdt 1.102

Right of entry etc to court premises

s 41 reloc from Court Security Act 2001 s 5 by A2004-60 amdt 1.99

Powers under Act additional to other powers

s 42 reloc from Court Security Act 2001 s 6 by A2004-60 amdt 1.99

Security officer to be identified before exercising powers

s 43 reloc from Court Security Act 2001 s 7 by A2004-60 amdt 1.99

Person may be required to state name etc

s 44 reloc from Court Security Act 2001 s 8 by A2004-60 amdt 1.99

Searches

s 45 reloc from Court Security Act 2001 s 9 by A2004-60 amdt 1.99

Seizure and forfeiture of firearms etc

s 46 reloc from Court Security Act 2001 s 10 by A2004-60 amdt 1.99

Security officer may require thing that may hide firearms etc to be left

s 47 reloc from Court Security Act 2001 s 11 by A2004-60 amdt 1.99

Unlawful, disorderly conduct etc

s 48 reloc from Court Security Act 2001 s 12 by A2004-60 amdt 1.99

Contravention of requirement of security officer

s 49 reloc from Court Security Act 2001 s 13 by A2004-60 amdt 1.99

Judge or magistrate may close court premises

s 50 relloc from Court Security Act 2001 s 15 by A2004-60
amdt 1.99

Security officers

s 51 relloc from Court Security Act 2001 s 16 by A2004-60
amdt 1.99

Identity cards for security officers

s 52 relloc from Court Security Act 2001 s 17 by A2004-60
amdt 1.99

Assignment of earnings not enforceable

s 53 def **earnings** relloc from Earnings (Assignment and
Attachment) Act 1966 s 4 by A2004-60 amdt 1.146

Expiry of existing rules

s 60 exp 1 July 2006 (s 60 (3))

References to Magistrates Court (Civil Jurisdiction) Act etc

s 61 exp 1 July 2006 (s 61 (8))

Arrest on mesne process

div 7.2 hdg exp 1 July 2006 (s 74)

Meaning of *capias* for div 7.2

s 62 exp 1 July 2006 (s 74)

No arrest on mesne process except under div 6.1

s 63 relloc from Arrest on Mesne Process Act 1902 s 4 by A2004-60
amdt 1.12
exp 1 July 2006 (s 74)

Order to hold to bail

s 64 relloc from Arrest on Mesne Process Act 1902 s 5 by A2004-60
amdt 1.12
exp 1 July 2006 (s 74)

Issue of writ of *capias*

s 65 relloc from Arrest on Mesne Process Act 1902 s 6 by A2004-60
amdt 1.15
exp 1 July 2006 (s 74)

Execution of writ

s 66 relloc from Arrest on Mesne Process Act 1902 s 7 by A2004-60
amdt 1.15
exp 1 July 2006 (s 74)

Order and arrest to be during pendency of action

s 67 relloc from Arrest on Mesne Process Act 1902 s 8 by A2004-60
amdt 1.15
exp 1 July 2006 (s 74)

Endnotes

4 Amendment history

Defendant to remain in custody until bail bond given or deposit made

s 68 reloc from Arrest on Mesne Process Act 1902 s 9 by A2004-60
 amdt 1.15
 exp 1 July 2006 (s 74)

Subsequent proceedings subject to rules of court

s 69 reloc from Arrest on Mesne Process Act 1902 s 10 by
 A2004-60 amdt 1.15
 exp 1 July 2006 (s 74)

Application for order nisi for discharge

s 70 reloc from Arrest on Mesne Process Act 1902 s 11 by
 A2004-60 amdt 1.15
 exp 1 July 2006 (s 74)

Proceedings on order nisi

s 71 reloc from Arrest on Mesne Process Act 1902 s 12 by
 A2004-60 amdt 1.15
 exp 1 July 2006 (s 74)

Appeal

s 72 reloc from Arrest on Mesne Process Act 1902 s 13 by
 A2004-60 amdt 1.15
 exp 1 July 2006 (s 74)

Discharge on bankruptcy

s 73 reloc from Arrest on Mesne Process Act 1902 s 14 by
 A2004-60 amdt 1.15
 exp 1 July 2006 (s 74)

Expiry of div 7.2

s 74 exp 1 July 2006 (s 74)

Attachment of earnings

div 7.3 hdg exp 1 July 2006 (s 78)

Definitions for div 7.3

s 76 exp 1 July 2006 (s 78)
 def **court** reloc from Earnings (Assignment and Attachment)
 Act 1966 s 4 by A2004-60 amdt 1.147
 def **dependant** reloc from Earnings (Assignment and
 Attachment) Act 1966 s 4 by A2004-60 amdt 1.147
 def **judgment debtor** reloc from Earnings (Assignment and
 Attachment) Act 1966 s 4 by A2004-60 amdt 1.147
 def **Metal Trades Award** reloc from Earnings (Assignment
 and Attachment) Act 1966 s 4 by A2004-60 amdt 1.147

Limitation on attachment of wages

s 77 reloc from Earnings (Assignment and Attachment) Act 1966
 s 5 by A2004-60 amdt 1.148
 exp 1 July 2006 (s 78)

Expiry of div 7.3

s 78 [exp 1 July 2006 \(s 78\)](#)

Stay of proceedings

div 7.4 hdg [exp 1 July 2006 \(s 83\)](#)

Stay of proceedings

s 80 reloc from Judiciary (Stay of Proceedings) Act 1933 s 3 by
A2004-60 amdt 1.161
[exp 1 July 2006 \(s 83\)](#)

Stay of execution

s 81 reloc from Judiciary (Stay of Proceedings) Act 1933 s 4 by
A2004-60 amdt 1.161
[exp 1 July 2006 \(s 83\)](#)

Rescission or variation of previous direction or order

s 82 reloc from Judiciary (Stay of Proceedings) Act 1933 s 5 by
A2004-60 amdt 1.161
[exp 1 July 2006 \(s 83\)](#)

Expiry of div 7.4

s 83 [exp 1 July 2006 \(s 83\)](#)

Set-off of debts

div 7.5 hdg [exp 1 July 2006 \(s 86\)](#)

Mutual debts to be set one against the other

s 84 reloc from Set-off of Debts Act 1735 s 13 by A2004-60
amdt 1.631
[exp 1 July 2006 \(s 86\)](#)

Exception

s 85 reloc from Set-off of Debts Act 1735 s 5 by A2004-60
amdt 1.633
[exp 1 July 2006 \(s 86\)](#)

Expiry of div 7.5

s 86 [exp 1 July 2006 \(s 86\)](#)

Judgment creditors remedies

div 7.6 hdg [exp 1 July 2006 \(s 94\)](#)

Limitation of arrest under ca. sa.

s 87 reloc from Judgment Creditors Remedies Act 1901 s 19 by
A2004-60 amdt 1.159
[exp 1 July 2006 \(s 94\)](#)

Fraudulent concealment or intended departure

s 88 reloc from Judgment Creditors Remedies Act 1901 s 20 by
A2004-60 amdt 1.159
[exp 1 July 2006 \(s 94\)](#)

Endnotes

4 Amendment history

Exception for certain actions

s 89 reloc from Judgment Creditors Remedies Act 1901 s 21 by
 A2004-60 amdt 1.159
 exp 1 July 2006 (s 94)

Ca. sa. to fix bail

s 90 reloc from Judgment Creditors Remedies Act 1901 s 22 by
 A2004-60 amdt 1.159
 exp 1 July 2006 (s 94)

Liability for escape

s 91 reloc from Judgment Creditors Remedies Act 1901 s 23 by
 A2004-60 amdt 1.159
 exp 1 July 2006 (s 94)

Discharge of judgment debtor on authority of lawyer

s 92 reloc from Judgment Creditors Remedies Act 1901 s 24 by
 A2004-60 amdt 1.159
 exp 1 July 2006 (s 94)

Ca. sa. may be executed on Sunday

s 93 reloc from Judgment Creditors Remedies Act 1901 s 26 by
 A2004-60 amdt 1.159
 exp 1 July 2006 (s 94)

Expiry of div 7.6

s 94 exp 1 July 2006 (s 94)

Transitional

pt 8 hdg exp 10 January 2007 (s 105)

New Magistrates Court (Civil Jurisdiction) Rules

s 100 exp 10 January 2005 (s 100 (5))

Rules and forms in force under Supreme Court Act

s 101 exp 10 January 2005 (s 101 (5))

Rules and forms in force under Magistrates Court Act

s 102 exp 10 January 2005 (s 102 (3))

Forms in force under Magistrates Court (Civil Jurisdiction) Act etc

s 103 exp 10 January 2005 (s 103 (4))

Modification of pt 8's operation

s 104 exp 10 January 2007 (s 105)

Expiry of pt 8

s 105 exp 10 January 2007 (s 105)

New Magistrates Court (Civil Jurisdiction) Rules 2004

sch 2 om LA s 89 (3)

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