

1998

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

SUPREME COURT (AMENDMENT) BILL 1998

EXPLANATORY MEMORANDUM

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BACKGROUND

While the Sheriff may force entry of a judgment debtor's non-residential premises to satisfy a judgment debt, the Sheriff has no power under statute or the common law to make a forcible entry of residential premises against the will of the owner. In comparison, under section 349 of the *Magistrates Court (Civil Jurisdiction) Act 1982*, a bailiff may apply to the Magistrates Court for such an order to enter any premises of a judgment debtor, residential or otherwise. The Magistrates Court may, on application by a bailiff, make an order allowing the bailiff to forcibly enter premises to search for and seize certain property in circumstances where the bailiff has been refused entry by the judgment debtor or has been unable to contact the judgment debtor.

The Supreme Court (Amendment) Bill 1998 will amend the *Supreme Court Act 1933* to allow the Supreme Court to make an order in relation to a forced entry by the Sheriff.

OVERVIEW OF THE BILL

The key amendments that will be implemented by the Bill are:

- the provision of a capacity in the Supreme Court, on application by the Sheriff, to order a forced entry for any purpose connected with executing a judgment in circumstances where the judgment debtor or other occupier has refused entry or is unable to be contacted;
- the insertion of a provision relating to the seeking of police assistance by the Sheriff; and
- the provision of an immunity for the Sheriff for acts done or omitted to be done in good faith in carrying out an order of the Court in relation to a forced entry.

It is unnecessary to provide specifically in respect of Sheriff's officers because, by virtue of subsections 51(1) and (2) and 53(2) and (3) of the *Supreme Court Act*, Deputy Sheriffs and Sheriff's assistants may do anything that the Sheriff may do and have the same rights, privileges, immunities and liabilities as the Sheriff in so doing.

FINANCIAL CONSIDERATIONS

The amendments to be made by the Bill are not expected to have any financial impact.

DETAILS OF THE BILL

TITLE

Clause 1 is a formal provision and will provide for the short title of the amending Act to be the *Supreme Court (Amendment) Act 1998*.

COMMENCEMENT

Clause 2 will provide for commencement of the amending Act on gazettal.

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PRINCIPAL ACT

Clause 3 will define the term 'Principal Act' as used in the Bill to mean the *Supreme Court Act 1933*.

INSERTION

Clause 4 will insert section 53A, in Part IV, as described below.

Entry, search and seizure - Sheriff's powers

Section 53A

Subsection 53A(1) will set out the circumstances in which the section applies. The section will apply where the Sheriff, in executing a judgment against a judgment debtor, is either:

- (a) refused entry to a judgment debtor's premises after informing or making reasonable attempts to inform the judgment debtor or any other occupier of the procedures in relation to execution and the intention to seek an order for a forced entry if entry is refused; or
- (b) unable to contact the judgment debtor or any other occupier to obtain consent after making reasonable attempts to do so.

Subsection 53A(2) will allow the Supreme Court to make an order on application by the Sheriff authorising a forced entry once a circumstance contemplated by subsection 53A(1) arises. The order will authorise the Sheriff, for any purpose connected with the execution, to enter the premises with such force as is necessary and reasonable, including with police assistance.

Subsection 53A(3) will make it clear that an order under subsection 53A(2) will authorise the Sheriff, among other things, to:

- (a) search the premises for any thing that the Sheriff is entitled to seize in execution of the judgment. This provision will ensure that the Sheriff's powers of seizure are no less than they would be in executing a judgment in circumstances where entry had not been refused; and
- (b) seize and remove any such thing.

In specifying the authority to search premises, seize and remove things, subsection 53A(3) will not limit what the Sheriff is otherwise authorised to do under the order in relation to the execution. For example, the Sheriff may wish to inspect the condition of premises, or allow prospective purchasers to inspect the premises, for the purposes of a sale of those premises and it is intended that an order may authorise these sorts of activities.

Subsection 53A(4) will restrict the Supreme Court in its capacity to make an order. The Court will not be able to make an order unless satisfied that the judgment debtor resides at the premises, has any thing within the premises that the Sheriff is

entitled to seize or that the Sheriff is entitled to sell the premises to satisfy a judgment debt.

Subsection 53A(5) will provide the Sheriff with an immunity against an action, suit or proceeding for any act done or omitted to be done in good faith in carrying out an order under subsection 53A(2) to forcibly enter premises. Subsection 53A(5), however, will not relieve the Sheriff of any other liability that the Sheriff may otherwise relevantly be subject to.

Subsection 53A(6) will preserve any other power that the Court or the Sheriff has in relation to the execution of a judgment.

Subsection 53A(7) will define "judgment debtor's premises", for the purposes of the section, to mean those premises occupied by the judgment debtor. It will not be necessary that a judgment debtor actually resides in the premises before an order can be made but that he or she merely occupies those premises.