

1995

AUSTRALIAN CAPITAL TERRITORY LEGISLATIVE ASSEMBLY

Determination No 27 of 1995

MAGISTRATES COURT (CIVIL JURISDICTION) ACT 1982

APPROVAL OF FORMS

EXPLANATORY STATEMENT

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EXPLANATORY STATEMENT

Magistrates Court (Civil Jurisdiction) Act 1982

APPROVAL OF FORMS RELATING TO THE ENFORCEMENT OF JUDGMENTS

OUTLINE

Forms 72 to 92 provide for matters relating to the enforcement of judgments in the Magistrates Court under the *Magistrates Court (Civil Jurisdiction) Act 1982* (the Act).

The *Magistrates Court (Enforcement of Judgments) Act 1994* provided for new civil enforcement procedures for the purposes of the Act. These procedures replaced outdated procedures for the enforcement of a judgment relating to a debt obtained in the Magistrates Court. The Court is empowered, at the time of giving judgment, to delegate its power to make enforcement orders to the Registrar of the Magistrates Court.

The enforcement of judgment procedures: -

- set out the means by which orders in relation to a judgment debt may be obtained from the Magistrates Court or the Registrar of the Magistrates Court;
- enable judgment creditors to enforce judgment debts through the use of efficient enforcement procedures;
- ensure that judgment debtors are appropriately protected; and
- provide the Court with appropriate flexibility in the making of enforcement orders.

Any of the following orders may be made by the Magistrates Court at the time of giving judgment in relation to a debt:

- (a) An examination of a debtor. The Registrar may make instalment orders, garnishee orders or to issue a writ of execution following the oral examination of a judgment debtor.

In considering whether to make an instalment order or a garnishee order regard to any preference indicated by the judgment debtor and to the likelihood of the judgment debtor complying with an instalment order. A writ of execution can only be issued where the Court (or the Registrar) is satisfied that it would be inappropriate to make an instalment order or a garnishee order having regard to the amount of the judgment debt and the interests of both the judgment creditor and the judgment debtor.

- (b) An instalment order. The Act provides for a judgment debtor to obtain an instalment order without the need for a Court hearing.

- (c) A garnishee order attaching earnings or attaching to money other than earnings. The Act provides for the continued operation of a garnishee order until such time as the judgment debt is extinguished.
- (d) A writ of execution. The Act provides that, subject to any court order, goods seized under a writ of execution may be sold to satisfy a debt but are not to be sold for a price substantially below their market value (defined in the Act to be 65% of their market value).

Section 22 of the *Magistrates Court (Enforcement of Judgments) Act 1994* amended section 284 of the Act to provide for the making of forms for the purposes of the Act. Under this provision the Attorney-General may approve forms for the purposes of the Act by notice in the *Gazette*. The substituted Form 1 and the new Forms 72 - 92 are to apply concomitantly with the commencement of the *Magistrates Court (Enforcement of Judgments) Act 1994*. The Enforcement of Judgments Act re-numbers the Civil Jurisdiction Act. The section numbers in the forms are of the Act as re-numbered.

SUBSTANTIVE DETAILS

A REPLACEMENT FORM

Form 1 replaces Form 1 in the Schedule to the Act. Form 1 is a general form of heading to the other forms used in the civil jurisdiction of the Court and provides a signature block where none is provided for in the forms in the Schedule to the *Magistrates Court (Civil Jurisdiction) Act 1982*. The principal change from the existing Form 1 is the inclusion of provision for a garnishee or claimant to be named as parties to an action. There has been no need to provide for this until now because civil enforcement remedies were, until the commencement of the *Magistrates Court (Enforcement of Judgments) Act 1994*, dealt with under the *Magistrates Court Act 1930*.

B NEW FORMS

Form 72 provides for the authorization of a Bailiff to seize goods which the Court has ordered be delivered to a particular person.

Form 73 provides for an application to be made for the issue of a writ for the delivery of specific goods (see Form 72) the subject of a claim.

Form 74 provides for a notice requiring a judgment debtor to provide information to the judgement creditor as to his or her financial circumstances. Its purpose is to obtain preliminary financial information so that a judgement creditor can give consideration to the making of an instalment order for the payment of a judgement debt.

Form 75 is the form of an application for the issue of a summons for the oral examination by the Registrar of the Court of a judgment debtor as to his or her financial circumstances.

Form 76 is the form of the summons to the debtor to attend the Magistrates Court to be examined as to his or her financial circumstances.

Form 77 is the form of an application for the issue of a warrant of apprehension of a judgment debtor where that person fails to appear in answer to a summons for an oral examination.

Form 78 is the form of a warrant of apprehension of a judgment debtor.

Form 79 is the form of an application for an instalment order to be made, varied or rescinded.

Form 80 provides for a statement to be given by a judgment debtor as to his or her property and financial circumstances. Its purpose is to assist the Court to understand the financial circumstances of the judgement debtor.

Form 81 provides the form for an agreement for the payment of a judgment debt by the debtor by periodic instalments and includes a form for an agreement to vary or revoke an instalment order made by the Magistrates Court.

Form 82 provides for the form of an application for a garnishee order.

Form 83 provides for the forms of garnishee orders attaching to money other than earnings or a garnishee order attaching to the earnings of a judgment debtor. The Form includes a notice to the debtor and to the garnishee about the implications and performance of such an order.

Form 84 provides for the form of an affidavit by which a garnishee may attest to the fact that the garnishee order has been complied with, or, that the order can not be complied with for the reasons stated by the garnishee.

Form 85 provides for the form of an application for a summons to a garnishee who has not complied with a garnishee order to appear before the Court to show cause why the garnishee should not comply with the garnishee order.

Form 86 is the form of a summons to a garnishee to attend the Magistrates Court.

Form 87 provides for the form of an application to the Magistrates Court for the issue of a writ of execution, that is, a warrant to seize and sell the goods of a judgment debtor and apply the proceeds of such a sale in the satisfaction of the judgment debt.

Form 88 provides the form of a writ of execution directed to a Bailiff of the Magistrates Court to seize the property of a judgment debtor, sell it and pay the money thus realised to the Registrar of the Magistrates Court.

Form 89 provides for the form of a notice to a person that he or she is responsible for the safekeeping of property of a judgment debtor which has been seized pursuant to a writ of execution. This addresses the circumstance where property is seized by a Bailiff but not removed at that time from the location where it was seized.

Form 90 is the form of a notice to a judgment debtor about the issue of a writ of execution against his or her property and of the implications for the judgment debtor of the effect of this writ.

Form 91 provides for the listing of the property of a judgment debtor seized by the Bailiff pursuant to a writ of execution, the reserve price for the sale of the property and how that reserve price was determined. This information enables a judgement debtor to challenge the reserve price which will apply to goods seized for sale.

Form 92 provides for a statement by a Bailiff to the Registrar of the Magistrates Court as to the performance, and the results of the performance, of a writ.

FINANCIAL IMPLICATIONS

There are no financial implications.