

1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Magistrates Court (Enforcement of
Judgments) Bill 1994**

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1994
THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

**Magistrates Court (Enforcement of
Judgments) Bill 1994**

**A BILL
FOR**

**An Act to amend certain laws to make provision for
the enforcement of judgments of the Magistrates
Court and for related purposes**

The Legislative Assembly for the Australian Capital Territory enacts as
follows:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Magistrates Court (Enforcement of
Judgments) Act 1994*.

Commencement

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

5 (2) The remaining provisions commence on a day fixed by the Minister by notice in the *Gazette*.

(3) If the provisions referred to in subsection (2) have not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, those provisions, by force of this subsection, commence on the first day after the end of that period.

10 **PART II—MAGISTRATES COURT (CIVIL JURISDICTION)
ACT 1982**

Principal Act

3. In this Part, "Principal Act" means the *Magistrates Court (Civil Jurisdiction) Act 1982*.

15 **Interpretation**

4. Section 3 of the Principal Act is amended—

(a) by inserting in subsection (1) the following definitions:

" 'approved form' means a form approved under subsection 284 (3);

20 'bailiff' means a bailiff of the court;

'corporation' includes a body of persons that may by law sue or be sued, whether in its own name or in the name of an officer or other person;

25 'officer', in relation to a corporation, includes a director and a person having (whether alone or with others) powers of management, direction or control of the corporation;"; and

(b) by omitting subsection (5) and substituting the following subsection:

30 "(5) In this Act, a reference to a form by number shall be read as a reference to—

(a) the form so numbered in the Schedule; or

(b) the approved form so numbered;

as the case may be."

Personal actions at law—amount or value

5. Section 5 of the Principal Act is amended by omitting from subsection (2) “an action for the detention of goods” and substituting “an action relating to the detention of goods”.

5 Insertion

6. After section 8 of the Principal Act the following section is inserted:

Disputed debts

“8A. (1) The court may, on application, declare—

- 10 (a) that a person does not owe a specified debt alleged to be owed by the person; or
- (b) the amount of a specified debt alleged to be owed by a person.

“(2) A person is not entitled to make an application unless a written demand for payment of the debt has been made by the respondent.

15 “(3) This section applies only in relation to a debt or alleged debt that does not exceed the amount specified in subsection 5 (1).

“(4) Subsections 20 (3), (4), (5), (6), (7) and (9) apply in relation to applications made under this section.”.

Form of claim

7. Section 16 of the Principal Act is amended—

- 20 (a) by omitting subsection (1A) and substituting the following subsection:

“(1A) A reference in paragraph (1) (a) to proceedings to recover a debt or liquidated damages shall be read as including—

- 25 (a) a reference to proceedings to recover a debt or liquidated damages in which the plaintiff claims interest, whether under section 227A or otherwise; and
- (b) a reference to proceedings to recover damages where the amount claimed can be ascertained by reference to a receipt or statement of account.”; and

- 30 (b) by adding at the end the following subsection:

“(5) A claim of a kind referred to in paragraph (1A) (b) shall be supported by an affidavit verifying the receipt or statement of account.”.

Judgment by agreement

8. Section 43 of the Principal Act is amended by omitting from subsection (4) "section 229" and substituting "section 278F".

Judgment in proceedings where no guardian *ad litem* appointed

- 5 9. Section 92 of the Principal Act is amended by omitting from subsection (3) "warrant" and substituting "writ".

Insertion

10. After section 151 of the Principal Act the following section is inserted in Division 4 of Part XIII:

10 **Executors and administrators**

"151A. (1) Where—

(a) an order for—

- (i) the recovery or payment of money with or without costs;
(ii) costs to be paid on a conviction; or
15 (iii) costs alone, including costs ordered to be paid by an informant;

has been made; and

(b) the party entitled to enforce the order dies;

- 20 a person who is the executor or administrator of the party may, on filing an affidavit verifying that the person is the executor or administrator, enforce the order to the same extent, by the like means and in the same circumstances as the party might have done if living.

- 25 "(2) A person who is an executor or administrator may sue or be sued in any proceedings in the same manner as if the person were a party suing or being sued in his or her own right."

Repeal

11. Sections 179 and 196 of the Principal Act are repealed.

Time for swearing affidavits

- 30 12. Section 202 of the Principal Act is amended by adding at the end the following subsections:

"(2) An affidavit supporting the issue of process to enforce a judgment shall not be used for the purpose for which it is filed if it is filed more than 14 days after the date on which it is sworn.

“(3) An affidavit shall not, without reasonable excuse, be used as evidence of the service of a document in the Territory if it is sworn more than 14 days after the date of service.”.

Contents of affidavits

- 5 13. Section 207 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

10 “(2) Where an affidavit for use in interlocutory proceedings contains a statement of information and belief with the source of that information and the grounds of that belief, the statement shall not be inadmissible on the ground that it is hearsay.”.

Substitution

14. Section 216 of the Principal Act is repealed and the following section substituted:

Judgment in actions relating to detention of goods

- 15 “216. (1) Where, in proceedings relating to the detention of goods, the court finds for the plaintiff, the court may give judgment—

- (a) for delivery of the goods to the plaintiff; or
- (b) for payment to the plaintiff of the value of the goods, as assessed by the court;

- 20 and for payment to the plaintiff of any consequential damages.

“(2) Relief under subsection (1) is at the discretion of the court but the plaintiff may, before judgment is given, inform the court of the relief that is preferred.

- 25 “(3) Where the court gives judgment under paragraph (1) (a), the court shall specify the period within which the goods are to be delivered.

“(4) A person who fails, without reasonable excuse, to comply with a judgment under paragraph (1) (a) is guilty of an offence punishable, on conviction, by a fine not exceeding—

- (a) in the case of a natural person—\$5,000; or
- 30 (b) in the case of a body corporate—\$25,000.

“(5) Where—

- (a) a judgment debtor delivers or tenders goods in satisfaction or part satisfaction of a judgment under paragraph (1) (a) and the judgment creditor refuses to accept the goods because they are not the goods the subject of the judgment; or
- 35

- (b) a judgment debtor fails to deliver the goods within the period specified in a judgment under paragraph (1) (a);

the judgment creditor may enforce the judgment by writ of specific delivery in accordance with Form 72.

- 5 “(6) The Registrar shall not issue a writ of specific delivery unless an affidavit in accordance with Form 73 by the judgment creditor has been filed containing and verifying a statement of—

- (a) such of the matters listed in subsection 278BC (3) as are relevant to the judgment in respect of which the writ is sought;

- 10 (b) whether any, and if so which, goods the subject of the judgment have been returned to the judgment creditor; and

- (c) the address at which it is alleged that the goods are situated.

“(7) Where—

- 15 (a) a judgment debtor delivers or tenders goods in satisfaction or part satisfaction of a judgment under paragraph (1) (a) and the judgment creditor refuses to accept the goods because—

- (i) they are not the goods the subject of the judgment; or

- (ii) they are substantially damaged;

- 20 (b) a judgment debtor fails to deliver the goods within the period specified in a judgment under paragraph (1) (a); or

- (c) the bailiff executing a writ of specific delivery is unable to seize the goods;

- 25 the court may, on application by the judgment creditor in accordance with section 121, set aside the judgment under paragraph (1) (a), and give judgment in the terms set out in paragraph (1) (b) and for the payment of any consequential damages.

“(8) Nothing in this section is to be taken to prevent a judgment given under paragraph (1) (b), or for the payment of consequential damages, from being enforced under Part XVIII.”.

30 Insertion

15. After section 217 of the Principal Act the following section is inserted:

Time for compliance

- 35 “217A. (1) A judgment or order that requires a person to do an act shall specify the time within which the person is required to do the act.

“(2) Where a judgment or order requires a person to do an act within a specified time, the court may order the person to do the act within another specified time.

5 “(3) Where a judgment or order requires a person to do an act but does not specify a time within which the act is required to be done, the court may order the person to do the act within a specified time.

“(4) This section does not apply to a requirement to pay money.”.

Setting aside of judgment or order

10 16. Section 219 of the Principal Act is amended by omitting from subsections (2) and (3) “warrant” and substituting “writ”.

Interest on judgments

17. Section 228 of the Principal Act is amended—

(a) by omitting paragraphs (2) (b) and (c) and substituting the following paragraphs:

15 “(b) for any period before the commencement of Part XVIII—be calculated at the rate fixed under the Supreme Court Rules for the purposes of section 70 of the *Supreme Court Act 1933*;

20 (c) for any period after the commencement of that Part—be calculated at such rate per centum per annum in respect of the period as is prescribed for the purposes of subsection 227B (2); and

(d) form part of the judgment debt.”; and

(b) by omitting subsection (4).

25 **Substitution**

18. Section 229 of the Principal Act is repealed and the following sections are substituted:

Limitation periods

30 “229. (1) A judgment creditor is not entitled, except with the leave of the court, to make an application for the purposes of subsection 278I (1), 278AC (1) or 278BC (1) after the expiration of 12 years from the date on which the judgment was given or entered.

“(2) The court shall not grant leave unless a certified copy of the judgment is produced to the court.

Payment of judgment debts generally

"229A. (1) A judgment debt is payable immediately.

"(2) Where—

- (a) a judgment debt is payable in one sum; or
 - 5 (b) an order for the payment of a judgment debt by instalments requires the instalments to be paid to the Registrar;
- the sum or each instalment is payable to the Registrar.

10 "(3) Where the court or Registrar orders payment of a judgment debt by instalments and does not require payment to the Registrar, the instalments are payable to the judgment creditor or at the judgment creditor's direction.

"(4) Despite subsection (2), a payment made by or on behalf of a judgment debtor on account of the judgment debt to or at the direction of the judgment creditor shall, if accepted by or on behalf of the judgment creditor, reduce the judgment debt by the amount of the payment.

15 **Payment of part of judgment debt**

"229B. (1) Where an instalment order or writ of execution is in force, the judgment debtor shall not, except with the consent of the judgment creditor, pay into court any amount less than the amount required to be paid under the order or writ.

20 "(2) If the Registrar inadvertently receives into court an amount less than the amount so required, he or she shall, on the written request of the judgment creditor, return the amount received to the judgment debtor."

Entry and enforcement of judgment in Supreme Court

19. Section 230 of the Principal Act is amended—

- 25 (a) by omitting from paragraph (1) (b) "warrant" and substituting "writ"; and
- (b) by omitting from subsections (2) and (5) "warrant" (wherever occurring) and substituting "writ".

Interpleader by bailiff

30 20. Section 233 of the Principal Act is amended—

- (a) by omitting from subsection (1) "warrant" and substituting "writ";
- (b) by omitting from paragraphs (2) (a) and (b) "warrant" and substituting "writ";
- 35 (c) by omitting from subsection (2) "warrant" (last occurring) and substituting "writ"; and

- (d) by omitting from subsection (6) "the levy of" and substituting "seizing and selling".

Insertion

21. After Part XVIII of the Principal Act the following Part is inserted:

5 **"PART XVIII—ENFORCEMENT OF JUDGMENTS**

"Division 1—Preliminary

Interpretation

"278A. (1) In this Part, unless the contrary intention appears—

'account' includes—

- 10 (a) a deposit account or withdrawable share account;
- (b) any record of deposit or subscription for withdrawable shares; and
- (c) a loan account that has a credit balance;

15 but does not include an account or record that is prescribed by the regulations as exempt from the operation of this section;

'bank' means—

- (a) a bank within the meaning of the *Banking Act 1959* of the Commonwealth; or
- 20 (b) a person who carries on State banking within the meaning of placitum 51 (xiii) of the Constitution;

'building society' has the same meaning as in the Financial Institutions (ACT) Code;

'credit union' has the same meaning as in the Financial Institutions (ACT) Code;

25 'deposit-taking institution' means a bank, building society, credit union or investment fund or corporation;

'earnings', in relation to a person, means a sum payable to the 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
- 30 (b) by way of pension, including—

- (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity;
- 5 (ii) periodical payments in respect of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment; and
- 10 (iii) periodical payments in respect of compensation for the loss of wages or salary because of illness or injury;
- but does not include a pension, benefit or allowance payable to the person under—
- (iv) the *Social Security Act 1991* of the Commonwealth; or
- 15 (v) the *Veterans' Entitlements Act 1986* of the Commonwealth;

'examination summons' means an examination summons issued under this Part;

20 'Financial Institutions (ACT) Code' means the provisions applying because of section 8 of the *Financial Institutions (Application of Laws) Act 1992*;

'garnishee' means the person to whom a garnishee order is directed;

'garnishee order' means a garnishee order made under this Part;

'instalment order' means an instalment order made under this Part;

25 'judgment' includes an order of the court for the payment of money, whether as costs or otherwise;

'judgment creditor' means a person in whose favour a judgment is given;

30 'judgment debt' includes an amount of money ordered by the court to be paid, whether as costs or otherwise;

'judgment debtor' means a person against whom a judgment is given;

'writ of execution' means a writ of execution issued under this Part.

"(2) A reference in this Part to the giving of a judgment shall be read as including a reference to the making of an order.

“(3) A reference in this Part to a debt due or accruing shall be read as including a debt that will become due and payable.

Exercise of powers

“278B. The court or Registrar shall—

- 5 (a) before making an order under Division 2, 3 or 4, endeavour to ascertain the property and financial circumstances of the judgment debtor; and
- 10 (b) in determining the amount of an instalment to be paid under an instalment order, take into account the other financial obligations of the judgment debtor.

Costs

“278C. Where the court or Registrar is of the opinion that a party has acted unreasonably in proceedings under this Part, the court or Registrar may order that party to pay—

- 15 (a) the costs, or part of the costs, of the other party; or
- (b) such amount as the court or Registrar thinks fit for the expenses of the other party;

incurred by reason of those proceedings.

Judiciary (Stay of Proceedings) Act 1933 not to apply

- 20 “278D. A judgment debtor or garnishee is not entitled to make an application under section 4 of the *Judiciary (Stay of Proceedings) Act 1933* in relation to any payment to the judgment creditor under this Part in respect of the judgment debt.

Court may exercise powers of Registrar

- 25 “278E. The court may exercise or perform any of the powers, authorities, duties or functions of the Registrar under this Part.

“Division 2—Orders at time of judgment

Instalment and garnishee orders

- 30 “278F. (1) When giving judgment in proceedings, the court may, on the oral application of a party to the proceedings or of its own motion—

- (a) make any of the orders specified in subsection (3); or
- (b) adjourn the proceedings to a hearing before the Registrar.

- 35 “(2) On an adjournment under paragraph (1) (b), the Registrar may hear the judgment creditor and the judgment debtor, or such of them as appears, and may make any of the orders specified in subsection (3).

“(3) The court or the Registrar may make any of the following orders under this section:

- (a) an instalment order for the payment of the judgment debt by such instalments payable at such times as the court thinks just;
- (b) a garnishee order in respect of the judgment debt directed to a specified person attaching earnings;
- 5 (c) a garnishee order in respect of the judgment debt directed to a specified person attaching debts other than earnings;
- (d) an order for the issue of an examination summons directed to—
 - (i) the judgment debtor; or
 - 10 (ii) if the judgment debtor is a corporation—an officer or former officer of the corporation.

“(4) In considering whether to make an order specified in subsection (3), the court or the Registrar shall have regard to—

- (a) the order (if any) preferred by the judgment debtor;
- 15 (b) the likelihood of the judgment debtor complying with an instalment order; and
- (c) any other information that, in the opinion of the court or the Registrar, is relevant and reliable.

Order for issue of writ of execution

20 “278G. (1) If, when giving judgment in proceedings, the court does not make an order under paragraph 278F (1) (a) or adjourn the proceedings under paragraph 278F (1) (b), the court may, on the oral application of a party to the proceedings or of its own motion, make an order for the issue of a writ of execution against goods of the judgment debtor.

25 “(2) On an adjournment under paragraph 278F (1) (b), the Registrar may hear the judgment creditor and the judgment debtor, or such of them as appears, and may issue a writ of execution against goods of the judgment debtor.

30 “(3) A writ of execution shall not be ordered by the court to be issued under subsection (1) or issued by the Registrar under subsection (2), unless—

- (a) the judgment creditor consents to the making of the order; and
- (b) the court or the Registrar is satisfied that, having regard to—
 - (i) the amount of the judgment debt remaining unpaid;
 - (ii) the interests of the judgment creditor; and
 - 35 (iii) the interests of the judgment debtor;

it would be inappropriate to make an instalment order or garnishee order in relation to the judgment debt.

"Division 3—Examination procedures

Notice requiring financial information

5 "278H. (1) Where a judgment debt has not been satisfied—

(a) the judgment creditor may file; and

(b) the Registrar may sign, seal and return to the judgment creditor,

10 a notice in accordance with Form 74 calling on the judgment debtor to furnish the judgment creditor with answers to the questions contained in the notice relating to the property and financial circumstances of the judgment debtor within 21 days after the day on which the notice is served on the judgment debtor.

15 "(2) A judgment creditor is not entitled to file a notice while an instalment order or garnishee order is in force in respect of the judgment unless the Registrar otherwise orders.

Issue of examination summons

"278I. (1) Where a judgment debt has not been satisfied, the Registrar may, on application by the judgment creditor in accordance with Form 75, issue an examination summons in accordance with Form 76 directed to—

20 (a) the judgment debtor; or

(b) if the judgment debtor is a corporation—an officer or former officer of the corporation.

25 "(2) A judgment creditor is not entitled to make an application while an instalment order or garnishee order is in force in respect of the judgment unless the Registrar otherwise orders.

"(3) An examination summons issued under subsection (1) shall not be directed to an officer or former officer of a corporation unless the Registrar is satisfied, by affidavit or otherwise, that the officer or former officer is likely—

30 (a) to have a sufficient knowledge of the affairs of the corporation to enable him or her to give such answers as might be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination; or

35 (b) to have in his or her possession or control any document or thing that tends to show the true position as to the property or financial circumstances of the corporation.

Content of examination summons

"278IA. An examination summons—

- 5 (a) shall summon the person to whom it is directed to attend before the Registrar at the time and place specified in the summons to be orally examined as to the matters referred to in paragraphs 278J (1) (a) and (b); and
- 10 (b) may require that person to produce to the Registrar at the examination any document or thing in that person's possession or control that tends to show the true position as to the judgment debtor's property or financial circumstances.

Service of examination summons

"278IB. An examination summons shall be served personally on the person to whom it is directed not less than 14 days before the date on which the attendance of the person is required by the summons.

15 Examination of judgment debtor

"278J. (1) Where the person to whom an examination summons is directed attends before the Registrar, the Registrar and the judgment creditor (if present) may orally examine the person—

- 20 (a) as to the judgment debtor's property and other means of satisfying the judgment debt; and
- (b) generally as to the judgment debtor's financial circumstances.

"(2) An examination—

- (a) shall be taken on oath administered by the Registrar; and
- 25 (b) may be conducted in open court or in chambers, as the Registrar directs.

Orders following examinations

30 "278K. (1) Following the examination of a judgment debtor, the Registrar may, on the oral application of the judgment creditor or judgment debtor or of his or her own motion, make one or more of the following orders:

- (a) an instalment order for the payment of the judgment debt by such instalments payable at such times as the Registrar thinks just;
- (b) a garnishee order in respect of the judgment debt directed to a specified person attaching earnings or debts other than earnings;
- 35 (c) an order varying or revoking an instalment order or garnishee order in force in relation to the judgment debt.

“(2) In considering whether to make an order under subsection (1), the Registrar shall have regard to—

- (a) the order (if any) preferred by the judgment debtor;
- 5 (b) the likelihood of the judgment debtor complying with an instalment order; and
- (c) any other information that, in the Registrar’s opinion, is relevant and reliable.

“(3) Subject to section 278BD, if the Registrar does not make an order under subsection (1), the Registrar may, on the oral application of the
10 judgment creditor or judgment debtor or of his or her own motion, issue a writ of execution against goods of the judgment debtor.

“(4) The Registrar shall not issue a writ under subsection (3) unless—

- (a) the judgment creditor consents to the issue of the writ;
- (b) the Registrar is satisfied that, having regard to—
15 (i) the amount of the judgment debt remaining unpaid;
- (ii) the interests of the judgment creditor; and
- (iii) the interests of the judgment debtor;

it would be inappropriate to make an instalment order or garnishee order, or to continue to enforce such an order, in relation to the
20 judgment debt; and

- (c) the Registrar revokes any instalment order or garnishee order in force in relation to the judgment debt.

Report of certain examinations

“278L. Where—

- 25 (a) a person is examined by the Registrar; and
- (b) the judgment creditor does not attend the examination;

the results of the examination and any order made shall be reported to the judgment creditor by the Registrar as soon as is reasonably practicable.

Subsequent examinations

- 30 “278M. Where a person has attended for examination pursuant to an examination summons, the Registrar shall not issue a further examination summons directed to that person in respect of the judgment debt within 3 months after that attendance unless satisfied, by affidavit, as to—

- (a) any change in the property or financial circumstances of the judgment debtor since the last examination of a person in respect of the judgment debt; or
- 5 (b) any additional relevant information that has become available since that last examination.

Failure to attend in answer to summons

"278N. (1) If at the time set down (whether originally or on an adjournment) for the examination of a person to whom an examination summons is directed—

- 10 (a) the person fails to attend before the Registrar;
- (b) there is proof—
 - (i) that the person has been served with the summons in accordance with section 278IB; or
 - 15 (ii) if the examination has been adjourned—that the person has been notified of the date, time and place fixed for the examination; and
- (c) the judgment creditor so requests;

the Registrar shall report in writing to the court that the person has failed to attend.

- 20 "(2) On receipt of a report, the court may—

- (a) authorise the Registrar to issue a warrant for the apprehension of the person to whom the examination summons was directed; or
- (b) adjourn the examination and order that the person attend before the Registrar at a time and place specified in the order;

- 25 and the Registrar shall forthwith serve on the person a notice informing the person of the action taken by the court.

"(3) A warrant shall not be issued until after the expiration of 14 days after the court authorises its issue.

- 30 "(4) If a person in respect of whom the court has authorised the issue of a warrant has not, within 14 days after the authorisation, attended by arrangement with the Registrar to be examined, the Registrar may—

- (a) on the application of the judgment creditor verified by his or her affidavit in accordance with Form 77; and
- (b) not later than 3 months after the authorisation;
- 35 issue a warrant.

“(5) If a judgment creditor fails to make an application within the period limited by subsection (4), the court may, on receiving a satisfactory explanation from the judgment creditor as to the reasons for the failure, direct the Registrar to issue a warrant.

5 Warrants

“278O. (1) A warrant shall be in accordance with Form 78 and shall—

- (a) be signed by the Registrar;
 - (b) name, or otherwise describe, the person whose apprehension is required by the warrant;
 - 10 (c) state briefly the reason for its issue;
 - (d) require the bailiff to apprehend the person named or described, if the person is in the Territory, and to bring that person before the Registrar to be examined; and
 - (e) continue in force until—
 - 15 (i) the warrant is executed;
 - (ii) the warrant is revoked by order of the court (because the judgment debt has been paid or for any other reason) and the revocation is communicated to the bailiff in whose hands the warrant is for execution; or
 - 20 (iii) the expiration of 3 months after the warrant is issued;
- whichever occurs first.

“(2) For the purposes of subparagraph (1) (e) (i), a warrant is executed when—

- (a) the person whose apprehension is required has been examined;
- 25 (b) the examination is adjourned to another day; or
- (c) the examination is struck out;

whichever occurs first.

Police assistance

30 “278P. A police officer shall, if called on by the bailiff to do so, aid and assist in the execution of a warrant.

Examination after issue of warrant

“278Q. (1) Where—

- (a) the person in respect of whom the issue of a warrant is authorised—
- (i) attends, by arrangement, before the Registrar; or
 - (ii) is brought before the Registrar under a warrant; and
- 5 (b) the judgment creditor, having been notified of the date, time and place set down for the conduct of the examination, attends before the Registrar;

the Registrar and the judgment creditor may orally examine that person as to the matters referred to in paragraphs 278J (1) (a) and (b).

10 “(2) Where—

- (a) the person in respect of whom the issue of a warrant is authorised—
- (i) attends, by arrangement, before the Registrar; or
 - (ii) is brought before the Registrar under a warrant; and
- 15 (b) the judgment creditor, having been notified of the date, time and place set down for the conduct of the examination, does not attend before the Registrar;

the Registrar may—

- 20 (c) orally examine that person as to the matters referred to in paragraphs 278J (1) (a) and (b); or
- (d) strike out the examination.

Refusal to be examined

“278R. Where a person attends, or is brought, before the Registrar for examination and the person—

- 25 (a) refuses or fails, without reasonable excuse—
- (i) to take an oath;
 - (ii) to answer a question he or she is required by the Registrar to answer; or
 - (iii) to produce a document or thing he or she is required by the
- 30 Registrar, or by a summons issued under section 278I, to produce; or
- (b) gives false information;

the Registrar may adjourn the examination and refer the matter of the refusal, failure or giving of false information to the court.

Registrar may adjourn examination

"278S. The Registrar may adjourn an examination at any time (whether before or after the time originally set down for the examination or to which it has already been adjourned).

5

"Division 4—Instalment orders

Instalment orders on application by judgment debtor

"278T. (1) Subject to subsection (5), a judgment debtor may make application to the Registrar in accordance with Form 79 for—

10

- (a) leave to pay the judgment debt, or the balance of the judgment debt owing to the judgment creditor, by such instalments payable at such times as may be specified in the application; or
- (b) an order varying or revoking an instalment order in force in respect of the judgment debt.

15

"(2) An application shall be supported by an affidavit (in duplicate) in accordance with Form 80 as to—

20

- (a) in the case of an application under paragraph (1) (a)—the judgment debtor's property and financial circumstances; or
- (b) in the case of an application under paragraph (1) (b)—any change in the property or financial circumstances of the judgment debtor since the instalment order was made.

25

"(3) The Registrar shall consider an application made in accordance with this section and—

- (a) in the case of an application under paragraph (1) (a)—may make an instalment order for payment of the judgment debt by such instalments payable at such times as are specified in the application; or
- (b) in the case of an application under paragraph (1) (b)—may make an order varying or revoking the instalment order as specified in the application.

30

"(4) Before making an order under subsection (3), the Registrar may consult the judgment creditor (either orally or in writing) about the order he or she proposes to make.

35

"(5) A judgment debtor is entitled to make one application only under subsection (1) in any period during which a writ of execution is in force in relation to the judgment debt.

Instalment orders by agreement

"278U. (1) A judgment creditor and judgment debtor may enter into an agreement in accordance with Form 81—

(a) specifying—

- 5 (i) the amount owing by the judgment debtor to the judgment creditor; and
- (ii) by what instalments payable at what times the amount owing is to be paid; or
- 10 (b) as to the variation or revocation of an instalment order in force in respect of the amount owing.

"(2) An agreement has no effect unless the signature of every person executing it (other than a barrister or solicitor) is witnessed by—

- (a) the Registrar;
- (b) a barrister or solicitor;
- 15 (c) a justice of the peace; or
- (d) a person prescribed for the purposes of subsection 116C (3) of the *Magistrates Court Act 1930*.

"(3) Where an agreement in accordance with this section is filed, the Registrar shall make an order—

- 20 (a) in the case of an agreement under paragraph (1) (a)—for the payment of the judgment debt by such instalments payable at such times as are specified in the agreement; or
- (b) in the case of an agreement under paragraph (1) (b)—varying or revoking the instalment order as specified in the agreement.

25 Objection by judgment creditor to instalment order

"278V. Where an instalment order is made under subsection 278T (3), the judgment creditor may, within 14 days after the day on which he or she was served in accordance with section 278X, file a notice objecting to the order.

30 Hearing by court

"278W. (1) Where—

- (a) the Registrar refuses to make an order on an application under section 278T; or
- (b) a notice of objection is filed under section 278V;
- 35 the Registrar shall—

- (c) set down the application or objection for hearing by the court; and
- (d) give notice of the date, time and place set down for the hearing to the judgment creditor and judgment debtor.

5 “(2) Where an application or objection has been set down for hearing, the court shall consider the matter and hear the judgment creditor and judgment debtor, or such of them as appears, and may make—

- (a) an instalment order for the payment of the judgment debt by such instalments payable at such times as the court thinks just;
- 10 (b) a garnishee order in respect of the judgment debt directed to a specified person attaching earnings or debts other than earnings;
- (c) an order confirming, varying or revoking an instalment order or garnishee order in force in relation to the judgment debt; or
- (d) an order for the issue of a writ of execution against goods of the judgment debtor.

15 “(3) In considering whether to make an order under paragraph (2) (a), (b) or (c), the court shall have regard to—

- (a) the order (if any) preferred by the judgment debtor;
- (b) the likelihood of the judgment debtor complying with an instalment order; and
- 20 (c) any other information that, in the court’s opinion, is relevant and reliable.

 “(4) The court shall not make an order under paragraph (2) (d) unless—

- (a) the judgment creditor consents to the making of the order;
- 25 (b) the court is satisfied that, having regard to—
 - (i) the amount of the judgment debt remaining unpaid;
 - (ii) the interests of the judgment creditor; and
 - (iii) the interests of the judgment debtor;

30 it would be inappropriate to make an instalment order or garnishee order, or to continue to enforce such an order, in relation to the judgment debt; and

- (c) the court revokes any instalment order or garnishee order in force in relation to the judgment debt.

Service of instalment orders

"278X. The Registrar shall serve—

- (a) notice of the making of an instalment order on the judgment creditor and judgment debtor; and
- 5 (b) if the order is made under subsection 278T (3)—a copy of any affidavit filed by the judgment debtor under subsection 278T (2) on the judgment creditor.

Judgment creditor may apply for variation or revocation

10 **"278Y. (1) A judgment creditor may make an application (in duplicate) to the Registrar in accordance with Form 79 for an order varying or revoking an instalment order in force in respect of the judgment debt on the ground that—**

- 15 (a) there has been a substantial increase in the property, or a substantial improvement in the financial circumstances, of the judgment debtor; or
- (b) at the time the order was made, material facts had been withheld from the court or Registrar or material evidence before the court or Registrar was false.

20 **"(2) An application shall be supported by an affidavit (in duplicate) setting out the facts sought to be relied on.**

"(3) Unless the Registrar otherwise orders, the judgment creditor shall serve a sealed copy of both the application and supporting affidavit on the judgment debtor by—

- 25 (a) if the judgment debtor is a natural person—serving them on the judgment debtor personally; or
- (b) if the judgment debtor is a body corporate—leaving them at a registered office, principal place of business or principal office of the judgment debtor with a person who is apparently an officer or employee of the judgment debtor over the age of 16 years.

30 **"(4) The Registrar shall consider an application made in accordance with this section and hear the judgment creditor and the judgment debtor, or such of them as appears, and may—**

- 35 (a) make an order confirming, varying or revoking the instalment order or any garnishee order in force in relation to the judgment debt;
- (b) make a garnishee order in respect of the judgment debt directed to a specified person attaching earnings or debts other than earnings; or

(c) issue a writ of execution against goods of the judgment debtor.

“(5) In considering whether to make an order under paragraph (4) (a) or (b), the Registrar shall have regard to—

(a) the order (if any) preferred by the judgment debtor;

5 (b) the likelihood of the judgment debtor complying with an instalment order; and

(c) any other information that, in the Registrar’s opinion, is relevant and reliable.

10 “(6) The Registrar shall not issue a writ under paragraph (4) (c) unless—

(a) the judgment creditor consents to the issue of the writ;

(b) the Registrar is satisfied that, having regard to—

(i) the amount of the judgment debt remaining unpaid;

(ii) the interests of the judgment creditor; and

15 (iii) the interests of the judgment debtor;

it would be inappropriate to make an instalment order or garnishee order, or to continue to enforce such an order, in relation to the judgment debt; and

20 (c) the Registrar revokes any instalment order or garnishee order in force in relation to the judgment debt.

Stay of enforcement of judgment

“278Z. (1) An instalment order operates as a stay of enforcement of the judgment in respect of which it is made unless the court or Registrar otherwise orders.

25 “(2) Where—

(a) an application is required to be set down for hearing under paragraph 278W (1) (c) because the Registrar has refused to make an order under subsection 278T (3); and

30 (b) no previous application in respect of the judgment to which the application relates has been made by the judgment debtor under subsection 278T (1);

35 the application shall operate as a stay of enforcement of the judgment (other than by way of an instalment order or garnishee order that was made before the application) until the application is determined under subsection 278W (2) or the court otherwise orders.

Payment to judgment creditor

"278AA. Subject to section 229B, the Registrar shall, as soon as practicable after receiving a payment from a judgment debtor under an instalment order, pay the amount received to the judgment creditor.

5 Default

"278AB. (1) Where—

- (a) a judgment debtor fails to make a payment pursuant to an instalment order; and
- 10 (b) the failure continues for 7 days after the day on which the payment was due;

unless—

- (c) the court otherwise orders; or
 - (d) in the case of an instalment order made under subsection 278U (3)—the relevant agreement otherwise provides;
- 15 the instalment order ceases to be in force and the judgment may be enforced for the balance of the judgment debt owing to the judgment creditor.

"(2) Where—

- (a) the execution of a garnishee order is stayed by virtue of section 278AG; and
- 20 (b) the instalment order ceases to be in force by virtue of subsection (1);

the Registrar shall, on the application of the judgment creditor in accordance with section 121, remove the stay of execution.

"Division 5—Garnishee orders**25 Orders on application to Registrar**

"278AC. (1) The Registrar may, on the application of a judgment creditor supported by the affidavit of the judgment creditor, make a garnishee order in respect of the judgment debt attaching earnings or debts other than earnings in the terms specified in the application.

- 30 "(2) The application and supporting affidavit shall be in accordance with Form 82.

Grounds for refusing orders

"278AD. The Registrar may refuse to make a garnishee order if—

- (a) by reason of the smallness of—

- (i) the judgment debt; or
 - (ii) the earnings or other debts sought to be attached; or
 - (b) for any other reason;
- the Registrar is of the opinion that the order should not be made.

5 Form and effect of orders

"278AE. (1) A garnishee order shall be in accordance with Form 83 and shall—

- (a) specify the unpaid amount of the judgment debt owing to the judgment creditor;
- 10 (b) require the garnishee to pay to the Registrar the earnings or other debts attached or so much of those earnings or other debts as may be sufficient to satisfy the unpaid amount after deducting such amount (if any) as may be notified in writing to the garnishee by
15 the judgment creditor or Registrar as having been paid or credited to the judgment creditor on account of the unpaid amount otherwise than pursuant to the order;
- (c) include such particulars of the earnings or other debts to be attached as are—
 - 20 (i) known to, or reasonably capable of being ascertained by, the judgment creditor; and
 - (ii) necessary to enable the garnishee to identify the earnings or other debts including, where the garnishee is a deposit-taking institution or other person carrying on business at
25 more than one place, the places where the accounts on which the debts are due or accruing are kept so far as those places are known to, or reasonably capable of being ascertained by, the judgment creditor;
- (d) contain a statement to the effect that the garnishee may apply for
30 the variation or revocation of the order on the ground of exceptional hardship; and
- (e) contain a statement to the effect that the judgment debtor may apply for—
 - 35 (i) if such an order is not already in force in respect of the judgment debt—an instalment order which, if made, will result in a stay of execution of any garnishee order attaching earnings; or
 - (ii) the variation or revocation of the garnishee order on the ground of exceptional hardship.

“(2) A garnishee order comes into force as soon as it is served on the garnishee and, subject to this Division, operates—

- 5 (a) in the case of an order attaching earnings—to attach, to the extent of the amount specified in the order, any earnings payable by the garnishee to the judgment debtor from time to time until the amount so specified has been paid; or
- 10 (b) in the case of an order attaching debts other than earnings—to attach, to the extent of the amount specified in the order, all debts that at the time of service are due or accruing from the garnishee to the judgment debtor (whether they were due and accruing at the time the order was made or not).

Service of garnishee orders

“278AF. (1) Subject to subsection (2), the judgment creditor shall serve a copy of a garnishee order on the garnishee.

- 15 “(2) Where execution of a garnishee order is stayed, the judgment creditor shall not serve a copy of the order on the garnishee until the stay is lifted.

- 20 “(3) The judgment creditor shall serve a copy of a garnishee order on the judgment debtor within 5 days after the day on which the garnishee is served under this section.

Stay of garnishee orders attaching earnings

“278AG. If, as a consequence of making an order under this Part, there is an instalment order and a garnishee order attaching earnings in force in relation to a judgment debt—

- 25 (a) the execution of the garnishee order is, by force of this section, stayed until the court or Registrar otherwise orders; and
- (b) the Registrar shall revoke the garnishee order as soon as the judgment debt is satisfied.

Part only of earnings may be attached

- 30 “278AH. A garnishee order attaching earnings shall attach only that part of the earnings that exceeds—

- (a) the amount calculated at the rate referred to in section 5 of the *Earnings (Assignment and Attachment) Act 1966*; or
- 35 (b) if the order specifies an amount greater than that amount—the greater amount.

One order attaching earnings to operate at a time

"278AI. Only one garnishee order attaching earnings may be in force in respect of a judgment debt at any one time.

Limitations on payments under orders attaching earnings

5 "278AJ. (1) In this section—

'garnishee order' means a garnishee order made under this Act or any other law of the Territory.

10 "(2) Where earnings are attached under 2 or more garnishee orders, the sum of the payments made by the garnishee pursuant to those orders shall not exceed that part of the earnings that exceeds the amount calculated at the rate referred to in section 5 of the *Earnings (Assignment and Attachment) Act 1966*.

15 "(3) A garnishee who is required to make payments under 2 or more garnishee orders shall make them in order of the times at which the orders were made.

Bank, building society and credit union accounts

20 "278AK. (1) For the purpose of determining whether an amount standing to the credit of a judgment debtor in an account in a deposit-taking institution is attachable as a debt due or accruing to the judgment debtor, the following conditions shall be disregarded:

- (a) a condition that a demand is required to be made before any money or share is withdrawn;
- (b) a condition relating to the manner in which or the place at which a demand is to be made;
- 25 (c) a condition that a passbook, receipt or other document or thing is required to be produced before any money or share is withdrawn;
- (d) a condition that notice is required before any money or share is withdrawn;
- 30 (e) a condition that any money or share may not be withdrawn for a specified period;
- (f) a condition prescribing a minimum amount in respect of any withdrawal;
- (g) a condition that a minimum balance is required to be maintained in the account;
- 35 (h) a condition relating to the account prescribed by the regulations for the purposes of this section.

5 “(2) So much of the amount standing to the credit of a judgment debtor in a withdrawable share account in a building society or credit union as is the minimum amount that is required to be maintained in the account in order that the judgment debtor retains membership of the society or union is not attachable.

 “(3) Where an amount standing to the credit of a judgment debtor in an account with a deposit-taking institution is attached—

- 10 (a) the garnishee order shall be deemed to operate as a notice of withdrawal or demand for payment under the contract between the garnishee and the judgment debtor in respect of the account;
- (b) that notice or demand is, while the order remains in force, irrevocable; and
- (c) that notice or demand shall be deemed to have been received by the garnishee—
- 15 (i) on the date of service of the order; or
- (ii) where the judgment debtor is not entitled under the contract to give a notice of withdrawal, or to make a demand for payment, on the date of service of the order—on the date on which the judgment debtor would, but for the order, have become so entitled.
- 20

 “(4) A charge on an amount standing to the credit of a judgment debtor in an account in a building society or credit union, being a charge created by—

- 25 (a) the Financial Institutions (ACT) Code; or
- (b) the rules of the building society or credit union;

shall be disregarded for the purposes of a garnishee order.

 “(5) Subsection (4) does not affect the rights of a building society or credit union to set off or appropriate the whole or any part of an amount standing to the credit of a judgment debtor.

30 “(6) Where—

- (a) before the expiration of 21 days after service of a garnishee order on a deposit-taking institution with respect to an amount standing to the credit of a judgment debtor in an account, the garnishee pays to the Registrar the debt attached to the extent of the attachment; and
- 35 (b) one of the conditions applicable to the account is that a passbook is required to be produced before any money or share is withdrawn;

the garnishee may, at the time of payment of that amount to the Registrar, by instrument signed by an officer of the institution, require the Registrar to retain the amount so paid for a specified period (not exceeding 14 days) commencing on the date of payment.

5 “(7) The Registrar shall, as soon as practicable after receiving a payment to which subsection (6) applies, give notice of the payment to the judgment creditor.

 “(8) Where—

- 10 (a) the Registrar is required to retain an amount for a specified period under subsection (6); and
- (b) the garnishee has, by reason of the production of a current passbook relating to that amount, or any part of that amount, before or during that period, paid to the judgment debtor the whole or any part of the debt attached, or otherwise dealt with the debt,
- 15 so as to satisfy the whole or any part of the debt;

the court—

- (c) on application by the garnishee before the expiration of the specified period; and
- 20 (d) if satisfied that, despite the payment or other dealing, the garnishee acted with reasonable diligence in relation to the garnishee order;

may order the Registrar to repay the amount, or any part of the amount, to the garnishee.

25 “(9) Where the Registrar is required to retain an amount for a specified period under subsection (6), the Registrar shall not pay that amount, or any part of it, to the judgment creditor—

 (a) until—

- 30 (i) the garnishee, by instrument signed by an officer of the deposit-taking institution, informs the Registrar or the Registrar is otherwise satisfied that during that period a current passbook relating to that amount, or any part of it, has come into the possession of the garnishee at the place of the account to the credit of which that amount or part was standing; or

 (ii) the expiration of that period;

35 whichever occurs first; and

- (b) unless the Registrar is satisfied, on such information as is available to the Registrar, that no application by the garnishee for an order under subsection (8) is pending.

“(10) If an amount required to be retained by the Registrar under subsection (6), or any part of such an amount, has been ordered to be repaid to the garnishee, the balance (if any) is payable by the Registrar to the judgment creditor.

5 Direct crediting—veterans’ pensions

“278AL. (1) Where—

- (a) a judgment debtor has an account with a deposit-taking institution;
- (b) instalments of a pension payable to the judgment debtor (whether on the judgment debtor’s own behalf or not) are being paid into the account; and
- (c) a garnishee order attaching debts other than earnings is in force in respect of the account;

the garnishee order does not attach to the saved amount (if any).

“(2) The saved amount is the difference between—

- (a) the total amount of pension payable to the judgment debtor that has been paid to the credit of the account during the 4 week period immediately before the garnishee order came into force; and
- (b) the total amount withdrawn from the account during the same 4 week period.

“(3) This section applies to an account whether it is maintained by the judgment debtor—

- (a) alone;
- (b) jointly with another person; or
- (c) in common with another person.

“(4) In this section—

‘pension’ means a pension, benefit or allowance payable under the *Veterans’ Entitlements Act 1986* of the Commonwealth.

Payments by garnishees

“278AM. (1) A payment under a garnishee order—

- (a) shall, subject to section 278AK, be made to the Registrar for payment to the judgment creditor; or
- (b) if, before making the payment, the garnishee notifies the judgment debtor and the Registrar that he or she proposes to do so—may be made to or at the direction in writing of the judgment creditor.

“(2) Subject to subsection (3), an amount paid by or raised as the result of execution against a garnishee shall—

(a) satisfy the judgment debt; and

5 (b) be a valid discharge to the garnishee as against the judgment debtor;

to the extent of the amount paid or raised, despite that the judgment may be set aside or the garnishee order may be set aside, varied or revoked.

“(3) Where an amount is ordered to be repaid to a garnishee under subsection 278AK (8)—

10 (a) the payment of that amount by the garnishee shall be deemed not to satisfy, and never to have satisfied, the judgment debt; and

(b) this Part applies in respect of the judgment debt as if the garnishee had not made the payment.

Time for payment

15 “278AN. (1) Payment by a garnishee pursuant to a garnishee order attaching earnings shall be made within 14 days after the day on which the earnings are due for payment to the judgment debtor.

“(2) Payment by a garnishee pursuant to a garnishee order attaching debts other than earnings shall be made—

20 (a) within 21 days after the day on which the order is served on the garnishee; or

(b) where the debt attached is due for payment to the judgment debtor after the expiration of that period—not later than the date on which the debt is due for payment.

25 **Notice by garnishee to judgment creditor**

“278AO. (1) Where a garnishee order attaches a debt other than earnings that is due for payment after the expiration of the period of 21 days after the day on which the order is served on the garnishee, the garnishee shall, before the expiration of that period, serve on the judgment creditor a
30 notice specifying—

(a) the date on which the debt is, or is likely to be, due for payment to the judgment debtor; and

35 (b) if the amount of the debt is less than the unpaid amount of the judgment debt specified in the garnishee order—the amount of the debt.

“(2) A person who knowingly makes a statement in a notice under subsection (1) that is false or misleading is guilty of an offence punishable, on conviction, by a fine not exceeding \$1,000.

Application to vary or revoke garnishee order

- 5 “278AP. At any time after a garnishee order comes into force, the judgment debtor or the garnishee may make application in accordance with section 121 for an order varying or revoking the garnishee order on the ground that the order imposes exceptional hardship on the applicant or a member of the applicant’s family.

Application for instalment order

- 10 “278AQ. (1) At any time after a garnishee order attaching earnings comes into force, the judgment debtor may make application for leave to pay the judgment debt, or the balance of the judgment debt owing to the judgment creditor, by such instalments payable at such times as may be
15 specified in the application.

“(2) An application shall be in accordance with Form 79 and supported by an affidavit (in duplicate) in accordance with Form 80 as to the judgment debtor’s property and financial circumstances.

Determination of application

- 20 “278AR. (1) Where an application is made under section 278AP or 278AQ, the Registrar shall—

- (a) set down the application for hearing by the court;
- (b) give notice of the date, time and place set down to the judgment creditor, the judgment debtor and the garnishee; and
- 25 (c) in the case of an application under section 278AQ—give a copy of the supporting affidavit to the judgment creditor.

- “(2) Where an application has been set down for hearing, the court shall consider the application and hear the judgment creditor, the judgment debtor and the garnishee, or such of them as appears, and may make one or
30 more of the following orders:

- (a) an instalment order for the payment of the judgment debt by such instalments payable at such times as the court thinks just;
- (b) an order varying or revoking the garnishee order;
- 35 (c) if the application relates to a garnishee order attaching earnings, and whether that order is varied or revoked or not—a garnishee order attaching debts other than earnings;

- (d) if the application relates to a garnishee order attaching debts other than earnings, and whether that order is varied or revoked or not—a garnishee order attaching earnings.

5 “(3) In considering whether to make an order under subsection (2), the court shall have regard to—

- (a) the order (if any) preferred by the judgment debtor;
- (b) the likelihood of the judgment debtor complying with an instalment order;
- 10 (c) the property and financial circumstances of the judgment debtor, including any other instalment orders or garnishee orders in force against the judgment debtor under this Act or any other law in force in the Territory; and
- (d) any other information that, in the court’s opinion, is relevant and reliable.

15 “(4) The Registrar shall serve a copy of any order made under this section on the judgment creditor, the judgment debtor and the garnishee.

Court may order writ of execution to be issued

20 “278AS. (1) If, following a hearing under subsection 278AR (2), the court does not make any orders under that subsection, the court may, on the oral application of the judgment creditor or judgment debtor or of its own motion, make an order for the issue of a writ of execution against goods of the judgment debtor.

“ (2) The court shall not make an order for the issue of a writ of execution under subsection (1) unless—

- 25 (a) the judgment creditor consents to the issue of the writ;
- (b) the court is satisfied that, having regard to—
 - (i) the amount of the judgment debt remaining unpaid;
 - (ii) the interests of the judgment creditor; and
 - (iii) the interests of the judgment debtor;
- 30 it would be inappropriate to continue to enforce the existing garnishee order, to vary that order or to make an instalment order or a further garnishee order in respect of the judgment debt; and
- (c) the court revokes the garnishee order.

No debts due or accruing

5 “278AT. (1) Where a garnishee reasonably believes that, at the time the garnishee order was served on him or her, there were no earnings or other debts due or accruing from the garnishee to the judgment debtor, the garnishee may serve on the judgment creditor and the Registrar an affidavit in accordance with Form 84 to that effect containing a summary of the grounds on which that belief is based.

10 “(2) A garnishee shall not be subject to any action, liability, claim or demand in respect of a disclosure of information under subsection (1) if, in the circumstances, it was reasonable to have made the disclosure.

Failure to comply with order

15 “278AU. (1) Where a garnishee order has not been complied with, the judgment creditor may apply for the issue of a summons under subsection (2) by filing an affidavit in accordance with Form 85 sworn by the judgment creditor as to the non-compliance of the garnishee.

20 “(2) Where an affidavit is filed under subsection (1), the Registrar may issue a summons in accordance with Form 86 requiring the garnishee to attend before the court on a day and at a time specified in the summons to show cause why the garnishee should not comply with the garnishee order.

“ (3) At the time set down (whether originally or on an adjournment) for a garnishee to attend to answer a summons under subsection (2), the court may hear and determine any question in dispute concerning the liability of the garnishee to pay the earnings or other debts sought to be attached by the garnishee order and—

- 25 (a) give judgment for the amount of those earnings or other debts or the unpaid amount of the judgment debt (whichever is the lesser) in favour of the judgment creditor against the garnishee; or
- (b) vary or revoke the garnishee order.

30 “(4) The court shall not give judgment in the absence of the garnishee unless the court is satisfied that—

- (a) the garnishee was duly served with the summons; and
- (b) where the hearing has been adjourned—the garnishee was notified of the date and time fixed for the garnishee to attend.

“ (5) Where—

- 35 (a) by reason of the smallness of the judgment debt or of the earnings or other debts sought to be attached; or
- (b) for any other reason;

the court is of the opinion that judgment should not be given under paragraph (3) (a), the court may refuse to give judgment.

Lien or claim of third party on debt

5 "278AV. Where, in proceedings under this Part, it appears to the court that a person other than the judgment debtor is or claims to be entitled to—

- (a) any money paid under a garnishee order;
- (b) the earnings or other debts attached by the order; or
- (c) any charge or lien on or interest in that money or those earnings or debts;

10 the court may—

- (d) order that notice of the proceedings be given to the person; and
- (e) hear and determine the claim and give such judgment or make such orders in respect of the claim (including an order barring the claim and an order for the payment into court by the judgment creditor of

15 money received under the garnishee order) as the court thinks just.

Excess paid by garnishee

"278AW. (1) Where a judgment creditor receives an amount paid under a garnishee order in excess of the amount required to satisfy the judgment debt, the judgment creditor shall—

- 20
- (a) notify the garnishee and the judgment debtor of the excess payment; and
 - (b) pay the excess to the garnishee or the judgment debtor.

Penalty: \$1,000.

25 "(2) Where an amount in excess of the amount required to satisfy the judgment debt is paid by a garnishee under a garnishee order, the excess shall be recoverable as a debt due to the garnishee or the judgment debtor from the judgment creditor.

Reduction of attached debt

"278AX. (1) If—

- 30
- (a) a garnishee order has been served on the garnishee; and
 - (b) the garnishee pays to the judgment debtor the whole or any part of the earnings or other debts attached, or otherwise deals with those earnings or other debts, so as to satisfy the whole or any part of the debts attached;

the court may order that, for the purposes of the garnishee proceedings, the earnings or other debts attached be reduced to the extent of the payment or satisfaction.

- 5 “(2) The court shall not make an order under subsection (1) unless satisfied that, despite the payment or other dealing, the garnishee acted with reasonable diligence for the purpose of giving effect to the attachment.

Deductions by garnishees

“278AY. (1) Where a garnishee—

- 10 (a) complies with a garnishee order attaching debts other than earnings within the period specified in paragraph 278AN (2) (a) or by the date referred to in paragraph 278AN (2) (b), as the case requires; and
- (b) if applicable—complies with subsection 278AO (1);

15 the garnishee may retain out of the amount otherwise payable under the garnishee order an amount (not exceeding the prescribed amount) for the garnishee’s own use and any amount so retained shall be taken to have been paid to the judgment creditor on account of the unpaid amount of the judgment debt.

- 20 “(2) A garnishee required to make a payment pursuant to a garnishee order attaching earnings may deduct from the payment an amount (not exceeding 10% of the payment) for the reasonable expenses incurred by the garnishee in complying with the order.

25 “(3) Where a garnishee makes a deduction in accordance with subsection (2), the garnishee shall, when paying the balance of the payment due, forward to the judgment creditor a statement showing—

- (a) the amount deducted pursuant to the garnishee order from the earnings of the judgment debtor;
- (b) the amount deducted by the garnishee under subsection (2); and
- 30 (c) the amount paid to the Registrar or to or at the direction of the judgment creditor.

“(4) Where a garnishee makes a deduction in accordance with subsection (2), the amount deducted shall be taken to have been paid to the judgment creditor on account of the unpaid amount of the judgment debt.

Judgment debtor ceases employment

- 35 “278AZ. (1) Where a garnishee order attaching earnings is in force and the judgment debtor ceases to be employed by the garnishee, the judgment debtor and the garnishee shall, within 21 days after the judgment debtor ceases to be so employed, each notify the Registrar in writing—

(a) that the judgment debtor has ceased employment with the garnishee; and

(b) specifying the date on which the employment ceased;

5 and, if the judgment debtor has a new employer, the judgment debtor shall also specify in his or her notice—

(c) the name and address of the new employer and the place of the new employment; and

(d) the amount of his or her earnings from the new employer.

Penalty: \$500.

10 “(2) Where the Registrar receives a notice in accordance with subsection (1), the Registrar—

(a) shall notify the judgment creditor in writing of the contents of that notice; and

15 (b) if no written objection is received from the judgment creditor or the judgment debtor within a reasonable time—may of his or her own motion revoke the existing garnishee order and make a further garnishee order in respect of the judgment debt directed to the judgment debtor’s new employer attaching the judgment debtor’s earnings.

20 **Prejudice to employee**

“278BA. (1) An employer shall not dismiss an employee, or otherwise prejudice an employee in his or her employment, because a garnishee order attaching the earnings of the employee has been made.

Penalty: \$5,000 or imprisonment for 6 months, or both.

25 “(2) If—

(a) an employee is dismissed or prejudiced within 6 months after a garnishee order is made; and

(b) all the elements of the offence other than the reason for the employer’s action are proved;

30 the onus of proving that the dismissal or prejudice was not because of the garnishee order is on the employer.

35 “(3) A conviction under subsection (1) does not limit, restrict or otherwise effect any obligation that the garnishee may have in relation to the judgment debtor or any right or remedy that the judgment debtor may have against the garnishee under any other law in force in the Territory.

Stay of enforcement of judgment

"278BB. A garnishee order operates as a stay of enforcement of the judgment in respect of which it is made unless the court or Registrar otherwise orders.

5 "Division 6—Execution against personal property**Issue of writs of execution**

10 "278BC. (1) Subject to section 278BD, the Registrar may, on the application of a judgment creditor supported by the affidavit of the judgment creditor, issue a writ of execution against goods of the judgment debtor to enforce the judgment debt.

 "(2) The application and supporting affidavit shall be in accordance with Form 87.

 "(3) The supporting affidavit shall contain and verify a statement of the following:

- 15 (a) the date of the judgment in respect of which the writ of execution is sought;
- (b) the amount of money originally payable under the judgment;
- (c) the amount of costs originally payable under the judgment, whether that amount has been fixed by taxation or otherwise;
- 20 (d) the total amount (if any) paid by the judgment debtor in reduction of the judgment debt;
- (e) the total amount of the credits (if any) accrued in reduction of the judgment debt otherwise than by payment;
- 25 (f) such other particulars (if any) as are necessary to calculate the amount payable under the judgment;
- (g) the amount payable under the judgment on the day on which the affidavit is sworn;
- (h) the interest (if any) payable under section 228 as at the day on which the affidavit is sworn;
- 30 (j) the address at which it is alleged that personal property of the judgment debtor is situated.

Leave to issue required in certain circumstances

35 "278BD. (1) The Registrar shall not, without leave of the court granted on the application of the person seeking to execute a judgment, issue a writ of execution—

- 5 (a) if, since the judgment was given or entered, a change has taken place (whether by assignment, death or otherwise) in the persons entitled or liable to execution under the judgment; or
- (b) the judgment is against the assets of a deceased person coming into the hands of his or her executor or administrator after the day on which the judgment was given or entered and the writ of execution is sought against assets of that description.
- “(2) An application under subsection (1)—
- 10 (a) shall be in accordance with section 121; and
- (b) shall be supported by an affidavit containing and verifying a statement of the following:
- 15 (i) the amount due on the date of the motion;
- (ii) if a period of more than 12 years has elapsed since the judgment was given or entered—the reason for the delay before seeking to execute the judgment;
- 15 (iii) where paragraph (1) (a) applies—the change that has taken place;
- (iv) where paragraph (1) (b) applies—that a demand for satisfaction of the judgment debt has been made of the person liable to execution but the judgment debt has not been satisfied;
- 20 (v) that the applicant is entitled to proceed to execution of the judgment;
- 25 (vi) that the person against whom execution is sought is liable to execution on the judgment.

Form of writ of execution

“278BE. A writ of execution shall be in accordance with Form 88 and shall bear the date on which it is issued.

Priority and duration of writs

- 30 “278BF. (1) On receipt of a writ of execution, a bailiff shall endorse the date and time of receipt on the back of the writ.

“(2) A bailiff who is required to execute more than one writ of execution against the property of a judgment debtor shall execute them in order of the dates and times of receipt.

- 35 “(3) Where—

- (a) a writ of *fiery facias* against the property of a person issues out of the Supreme Court; and
 - (b) a writ of execution against the same property issues out of the Magistrates Court;
- 5 the right to that property when seized shall be determined by the priority of—
- (c) the time of the delivery of the writ issued out of the Supreme Court to the Sheriff of the Territory; or
 - (d) the time of receipt of the writ issued out of the Magistrates Court by the bailiff.
- 10 “(4) A writ of execution shall be valid for a period of 6 months commencing on the date of issue.
- “ (5) Despite subsection (4), a writ of execution remains valid until the property seized under the writ is sold or otherwise disposed of, or is returned to the judgment debtor, in accordance with this Division.
- 15

Seizure of property for sale

- “278BG. (1) For the purpose of executing a writ of execution, a bailiff may seize and sell personal property (other than any right or interest in respect of land) that is or may be in the judgment debtor’s possession, to which the judgment debtor is or may be entitled or that the judgment debtor can (at law or in equity) assign or dispose of except—
- 20
- (a) necessary items of clothing, and beds, bedding and kitchen furniture, including a stove, oven and refrigerator, but not including a washing machine or automatic dishwasher; and
 - (b) ordinary tools of trade, plant and equipment, professional instruments and reference books, the aggregate value of which does not exceed the prescribed amount.
- 25

“(2) Property seized shall, prior to its sale, remain in such custody as the bailiff directs.

30 Seizure of money and things in action

- “278BH. (1) A bailiff or any other person executing a writ of execution may seize any money, banknotes, cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to the person against whom the writ has been issued.
- 35 “(2) When the time for payment in respect of a cheque, bill of exchange, promissory note, bond, specialty or security for money so seized has arrived, the person on whose behalf the writ has been issued is entitled to—

- (a) demand and receive payment; and
- (b) sue in the name of the person against whom the writ has been issued, or in the name of a person in whose name that person might have sued, for the recovery of the sum made payable or secured.

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Forced entry

“278BI. (1) Where a bailiff—

- (a) is refused entry into premises by a judgment debtor; or
- (b) is unable to contact a judgment debtor to obtain consent to such entry;

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the court may, on application by the bailiff in accordance with section 121, make an order allowing the bailiff—

- (c) to enter the premises using such force as is necessary and reasonable;
- (d) to search the premises; and
- (e) to seize any property on the premises that the bailiff is entitled to seize by virtue of subsection 278BG (1) or 278BH (1).

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“(2) The court shall not make an order under subsection (1) unless satisfied that the judgment debtor resides at, or has property in, the premises and—

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- (a) where the judgment debtor has refused entry—that, at the time of the refusal, the bailiff made reasonable attempts to notify the judgment debtor (either orally or in writing) of the procedure in respect of the execution; or
- (b) where the bailiff has been unable to contact the judgment debtor—that the bailiff made reasonable attempts to contact the judgment debtor.

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Safekeeping of property seized

“278BJ. A bailiff shall serve—

- (a) a judgment debtor against whom a writ of execution has been issued; or
- (b) any person who has custody of any personal property of a judgment debtor;

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with a notice, in accordance with Form 89, listing the property in the custody of the person served that has been seized under the writ and, if

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appropriate, informing the person served that he or she is responsible for the safekeeping of the property so seized.

Property seized not abandoned

5 “278BK. (1) A bailiff may, after seizing property under a writ of execution—

 (a) leave the house or other place in which the property seized then is; and

 (b) at all reasonable times re-enter that house or place.

10 “(2) A bailiff leaving and subsequently returning to a house or other place under subsection (1) shall not be deemed to have abandoned the property seized there.

Removal of property seized

15 “278BL. (1) A bailiff may remove property seized under a writ of execution from the place where it was seized to another place if it is necessary to do so for the safekeeping or sale of the property.

 “(2) A bailiff shall, as soon as practicable after removing property under subsection (1), give to the judgment debtor or leave for the judgment debtor at the place from which the property is removed, notice of the removal and an inventory of the property removed.

20 **Notice of seizure**

 “278BM. On seizing property under a writ of execution, a bailiff shall deliver to the judgment debtor, or leave at the place where the property is seized, a notice in accordance with Form 90—

25 (a) specifying the amount that is necessary to satisfy the judgment, including costs and charges;

 (b) setting out the effects of subsections 278BT (1) and (2) and section 278BWA;

30 (c) informing the judgment debtor that he or she may make an application for a declaration exempting specified property from execution or an application for an instalment order; and

 (d) setting out the effect of section 278Z.

Exempt property

35 “278BN. (1) The Registrar may, on application by a judgment debtor, declare that specified property of the judgment debtor is exempt from execution.

“(2) An application under subsection (1) shall be in accordance with section 121.

5 “(3) The Registrar shall not make a declaration under subsection (1) unless satisfied that, if the declaration were not made, the judgment debtor or a member of his or her family would be likely to suffer exceptional hardship.

 “(4) The Registrar may vary or revoke a declaration.

Stay of sale of property seized

10 “278BO. (1) Where, after a writ of execution has been issued, the judgment debtor makes an application under subsection 278T (1), a bailiff shall not sell any property seized under the writ until after the Registrar has considered the application.

15 “(2) If the Registrar refuses to make an order under subsection 278T (3) in respect of an application referred to in subsection (1), the Registrar may order a stay of the sale of the property seized under the writ of execution.

 “(3) A stay of the sale of property under subsection (2) remains in force until the court has considered the application under subsection 278W (2).

Payment preventing execution

20 “278BP. Where a person—

- (a) pays to a bailiff the amount for which a writ of execution was issued or produces to the bailiff the receipt of the Registrar for that amount; and
- 25 (b) pays the amount of all the proper costs and charges actually incurred in effecting the sale up to the time of payment, including any costs associated with removing the property from the place where it was seized and advertising the sale;

the bailiff shall not proceed with the execution and shall return the writ.

Suspension of execution by judgment creditor

30 “278BQ. (1) Where property has not been seized under a writ of execution, the judgment creditor may—

- (a) require execution of the writ to be suspended unconditionally; and
- (b) where the execution of the writ has been suspended—require execution to be resumed.

35 “(2) A requirement under subsection (1) shall be in writing.

“(3) A bailiff shall comply with a requirement in accordance with this section.

Agreements to withdraw and re-enter

5 “278BR. (1) Where property has been seized under a writ of execution and the judgment creditor—

- (a) enters into an arrangement with the judgment debtor that a bailiff shall be at liberty to withdraw from and re-enter possession;
- (b) communicates that arrangement to the bailiff; and
- (c) requests the bailiff to withdraw from possession;

10 the bailiff shall withdraw from possession and suspend execution of the writ but shall be at liberty, at the request in writing of the judgment creditor, to re-enter possession and resume the execution in accordance with the terms of the arrangement.

15 “(2) Where property has been seized under a writ of execution and the judgment creditor, without communicating any arrangement referred to in subsection (1), requests a bailiff to withdraw from possession or to suspend execution, other than for the purposes of postponing a sale for a reasonable time—

- 20 (a) the judgment creditor shall be deemed to have abandoned the execution; and
- (b) the bailiff shall withdraw from possession and return the writ.

Deposit to cover costs of execution

25 “278BS. (1) The Registrar may, before issuing a writ of execution or during the execution of a writ, require the judgment creditor to deposit with the Registrar an amount of money sufficient to meet the costs and charges incurred, or likely to be incurred, by a bailiff in executing the writ.

“(2) If a deposit required by the Registrar is not paid as soon as practicable—

- 30 (a) the Registrar may refuse to issue the writ of execution; or
- (b) the bailiff executing the writ may withdraw from any possession entered into and return the writ.

Conditions of sale

35 “278BT. (1) Where a bailiff is of the opinion that the property seized under a writ of execution is more than sufficient to satisfy the execution, the bailiff shall sell—

- (a) so much of the property as, in his or her opinion, would be sufficient; and
- (b) if the property sold is not sufficient—so much more of the property as, in his or her opinion, would be sufficient to satisfy the balance due under the execution.

“(2) Where property is to be sold in accordance with subsection (1), the bailiff shall sell the property—

- (a) in such order as, in his or her opinion, is best for the speedy execution of the writ without undue expense;
- (b) subject to paragraph (a), in such order as the judgment debtor may specify; and
- (c) subject to paragraphs (a) and (b), in such order as, in his or her opinion, is best for minimising hardship to the judgment debtor or any other person.

“(3) Subsections (1) and (2) do not affect any liability of the bailiff to the judgment creditor.

“(4) Subject to subsection 278BU (1), the bailiff shall offer the property for sale at a public auction as soon as practicable, having regard to—

- (a) the interests of the judgment creditor and the judgment debtor; and
- (b) the need to obtain the reserve price for the property.

Time of sale

“278BU. (1) Subject to subsections 278BN (1) and 278BT (1) and (2), property seized under a writ of execution shall be offered for sale at a public auction—

- (a) within 10 weeks after the day on which the property is seized; or
- (b) if execution of the writ is suspended—within 10 weeks from and including the day on which execution is resumed;

unless the amount for which the writ has been issued and the costs and charges of the execution are sooner paid or the court otherwise orders.

“(2) Subject to subsection (3), property seized under a writ of execution shall not be sold before—

- (a) the expiration of 6 days after the day on which the property is seized unless the judgment debtor requests in writing that the property be sold within that period; and

- (b) any application made by the judgment debtor under subsection 278BN (1) is determined.

“(3) Property of a perishable nature seized under a writ of execution may be sold forthwith after it is seized.

5 Postponement

“278BV. Subject to subsection 278BU (1), a bailiff may postpone, or require the auctioneer to postpone, a sale of property under the writ—

- (a) if the bailiff is of the opinion that a postponement is necessary to obtain the reserve price; or
- 10 (b) in compliance with a request by the judgment creditor for a postponement.

Determining market value

15 “278BW. (1) Before an item of property is offered for sale at an auction under section 278BX, the bailiff shall, so far as he or she can do so by exercising reasonable diligence, determine the market value of the item.

“(2) For the purposes of subsection (1), the bailiff—

- (a) may require the judgment creditor to furnish him or her with any information about the property to be auctioned known to, or reasonably capable of being ascertained by, the judgment creditor;
- 20 (b) if the nature and apparent value of the property is such that it is reasonable to do so—may engage a suitably qualified and experienced person to provide the bailiff with an opinion as to the value of the property; and
- (c) may make such other inquiries as are reasonable.

25 “(3) If a judgment creditor unreasonably fails to provide any information required under paragraph (2) (a), the bailiff—

- (a) shall report the failure to the Registrar; and
- (b) may refuse to proceed further towards the sale of the property.

30 “(4) The bailiff shall, as soon as practicable after determining the market values of the items to be offered for sale under subsection (1), notify the judgment debtor in writing of those market values.

Judgment debtor may challenge market value

35 “278BWA. (1) The Registrar may, on application by the judgment debtor, revoke a determination under subsection 278BW (1) in respect of an item and determine a higher market value for the item.

“(2) An application under subsection (1)—

- (a) shall be made within 5 days after the judgment debtor is notified of the determination under subsection 278BW (4); and
- (b) shall be in accordance with section 121.

5 “(3) The Registrar shall not make a determination under subsection (1) unless—

- (a) there is evidence before the Registrar from a suitably qualified and experienced person as to the true market value of the item; and
- 10 (b) the Registrar is satisfied that, having regard to that evidence, the market value of the item determined under subsection 278BW (1) is substantially less than its true market value.

“(4) Where a judgment debtor makes an application under subsection (1), a bailiff shall not sell any property seized under the writ of execution until the application has been determined.

15 **Sale by public auction**

“278BX. (1) Subject to subsection (5), property seized under a writ of execution and offered for sale at a public auction shall be sold to the highest bidder.

“(2) The bailiff—

- 20 (a) may conduct the auction; or
- (b) if the nature and apparent value of property to be sold is such that it is reasonable to do so—may engage an auctioneer licensed under the *Auctioneers Act 1959* to conduct the auction under the bailiff’s direction.

25 “(3) The bailiff shall, at least 48 hours before the day of the auction—

- (a) advertise the details of the proposed auction in the principal daily newspaper circulating in the Territory; and
- (b) serve on the judgment debtor a notice specifying the date, time and place of the auction and the property to be auctioned.

30 “(4) The advertisement shall not contain any statement to the effect, or from which it may be inferred, that the auction is in respect of property seized under a writ of execution.

35 “(5) There shall be a single reserve price in respect of each item offered for sale at the auction equal to 65% of the market value of the item determined under section 278BW or 278BWA, as the case may be.

“(6) The reserve price of an item shall not be disclosed at any time before or during the auction at which it is offered for sale.

“(7) Before the auction is conducted, the bailiff shall—

- 5 (a) prepare a list in accordance with Form 91 of the items of property to be offered for sale at the auction; and
- (b) record opposite each item in the list the reserve price of the item and how that price was determined.

“(8) No item shall be sold at the auction for a price less than the reserve price.

10 **Sale by private agreement**

“278BY. (1) Where property seized under a writ of execution remains unsold after being offered for sale at an auction under section 278BX, a bailiff or the auctioneer may sell the property by private agreement.

- 15 “(2) No item of property shall be sold by private agreement for a price less than the reserve price set under subsection 278BX (5).

Terms as to payment

“278BZ. (1) A bailiff or auctioneer shall sell property seized under a writ of execution on terms that the purchaser of an item of that property—

- (a) shall pay—
- 20 (i) an amount equal to 10% of the purchase price as a deposit immediately after the sale; and
- (ii) the balance of the purchase price within such period (not exceeding 2 working days after the day of the sale) as the bailiff may determine prior to the sale; or
- 25 (b) shall pay the whole of the purchase price immediately after the sale.

“(2) The bailiff shall require payment of the purchase price to be in cash, by bank draft or, with the approval of the bailiff, by credit card.

- 30 “(3) Where payment is made by credit card, any charge made to the bailiff or auctioneer in respect of the payment shall be included in the costs and charges of the execution.

Sale price to be recorded

- 35 “278CA. The bailiff or auctioneer shall record opposite each item in the list under subsection 278BX (7) that is sold the price for which the item was sold.

Purchase by bailiffs or auctioneer prohibited

"278CB. Neither a bailiff nor the auctioneer is entitled—

- (a) to bid at the auction at which property seized under a writ of execution is offered for sale; or
- 5 (b) to purchase, on his or her own behalf or on another person's behalf, any item of that property at the auction or by private agreement.

Auctioneer to account

10 "278CC. (1) An auctioneer shall, as soon as practicable after being advised by a bailiff that his or her services will not be required in respect of a writ of execution or asked by a bailiff for an account of his or her charges, advise the bailiff of the amount of those charges.

15 "(2) An auctioneer shall, as soon as practicable after receiving any moneys under a writ of execution, pay those moneys, less his or her charges, to a bailiff.

Surplus sale proceeds paid to judgment debtor

"278CD. A bailiff shall deduct from the amount realised from the sale of property seized under a writ of execution—

20 (a) the amount of all proper costs and charges actually incurred in effecting the sale, including any costs associated with removing the property from the place where it was seized and advertising the sale; and

(b) the amount for which the writ was issued;

and shall pay the surplus (if any) to the judgment debtor.

25 **Costs of execution**

"278CE. Unless the court otherwise orders, the costs and charges of a writ of execution (whether executed or not and whether productive or not) shall be added to and form part of the judgment debt.

Payment of amounts raised to Registrar

30 "278CF. A bailiff shall, within 24 hours after receiving the amount realised from the sale of property seized under a writ of execution, pay the amounts deducted under section 278CD to the Registrar.

Proceeds of writ

35 "278CG. (1) Subject to section 229B, where the Registrar receives an amount of money as the proceeds of a writ of execution pursuant to a judgment given or entered on a claim, the Registrar shall (unless section 25

of the *Public Trustee Act 1985* or the court otherwise requires) pay the amount to the judgment creditor.

- 5 “(2) Subject to section 229B, where the Registrar receives an amount of money as the proceeds of a writ of execution issued other than pursuant to a judgment given or entered on a claim, the Registrar shall (unless a law in force in the Territory or the court otherwise requires) pay the amount into the Consolidated Revenue Fund.

Account

“278CH. A bailiff shall, on request, give to—

- 10 (a) a party to the proceedings in relation to which a writ of execution was issued; or
- (b) a person who claims that his or her property has been sold by the bailiff;
- a report of the sale of the property seized under the writ and an account of—
- 15 (c) the proceeds of the sale and any other money received by the bailiff under the writ;
- (d) all the proper costs and charges actually incurred in effecting the sale, including any costs associated with removing the property from the place where it was seized and advertising the sale; and
- 20 (e) the manner of disposal of those proceeds and that money.

Order for disposal

- 25 “278CI. (1) Where property seized under a writ of execution remains unsold after being offered for sale at an auction under section 278BX, the court may, on application by the judgment creditor, make an order for the disposal of the property.

 “(2) An application under subsection (1) shall be made in accordance with section 121 and—

- (a) within 11 weeks after the property was seized; or
- 30 (b) if execution of the writ is suspended—within 11 weeks from and including the day on which execution is resumed.

 “(3) In considering whether to make an order for the disposal of the property, the court shall have regard to—

- (a) the amount of the judgment debt and costs and charges remaining unpaid; and

- (b) any hardship that would be occasioned to the judgment creditor if the order were not made and to the judgment debtor if the order were made.

Property to be returned to judgment debtor

5 "278CJ. If—

- (a) the judgment creditor does not make an application in accordance with subsection 278CI (2) in respect of property remaining unsold; or
- 10 (b) the court refuses to make an order for the disposal of property remaining unsold under subsection 278CI (1);

that property shall be returned to the judgment debtor.

Separate execution for costs

"278CK. Where—

- 15 (a) there is a judgment for the payment of money and for the payment of costs; and
- (b) the money becomes payable pursuant to the judgment before the costs become payable because the costs have not been taxed or for any other reason;

20 a person entitled to enforce the judgment by execution may have execution issued separately to enforce payment of the money and costs when each becomes payable.

Offences

"278CL. (1) A person other than a bailiff shall not act as, or purport to be, a bailiff.

25 "(2) A person shall not assault, resist, interrupt or obstruct a bailiff in the exercise of his or her powers, authorities, duties or functions under this Act or any other law in force in the Territory.

30 "(3) A person who knows that property has been seized under section 278BG or is the subject of a notice under section 278BJ shall not, except with the consent of the court or the consent in writing of the bailiff by whom the property was seized or the notice was served—

- (a) interfere with or dispose of the property;
- (b) remove the property from the place at which it was seized or at which it was situated when the notice was served; or

- (c) cause, permit or suffer the property to be interfered with, disposed of or removed.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Liability of bailiffs

- 5 "278CM. A bailiff who executes a writ of execution is responsible to the parties to the proceedings in relation to which the writ was issued for all the acts and omissions of the bailiff, and any person assisting the bailiff, in executing that writ in the same manner as the Sheriff of the Territory is responsible for all the acts and omissions of the Sheriff, and any person
10 assisting the Sheriff, in executing a writ of *fiery facias*."

Forms

22. Section 284 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

- 15 "(2) A form under this Act shall be completed in accordance with such directions as are specified in the form.

"(3) The Minister may, by notice published in the *Gazette*, approve a form for the purposes of this Act.

"(4) The notice referred to in subsection (3)—

- (a) shall include the text of the approved form; and
20 (b) may include a declaration by the Minister that the approved form supersedes a particular numbered form or forms in the Schedule and the numbered form or forms shall be taken to be superseded accordingly.

- 25 "(5) Where a form in the Schedule is superseded, it shall cease to have effect as if it had been repealed.

"(6) Where a form in the Schedule is superseded by an approved form, the revocation of the approved form does not revive the form in the Schedule.

- 30 "(7) A notice referred to in subsection (3) is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

"(8) Where there is neither a form in the Schedule nor an approved form for a document to be filed in proceedings, that document shall be framed to the satisfaction of the Registrar."

Seal of court

- 35 23. Section 291 of the Principal Act is amended by inserting in paragraph (2) (a) "writ," after "warrant,".

Insertion

24. After section 295 of the Principal Act the following section is inserted:

Right of appearance

5 "295A. (1) A party to proceedings may appear before the court or the Registrar—

- (a) by solicitor or counsel;
- (b) in the case of an individual—personally;
- 10 (c) in the case of a corporation—by an officer of the corporation duly authorised by the corporation; or
- (d) with the leave of the court or the Registrar—by another person.

"(2) Subject to this Act, a person so appearing may address the court or the Registrar and may examine and cross-examine witnesses.

15 "(3) A person who is not a barrister or solicitor is not entitled to receive or recover an amount of money or other remuneration or consideration for appearing on behalf of another person.

"(4) Subsection (3) does not operate to prevent an employee who, in the ordinary course of his or her employment, appears on behalf of his or her employer from receiving wages or salary for so appearing."

20 **Insertion**

25. After section 300 of the Principal Act the following section is inserted:

Corporations acting in person

25 "300A. (1) A corporation may, in respect of proceedings to which the corporation is or may become a party, authorise an officer of the corporation to sign any document or do any thing that a party acting in person may do.

"(2) A document signed or thing done by an officer authorised under subsection (1) shall be deemed to be signed or done by the corporation.

30 "(3) An authority shall—

- (a) be given under the seal of the corporation; and
- (b) before the officer so authorised takes any step in any proceedings by virtue of the authority, be lodged with the Registrar.

"(4) An authority may be lodged by lodging the authority or a machine copy or reproduction of the authority.

“(5) An authority may be expressed to be—

- (a) only for the purposes of the proceedings named in the authority; or
- (b) for the purposes of all proceedings to which the corporation is, or may become, a party.

5 “(6) On lodgment, an authority remains in force until a revocation signed by the secretary or other public officer of the corporation is lodged with the Registrar.”.

Application of former procedural provisions to new proceedings

10 26. Section 311 of the Principal Act is amended—

- (a) by omitting from Column 1 of the table in subsection (1) “Section 248”; and
- (b) by omitting from Column 2 of the table in subsection (1) “Part XVII” and “Part XVIII”.

15 **Schedule**

27. The Schedule to the Principal Act is amended—

- (a) by omitting from Form 54 “warrant” (wherever occurring) and substituting “writ”;
- 20 (b) by omitting from Forms 57 and 58 “Warrant” and “warrant” and substituting “Writ” and “writ”, respectively;
- (c) by omitting from Form 59 “WARRANT” and “warrant” (wherever occurring) and substituting “WRIT” and “writ”, respectively; and
- (d) by omitting from Form 63 “warrant” and substituting “writ”.

Formal amendments

25 28. The Principal Act is amended—

- (a) by omitting “her or him” (wherever occurring) and substituting “him or her”;
- (b) by omitting “her or his” (wherever occurring) and substituting “his or her”; and
- 30 (c) by omitting “she or he” (wherever occurring) and substituting “he or she”.

Renumbering of provisions

29. (1) The amended Act is amended as provided by this section.

(2) The sections of the amended Act are renumbered in a single series so that they bear consecutive Arabic numerals.

5 (3) Any provision of the amended Act that refers to a section of that Act that has been renumbered by subsection (2) is amended by omitting that reference and substituting a reference to the section as so renumbered.

10 (4) A reference in a provision of another law of the Territory made before the commencement of this section (whether or not that provision has commenced), or in any instrument or document, to a section of the amended Act that has been renumbered by subsection (2) shall (except as regards the operation of the section before it was so renumbered) be construed as a reference to that section as so renumbered.

(5) In this section, "amended Act" means the Principal Act as amended by the other provisions of this Part.

PART III—MAGISTRATES COURT ACT 1930

15 Principal Act

30. In this Part, "Principal Act" means the *Magistrates Court Act 1930*.

Repeal

31. Section 3 of the Principal Act is repealed.

20 Authentication of acts of Magistrate or Registrar

32. Section 11 of the Principal Act is amended by inserting "writ," after "warrant,".

Issue of warrant of commitment or writ of execution

25 33. Section 13 of the Principal Act is amended by omitting "warrant of execution or commitment" and substituting "warrant of commitment or writ of execution".

Process not avoided by death of Magistrate or Registrar

34. Section 15 of the Principal Act is amended by omitting "warrant or summons" and substituting "summons, warrant or writ".

30 Repeal

35. Section 65 of the Principal Act is repealed.

Witnesses may be discharged on recognisance

35 36. Section 76 of the Principal Act is amended by omitting "65 or under section 196 of the *Magistrates Court (Civil Jurisdiction) Act 1982*" and substituting "255AB".

Heading to Division 2, Part IX

37. The heading to Division 2 of Part IX of the Principal Act is omitted and the following heading substituted:

"Division 2—Enforcement of fines, penalties and other sums".

5 Enforcing convictions and orders

38. Section 147 of the Principal Act is amended—

- (a) by omitting subsection (1);
- (b) by omitting from subsection (3A) "warrant of execution is issued under section 158" and substituting "writ of execution is issued";
- 10 (c) by omitting from subsection (3A) "warrant" (second occurring) and substituting "writ"; and
- (d) by omitting from paragraphs (3A) (a) and (b) "warrant" and substituting "writ".

15 Parking and traffic offences—further orders in respect of bodies corporate

39. Section 150B of the Principal Act is amended by omitting from subsections (1) and (3) "warrant" and substituting "writ".

Repeal

40. Sections 158 to 166 (inclusive) of the Principal Act are repealed.

20 Enforcement of fine

41. Section 166C of the Principal Act is amended—

- (a) by omitting from paragraph (2) (b) "warrant" and substituting "writ";
- 25 (b) by omitting paragraph (2) (c) and substituting the following paragraph:
 - “(c) subject to this section, this Act and the *Magistrates Court (Civil Jurisdiction) Act 1982* apply in relation to a writ issued under paragraph (b) as if the writ had been issued in connection with a conviction of the Court.”;
- 30 (c) by omitting from paragraph (4) (a) "warrant" and substituting "writ";
- (d) by omitting from subsection (4) "warrant" (second occurring) and substituting "writ";
- 35 (e) by omitting from paragraphs (4) (c) and (d) "warrant" and substituting "writ"; and

- (f) by omitting from subsection (5) "warrant" (wherever occurring) and substituting "writ".

Repeal

42. The following provisions of the Principal Act are repealed:

- 5 (a) Divisions 4 and 5 of Part IX;
(b) sections 190 and 192.

Warrant of commitment or writ of execution not void for form only

- 10 43. Section 194 of the Principal Act is amended by inserting "writ" before "of execution".

Magistrate sued for act not within jurisdiction

44. Section 231 of the Principal Act is amended by inserting "or writ" after "warrant" (first occurring).

Warrant or writ by Magistrate on order of Court

- 15 45. Section 233 of the Principal Act is amended by omitting "warrant of execution or of commitment" and substituting "warrant of commitment or writ of execution".

No action where proceedings confirmed on appeal

46. Section 235 of the Principal Act is amended—

- 20 (a) by omitting "warrant of execution or of commitment" and substituting "warrant of commitment or writ of execution"; and
(b) by inserting after "warrant" (second and last occurring) "or writ".

Substitution

- 25 47. Section 243 of the Principal Act is repealed and the following section substituted:

Damages

"243. Where—

- 30 (a) the plaintiff in an action against a Magistrate is entitled to recover, and seeks to recover a penalty or other sum paid or raised as a result of a conviction, judgment or order or to recover damages for imprisonment; and
(b) it is proved that the plaintiff was guilty of the offence or liable to pay the sum or, in the case of imprisonment, did not undergo any

greater punishment than could have been imposed for the offence of which he or she was convicted;

the plaintiff is not entitled to recover the penalty or other sum paid or raised or, in the case of imprisonment, damages greater than 1 cent, or any costs in the action.”.

Award of costs

48. Section 244 of the Principal Act is amended—

(a) by omitting “(1)”; and

(b) by omitting from paragraph (d) “raised and levied by distress under the provisions of this Act” and substituting “recovered under Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act 1982*”.

Repeal

49. Section 248 of the Principal Act is repealed.

Enforcement of recognisance

50. Section 254 of the Principal Act is amended by omitting paragraphs (5) (b) and (c) and substituting the following paragraphs:

“(b) a writ of execution has been issued; and

(c) property has been sold under the writ;”.

Insertion

51. After section 255 of the Principal Act the following sections are inserted:

Refusal or failure to give evidence—offence

“255AA. (1) This section applies to a person who—

(a) appears as a witness in proceedings in the Court; or

(b) attends, or is brought, before the Registrar for examination under section 278J of the *Magistrates Court (Civil Jurisdiction) Act 1982*.

“(2) A person shall not, without reasonable excuse—

(a) refuse or fail to take an oath;

(b) refuse or fail to answer a question that he or she is required to answer by the Court or Registrar; or

(c) refuse or fail to produce a document required by the Court or Registrar, or by a summons or warrant, to be produced.

“(3) A person shall not give false information.

Penalty: \$5,000 or imprisonment for 6 months, or both.

Refusal or failure to give evidence—committal

“255AB. (1) Where—

- 5 (a) a person appearing as a witness in a proceeding in the Court
contravenes section 255AA; or
- (b) on hearing a matter referred to it under section 278R of the
Magistrates Court (Civil Jurisdiction) Act 1982, the Court is
10 satisfied that the person who is the subject of the referral has
contravened section 255AA;

the Court may, subject to subsection (4)—

- (c) adjourn the proceedings or hearing for a period not exceeding 8
days; and
- 15 (d) issue a warrant for the committal of that person to a gaol, lock-up
or remand centre until—
- (i) the date to which the proceedings or hearing is adjourned;
or
- (ii) the person consents to comply with section 255AA;
whichever occurs first.

20 “(2) Where—

- (a) the Court has adjourned proceedings or a hearing, and committed a
person, pursuant to subsection (1) or this subsection;
- (b) the person who was committed is brought before the Court; and
- (c) the person does not consent to comply with section 255AA;

25 the Court may, subject to subsection (4), exercise the powers referred to in
paragraphs (1) (c) and (d) in respect of that person.

“(3) The periods for which a person is committed under this section
shall not, in the aggregate, exceed 1 month.

30 “(4) The Court shall not commit a person pursuant to subsection (1) or
(2) if the person is punished for an offence against section 255AA.”.

The First Schedule

52. The First Schedule to the Principal Act is amended by omitting
Forms 45, 51 to 62 (inclusive) and 80 to 83 (inclusive).

Formal amendments

53. (1) Section 189 of the Principal Act is amended by omitting "Division 5 of this Part and to".

(2) Section 208 of the Principal Act is amended—

5 (a) by omitting from paragraph (1) (e) "and" (last occurring); and

(b) by omitting paragraph (1) (g).

(3) Section 219A of the Principal Act is repealed.

(4) Section 219B of the Principal Act is amended by omitting paragraph (1) (d).

10 (5) The Principal Act is amended—

(a) by omitting "her or him" (wherever occurring) and substituting "him or her";

(b) by omitting "herself or himself" (wherever occurring) and substituting "himself or herself";

15 (c) by omitting "her or his" (wherever occurring) and substituting "his or her"; and

(d) by omitting "she or he" (wherever occurring) and substituting "he or she".

20 **PART IV—MAGISTRATES COURT (CIVIL JURISDICTION)
REGULATIONS**

Principal Regulations

54. In this Part, "Principal Regulations" means the Magistrates Court (Civil Jurisdiction) Regulations.

Insertion

25 55. The Principal Regulations are amended by inserting after regulation 3 the following regulations:

Amount garnishee may retain

"4. For the purposes of subsection 278AY (1) of the Act the prescribed amount is \$19.

30 **Value of tools of trade etc.**

"5. For the purposes of paragraph 278BG (1) (b) of the Act the prescribed amount is \$1,000.

Keeping of records

"6. (1) A bailiff shall keep, in a form approved by the Registrar or as directed by the Registrar, records in respect of process required to be served or executed by the bailiff.

5 "(2) Without limiting the generality of subregulation (1), the bailiff shall keep a record of—

- (a) the particulars of every writ that the bailiff has been required to execute;
- (b) what the bailiff has done under each of those writs; and
- 10 (c) where property has not been seized under a writ within 1 month after delivery of the writ to the bailiff—the reasons why it has not been seized.

Service and execution of process

"7. (1) A bailiff shall serve or execute process as soon as practicable.

15 "(2) Where a bailiff required to serve or execute any process ascertains that the person to be served is not, or the goods of the judgment debtor are not, at the address shown in the process but at another address within the Territory, the bailiff shall serve or execute the process at that other address.

Notice of service of process

20 "8. (1) The bailiff shall, within 2 days after service of any process, forward an affidavit of service to the person (other than the Registrar) who required the service.

"(2) Where process delivered to the bailiff for service cannot be expeditiously served, the bailiff shall—

- 25 (a) as soon as practicable after the bailiff becomes aware that there is no likelihood of the bailiff effecting service;
- (b) as soon as practicable after the last day on which the process may be served; or
- 30 (c) on the expiration of 1 month after the last attempt made to serve the process;

whichever occurs first, forward the process to the person (other than the Registrar) who required the service, together with a notice specifying why the process had not been served.

Receipt for money

"9. A bailiff raising or receiving any money under a writ of execution shall, where practicable, give a receipt for that money to the judgment debtor or person from whom he or she received it.

5 Return on writ

"10. The bailiff who is required by the Registrar to execute a writ shall—

- (a) on completion of the execution;
- (b) on the expiry of the writ; or
- 10 (c) when required in writing by the judgment creditor to do so;

complete a return in accordance with Form 92 in relation to the writ and forward the writ (if it is still in the bailiff's possession) and the return to the Registrar.

Notices

15 "11. (1) Where the bailiff executing a writ of execution—

- (a) delivers property seized under the writ to the judgment debtor's trustee in bankruptcy in accordance with section 119A of the *Bankruptcy Act 1966* of the Commonwealth; or
- (b) is unable to seize any property of the judgment debtor;

20 the bailiff shall, as soon as practicable, give to the judgment creditor or the judgment creditor's solicitor notice of the bankruptcy or the reasons for being unable to seize any property.

25 "(2) A bailiff shall, at all reasonable times, give to the judgment creditor or the judgment creditor's solicitor any information reasonably required as to the execution or non-execution of a writ.

Bailiff not to act as agent

"12. A bailiff or an officer under the control of a bailiff shall not act as agent for a party in proceedings before the court."

PART V—MAGISTRATES COURT RULES**30 Principal Rules**

56. In this Part, "Principal Rules" means the Magistrates Court Rules.

Form of heading and conclusion of notices

57. Rule 4 of the Principal Rules is amended by omitting "warrants" and substituting "writs".

Repeal

58. The following provisions of the Principal Rules are repealed:

- (a) rules 9 to 12 (inclusive);
- (b) Parts XVII and XVIII.

5 **First Schedule**

59. The First Schedule to the Principal Rules is amended by omitting Forms 3, 4 and 19.

Formal amendments

60. The Principal Rules are amended—

- 10 (a) by omitting “her or him” (wherever occurring) and substituting “him or her”;
- (b) by omitting “herself or himself” (wherever occurring) and substituting “himself or herself”;
- 15 (c) by omitting “her or his” (wherever occurring) and substituting “his or her”; and
- (d) by omitting “she or he” (wherever occurring) and substituting “he or she”.

PART VI—WORKERS’ COMPENSATION RULES

Principal Rules

20 61. In this Part, “Principal Rules” means the Workers’ Compensation Rules.

Repeal

62. Rules 69 and 70 of the Principal Rules are repealed.

Other proceedings for enforcement of award etc.

25 63. Rule 71 of the Principal Rules is amended—

- (a) by omitting “*Magistrates Court Act 1930*” and substituting “*Magistrates Court (Civil Jurisdiction) Act 1982*”; and
- (b) by omitting “otherwise than by execution against the party in default or her or his goods”.

30 **The First Schedule**

64. The First Schedule to the Principal Rules is amended by omitting Form 59.

Formal amendments

65. The Principal Rules are amended—

- (a) by omitting “her or him” (wherever occurring) and substituting “him or her”;
- 5 (b) by omitting “herself or himself” (wherever occurring) and substituting “himself or herself”;
- (c) by omitting “her or his” (wherever occurring) and substituting “his or her”; and
- 10 (d) by omitting “she or he” (wherever occurring) and substituting “he or she”.

PART VII—AMENDMENTS OF OTHER LAWS

Division 1—Attachment of Wages Limitation Act 1966

Principal Act

15 66. In this Division, “Principal Act” means the *Attachment of Wages Limitation Act 1966*.

Long title

67. The title of the Principal Act is repealed and the following title substituted:

“An Act relating to the assignment and attachment of earnings”.

20 **Short title**

68. Section 1 of the Principal Act is amended by omitting “*Attachment of Wages Limitation Act 1966*” and substituting “*Earnings (Assignment and Attachment) Act 1966*”.

Interpretation

25 69. Section 4 of the Principal Act is amended—

- (a) by omitting the definitions of “Board”, “Determination” and “wages”; and
- (b) by inserting the following definitions:
 - “ ‘earnings’ means a sum payable to a person—
 - 30 (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—

- 5 (i) an annuity in respect of past services, whether or not the services were rendered to the person paying the annuity;
- (ii) periodical payments in respect of compensation for the loss, abolition or relinquishment, or any diminution in the emoluments, of any office or employment; and
- 10 (iii) periodical payments in respect of compensation for the loss of wages or salary because of illness or injury;

but does not include a pension, benefit or allowance payable to a person under—

- 15 (iv) the *Social Security Act 1991* of the Commonwealth; or
- (v) the *Veterans' Entitlements Act 1986* of the Commonwealth;

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

Limitation on attachment of earnings

70. Section 5 of the Principal Act is amended—

- 25 (a) by omitting all the words from and including "A court" to and including "period" (second occurring) and substituting "A court shall not make an order for the attachment of earnings of a judgment debtor that would, if enforced, reduce those earnings"; and
- 30 (b) by omitting from paragraphs (a) and (b) "Determination to adult males" and substituting "Metal Trades Award to adult employees".

Addition

71. The Principal Act is amended by adding at the end the following section:

Assignment of earnings not enforceable

- 35 "6. (1) An assignment of earnings after the commencement of this section 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.”.

Division 2—Crown Proceedings Act 1992

5 Principal Act

72. In this Division, “Principal Act” means the *Crown Proceedings Act 1992*.

Proceedings by and against the Crown generally

10 73. Section 5 of the Principal Act is amended by adding at the end the following subsection:

“(3) In this section, a reference to proceedings against the Crown shall be read as including proceedings to attach earnings or other debts due or accruing from the Territory Crown to another person.”.

Enforcement of judgments against the Crown

15 74. Section 13 of the Principal Act is amended by omitting from subsection (1) “writ, warrant” and substituting “writ”.

Division 3—Landlord and Tenant Act 1949

Principal Act

20 75. In this Division, “Principal Act” means the *Landlord and Tenant Act 1949*.

Power to stay proceedings on orders

76. Section 72 of the Principal Act is amended—

- (a) by omitting from paragraph (c) “warrant” (first, second and third occurring) and substituting “writ”; and
- 25 (b) by omitting from subparagraph (c) (i) “warrant” (wherever occurring) and substituting “writ”.

Certain applications to operate as a stay of execution

77. Section 73 of the Principal Act is amended—

- 30 (a) by omitting from subsection (1) “warrant” and substituting “writ”; and
- (b) by omitting from subsection (2) “warrant” (wherever occurring) and substituting “writ”.

**Division 4—Magistrates Court (Civil Jurisdiction)
(Solicitors' Costs) Regulations**

Principal Regulations

- 5 78. In this Division, "Principal Regulations" means the Magistrates Court (Civil Jurisdiction) (Solicitors' Costs) Regulations.

Schedule 2

79. Schedule 2 to the Principal Regulations is amended—

- (a) by omitting from item 45 "warrant" (wherever occurring) and substituting "writ";
- 10 (b) by omitting from item 47 "order under section 171 of the *Magistrates Court Act 1930* for attachment of debt" and substituting "garnishee order under section 278AC of the *Magistrates Court (Civil Jurisdiction) Act 1982*"; and
- (c) by omitting item 48.

15 **Division 5—Sale of Goods Act 1954**

Principal Act

80. In this Division, "Principal Act" means the *Sale of Goods Act 1954*.

Interpretation

- 20 81. Section 5 of the Principal Act is amended by omitting from the definition of "sheriff" in subsection (1) "or warrant".

Effects of writs of execution

82. Section 30 of the Principal Act is amended by omitting "or warrant" (wherever occurring).

25 **Division 6—Small Claims Act 1974**

Principal Act

83. In this Division, "Principal Act" means the *Small Claims Act 1974*.

Substitution

- 30 84. Section 22 of the Principal Act is repealed and the following section substituted:

Enforcement of decisions

"22. Part XVIII A of the *Magistrates Court (Civil Jurisdiction) Act 1982* applies in relation to a judgment (other than an interlocutory judgment) or an

order given, entered or made in proceedings that requires the payment of money as if it were a judgment within the meaning of that Part.”.

Repeal

85. Section 24C of the Principal Act is repealed.

5 Judgment by agreement

86. Section 25A of the Principal Act is amended by omitting from subsection (5) “Section 24C” and substituting “Section 278F of the *Magistrates Court (Civil Jurisdiction) Act 1982*”.

Formal amendments

- 10 87. The Principal Act is amended—
- (a) by omitting “her or him” (wherever occurring) and substituting “him or her”;
 - (b) by omitting “her or his” (wherever occurring) and substituting “his or her”; and
 - 15 (c) by omitting “she or he” (wherever occurring) and substituting “he or she”.

PART VIII—TRANSITIONAL PROVISIONS

Interpretation

88. (1) In this Part, unless the contrary intention appears—
- 20 “amended Civil Jurisdiction Act” means the *Magistrates Court (Civil Jurisdiction) Act 1982* as amended by this Act;
 - “amended Magistrates Court Act” means the *Magistrates Court Act 1930* as amended by this Act;
 - 25 “amended Rules” means the Workers’ Compensation Rules as amended by this Act;
 - “commencement day” means the day on which the provisions of this Act, other than sections 1 and 2, commence;
 - “former Civil Jurisdiction Act” means the *Magistrates Court (Civil Jurisdiction) Act 1982* as in force immediately before the
 - 30 commencement day;
 - “former Magistrates Court Act” means the *Magistrates Court Act 1930* as in force immediately before the commencement day;
 - “former Rules” means the Workers’ Compensation Rules as in force immediately before the commencement day;

“judgment” includes an order of the court for the payment of money, whether as costs or otherwise;

“Small Claims Act” means the *Small Claims Act 1974* as in force immediately before the commencement day.

- 5 (2) A reference in this Part to the giving of a judgment shall be read as including a reference to the making of an order.

Interest on judgment

- 10 89. Despite section 17 of this Act, subsection 228 (4) of the former Civil Jurisdiction Act continues, on and after the commencement day, to apply in relation to any judgment that took effect, and any costs that were ascertained, before that day.

Application of new Part XVIII

- 15 90. Subject to this Part, Part XVIII of the amended Civil Jurisdiction Act applies in relation to a judgment, whether it was entered or given before or after the commencement day.

Oral examinations

- 20 91. (1) An application for the issue of a summons for the oral examination of a person under subsection 170 (1) of the former Magistrates Court Act that was pending immediately before the commencement day, on and after that day is to be taken to be an application for an examination summons in accordance with section 278I of the amended Civil Jurisdiction Act.

- 25 (2) An oral examination of a person that was being conducted under subsection 170 (2) of the former Magistrates Court Act immediately before the commencement day, on and after that day, shall continue to be conducted as if it were an oral examination in accordance with section 278J of the amended Civil Jurisdiction Act.

- 30 (3) A proceeding under Division 5 of Part IX of the former Magistrates Court Act that was pending immediately before the commencement day is, by force of this section, discontinued on that day.

Instalment orders

- 35 92. (1) An application for an instalment order under subsection 229 (1) of the former Civil Jurisdiction Act or subsection 24C (1) of the Small Claims Act that was pending immediately before the commencement day, on and after that day, is to be taken to be—

- (a) if it was made at the time the judgment was given—an application for an instalment order in accordance with section 278F of the amended Civil Jurisdiction Act; or

- (b) if it was made subsequently—an application for an instalment order in accordance with section 278T of the amended Civil Jurisdiction Act.

5 (2) An application for an order to vary or rescind an instalment order under subsection 229 (2) of the former Civil Jurisdiction Act or subsection 24C (2) of the Small Claims Act that was pending immediately before the commencement day, on and after that day, is to be taken to be—

- 10 (a) if it was made by the judgment debtor—an application to vary or revoke an instalment order in accordance with section 278T of the amended Civil Jurisdiction Act; or

- (b) if it was made by the judgment creditor—an application for an order varying or revoking an instalment order in accordance with section 278Y of the amended Civil Jurisdiction Act.

15 (3) On and after the commencement day, the amended Civil Jurisdiction Act applies in relation to an instalment order in force under subsection 43 (4) or 229 (1) of the former Civil Jurisdiction Act or subsection 24C (1) or 25A (4) of the Small Claims Act immediately before that day as if it were an instalment order made under subsection 278F (1) of the amended Civil Jurisdiction Act.

20 **Garnishee orders**

93. (1) An application for a garnishee order in accordance with section 171 of the former Magistrates Court Act that was pending immediately before the commencement day, on and after that day, is to be taken to be an application for a garnishee order in accordance with section 278AC of the amended Civil Jurisdiction Act.

(2) A proceeding under subsection 171 (2) or section 173, 174 or 175 of the former Magistrates Court Act that was pending immediately before the commencement day, on and after that day, is to be taken to be a proceeding under section 278AU of the amended Civil Jurisdiction Act.

30 (3) A proceeding under section 176 or 177 of the former Magistrates Court Act that was pending before the commencement day, on and after that day, is to be taken to be a proceeding under section 278AV of the amended Civil Jurisdiction Act.

35 (4) On and after the commencement day, the amended Civil Jurisdiction Act applies in relation to a garnishee order in force under the former Magistrates Court Act immediately before that day as if it were a garnishee order made under subsection 278AC (1) of the amended Civil Jurisdiction Act.

Warrants of execution under Magistrates Court Act

5 94. (1) An application for the issue of a warrant of execution under section 158 of the former Magistrates Court Act that was pending immediately before the commencement day, on and after that day, is to be taken to be an application in accordance with section 278BC of the amended Civil Jurisdiction Act.

10 (2) On and after the commencement day, the amended Civil Jurisdiction Act applies in relation to a warrant of execution in force under the former Magistrates Court Act immediately before that day as if it were a writ of execution issued under section 278BC of the amended Civil Jurisdiction Act.

Warrants of execution under the Workers' Compensation Rules

15 95. (1) An application for leave to issue a warrant of execution under rule 69 that was pending under the former Rules immediately before the commencement day, on and after that day, is to be taken to be an application in accordance with 278BC of the amended Civil Jurisdiction Act.

20 (2) On and after the commencement day, the amended Civil Jurisdiction Act applies in relation to a warrant of execution in force under rule 69 of the former Rules immediately before that day as if it were a writ of execution issued under section 278BC of the amended Civil Jurisdiction Act.

Warrants of execution—references generally

25 96. On and after the commencement day, a reference in a law of the Territory to a writ of execution shall be read as including a reference to a warrant of execution in force immediately before that day.

Validity of acts done not affected

97. Nothing in this Part is to be taken to affect the validity of any act or thing done, or purported to have been done, in relation to a judgment before the commencement day.

NOTE ABOUT SECTION HEADING

On the day on which section 21 of this Act commences, the heading to section 255 of the *Magistrates Court Act 1930* is altered by adding at the end "in the face of the Court".

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