

Western Australia

## **Civil Judgments Enforcement Act 2004**

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## Civil Judgments Enforcement Act 2004

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Western Australia

## **Civil Judgments Enforcement Act 2004**

**An Act to provide for the enforcement of judgments given in the civil jurisdiction of courts and for related matters.**

## Part 1 — Preliminary

### 1. Short title

This Act may be cited as the *Civil Judgments Enforcement Act 2004*.

### 2. Commencement

This Act comes into operation on a day fixed by proclamation.

### 3. Interpretation

In this Act, unless the contrary intention appears —

“**assistant bailiff**” means a person who holds an appointment under section 108 as an assistant bailiff;

“**available debt**” has the meaning given by section 46;

“**bailiff**” means a person who holds an appointment under section 107 as a bailiff;

“**corporation**” has the meaning given by section 57A of the *Corporations Act 2001* of the Commonwealth;

“**court**” has a meaning affected by sections 5 and 9;

“**debt appropriation order**” means an order made under section 49(2);

“**default inquiry**” means an inquiry held under Part 4 Division 8;

“**Deputy Sheriff**” means a deputy appointed by the Sheriff under the *Supreme Court Act 1935* section 158;

“**dwelling**” means —

(a) a building, structure or tent, or a part of a building structure or tent, that is ordinarily used for human habitation; or

(b) a mobile home,

and it does not matter that it is uninhabited from time to time;

**“earnings”** has the meaning given by section 4;

**“earnings appropriation order”** means an order made under section 35(2);

**“enforcement costs”**, of a judgment, means —

- (a) any fees, expenses, or other amounts, that are paid, ordered to be paid, or payable, under this Act or another written law in connection with enforcing the judgment; and
- (b) any costs of taking, or in relation to, any proceedings under this Act to enforce the judgment that are ordered by a court to be paid by the person against whom the judgment is given;

**“enforcement officer”** means the Sheriff, a Deputy Sheriff, a bailiff, an assistant bailiff, or a person appointed under section 112;

**“instalment order”** means an order made under section 33(2);

**“interpleader proceedings”** means proceedings held under Part 4 Division 4;

**“judgment”** means —

- (a) a monetary judgment; or
- (b) a judgment or an order of a court that requires or has the effect of requiring a person —
  - (i) to give possession of any property to another person; or
  - (ii) to do an act, to not do an act, or to cease doing an act;

**“judgment creditor”** means a person who is entitled to the benefit of a monetary judgment, including a person to whom the benefit of a monetary judgment has passed (by assignment or any other way);

**“judgment debt”** means the unpaid amount of any of the following —

- (a) a judgment sum;

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(b) interest on the judgment sum;

(c) enforcement costs of the judgment;

**“judgment debtor”** means any person against whom a monetary judgment has been given or may be enforced;

**“judgment sum”** means the amount of money ordered to be paid under a monetary judgment, whether or not the money is or includes costs or pre-judgment interest;

**“means inquiry”** means an inquiry held under Part 4 Division 2;

**“mobile home”** means a vehicle —

(a) that is ordinarily used for human habitation; and

(b) that is permanently or semi-permanently stationary in a single location;

**“monetary judgment”** means a judgment or an order of a court that requires or has the effect of requiring a person to pay money, whether or not the judgment or order contains any other requirements;

**“officer”**, of a corporation, has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

**“partnership”** means a partnership within the meaning of the *Partnership Act 1895* or an unincorporated company or association formed for the purposes of gain;

**“personal property”** does not include any estate or interest in land;

**“place”** means any land, building, structure, tent or vehicle, or any part of any land, building, structure, tent or vehicle;

**“property (seizure and delivery) order”** means an order made under section 95(2);

**“property (seizure and sale) order”** means an order made under section 59(2);

**“real property”** includes a leasehold and any other estate or interest in land;

**“record”** means any thing or process —

(a) upon or by which information is recorded or stored;  
or

(b) by means of which a meaning can be conveyed by  
any means in a visible or recoverable form,  
whether or not the use or assistance of some electronic,  
electrical, mechanical, chemical or other device or process  
is required to recover or convey the information or  
meaning;

**“saleable interest”**, in real or personal property, has the  
meaning given by section 74(1) or 80(1), as the case  
requires;

**“Sheriff”** means the Sheriff referred to in the *Supreme Court  
Act 1935* section 156;

**“suspension order”** means an order made under section 15(3);

**“time for payment order”** means an order made under  
section 32(2);

**“vehicle”** means any thing capable of transporting people or  
things by road, rail or water, including a hovercraft, and it  
does not matter how the thing is moved or propelled.

**4. “Earnings”, definition of**

In this Act **“earnings”**, of a natural person, means money that is  
or will be payable to the person for or in relation to services  
provided by the person by way of —

(a) wages, salary, commissions, fees, bonuses, overtime  
pay, leave loadings, payments in lieu of leave, or  
otherwise;

(b) an annuity or pension for or in relation to past services,  
whether or not the services were provided to the person  
paying the annuity;

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- (c) periodical payments of compensation for —
  - (i) the loss, abolition or relinquishment of, or any reduction in the remuneration of, any office or employment; or
  - (ii) the loss of the money referred to in paragraph (a) because of illness or injury, whether at work or not,

but does not include the following —

- (d) money payable to the person under a child maintenance order made under the *Family Court Act 1997*;
- (e) money payable to the person under a child maintenance order made under the *Family Law Act 1975* of the Commonwealth;
- (f) money payable to the person under the *Child Support (Registration and Collection) Act 1988* of the Commonwealth;
- (g) money payable to the person under the *Child Support Assessment Act 1988* of the Commonwealth;
- (h) a pension, benefit or allowance payable to the person under —
  - (i) the *Social Security Act 1991* of the Commonwealth; or
  - (ii) the *Veterans' Entitlements Act 1986* of the Commonwealth;
- (i) money payable to the person that is prescribed not to be earnings for the purposes of this Act.

**5. Judgments to which this Act applies**

This Act applies to and in respect of any judgment given by any of the following courts in the exercise of its civil jurisdiction —

- (a) the Supreme Court;
- (b) the District Court;

(c) the Magistrates Court.

**6. Crown bound**

This Act binds the Crown.

**7. Common law writs etc. and rules, application of**

(1) The writs, warrants and orders that, immediately before the commencement of this Act, could be issued or made at common law or in equity or under a written law —

(a) to enforce or execute a judgment of a court; or

(b) in aid of a writ, warrant or order to enforce or execute a judgment of a court,

are abolished.

(2) The rules at common law or in equity applicable to or in relation to a writ, warrant or order that is abolished by subsection (1) and that is substantially similar to an order that may be made under this Act, apply to or in relation to the order that may be made under this Act so far as they are consistent with this Act.

## **Part 2 — Interest on judgment sums**

### **8. Interest on judgment sums**

- (1) Interest is to be paid on the unpaid amount of a judgment sum from the date of the judgment until the date on which the judgment sum is paid —
  - (a) at the rate prescribed by the regulations; or
  - (b) at the rate set by the court in the judgment or by an order made after the judgment is given.
- (2) Subsection (1) applies whether or not —
  - (a) a suspension order has been made; or
  - (b) a time for payment order or an instalment order has been made,unless the court that made such an order orders otherwise.
- (3) The judgment creditor may waive the payment of the whole or a part of the interest referred to in subsection (1).
- (4) A judgment creditor who waives interest under subsection (3) must advise the court of the fact when applying for an enforcement order under Part 4.
- (5) Subsection (1) does not apply to —
  - (a) a judgment that is registered under section 105(1) of the *Service and Execution of Process Act 1992* of the Commonwealth; or
  - (b) a judgment sum on which interest is payable under another written law.

## **Part 3 — Provisions applying to all judgments**

### **Division 1 — Procedural matters**

#### **9. Applying to a court under this Act**

- (1) An application or request that may be made under this Act to a court in relation to a judgment must be made —
  - (a) to the court that gave the judgment; and
  - (b) at the registry of that court where the documents relating to the action or matter in which the judgment was given are being held, unless the court gives permission for the application or request to be made at another registry.
- (2) An application or request that may be made under this Act must be made in accordance with the regulations.
- (3) Rules of court made by a court referred to in section 5 may prescribe applications and requests that, when made to the court under this Act, may be dealt with by an officer of that court, other than an officer who may constitute the court, who is prescribed by the rules for that purpose.
- (4) A person who is dissatisfied by a decision of an officer of a court, who is prescribed under subsection (3), made on an application or request dealt with by the officer may apply to the court for a review of the decision.
- (5) The application under subsection (4) must be made —
  - (a) in accordance with rules of court made by the court; and
  - (b) within 21 days after the date of the officer's decision.
- (6) The court may extend the 21 day period and may do so even if it has expired.
- (7) The review is to be by way of a new hearing of the issue that was before the officer.

- (8) On the review the court may confirm the officer's decision or set it aside and make any decision that the officer could have made, and may do so on terms as to costs or otherwise.

**10. Costs of proceedings under this Act**

The court in which proceedings under this Act are taken in relation to a judgment may make any order as to and incidental to the costs of taking, or the costs in relation to, the proceedings that it could make as to and incidental to costs in civil proceedings before the court.

**Division 2 — General**

**11. When judgments have effect**

- (1) A judgment has effect —
- (a) at the time it is given; or
  - (b) if it provides, or the court giving it orders, that it has effect from an earlier or later time, at that time.
- (2) Subject to sections 12 and 13, an application for an order under this Act to enforce a judgment may be made at any time after it has effect.
- (3) The commencement of an appeal against a judgment does not affect subsection (1).
- (4) This section does not limit the operation of Division 3.

**12. Limitation period for enforcement**

An order under this Act to enforce a judgment that takes effect after the commencement of this Act must not be made if 12 years have elapsed since the judgment took effect.

**13. Court's leave to enforce needed in some cases**

- (1) Leave of the court must be obtained before an order may be made under this Act to enforce a judgment —
- (a) if 6 years have elapsed since the judgment took effect;
  - (b) if the order in the judgment that a person seeks to enforce is subject to the fulfilment of a condition;
  - (c) if the property that is proposed for seizure under the order to satisfy the judgment is in the hands of a receiver;
  - (d) if the person seeking to enforce the judgment was not personally a party to the case in which the judgment was given;
  - (e) if the person liable to satisfy the judgment was not personally a party to the case in which the judgment was given, unless section 14(2)(b) applies to the person;
  - (f) if the judgment is against a partnership and is sought to be enforced against a person to whom section 14(2)(b) does not apply;
  - (g) if the judgment is given in a case between —
    - (i) partnerships having one or more partners in common; or
    - (ii) a partnership and one or more of its partners;or
  - (h) if the judgment is against a corporation and is sought to be enforced against one or more officers or shareholders of the corporation.
- (2) On an application for leave under subsection (1), the court —
- (a) may give leave if it is satisfied that the person seeking to enforce the judgment is entitled to do so and that the person against whom the order is sought is liable to satisfy the judgment;

- (b) may order the trial of any issue that needs to be decided in order to determine if the judgment may be enforced and, if it may be enforced, by whom and against whom; and
  - (c) may do so on terms as to costs or otherwise.
- (3) On an application for leave under subsection (1)(g) the court may order accounts to be taken and inquiries to be made.

**14. Partnerships, enforcement against**

- (1) Unless it is made for the purpose of enforcing a judgment against the partnership itself, an enforcement order must not be made under Part 4 in respect of any available debt in relation to, or any property of, a partnership.
- (2) If a judgment in a case is given against a partnership, an order to enforce the judgment may be made under Part 4 or 5 —
- (a) against the partnership or in respect of any available debt in relation to, or any property of, the partnership;
  - (b) without the court's leave, against a person who —
    - (i) was served as a partner with the writ or other document commencing the case, or with notice of the writ or document, but who did not enter an appearance;
    - (ii) entered an appearance in the case as a partner;
    - (iii) admitted in the case to being a partner; or
    - (iv) was adjudged in the case to be a partner;or
  - (c) with the court's leave, against a person who is a partner but to whom paragraph (b) does not apply.
- (3) Section 13(2) applies to an application for leave under this section.
- (4) If under Part 4 or 5 an order is made under which any property of a partnership may be sold or foreclosed, the order must

include liberty for the other partner or partners at any time to purchase or redeem the property.

### **Division 3 — Suspending the enforcement of judgments**

#### **15. Suspension order**

- (1) A person against whom a judgment is given may apply for an order suspending the enforcement of all or part of the judgment to —
  - (a) the court that gave the judgment; or
  - (b) a court that is dealing with an appeal against the judgment.
- (2) The court may deal with such an application in the absence of the person entitled to the benefit of the judgment if it is just to do so.
- (3) On such an application, the court may only make such an order if there are special circumstances that justify doing so.
- (4) A suspension order may be made for any period (including an indefinite period) and may be made on terms as to costs or otherwise.
- (5) When or after making a suspension order the court may make any necessary ancillary or consequential order including an order —
  - (a) that a means inquiry, default inquiry or interpleader proceedings be adjourned;
  - (b) that a means inquiry or default inquiry not be held for such period as the court specifies;
  - (c) as to the operation or effect of any order that has been made under Part 4 or 5 or section 101;
  - (d) that a person imprisoned under section 90 or 98 for a contempt of court be released from prison for such period and on any terms that the court specifies;

- (e) that prohibits or restricts dealings with a judgment debtor's property, or the payment of debts owed to a judgment debtor, while the suspension order has effect.

**16. Suspension order, effect of**

- (1) A suspension order has effect according to its contents.
- (2) While a suspension order has effect —
  - (a) the enforcement of the judgment is suspended to the extent stated in the order;
  - (b) any order that has been made under Part 4 or 5 or section 101 has effect subject to the suspension order and any order made under section 15(5).
- (3) To the extent that a suspension order suspends the enforcement of a judgment, the order is to be taken for all purposes to be a stay of the execution of the judgment to that extent.

## **Part 4 — Enforcing monetary judgments**

### **Division 1 — General**

#### **17. Interpretation**

In this Part, unless the contrary intention appears —

**“enforcement order”** means —

- (a) a time for payment order made under section 32;
- (b) an instalment order made under section 33;
- (c) an earnings appropriation order made under section 35;
- (d) a debt appropriation order made under section 49;
- (e) a property (seizure and sale) order made under section 59; or
- (f) an order made under section 86.

#### **18. Enforcement orders, applicability of**

- (1) An enforcement order, other than an earnings appropriation order, may be made in respect of any person, whether a natural person, a partnership, or a corporation.
- (2) An earnings appropriation order may only be made in respect of a natural person.

#### **19. Enforcement orders, application for etc.**

- (1) A judgment creditor may apply to a court for an enforcement order for the purpose of satisfying a judgment debt owed to the judgment creditor.
- (2) Subject to section 21, an application for an enforcement order may be made whether or not previously a means inquiry has been held or an enforcement order has been made.
- (3) Subject to section 21, an application for an enforcement order may be made without notifying the judgment debtor or any

person to whom the order will be addressed, unless the regulations provide otherwise.

**20. Enforcement and other orders, making of**

- (1) Subject to section 31, a court may only make an enforcement order in respect of a monetary judgment on the application of the judgment creditor or a person given leave under section 13(1)(d).
- (2) A court that makes an enforcement order, or any other order, under this Part may do so on terms as to costs or otherwise.
- (3) When or after making an enforcement order, or any other order, under this Part the court may make any necessary ancillary or consequential order and may do so on terms as to costs or otherwise.

**21. Certain orders only available at or after means inquiry**

- (1) The following enforcement orders —
  - (a) a time for payment order;
  - (b) an instalment order;
  - (c) an earnings appropriation order,

may only be made in respect of a judgment debtor at or, subject to section 31(4), after a means inquiry in respect of the judgment debtor.

- (2) In making an order referred to in subsection (1) in respect of a judgment debtor who is a natural person, the court should ensure that the order does not impose unreasonable obligations on the judgment debtor having regard to the judgment debtor's means to satisfy the judgment.

**22. More than one enforcement order, applications for**

- (1) If an enforcement order is in effect against a judgment debtor in respect of a monetary judgment, the judgment creditor may

apply for one or more additional enforcement orders against the debtor in respect of the judgment.

- (2) On such an application, a court must not make an additional enforcement order against the judgment debtor in respect of the monetary judgment unless it is satisfied that the additional order —
  - (a) will not impose unreasonable obligations on the judgment debtor having regard to the judgment debtor's means to satisfy the judgment; and
  - (b) is justified having regard to the one or more enforcement orders already in effect.

**23. Multiple enforcement orders, effect of**

- (1) This section applies if, as a result of 2 or more monetary judgments given against one person, the person at one time is liable to pay 2 or more judgment debts, irrespective of whether the judgment creditor under each monetary judgment is the same person.
- (2) If 2 or more time for payment orders are in effect at one time in respect of the separate monetary judgments, each order has effect according to its contents.
- (3) If 2 or more instalment orders are in effect at one time in respect of the separate monetary judgments, the orders have effect concurrently.
- (4) If 2 or more debt appropriation orders addressed to the same third person are in effect at one time in respect of the separate monetary judgments, the orders have effect consecutively according to when they are served on the third person.
- (5) If 2 or more property (seizure and sale) orders are in effect at one time in respect of the separate monetary judgments, the orders have effect according to Division 6.

**24. Money recovered, judgment creditor's duties as to**

(1) A judgment creditor who receives or recovers money in respect of a judgment debt, whether or not under an enforcement order, must apply the money so as to discharge —

- (a) firstly, the judgment sum;
- (b) secondly, any interest due to the judgment creditor on the judgment sum; and
- (c) thirdly, any enforcement costs in connection with the judgment.

(2) If requested to do so by —

- (a) a registrar of the court that gave the judgment; or
- (b) the Sheriff, if an enforcement order in respect of the judgment has been issued and addressed to the Sheriff,

a judgment creditor must, within 7 days after receiving the request, give the person who made the request an account showing —

- (c) the judgment sum;
- (d) any interest due on the judgment sum;
- (e) the enforcement costs in connection with the judgment;
- (f) money received or recovered by the judgment creditor in satisfaction of the judgment debt; and
- (g) the amount of the judgment debt at the time the account is given.

(3) A person who contravenes a request made under subsection (2) is guilty of a contempt of court.

**25. Excess money recovered, consequences**

If a judgment creditor receives or recovers an amount in excess of the amount required to satisfy the judgment debt the judgment creditor holds the excess on trust for the judgment debtor.

### **Division 2 — Means inquiry**

**26. Means inquiry, nature of**

A means inquiry in respect of a judgment debtor is an inquiry conducted before a court in order to determine —

- (a) the judgment debtor's means to pay the judgment debt having regard to the income, assets and liabilities of the judgment debtor and, if applicable, his or her spouse or de facto partner and any dependents of the judgment debtor and his or her spouse or de facto partner;
- (b) whether there are or will be any earnings of the judgment debtor that might be appropriated to satisfy the judgment debt and, if there are, the net earnings for the purpose of Division 4;
- (c) whether there is or will be any available debt that might be appropriated to satisfy the judgment debt; and
- (d) the existence and whereabouts and value of any property of the judgment debtor that might be seized and sold to satisfy the judgment debt.

**27. Means inquiry, application for by judgment creditor**

- (1) A judgment creditor may apply for a means inquiry to be held in respect of the judgment debtor.
- (2) Such an application may be made whether or not previously a means inquiry has been held or an enforcement order has been made.
- (3) Such an application must —
  - (a) if the judgment debtor is a natural person, contain his or her name and address;
  - (b) if the judgment debtor is a partnership, contain the name and address of a partner;
  - (c) if the judgment debtor is a corporation, contain the name and address of an officer of the corporation;

- (d) contain the name and address of any other person who the judgment creditor thinks should be summoned to the inquiry to give or produce evidence; and
  - (e) for each such person indicate whether a summons under section 29(1)(a) or (b) or both is required.
- (4) On receiving such an application the court must set a date for the means inquiry and notify the judgment creditor of it.

**28. Means inquiry, application for by judgment debtor**

- (1) A judgment debtor who applies for a suspension order on the grounds that the debtor is unable to pay the judgment debt may apply for a means inquiry to be held in respect of the judgment debtor.
- (2) Such an application may be made whether or not previously a means inquiry has been held or an enforcement order has been made.
- (3) Such an application must be served on the judgment creditor.
- (4) A judgment creditor who is served with such an application may request the court to issue a summons to a person who the judgment creditor thinks should be summoned to the inquiry to give or produce evidence.
- (5) Such a request must —
  - (a) contain the name and address of each person to be summoned; and
  - (b) for each such person indicate whether a summons under section 29(1)(a) or (b) or both is required.
- (6) On receiving an application made under subsection (1) the court must set a date for the means inquiry and notify —
  - (a) the judgment debtor and judgment creditor of the date; and
  - (b) notify the judgment debtor of the duties in section 30(3).

**29. Means inquiry, summons to attend**

- (1) In respect of each person named in an application under section 27(3), or in a request under section 28(5), or in a request made under subsection (2), the court may issue either or both of the following, according to the application or request —
  - (a) a summons to attend a means inquiry to give oral evidence;
  - (b) a summons to attend and produce to the court, for use in the inquiry, any record or thing that is or may relate to the matters listed in section 26 and that is detailed in the summons.
- (2) During a means inquiry the judgment creditor or judgment debtor may request the court to summons a person to the inquiry to give or produce evidence.
- (3) A summons issued under subsection (1) must be served personally.
- (4) If a person who has been summoned under subsection (1) does not attend as ordered by the summons, the court may issue a warrant to have the person arrested and brought before the court.
- (5) A person who has been summoned under subsection (1) and who, without a reasonable excuse —
  - (a) does not obey the summons; or
  - (b) refuses to be sworn or answer any lawful question,is guilty of a contempt of court.

**30. Means inquiry, conduct of**

- (1) In this section —

**“lawyer”** means a certificated practitioner within the meaning of the *Legal Practice Act 2003*.

- (2) At a means inquiry the court is to determine the matters listed in section 26.
- (3) At a means inquiry held on the application of a judgment debtor the judgment debtor must produce to the court all records that relate to the matters listed in section 26 and that are in the possession or under the control of the judgment debtor.
- (4) A judgment debtor who contravenes subsection (3) is guilty of a contempt of court.
- (5) A court may adjourn a means inquiry.
- (6) At a means inquiry in the Magistrates Court a person who is not a lawyer and who is an employee of, or under the control or direction of —
  - (a) the judgment creditor; or
  - (b) the judgment creditor's lawyer,may appear on behalf of the judgment creditor, despite the *Legal Practice Act 2003* section 123.

**31. Orders at or after a means inquiry**

- (1) At a means inquiry the court, having regard to the matters listed in section 26 that it has determined, may —
  - (a) make any enforcement order that is just, whether or not the judgment creditor has applied for the order; or
  - (b) make a suspension order on the application of the judgment debtor.
- (2) After a means inquiry has been held, the judgment creditor may apply for —
  - (a) a time for payment order;
  - (b) an instalment order; or
  - (c) an earnings appropriation order.
- (3) On receiving such an application the court must set a date for hearing the application, notify the judgment creditor of it and

issue a summons to the judgment debtor requiring the debtor to appear before the court and to say why the order applied for should not be made.

- (4) On the hearing of the application, the court, having regard to the matters listed in section 26 that it has determined at the means inquiry, may make the order sought by the judgment creditor, or some other enforcement order, if —
- (a) the court is satisfied that there has not been a material change in those matters since the inquiry; or
  - (b) the judgment debtor, having been summoned, does not attend.

### **Division 3 — Orders for payment**

#### **32. Time for payment order**

- (1) In order to recover a judgment debt, a judgment creditor may apply to the court for an order, addressed to the judgment debtor, that orders the debtor to pay the judgment debt —
- (a) immediately; or
  - (b) on or before a date set by the court.
- (2) The court may make such an order, subject to sections 21 and 22.

#### **33. Instalment order**

- (1) In order to recover a judgment debt, a judgment creditor may apply to the court for an order, addressed to the judgment debtor, that orders the debtor to pay the judgment debt by instalments of amounts and at times set by the court in the order.
- (2) The court may make such an order, subject to sections 21 and 22.

**Division 4 — Appropriating a judgment debtor's earnings**

**34. Interpretation**

In this Division, unless the contrary intention appears —

**“net earnings”**, in relation to a judgment debtor, means the total amount of the judgment debtor's earnings from any person less all amounts required to be deducted, before the payment of those earnings to the judgment debtor, under a law of the Commonwealth or another written law;

**“third person”**, in relation to an earnings appropriation order, means the person to whom the order is addressed.

**35. Earnings appropriation order**

- (1) In order to recover a judgment debt, a judgment creditor may apply to the court for an order requiring a person who is liable to pay earnings to the judgment debtor to pay a portion of those earnings to the judgment creditor at the time or times when the balance of the earnings is paid to the judgment debtor.
- (2) The court may make such an order, subject to sections 18(2), 21 and 22 and this section.
- (3) An earnings appropriation order must not be made unless an instalment order has been made in respect of the judgment debt and has been disobeyed and cancelled.
- (4) An earnings appropriation order must not be made against a judgment debtor in respect of a monetary judgment if another earnings appropriation order against the judgment debtor is in effect, whether in respect of that judgment or another monetary judgment.
- (5) An earnings appropriation order must not be addressed to more than one person who is liable to pay earnings to the judgment debtor.

- (6) Despite any other law, an earnings appropriation order may be made in respect of any earnings owed by the State to the judgment debtor.
- (7) If an earnings appropriation order is in effect in relation to a judgment debtor, a subsequent earnings appropriation order made in respect of the same judgment debtor in respect of another monetary judgment and addressed to the same person to whom the first order is addressed has no effect.

**36. Earnings appropriation order, content and service of**

- (1) An earnings appropriation order must —
  - (a) be addressed to the person who is liable to pay earnings to the judgment debtor and who will be bound by the order;
  - (b) state the name and address of the judgment debtor and the judgment creditor;
  - (c) identify the earnings to which the order applies;
  - (d) state the judgment debt as at the date of the order;
  - (e) order the third person to pay the judgment creditor from the earnings a stated amount or amounts;
  - (f) state when the amount or amounts are to be paid; and
  - (g) contain any other information that is prescribed by the regulations.
- (2) The judgment creditor must serve the earnings appropriation order on the third person in accordance with the regulations.

**37. Earnings appropriation order, effect of**

- (1) An earnings appropriation order takes effect when it is served on the third person.
- (2) An earnings appropriation order has effect according to its contents.

- (3) An earnings appropriation order ceases to have effect —
- (a) when the third person is notified of the fact by the court or the judgment creditor;
  - (b) when the third person becomes aware that an objection has been allowed under section 41;
  - (c) when the judgment debt is satisfied; or
  - (d) when an order cancelling it has effect under section 103,
- whichever happens first.
- (4) If an earnings appropriation order ceases to have effect or the judgment debt to which it relates is satisfied, the judgment creditor must immediately notify the third person.

Penalty: Imprisonment for 12 months.

**38. Third person's obligations**

- (1) A third person who —
- (a) pays an amount to the judgment creditor under an earnings appropriation order; or
  - (b) retains an amount under section 39,
- must give the judgment debtor a written notice containing details of the amounts.
- (2) A person who knowingly makes a statement in a notice given under subsection (1) that is false or misleading in a material particular commits an offence.

Penalty: Imprisonment for 12 months.

**39. Third person entitled to expenses of obeying order**

- A third person who obeys an earnings appropriation order —
- (a) is entitled to the reasonable expenses (not exceeding the prescribed amount) of doing so; and
  - (b) may retain an amount equal to those expenses from the balance of the earnings due to the judgment debtor after

payment of the amount under the earnings appropriation order to the judgment creditor.

**40. Third person may object to appropriation order**

- (1) A third person who is served with an earnings appropriation order may object to the order on the grounds that the third person —
  - (a) is not a person who is liable to pay earnings to the judgment debtor; or
  - (b) ceased to be such a person on a date after the order was served.
- (2) The objection must —
  - (a) be in writing;
  - (b) state the grounds on which it is made and the facts that support the grounds; and
  - (c) be lodged at the court within 7 days after the day on which the third person —
    - (i) is served with the earnings appropriation order if the objection is made under subsection (1)(a); or
    - (ii) ceases to be a person who is liable to pay earnings to the judgment debtor if the objection is made under subsection (1)(b).
- (3) The court must serve a copy of the objection on the judgment creditor and judgment debtor.

**41. Objection to appropriation order, consequences of**

- (1) A judgment creditor who is served with an objection under section 40(3) may allow the objection.
- (2) If the judgment creditor does not allow the objection within 7 days after the date of it, either the third person or the judgment debtor may apply to the court for an order that the objection be allowed.

- (3) Notice of the application and of when and where it will be heard must be given in accordance with the regulations to the person who made the objection and to each person on whom the objection was served.
- (4) At the hearing of the application, the court may allow or reject the objection.
- (5) If an objection is allowed under this section, notice of the fact must be given in accordance with the regulations to the person who made the objection and to each person on whom the objection was served.

**42. Earnings appropriation order, failure to obey**

- (1) If a third person who is served with an earnings appropriation order —
  - (a) does not obey the order;
  - (b) does not object to the order under section 40; or
  - (c) objects to the order under section 40 but does not appear at the hearing of the objection,the judgment creditor may apply to the court for an enforcement order for the purposes of recovering from the third person —
  - (d) the amount that was not paid in accordance with the earnings appropriation order; and
  - (e) the costs of obtaining and carrying out the enforcement order.
- (2) The court may make such an order.
- (3) For the purposes of subsection (2) this Part applies as if the third person were a judgment debtor and the money to be recovered from the third person were a judgment debt.

**43. Earnings appropriation order, effect of obeying**

- (1) Any amount —
- (a) paid by the third person to the judgment creditor under an earnings appropriation order;
  - (b) retained by a third person under section 39; or
  - (c) recovered from a third person under section 42,
- discharges the third person from the obligation to pay the amount to the judgment debtor and is not recoverable from the third person by the judgment debtor.
- (2) Subsection (1) applies even if, after the amount is paid or recovered —
- (a) enforcement of the monetary judgment that gave rise to the earnings appropriation order is suspended; or
  - (b) the monetary judgment is set aside or reversed.

**44. Employees, protection of**

- (1) If an employer, on the ground that an earnings appropriation order has been served on the employer in respect of the earnings of an employee, treats the employee less favourably than in the same circumstances, or in circumstances that are not materially different, the employer treats or would treat an employee whose earnings are not the subject of such an order, the employer commits an offence.

Penalty: \$5 000.

- (2) If —
- (a) an employer is charged with an offence under subsection (1) that is alleged to have been committed within 6 months after the employer was served with the earnings appropriation order concerned; and
  - (b) all of the elements of the offence are proved except the grounds for the employer's treatment of the employee,

the onus of proving that the grounds for the employer's treatment of the employee were not that the earnings appropriation order has been served on the employer is on the employer.

### **Division 5 — Appropriating debts owed to a judgment debtor**

#### **45. Interpretation**

In this Division and Schedule 1, unless the contrary intention appears —

**“account”** includes —

- (a) a withdrawable share account or deposit account; and
- (b) any record of a subscription for withdrawable shares or of a deposit;

**“appropriated debt”** means an available debt, or the portion of an available debt, to which a debt appropriation order applies;

**“financial institution”** means —

- (a) an ADI (authorised deposit-taking institution) as defined in section 5 of the *Banking Act 1959* of the Commonwealth;
- (b) a bank constituted by a law of a State, a Territory or the Commonwealth;
- (c) a society registered or deemed to be registered under the *Co-operative and Provident Societies Act 1903*;
- (d) a society within the meaning of the *Housing Societies Act 1976* section 5; or
- (e) an investment fund or corporation;

**“third person”**, in relation to a debt appropriation order, means the person to whom the order is addressed.

**46. “Available debt”, definition of**

- (1) An available debt in relation to a judgment debtor is any obligation on the part of a person to pay money to the debtor alone, or to the debtor jointly with another or others, which obligation, at the time a debt appropriation order is made —
- (a) is current and unconditional, irrespective of whether the money or any part of it is payable at some future time;
  - (b) will arise on the fulfilment of one or more conditions under —
    - (i) an existing agreement or trust;
    - (ii) the will of a deceased person; or
    - (iii) an issued share or other marketable security;
  - (c) may arise in respect of an existing cause of action; or
  - (d) is imposed by a written law and is likely to arise as a result of an event that has occurred.
- (2) The following are not available debts in relation to a judgment debtor —
- (a) earnings that are or may be payable to the debtor;
  - (b) money standing to the credit of the debtor in a court;
  - (c) money that is payable to the debtor as a trustee and in which the debtor does not have a beneficial interest, unless the judgment concerned was given against the debtor as that trustee.

**47. *Workmen’s Wages Act 1898*, application of**

This Division is subject to the *Workmen’s Wages Act 1898* section 6.

**48. Available debts, provisions about**

Schedule 1 has effect.

**49. Debt appropriation order**

- (1) In order to recover a judgment debt, a judgment creditor may apply to the court for an order requiring a person who owes or will or may owe an available debt to the judgment debtor alone or to the judgment debtor jointly with another or others to pay —
  - (a) the whole amount of the available debt; or
  - (b) such of the available debt as will satisfy the judgment debt,to the judgment creditor at the time or times when the available debt would otherwise be paid to the judgment debtor.
- (2) The court may make such an order, subject to sections 20(1) and 22.
- (3) When or after making a debt appropriation order, the court may make an order under Schedule 1 clause 2, 3 or 4.
- (4) A debt appropriation order may apply to more than one available debt that is or will be or may be owed by one person to the judgment debtor alone or to the judgment debtor jointly with another or others.
- (5) Despite any other law, a debt appropriation order may be made in respect of any available debt owed by the State to the judgment debtor.

**50. Debt appropriation order, content and service of**

- (1) A debt appropriation order is to —
  - (a) be addressed to the person who owes or will or may owe the available debt;
  - (b) state the name and address of the judgment debtor and the judgment creditor;
  - (c) state the judgment debt as at the date of the order;
  - (d) identify the available debt to which the order applies;

- (e) if the available debt is, will be or may be owed to the judgment debtor jointly with another or others, state the portion of the available debt to which the order applies;
  - (f) order the third person to pay the judgment creditor —
    - (i) the whole of the appropriated debt; or
    - (ii) such of the appropriated debt as will satisfy the judgment debt,as the case requires, after retaining any amount to which the third person is entitled under section 53(1); and
  - (g) contain any other information that is prescribed by the regulations.
- (2) The judgment creditor must serve the debt appropriation order on the third person in accordance with the regulations.

**51. Debt appropriation order, effect of**

- (1) A debt appropriation order takes effect when it is served on the third person.
- (2) A debt appropriation order has effect according to its contents subject to —
  - (a) Schedule 1 clause 2 and any order made under that clause;
  - (b) any order made under Schedule 1 clause 3; and
  - (c) any order made under Schedule 1 clause 4.
- (3) If an appropriated debt is payable to the judgment debtor in full at one time, the third person must pay the full debt to the judgment creditor —
  - (a) if the debt is due and payable to the judgment debtor at the time the order is made — within 7 days after the day on which the debt appropriation order is served on the third person; or

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- (b) in any other case — within 7 days after the day on which the appropriated debt becomes due and payable to the judgment debtor.
- (4) If an appropriated debt is payable to the judgment debtor in 2 or more instalments, the third person must pay each instalment to the judgment creditor —
  - (a) if any instalment is due and payable to the judgment debtor at the time the order is made — within 7 days after the day on which the debt appropriation order is served on the third person; or
  - (b) in any other case — within 7 days after the day on which the instalment becomes due and payable to the judgment debtor.
- (5) If a debt appropriation order relates to the whole or a part of an amount standing to the credit of a judgment debtor in an account with a financial institution, the order, while it is in effect, has effect as an irrevocable demand for payment, or an irrevocable notice of withdrawal, made to the institution —
  - (a) under the contract between the judgment debtor and the institution in respect of the account; and
  - (b) on —
    - (i) the date when the order is served on the institution; or
    - (ii) if the judgment debtor is not entitled under the contract to make a demand for payment or give notice of withdrawal on that date — the date on which the judgment debtor would, but for the order, have become so entitled.
- (6) A debt appropriation order ceases to have effect —
  - (a) when the third person is notified of the fact by the court or the judgment creditor;
  - (b) when the third person is notified that an objection has been allowed under section 55;

- (c) when the judgment debt is satisfied; or
  - (d) when an order cancelling it has effect under section 103,  
whichever happens first.
- (7) If a debt appropriation order ceases to have effect or the judgment debt to which it relates is satisfied, the judgment creditor must immediately notify the third person.  
Penalty: Imprisonment for 12 months.

**52. Third person's obligations**

- (1) If —
- (a) a third person is served with a debt appropriation order;  
and
  - (b) the appropriated debt under the order, or any part of it —
    - (i) is not or will not be or may not be due and payable until more than 7 days after the day on which the order is served; or
    - (ii) will not be due and payable until a condition is fulfilled,

the third person must within 7 days after the day on which the order is served give the judgment creditor a written notice stating —

- (c) the date on which the appropriated debt, or any part of it, is or will be or may be due and payable; and
  - (d) the amount of the appropriated debt if that amount is less than the judgment debt.
- (2) A third person who —
- (a) pays an amount to the judgment creditor under a debt appropriation order; or
  - (b) retains an amount under section 53(1),

must give the judgment debtor a written notice containing details of the amounts.

- (3) A person who knowingly makes a statement in a notice given under subsection (1) or (2) that is false or misleading in a material particular commits an offence.

Penalty: Imprisonment for 12 months.

**53. Third person entitled to expenses of obeying order**

- (1) A third person who obeys a debt appropriation order is entitled to the reasonable expenses (not exceeding the prescribed amount) of doing so.
- (2) A third person may recover an amount equal to the expenses referred to in subsection (1) —
- (a) if the debt appropriation order relates to the whole of the available debt — by retaining the amount from the available debt before paying the balance of it to the judgment creditor;
  - (b) if the debt appropriation order relates to a part of the available debt — by retaining the amount —
    - (i) firstly, from the balance of the available debt that would remain after paying the appropriated debt to the judgment creditor; and
    - (ii) secondly and if necessary, from the appropriated debt before paying the balance of the appropriated debt to the judgment creditor.

**54. Third person may object to appropriation order**

- (1) A third person who is served with a debt appropriation order may object to the order on one or more of these grounds —
- (a) that a person other than the judgment debtor and the judgment creditor owns or has a claim on or interest in the appropriated debt;
  - (b) that the appropriated debt does not and will not exist;

- (c) that the third person has an unsatisfied monetary judgment against the judgment creditor or the judgment debtor.
- (2) The objection must —
  - (a) be in writing;
  - (b) state the grounds on which it is made and the facts that support the grounds; and
  - (c) be lodged at the court within 7 days after the day on which the third person is served with the debt appropriation order.
- (3) The court must serve a copy of the objection on —
  - (a) the judgment creditor;
  - (b) the judgment debtor; and
  - (c) any other person whom the third person claims owns or has a claim on or interest in the appropriated debt.
- (4) A civil action does not lie against a third person who has made an objection under this section in respect of the disclosure of any information in the objection, if the disclosure was reasonable in the circumstances.

**55. Objection to appropriation order, consequences of**

- (1) A judgment creditor who is served with an objection under section 54(3) may allow the objection.
- (2) If the judgment creditor does not allow the objection within 7 days after the date of it, any of —
  - (a) the third person;
  - (b) the judgment debtor; or
  - (c) any other person whom the third person claims owns or has a claim on or interest in the appropriated debt,

may apply to the court for an order that the objection be allowed.

- (3) Notice of the application and of when and where it will be heard must be given in accordance with the regulations to the person who made the objection and to each person on whom the objection was served.
- (4) At the hearing of the application, the court may allow or reject the objection.
- (5) If an objection is allowed under this section, notice of the fact must be given in accordance with the regulations to the person who made the objection and to each person on whom the objection was served.

**56. Debt appropriation order, failure to obey**

- (1) If a third person who is served with a debt appropriation order —
  - (a) does not obey the order;
  - (b) does not object to the order under section 54; or
  - (c) objects to the order under section 54 but does not appear at the hearing of the objection,the judgment creditor may apply to the court for an enforcement order for the purposes of recovering from the third person —
  - (d) the amount that was not paid in accordance with the debt appropriation order; and
  - (e) the costs of obtaining and carrying out the enforcement order.
- (2) The court may make such an order.
- (3) For the purposes of subsection (2) this Part applies as if the third person were a judgment debtor and the money to be recovered from the third person were a judgment debt.

**57. Debt appropriation order, effect of obeying**

- (1) Any amount —
  - (a) paid by a third person to the judgment creditor under a debt appropriation order;
  - (b) recovered by a third person under section 53; or
  - (c) recovered from a third person under section 56,discharges the third person from the obligation to pay the amount to the judgment debtor and is not recoverable from the third person by the judgment debtor.
- (2) Subsection (1) applies even if, after the amount is paid or recovered —
  - (a) enforcement of the monetary judgment that gave rise to the debt appropriation order is suspended; or
  - (b) the monetary judgment is set aside or reversed.

**58. Money in court due to a judgment debtor, appropriation of**

- (1) In order to recover a judgment debt, a judgment creditor may apply to any court in which there is money standing to the credit of the judgment debtor for an order that the money, or so much of it as is sufficient to satisfy the judgment debt, be paid to the judgment creditor.
- (2) The court may make such an order.
- (3) On the making of an application under subsection (1), the money in court must not be paid to the judgment debtor until the application is finally determined.

**Division 6 — Seizing and selling a judgment debtor's property**

**Subdivision 1 — General**

**59. Property (seizure and sale) order**

- (1) In order to recover a judgment debt, a judgment creditor may apply to the court for an order authorising the Sheriff to seize and sell the judgment debtor's property to wholly or partially satisfy the judgment debt.
- (2) The court may make such an order.

**60. Property (seizure and sale) order, content and service of**

- (1) A property (seizure and sale) order must —
  - (a) be addressed to the Sheriff;
  - (b) state the name and address of the judgment debtor and the judgment creditor;
  - (c) state the judgment debt as at the date of the order; and
  - (d) contain any other information that is prescribed by the regulations.
- (2) The judgment creditor must serve the property (seizure and sale) order on the Sheriff in accordance with the regulations unless the court has given the order to the Sheriff.

**61. Receipt of order to be recorded by Sheriff**

On receipt of a property (seizure and sale) order the Sheriff must record the date and time when it was received.

**62. Property (seizure and sale) order, duration of**

- (1) A property (seizure and sale) order ceases to have effect —
  - (a) when the judgment debt in relation to which it was made is satisfied;
  - (b) when under section 102 it ceases to have effect; or

(c) when an order cancelling it has effect under section 103, whichever happens first.

(2) If —

(a) a property (seizure and sale) order is registered under the *Transfer of Land Act 1893* section 133; and

(b) the sale period referred to in that section in respect of the order expires at a time after the order ceases to have effect under section 102,

the property (seizure and sale) order is to be taken to remain in effect until the sale period expires, despite section 102.

(3) If a property (seizure and sale) order ceases to have effect before any property seized under it is sold, the property must be released and returned to a person who is entitled to its possession.

**63. Determining a judgment debtor's interest in property**

(1) In this section —

**“interest”**, in any property, means any security, charge or lien over, claim on, or right to, the property or any other legal or equitable interest in the property;

**“public authority”** means a public sector body (within the meaning of the *Public Sector Management Act 1994* section 3(1)), a local government or a regional local government.

(2) The powers in this section may only be exercised by the Sheriff after receiving a property (seizure and sale) order and for the purpose of determining whether and to what extent a judgment debtor has any saleable interest in any personal or real property that might be sold under the order.

(3) The Sheriff, in writing, may request any person, other than the judgment debtor, who the Sheriff believes on reasonable

grounds has or may have an interest in any such property to disclose to the Sheriff —

- (a) the nature of the interest;
  - (b) if the interest is a security over the property —
    - (i) the amount secured against the property;
    - (ii) the amount outstanding under the security;
    - (iii) the amount and rate of interest accruing; and
    - (iv) any change that occurs to the terms of the security;
  - (c) the amount of money that is owed to the person in relation to the property; and
  - (d) any other information the Sheriff considers is or may be relevant to determining the matters in subsection (2).
- (4) The Sheriff, in writing, may request a public authority to disclose to the Sheriff the amount of any rates, taxes, service charges, or other amounts, that are due and unpaid in respect of any such real property.
- (5) A person, other than a public authority, who contravenes a request made under subsection (3) is guilty of a contempt of the court that issued the property (seizure and sale) order.
- (6) The Sheriff may disclose any information about any property that has been obtained by the Sheriff to any potential purchaser of the judgment debtor's interest in the property.

**64. Personal property to be sold in preference to real property**

- (1) Under a property (seizure and sale) order, a judgment debtor's saleable interest in any real property must not be sold unless the Sheriff is satisfied that the amount that is reasonably likely to be realised from selling the judgment debtor's saleable interest in any personal property under the order will not be sufficient to satisfy the judgment debt.

- (2) Subsection (1) does not prevent a judgment debtor's saleable interests in real property and in personal property being sold at the same time.

**65. Only sufficient property to be sold**

- (1) Under a property (seizure and sale) order, the Sheriff must not sell more property than is sufficient, in the Sheriff's opinion, to wholly satisfy the judgment debt.
- (2) Subsection (1) does not prevent the Sheriff from making one or more additional sales of property if a sale of property has not been sufficient to satisfy the judgment debt.

**66. Seized property, Sheriff to determine fair value of**

- (1) Before selling a judgment debtor's saleable interest in personal or real property under a property (seizure and sale) order, the Sheriff must take reasonable steps to determine a fair value for the interest.
- (2) For the purposes of determining a fair value the Sheriff may —
- (a) request the judgment debtor to provide the Sheriff with such information relevant to the value of the interest as is known to the debtor or is reasonably capable of being ascertained by the debtor;
  - (b) if the nature and apparent value of the interest is such that it is reasonable to do so, engage a suitably qualified and experienced person to give the Sheriff a written valuation of the interest.

**67. Interests of others**

If a person other than the judgment debtor has any legal or equitable interest in any personal or real property in which a judgment debtor has a saleable interest that may be sold under a property (seizure and sale) order, that interest and that of the debtor may be sold together if —

- (a) the Sheriff is of the opinion that such a sale is desirable;

- (b) the other person consents in writing; and
- (c) the Sheriff and the other person agree in writing before the sale as to the division of —
  - (i) the expenses of and incidental to the sale or any attempted sale of the property; and
  - (ii) the proceeds of the sale after payment of those expenses.

**68. Sale to be advertised**

- (1) The Sheriff must advertise any intended sale of a judgment debtor's saleable interest in personal or real property under a property (seizure and sale) order in a reasonable manner.
- (2) A judgment debtor's saleable interest in personal or real property must not be sold under a property (seizure and sale) order unless at least 7 days have elapsed since the intended sale was first advertised under subsection (1), except with the judgment debtor's written consent.
- (3) Despite subsections (1) and (2), perishable personal property may be sold without having advertised its intended sale.

**69. Place and manner of sale**

- (1) Subject to any order made by a court under this section, the sale under a property (seizure and sale) order of a judgment debtor's saleable interest in personal or real property —
  - (a) may be conducted —
    - (i) in the case of personal property — at the place where the property was seized or at any other place, as the Sheriff thinks fit;
    - (ii) in the case of real property — on the property or at any other place, as the Sheriff thinks fit;
  - (b) must be by public auction; and
  - (c) must not be for less than a fair value of the interest.

- (2) The Sheriff or the judgment creditor may apply to the court that made a property (seizure and sale) order for an order as to any or all of the following in relation to a saleable interest to which the order applies —
  - (a) that the interest may be sold by public tender;
  - (b) that the interest may be sold by private agreement;
  - (c) that the interest may be sold for an amount that is less than a fair value of the interest.
- (3) The judgment debtor is entitled to be heard on an application made under subsection (2).
- (4) The court may make any or all of such orders.
- (5) When or after making an order under subsection (2)(c) a court may order that the interest not be sold for less than an amount set by the court.

**70. Transfers of property sold, Sheriff may sign**

- (1) If any property is sold under a property (seizure and sale) order, the Sheriff may sign any document that is needed to transfer the property to its purchaser.
- (2) A document signed under subsection (1) has effect as if it were signed by the judgment debtor named in the property (seizure and sale) order.

**71. Purchasers of property sold, protection of**

- (1) In this section —

**“third party interest”**, in relation to property that has been sold under a property (seizure and sale) order, means any legal or equitable estate or interest in the property of a person other than the judgment debtor.
- (2) If an enforcement officer, under a property (seizure and sale) order, sells any saleable interest in property, other than a saleable interest that is registered under the *Transfer of Land*

**Civil Judgments Enforcement Act 2004**

**Part 4** Enforcing monetary judgments

**Division 6** Seizing and selling a judgment debtor's property

**s. 72**

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*Act 1893* in respect of land under the operation of that Act, the purchaser acquires a good title to the property subject only to —

- (a) any third party interest in relation to the property that has been registered, or of which public notice has been given, under a written law before the sale;
  - (b) any other third party interest in relation to the property, a claim for which has either been admitted under section 84(1) or determined as valid by a court in interpleader proceedings, before the sale; and
  - (c) any third party interest acquired before the sale in the manner set out in section 74(4)(a) and (b).
- (3) If an enforcement officer, under a property (seizure and sale) order, sells any property, the enforcement officer is not liable to any person in respect of the sale unless it is proved that the officer had notice of, or by making reasonable inquiries might have ascertained, the existence of a third party interest.
- (4) Subsections (2) and (3) do not affect the entitlement of a person who claims a third party interest in any property sold under a property (seizure and sale) order to a remedy against a person, other than the enforcement officer or the purchaser of the property, if the claimant proves that at the time of the sale the claimant had a third party interest in the property.

**72. Proceeds of sale, how to be applied**

- (1) The Sheriff is to apply the money from the sale of any property by the Sheriff under a property (seizure and sale) order (the “**proceeds**”) in accordance with this section.
- (2) Firstly, the proceeds are to be applied in the payment of the expenses of, and incidental to, the sale and any attempted sale of the property.
- (3) Secondly, the proceeds are to be applied in payment of the fees, expenses, or other amounts, that are paid or payable under this Act or another written law in connection with enforcing the judgment.

- (4) Thirdly, the proceeds are to be applied —
- (a) if there is only one judgment creditor who has obtained a property (seizure and sale) order — in payment to the judgment creditor of an amount sufficient to satisfy the judgment debt;
  - (b) if there is more than one judgment creditor who has obtained a property (seizure and sale) order — in payment to them according to the priorities of their orders determined —
    - (i) in the case of the proceeds of a sale of personal property under Subdivision 2 — in accordance with subsection (6);
    - (ii) in the case of the proceeds of a sale of real property under Subdivision 3 — in accordance with subsection (7).
- (5) Fourthly, the proceeds are to be applied in the payment of any surplus to the judgment debtor.
- (6) For the purposes of subsection (4)(b)(i) the proceeds are to be paid to those judgment creditors who obtained property (seizure and sale) orders in priority according to the order in which their orders were received by the Sheriff.
- (7) For the purposes of subsection (4)(b)(ii) the proceeds are to be paid —
- (a) in the case of the proceeds of a sale of a saleable interest that is registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act —
    - (i) firstly, to each judgment creditor who, under section 133 of that Act, registered a property (seizure and sale) order in respect of the interest, in priority according to the order in which the orders were registered under that section; and
    - (ii) secondly, to each judgment creditor who did not register a property (seizure and sale) order under

that section in respect of the interest, in priority according to the order in which the orders were received by the Sheriff;

- (b) in the case of the proceeds of a sale of a saleable interest that is not registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act — to each judgment creditor in priority according to the order in which the property (seizure and sale) orders were received by the Sheriff;
- (c) in the case of the proceeds of a sale of a saleable interest in land that is not under the operation of the *Transfer of Land Act 1893* —
  - (i) firstly, to each judgment creditor who, under the *Registration of Deeds Act 1856*, registered a property (seizure and sale) order in respect of the interest, in priority according to the order in which the orders were registered under that Act; and
  - (ii) secondly, to each judgment creditor who did not register a property (seizure and sale) order under that Act in respect of the interest, in priority according to the order in which the orders were received by the Sheriff.

**73. Priority of orders, establishing**

If it is not possible under this Part to determine the priority between 2 or more property (seizure and sale) orders, the priority is to be determined —

- (a) by the times when the orders were made by the court;
- (b) if the priority cannot be determined under paragraph (a), by the times when the judgments to which the orders respectively relate were given; and
- (c) if the priority cannot be determined under paragraph (a) or (b), by a ballot conducted by the Sheriff in accordance with the regulations.

**Subdivision 2 — Seizing and selling personal property**

**74. Property (seizure and sale) order, effect of**

- (1) In this section —  
“**saleable interest**”, in personal property, means any legal or equitable interest in the property that can be disposed of according to law.
- (2) A property (seizure and sale) order made in respect of a judgment debtor —
  - (a) applies to any saleable interest that the debtor has in any personal property at the time when the Sheriff receives the order; and
  - (b) entitles the Sheriff —
    - (i) to seize any such property in which the judgment debtor has a saleable interest and to sell that interest;
    - (ii) to seize any money of the judgment debtor;
    - (iii) to seize any cheque, bill of exchange, promissory note, bond, specialty, or other security for money, by virtue of which money is or may be payable to the judgment debtor, and to deal with it in accordance with section 79; and
    - (iv) to apply the proceeds of the sale, the money, and any money received or recovered under section 79, in accordance with section 72.
- (3) The Sheriff's entitlement applies even if the judgment debtor's interest in any personal property is held jointly or in common with another or others.

- (4) If, after the Sheriff receives the order, a person acquires an interest in any personal property to which the order applies, the person does so subject to the Sheriff's entitlement in subsection (2) unless, at the time of acquiring the interest —
- (a) the person acquired it in good faith and for valuable consideration; and
  - (b) the person had no notice of the fact that the Sheriff had received the order and that it was in effect.

**75. Seizing personal property, powers enabling**

- (1) Under a property (seizure and sale) order the Sheriff, using any force and assistance that is reasonably necessary in the circumstances, may do any or all of the following —
- (a) enter any place where the Sheriff believes on reasonable grounds there is or may be personal property that may be seized under the order, or a record evidencing the title to such property, for the purpose of searching for and seizing it;
  - (b) from time to time re-enter any such place where any such property or record is for the purpose of performing the Sheriff's functions under the order and this Act in relation to the property;
  - (c) seize and remove any such property or record;
  - (d) make or print out, and keep, a copy of any such record and for that purpose —
    - (i) seize and remove, for no more than 7 days, any computer or other thing on which any such record is or may be stored;
    - (ii) operate the computer or other thing;
    - (iii) direct a person who has the custody or control of any such record, computer or thing to make or print out a copy of the record or to operate the computer or thing;

- (e) take reasonable measures to secure or protect any such property, record, computer or thing against damage or unauthorised removal or interference.
- (2) The powers in subsection (1)(a) and (b) —
  - (a) may be exercised at any time of the day or night in respect of a place that is not a dwelling; and
  - (b) must not be exercised in respect of a dwelling without the consent of the occupier of the dwelling or, if there is no occupier, the owner.
- (3) Despite subsection (2)(b), if —
  - (a) the consent referred to in subsection (2)(b) is unreasonably withheld; or
  - (b) the Sheriff, after reasonable attempts to do so, cannot contact the occupier or owner of the dwelling,

the Sheriff may exercise the powers in subsection (1)(a) and (b) without that consent, at any time between 9 a.m. and 5 p.m.

- (4) A person who disobeys a direction given under subsection (1)(d)(iii) commits an offence.

Penalty: Imprisonment for 12 months.

**76. Property that cannot be seized and sold**

The following personal property of a judgment debtor must not be seized or sold under a property (seizure and sale) order —

- (a) property that the judgment debtor holds in trust for another person and in which the judgment debtor does not have a beneficial interest;
- (b) wearing apparel and personal items that are of a kind and value prescribed by the regulations;
- (c) household property that is of a kind and value prescribed by the regulations;

- (d) property that is used by the judgment debtor to earn income by personal exertion of a value that does not exceed the amount prescribed by the regulations.

**77. Seizure notice to be issued**

- (1) As soon as practicable after seizing personal property under a property (seizure and sale) order the Sheriff must give a written notice of seizure to the judgment debtor and, if the person who has custody of the property when it is seized is not the judgment debtor, to that person.
- (2) The notice must —
  - (a) name the judgment debtor;
  - (b) state the judgment debt as at the date of the notice;
  - (c) describe the personal property seized;
  - (d) explain that the property has been seized and that unless the judgment debt is paid, the property will be sold to recover it; and
  - (e) contain any other information that is prescribed by the regulations.
- (3) If the Sheriff releases any personal property from seizure the Sheriff must serve any person on whom a notice of seizure was served with a notice of release.

**78. Custody of seized property**

- (1) Until it is sold, seized personal property is to be kept in such custody as the Sheriff decides.
- (2) Seized personal property may be left in the custody of the judgment debtor or another person if the debtor or person, in writing, consents and agrees —
  - (a) to be responsible for its safekeeping;
  - (b) not to move it, or allow it to be moved, without the prior consent of the Sheriff; and

- (c) not to give custody or possession of it to another person without the prior consent of the Sheriff.
- (3) If the Sheriff leaves seized personal property in the custody of the judgment debtor or another person, the Sheriff is not to be taken as having abandoned the property.
- (4) If the Sheriff seizes any record relating to a business or undertaking of the judgment debtor or another person, it must not be retained for longer than 7 days.
- (5) Subsection (4) does not apply to any cheque, bill of exchange, promissory note, bond, specialty or other security for money.

**79. Cheques etc., consequences of seizing**

- (1) If a cheque, bill of exchange, promissory note, bond, specialty, or other security for money, is seized under a property (seizure and sale) order, the Sheriff may receive any money payable under it from the person liable to pay and may, when payment of the money is due —
  - (a) demand payment; and
  - (b) sue the person liable to pay.
- (2) For the purposes of receiving payment under any record referred to in subsection (1), the Sheriff is to be taken to be the agent of the judgment debtor.
- (3) Payment to the Sheriff by the person liable to pay under such a record discharges the person's liability to pay to the extent of the payment.

**Subdivision 3 — Seizing and selling real property**

**80. Property (seizure and sale) order, effect of**

- (1) In this section —  
“**saleable interest**”, in real property, means any legal or equitable estate or interest in the property that can be disposed of according to law.

- (2) A property (seizure and sale) order made in respect of a judgment debtor —
- (a) applies to —
- (i) any saleable interest that is registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act and that the debtor has at the time when the order is registered under section 133 of that Act in respect of the interest;
  - (ii) any saleable interest that is not registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act and that the debtor has at the time when the Sheriff receives the order;
  - (iii) any saleable interest in any other real property in the State that the debtor has at the time when the Sheriff receives the order;
- and
- (b) entitles the Sheriff —
- (i) to seize the land;
  - (ii) to sell the saleable interest; and
  - (iii) to apply the proceeds in accordance with section 72.
- (3) The Sheriff's entitlement applies even if the judgment debtor's saleable interest is held jointly or in common with another or others.
- (4) Actual seizure of real property by physical occupation or other means before any saleable interest in it is sold under a property (seizure and sale) order is not necessary.
- (5) A monetary judgment does not create a charge over or an interest in any real property.

- (6) Irrespective of whether it is registered under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856*, a property (seizure and sale) order does not create a charge over or an interest in any real property.
- (7) Under a property (seizure and sale) order, the Sheriff must not sell any saleable interest that is registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act unless, at the time of the sale, the order is registered under section 133 of that Act in respect of the interest.
- (8) If, after the Sheriff receives a property (seizure and sale) order, a person acquires an interest in any real property to which the order applies, the person does so subject to the Sheriff's entitlement in subsection (2) unless, at the time of acquiring the interest —
  - (a) the person acquired it in good faith and for valuable consideration;
  - (b) the person had no notice of the fact that the Sheriff had received the order and that it was in effect; and
  - (c) the order had not been registered under the *Registration of Deeds Act 1856*.
- (9) Subsection (8) does not apply to or in relation to an interest acquired in any saleable interest that is registered under the *Transfer of Land Act 1893* in respect of land under the operation of that Act.

**81. Power of entry**

- (1) Under a property (seizure and sale) order the Sheriff, using any force and assistance that is reasonably necessary in the circumstances, may enter any real property in which the judgment debtor has a saleable interest for the purposes of performing the Sheriff's functions under the order and this Act in relation to the interest.

- (2) Without limiting subsection (1), the Sheriff may —
  - (a) enter the real property with any prospective purchaser of the judgment debtor's saleable interest;
  - (b) conduct any sale of the interest on the property;
  - (c) exercise the powers in section 100 in respect of any personal property situated on the real property.
- (3) The powers in subsections (1) and (2) —
  - (a) may be exercised at any time of the day or night in respect of a place that is not a dwelling; and
  - (b) must not be exercised in respect of a dwelling without the consent of the occupier of the dwelling or, if there is no occupier, the owner.
- (4) Despite subsection (3)(b), if —
  - (a) the consent referred to in subsection (3)(b) is unreasonably withheld; or
  - (b) the Sheriff, after reasonable attempts to do so, cannot contact the occupier or owner of the dwelling,

the Sheriff may exercise the powers in subsections (1) and (2) without that consent, at any time between 9 a.m. and 5 p.m.

**82. Judgment debtor may be permitted to sell or mortgage real property**

- (1) With the written consent of the judgment creditor, the Sheriff may permit the judgment debtor to sell or mortgage the judgment debtor's saleable interest in any real property to which a property (seizure and sale) order applies.
- (2) The Sheriff's permit must —
  - (a) be in writing;
  - (b) require the amount of any deposit paid in respect of any sale of the interest to be paid to the Sheriff to be held by the Sheriff as stakeholder;

- (c) state the minimum amount (including any such deposit) that must be paid to the Sheriff out of the money realised from any sale or mortgage of the interest;
  - (d) state the date on which the permit expires; and
  - (e) contain any other information that is prescribed by the regulations.
- (3) The Sheriff's permit may include any conditions that the Sheriff considers necessary.
- (4) While the Sheriff's permit is in force, the Sheriff must not sell the saleable interest under the property (seizure and sale) order.
- (5) If while the Sheriff's permit is in force —
- (a) the judgment debtor sells or mortgages the interest;
  - (b) in the case of a sale, the amount of any deposit paid is paid to the Sheriff in accordance with the permit; and
  - (c) in any case, either —
    - (i) an amount not less than the minimum amount stated in the permit is paid to the Sheriff; or
    - (ii) with the Sheriff's consent, an amount less than the minimum amount stated in the permit is paid to the Sheriff,
- then —
- (d) any liability of the purchaser or mortgagee to pay the judgment debtor the money paid to the Sheriff is extinguished;
  - (e) the Sheriff must consent to the registration under the *Transfer of Land Act 1893* or the *Registration of Deeds Act 1856* of any documents that relate to the sale or mortgage; and
  - (f) the Sheriff must apply the money received in accordance with section 72 as if they were the proceeds of a sale under the order.

**Subdivision 4 — Interpleader**

**83. Making a claim to property**

- (1) A person (the “**claimant**”), other than the judgment debtor, who claims —
  - (a) any legal or equitable estate or interest in any personal property that has been seized by the Sheriff under a property (seizure and sale) order;
  - (b) any legal or equitable estate or interest in any real property in which a judgment debtor has a saleable interest to which a property (seizure and sale) order applies; or
  - (c) the proceeds of the sale of any such property or interest,may make a claim to the Sheriff.
- (2) The claim must —
  - (a) be in writing;
  - (b) describe the property or interest that is claimed;
  - (c) state the basis for the claim;
  - (d) state an address for service for the claimant; and
  - (e) contain any other information that is prescribed by the regulations.
- (3) As soon as practicable after receiving such a claim, the Sheriff must give the judgment creditor —
  - (a) a copy of the claim; and
  - (b) a notice requiring the judgment creditor to notify the Sheriff within the period that is specified in the notice whether the claim is admitted or disputed by the judgment creditor.

**84. Judgment creditor may admit or dispute claim**

- (1) A judgment creditor may admit or dispute a claim made under section 83.

- (2) If a judgment creditor disputes a claim the Sheriff may apply for relief by way of interpleader —
- (a) if the claim relates to personal property, to the court that issued the property (seizure and sale) order;
  - (b) if the claim relates to real property —
    - (i) to the Supreme Court if the property (seizure and sale) order was issued by the Supreme Court;
    - (ii) to the District Court if the property (seizure and sale) order was issued by the District Court or the Magistrates Court.
- (3) On an application made under subsection (2) to the Magistrates Court or the District Court, that court has and may exercise the same powers as the Supreme Court would have if the application were made to the Supreme Court.

### **Division 7 — Receivers and special remedies**

#### **85. Interpretation**

In this Division —

**“available asset”**, in relation to a judgment debtor, means —

- (a) the judgment debtor’s legal or equitable estate or interest in any real or personal property; or
  - (b) the judgment debtor’s interest in the property or profits of a partnership of which the debtor is a partner or in any other money that may be coming to the judgment debtor in respect of the partnership,
- irrespective of whether the interest is held jointly or in common with another or others.

#### **86. Appointing a receiver, injunctions etc.**

- (1) If an available asset of a judgment debtor cannot be conveniently appropriated or realised under this Part for the purposes of recovering a judgment debt, whether due to acts or

omissions of the judgment debtor or otherwise, the judgment creditor may apply to the court for any or all of the following —

- (a) an order that determines the nature and extent of the asset;
  - (b) an order that appoints a receiver of the asset;
  - (c) an order that the judgment debtor or any person in possession or control of the asset —
    - (i) deliver the asset to a person named in the order;
    - (ii) do, not do, or cease from doing, any act that relates to the asset and that is specified in the order;
  - (d) an order that prohibits the judgment debtor or any other person from disposing of or otherwise dealing with the asset;
  - (e) an order that facilitates the appropriation or realisation of the asset.
- (2) The court may make any such order, subject to section 87.
- (3) The court may make any such order even if no other proceedings have been taken to enforce the monetary judgment concerned.

**87. Receiver, appointment of etc.**

- (1) In determining whether to appoint a receiver under section 86 the court must consider at least the following —
- (a) whether appointing a receiver would be an effective means of realising the property;
  - (b) the probable cost of the receivership in relation to the probable benefits to be derived by appointing a receiver;
  - (c) whether appointing a receiver would cause undue hardship or prejudice to the judgment debtor or any other person;

- (d) the likelihood of the judgment debt being recovered by means of any other enforcement order without realising the available asset in question.
- (2) A court must not appoint a person as a receiver unless —
  - (a) the person satisfies the qualifications, if any, prescribed by the regulations; and
  - (b) the person has agreed in writing to act as receiver in respect of the available asset in question.
- (3) Unless otherwise ordered by the court, a receiver appointed by the court may take into the receiver's custody and control the available asset in respect of which the receiver is appointed.
- (4) When or after appointing a receiver the court may make any ancillary or consequential order needed to enable the receiver to realise from the available asset sufficient money to satisfy the judgment debt.
- (5) Without limiting subsection (4), the court may make —
  - (a) any order needed to give the receiver power to take custody or control of, manage, sell, dispose of, divert income from, or take proceedings in relation to, the available asset;
  - (b) any order needed as to the payment of the receiver's fees and expenses.

**Division 8 — Disobeying time for payment orders and instalment orders**

**88. Summons to default inquiry, request for**

- (1) If a time for payment order has been made in respect of a judgment debtor and the debtor has disobeyed the order, the judgment creditor may apply for a default inquiry to be held in respect of the judgment debtor.
- (2) If an instalment order has been made in respect of a judgment debtor and the debtor, on 2 or more occasions, has not paid an

instalment in accordance with the order, the judgment creditor may apply for a default inquiry to be held in respect of the judgment debtor.

- (3) An application made under subsection (1) or (2) must —
  - (a) if the judgment debtor is a natural person, contain his or her name and address;
  - (b) if the judgment debtor is a partnership, contain the name and address of one or more partners;
  - (c) if the judgment debtor is a corporation, contain the name and address of one or more officers of the corporation;
  - (d) contain the name and address of any other person who the judgment creditor thinks may be able to assist with the inquiry and who should be summoned to it; and
  - (e) for each such person indicate whether a summons under section 89(1)(a) or (b) or both is required.
- (4) On receiving such an application the court must set a date for the default inquiry and notify the judgment creditor of it.

**89. Default inquiry, summons to attend**

- (1) In respect of each person named in an application under section 88(3), or in a request made under subsection (2), the court may issue either or both of the following, according to the application or request —
  - (a) a summons to attend a default inquiry to give oral evidence;
  - (b) a summons to attend and produce to the court, for use in the inquiry, any record or thing that is or may relate to the matters about which the judgment debtor may be examined and that is detailed in the summons.
- (2) During a default inquiry the judgment creditor or judgment debtor may request the court to summons a person to the inquiry to give or produce evidence.

- (3) A summons issued under subsection (1) must be served personally.
- (4) If a person who has been summoned under subsection (1) does not attend as ordered by the summons, the court may issue a warrant to have the person arrested and brought before the court.
- (5) A person who has been summoned under subsection (1) and who, without a reasonable excuse —
  - (a) does not obey the summons; or
  - (b) refuses to be sworn or answer any lawful question,is guilty of a contempt of court.

**90. Default inquiry, nature of**

- (1) If at a default inquiry a court is satisfied —
  - (a) in the case of an alleged disobedience of a time for payment order — that the judgment debtor, at the time the judgment debt was to be paid under the order —
    - (i) had the means to pay the judgment debt but did not pay it; and
    - (ii) did not have a reasonable excuse for not paying the judgment debt;
  - (b) in the case of an alleged disobedience of an instalment order — that in the case of each of 2 or more of the instalments that were required to be paid under the order, the judgment debtor, at the time the instalment was to be paid under the order —
    - (i) had the means to pay the instalment but did not pay it; and
    - (ii) did not have a reasonable excuse for not paying the instalment,

then —

- (c) if the judgment debtor is a natural person — he or she is guilty of a contempt of court;
  - (d) if the judgment debtor is a partnership — each partner is guilty of a contempt of court unless he or she satisfies the court —
    - (i) that the partnership's disobedience occurred without the partner's consent or connivance; and
    - (ii) that the partner took all the measures to ensure the partnership obeyed the order that he or she could reasonably be expected to have taken having regard to the partner's functions and to all the circumstances;
  - (e) if the judgment debtor is a corporation, the corporation is guilty of a contempt of court, and each officer of the corporation is also guilty of a contempt of court unless he or she satisfies the court —
    - (i) that the corporation's disobedience occurred without the officer's consent or connivance; and
    - (ii) that the officer took all the measures to ensure the corporation obeyed the order that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.
- (2) A natural person, partner, corporation or officer guilty of a contempt under subsection (1) may be punished for it by the court at or after the default inquiry.
- (3) If under subsection (2) a court decides to imprison a person for contempt of court, the period of imprisonment must be for a period set by the court that is not longer than 40 days.
- (4) If under subsection (2) a court decides to imprison a person for contempt of court, the court may order that the order for the person's imprisonment be suspended for such period and on

such terms as the court orders to enable the judgment debtor to comply with —

- (a) a new time for payment order made by the court; or
  - (b) the instalment order, or an amended or new instalment order made by the court.
- (5) If —
- (a) an order for a person's imprisonment is suspended under subsection (4); and
  - (b) the judgment debtor does not comply with the order referred to in subsection (4)(a) or (b), as the case requires,

the court, on the application of the judgment creditor and on proof of the non-compliance, may issue a warrant for the arrest of the person and for his or her imprisonment in accordance with the suspended order.

- (6) A punishment imposed on a person under this section for a contempt of court does not —
- (a) extinguish or reduce the judgment debt; or
  - (b) terminate an instalment order, unless the court orders otherwise.

**91. Imprisonment for default, judgment creditor's duties**

If an order is made under section 90(2) for the imprisonment of a person for a contempt of court then, whether or not it is suspended under section 90(4), the judgment creditor must immediately advise the Sheriff —

- (a) if the judgment creditor receives or recovers any amount in respect of the judgment debt and the amount; or
- (b) if the judgment creditor accepts part payment of the judgment debt in full satisfaction of the judgment debt.

Penalty: Imprisonment for 12 months.

**92. Imprisonment for default, release from**

- (1) In this section —
- “**imprisonment order**” means an order made under section 90(2) for the imprisonment of a person for a contempt of court;
- “**superintendent**” has the meaning given by the *Prisons Act 1981* section 3(1).
- (2) Whether or not the period of imprisonment stated in an imprisonment order has expired, the person imprisoned under the order must be released if —
- (a) the whole of the judgment debt is paid or recovered;
  - (b) the judgment creditor accepts part payment of the judgment debt in full satisfaction of the judgment debt; or
  - (c) the judgment creditor gives the Sheriff a written request that the person be released.
- (3) The Sheriff must immediately advise the superintendent of the prison in which a person is imprisoned on becoming aware that the debtor should be released under subsection (2).
- (4) If the whole or a part of the judgment debt is paid to a superintendent he or she must immediately transmit it to the Sheriff.
- (5) The court that made an imprisonment order may order the release of the person concerned if it considers that the person ought to be released because of illness or other good reason.
- (6) This section does not authorise the release of a person who by law is required to be kept in custody in respect of another matter.

**Division 9 — Miscellaneous**

**93. Judgments against objects**

- (1) If a court gives a monetary judgment against an object, the court may —
  - (a) authorise its seizure and sale; and
  - (b) make any ancillary or consequential order needed.
- (2) Subsection (1) does not limit the operation of the *Admiralty Act 1988* of the Commonwealth in relation to judgments in matters under that Act.

## **Part 5 — Enforcing non-monetary judgments**

### **Division 1 — Judgments requiring property to be given up**

#### **94. Application of this Division**

This Division applies if a judgment of a court requires or has the effect of requiring a person to give possession of any real or personal property to another person.

#### **95. Property (seizure and delivery) order**

- (1) In order to enforce a judgment to which this Division applies, a person entitled to the benefit of the judgment may apply to the court for an order, addressed to the Sheriff, authorising the Sheriff to seize the property concerned and deliver possession of it to the person.
- (2) The court may make such an order and may do so on terms as to costs or otherwise.
- (3) When or after making a property (seizure and delivery) order the court may make any necessary ancillary or consequential order and may do so on terms as to costs or otherwise.
- (4) When or after making a property (seizure and delivery) order, the court may make an enforcement order under Part 4 for the purpose of enforcing the payment of —
  - (a) the enforcement costs associated with the property (seizure and delivery) order; and
  - (b) the value of the property concerned, as assessed by the court, if the property cannot be seized under the property (seizure and delivery) order.

**96. Property (seizure and delivery) order, effect of**

- (1) Under a property (seizure and delivery) order the Sheriff, using any force and assistance that is reasonably necessary in the circumstances, may —
  - (a) if the order relates to real property —
    - (i) enter the property and evict from it any person who is not lawfully entitled to be on the property;
    - (ii) exercise the powers in section 100 in respect of any personal property situated on the real property;
  - (b) if the order relates to personal property — enter any place where the Sheriff reasonably suspects the property is situated and seize the property.
- (2) If a property (seizure and delivery) order relates to real property, the powers in subsection (1)(a) may only be exercised between 9 a.m. and 5 p.m.
- (3) If a property (seizure and delivery) order relates to personal property, the powers in subsection (1)(b) —
  - (a) may be exercised at any time of the day or night in respect of a place that is not a dwelling; and
  - (b) must not be exercised in respect of a dwelling without the consent of the occupier of the dwelling or, if there is no occupier, the owner.
- (4) Despite subsection (3)(b), if —
  - (a) the consent referred to in subsection (3)(b) is unreasonably withheld; or
  - (b) the Sheriff, after reasonable attempts to do so, cannot contact the occupier or owner of the dwelling,

the Sheriff may exercise the powers in subsection (1)(b) without that consent, at any time between 9 a.m. and 5 p.m.

- (5) If a person unlawfully resumes possession of real or personal property seized from the person under a property (seizure and delivery) order, section 98 applies as if the person had disobeyed a judgment to which Division 2 applies.

**Division 2 — Other non-monetary judgments**

**97. Application of this Division**

This Division applies if a judgment requires or has the effect of requiring a person to not do an act, to cease doing an act, or to do an act, other than —

- (a) to pay money; or
- (b) to give possession of any real or personal property to another person.

**98. Disobeying judgment is a contempt of court**

- (1) If a natural person disobeys a judgment to which this Division applies the person is guilty of a contempt of court.
- (2) If a partnership disobeys a judgment to which this Division applies, each partner is guilty of a contempt of court unless he or she satisfies the court —
  - (a) that the partnership's disobedience occurred without the partner's consent or connivance; and
  - (b) that the partner took all the measures to ensure the partnership obeyed the judgment that he or she could reasonably be expected to have taken having regard to the partner's functions and to all the circumstances.
- (3) If a corporation disobeys a judgment to which this Division applies, the corporation is guilty of a contempt of court, and each officer of the corporation is also guilty of a contempt of court unless he or she satisfies the court —
  - (a) that the corporation's disobedience occurred without the officer's consent or connivance; and

- (b) that the officer took all the measures to ensure the corporation obeyed the judgment that he or she could reasonably be expected to have taken having regard to the officer's functions and to all the circumstances.
- (4) A person entitled to the benefit of a judgment to which this Division applies may request the court to deal with a natural person, partner, corporation or officer guilty of a contempt under this section for the contempt.

**99. Court may order act to be done at expense of obligated person**

- (1) This section applies if a judgment requires or has the effect of requiring a person (the "**obligated person**") to do an act.
- (2) In order to enforce such a judgment, a person who is entitled to the benefit of the judgment may apply to the court for an order addressed to —
  - (a) the person entitled to the benefit of the judgment; or
  - (b) a person appointed by the court,that authorises that person to do the act concerned, or as much of it as is practicable, at the expense of the obligated person.
- (3) The court may make such an order and may do so on terms as to costs or otherwise.
- (4) The court may make such an order whether or not proceedings for contempt are being taken against the obligated person.
- (5) When or after making such an order the court may make any necessary ancillary or consequential order including an order providing for the expenses of carrying out the order to be determined by the court.
- (6) When or after making such an order, the court may make an enforcement order under Part 4 for the purpose of enforcing the payment of —
  - (a) the enforcement costs associated with the order; and

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(b) the expenses determined under subsection (5).

## **Part 6 — Miscellaneous enforcement provisions**

### **100. Personal property on land, powers to deal with**

- (1) If under section 81(2) or 96(1) the Sheriff may exercise the powers in this section in relation to personal property situated on real property, the Sheriff may, if he or she thinks fit, remove the personal property from the real property and store it.
- (2) If the owner of personal property removed and stored under subsection (1) can be found —
  - (a) the property must be returned to the owner if the owner pays the costs of removing and storing the property; but
  - (b) otherwise, the property is to be dealt with by the Sheriff in accordance with a court's directions given under section 104.
- (3) If the owner of personal property removed and stored under subsection (1) cannot be found after reasonable inquiries by the Sheriff, the property is to be dealt with by the Sheriff in accordance with a court's directions given under section 104.
- (4) A court that gives directions in respect of such property may give directions to enable the Sheriff to recover the costs of removing and storing the property.

### **101. Signing of documents, court may order**

- (1) If the signature or seal of a person is required on a document in order to give effect to a judgment, a party entitled to the benefit of the judgment may apply to the court for an order that —
  - (a) orders the person to sign or seal the document; or
  - (b) authorises an officer of the court to apply the court's seal instead of the person's signature or seal.
- (2) A document that has a court's seal applied under such an order has effect as if it were signed or sealed by the person concerned.

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**102. Duration and renewal of orders and warrants**

- (1) Each of the following has effect for 12 months after the day on which it is made or issued —
  - (a) a property (seizure and delivery) order;
  - (b) a property (seizure and sale) order;
  - (c) a warrant issued under section 29(4) or 89(4).
- (2) A person in whose favour such an order operates may from time to time apply to the court that made it for the order's operation to be extended.
- (3) The judgment creditor in proceedings in which such a warrant was issued may from time to time apply to the court that made it for the warrant's operation to be extended.
- (4) On such an application, the court may extend the operation of the order or warrant for a period set by the court that is not longer than 12 months.
- (5) An order made under subsection (4) has no effect if it is made after the order or warrant referred to in subsection (1) has ceased to have effect.

**103. Amending and cancelling orders etc.**

- (1) If a court makes an order under this Act (the “**original order**”), a person —
  - (a) who obtained the original order;
  - (b) to whom the original order is addressed;
  - (c) who is authorised to do anything under the original order; or
  - (d) who is affected by, or whose property is affected by, the original order,

may apply to the court for an order that amends or cancels the original order.

- (2) The court may make an order that amends or cancels the original order and may do so on terms as to costs or otherwise.
- (3) The person who made the application under subsection (1) must serve the order made under subsection (2) on each of the other persons referred to in subsection (1).
- (4) Unless it orders otherwise, the order made under subsection (2) has effect —
  - (a) if the person referred to in subsection (1)(b) or (c) applied for it, when it is made; or
  - (b) otherwise, when it is served on that person.

**104. Directions, court may give**

- (1) Any of the following persons may apply to a court for directions in respect of a matter arising under or in connection with the operation or carrying out of an order issued under this Act —
  - (a) the person who obtained the order;
  - (b) a person to whom the order is addressed;
  - (c) a person who is authorised to do anything under the order;
  - (d) a person who is affected by, or whose property is affected by, the order; or
  - (e) a person who in the opinion of the court has a sufficient interest in the matter.
- (2) Such an application must be made —
  - (a) if the order relates to personal property, to the court that issued the order;
  - (b) if the order relates to real property —
    - (i) to the Supreme Court if the order was issued by the Supreme Court;
    - (ii) to the District Court if the order was issued by the District Court or the Magistrates Court.

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- (3) On such an application, the court may —
- (a) give any directions that are just; and
  - (b) make any order as to the payment of the costs of the application as are just.

**105. Irregular enforcement, courts' powers as to**

If the court that made an order under Part 4 or 5 or section 101 is satisfied that an irregularity has occurred in connection with the making or carrying out of the order, the court may make any order needed to correct the irregularity including an order —

- (a) that sets aside the order or an act done under the order;
- (b) that requires the restitution of property or the payment of money, compensation or damages.

## **Part 7 — Administrative matters**

### **Division 1 — Officers**

#### **106. Interpretation**

In this Division —

**“declared areas”** means those areas of the State outside the metropolitan region (as defined in the *Metropolitan Region Town Planning Scheme Act 1959*) that the Governor proclaims to be areas of the State where it will not be practicable to appoint a bailiff unless section 111 applies to the bailiff;

**“police officer”** means a person who is a member of the Police Force;

**“public servant”** means a person who is employed under the *Public Sector Management Act 1994* Part 3.

#### **107. Bailiffs, appointment of**

- (1) The Sheriff may appoint one or more fit and proper natural persons as bailiffs.
- (2) Subject to subsection (1) the Sheriff may appoint as a bailiff —
  - (a) a public servant, with the consent of his or her employing authority under the *Public Sector Management Act 1994*;
  - (b) a natural person who is employed by a local government or a regional local government, with the consent of his or her employer;
  - (c) a police officer, with the consent of the Commissioner of Police;
  - (d) a natural person with whom the Sheriff has entered into a contract for services;

- (e) a natural person who is employed by a person with whom the Sheriff has entered into a contract for services.
- (3) A bailiff's appointment may be suspended or terminated for misconduct in the performance of his or her functions or for any other good reason by the Sheriff.
- (4) Any act by the Sheriff under this section must be in writing.

**108. Assistant bailiffs, appointment of**

- (1) With the prior written approval of the Sheriff, a bailiff may appoint one or more natural persons who are fit and proper persons as his or her assistant bailiffs.
- (2) An assistant bailiff's appointment may be suspended or terminated for misconduct in the performance of his or her functions or for any other good reason by —
  - (a) the bailiff to whom he or she is an assistant bailiff; or
  - (b) the Sheriff.
- (3) An assistant bailiff's appointment ceases on the death or termination of the appointment of his or her bailiff.
- (4) The death or termination of the appointment of a bailiff does not invalidate an act of his or her assistant bailiff committed before the assistant became aware of the death or termination.
- (5) Any act by a bailiff or the Sheriff under this section must be in writing.

**109. Sheriff may delegate to bailiffs**

- (1) The Sheriff may delegate to a bailiff, on any terms the Sheriff thinks fit —
  - (a) any power or duty the Sheriff has under this Act, other than this power to delegate and any power in section 107; or

- (b) the carrying out of an order that is made by a court under this Act and addressed to the Sheriff.
- (2) Such a delegation may be in general terms or as to matters specified by the Sheriff in the delegation.
- (3) If a delegation is made under subsection (1)(b), the delegate is for the purposes of this Act to be taken to be the Sheriff in relation to the carrying out of the order.
- (4) The Sheriff may cancel or amend a delegation to a bailiff.
- (5) A bailiff exercising or performing a power or duty that has been delegated under this section, is to be taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) Neither the Sheriff nor the State is liable for any act or omission of a bailiff or an assistant bailiff (other than a bailiff, or an assistant bailiff, who is a public servant or a police officer) when exercising or performing, or purporting to exercise or perform, a power or duty that has been delegated under this section.
- (7) Any act by the Sheriff under this section must be in writing.
- (8) This section does not limit the Sheriff's ability to perform a function through an officer or agent.

**110. Bailiffs' functions**

- (1) A bailiff—
  - (a) may perform any power or duty of the Sheriff under this Act that is delegated to him or her by the Sheriff; and
  - (b) is to carry out any order that is made by a court under this Act and addressed to the Sheriff and that the Sheriff delegates to the bailiff to carry out.
- (2) A bailiff is not to carry out a function of the Sheriff other than a function delegated to the bailiff by the Sheriff.

- (3) A bailiff may delegate any of his or her functions to one or more of his or her assistant bailiffs, other than this power to delegate and any power in section 108.

**111. Protection from liability**

- (1) In this section —  
“**protected officer**” means —
- (a) the Sheriff;
  - (b) a Deputy Sheriff; and
  - (c) a bailiff or an assistant bailiff within the declared areas.
- (2) In this section, a reference to the doing of anything includes a reference to an omission to do anything.
- (3) A civil action does not lie against a protected officer for anything that he or she has done, in good faith, in the performance or purported performance of a function under this Act or under an order made under this Act.
- (4) The Crown is also relieved of any liability that it might otherwise have had for another person having done anything as described in subsection (3).
- (5) The protection given by this section applies even though the thing done as described in subsection (3) may have been capable of being done whether or not this Act had been enacted.

**Division 2 — Provisions about the Sheriff**

**112. Sheriff unable to act, court’s powers**

- (1) If the Sheriff, due to a conflict of interest or any other reason, is unable to perform any of his or her functions under an order made under this Act, the court that made the order may appoint another person to perform the functions.

- (2) A person who is appointed under subsection (1) to perform any functions has, when performing those functions, the functions and protection that the Sheriff would have had.

**113. Sheriff exempt from some fees**

The Sheriff is exempt from paying fees under the Acts in the Table to this section in connection with any matter arising out of or in connection with the performance of his or her functions under this Act.

**Table**

*Electoral Act 1907*  
*Road Traffic Act 1974*  
*Western Australian Marine Act 1982*

**114. Sheriff entitled to access to some official records**

To the extent that it is necessary for the performance of the Sheriff's functions under this Act, the Sheriff is entitled to have access to and to make use of the records kept under —

- (a) the *Road Traffic Act 1974* in relation to driver's licences and vehicle licences issued under that Act; or
- (b) the *Western Australian Marine Act 1982* in relation to vessel licences issued under that Act.

**115. Sheriff exempt from some licensing requirements**

- (1) The Sheriff and any delegate of the Sheriff may sell property seized under an order made under this Act without holding any licence to do so that is required under a written law.
- (2) Subsection (1) does not prevent the Sheriff from engaging a person with an appropriate licence under a written law to sell property seized under an order made under this Act.

## **Part 8 — Miscellaneous**

### **116. Protection of person acting under sealed court order**

In any civil action against a person in respect of any act done under an order issued under this Act, a copy of the order sealed with a court seal is proof of the authority of the court to issue the order.

### **117. Sheriff and bailiffs to carry out orders**

- (1) The Sheriff, and any bailiff delegated to do so by the Sheriff, must take action in accordance with an order issued under this Act and addressed to the Sheriff as soon as practicable after receiving the order.
- (2) The Sheriff may take any reasonable action that the Sheriff considers necessary or convenient for the purposes of performing the Sheriff's functions under an order issued under this Act.

### **118. Impersonating an officer, offence of**

A person who by words or conduct falsely represents himself or herself to be an enforcement officer commits an offence.

Penalty: Imprisonment for 12 months.

### **119. Regulations**

- (1) The Governor may make regulations prescribing any matter that is required or permitted by this Act to be prescribed or that is necessary or convenient for giving effect to the purposes of this Act.
- (2) Without limiting subsection (1) regulations may be made about any or all of the following matters —
  - (a) the practice and procedure to be followed —
    - (i) when making a request or application;
    - (ii) when making or issuing an order;

- (iii) in proceedings in a court or otherwise;
    - (iv) in dealing with a contempt of court committed, under this Act;
  - (b) matters relating to the costs in proceedings under this Act;
  - (c) authorising the chief executive officer from time to time to approve the forms of applications, orders and other documents required for the purposes of this Act.
- (3) Without limiting subsection (1) regulations may empower a court to issue a summons to, or a warrant for the arrest of, a person for or in connection with proceedings under this Act and in particular for or in connection with dealing with a person for an alleged contempt of court committed under this Act.
- (4) Regulations may provide for or prescribe the fees and other amounts to be paid in respect of anything done by the Marshal in Admiralty in or in relation to enforcing any judgment in a matter under the *Admiralty Act 1988* of the Commonwealth.

**120. Fees, regulations may prescribe**

- (1) Without limiting section 119(1), regulations may provide for or prescribe the fees to be paid in respect of or in connection with any proceedings under this Act.
- (2) Without limiting subsection (1), regulations may in respect of or in connection with such proceedings —
  - (a) provide for or prescribe the fees to be paid —
    - (i) when making a request or application;
    - (ii) when lodging a document with a court;
    - (iii) for the issue of any document by a court;
    - (iv) for the service of any document;
  - (b) provide for or prescribe the allowances and expenses to be paid to witnesses, interpreters and other persons who are required to appear before a court;

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- (c) provide for or prescribe the fees to be paid to an enforcement officer in connection with the officer carrying out an order made under this Act;
- (d) require the payment of expenses incurred by an enforcement officer in connection with the officer carrying out an order made under this Act;
- (e) require a deposit to be paid in anticipation of the fees or expenses that will or may be payable;
- (f) provide for the resolution of disputes about the fees or expenses payable in any case and for the review of decisions in such disputes;
- (g) provide for fees to be calculated by reference to —
  - (i) the amount of a judgment sum or the unpaid amount of a judgment sum;
  - (ii) the amount of a judgment debt at any time;
  - (iii) the value of any property that is seized, or that is sold or delivered, under an order made under this Act;
  - (iv) the amount recovered under an enforcement order made under Part 4;
  - (v) the time spent by an enforcement officer in connection with carrying out an order made under this Act.

**121. Rules of court**

- (1) A court referred to in section 5 may make rules of court that provide for any matter that is required or permitted by this Act to be the subject of rules of court or that is necessary or convenient for giving effect to the purposes of this Act.
- (2) The rules of court must not be inconsistent with any regulations made under section 119.

## **Schedule 1 — Provisions about available debts**

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### **1. Financial institution accounts in name of judgment debtor**

- (1) This clause does not apply to an account that is prescribed by regulations as being exempt from the operation of this clause.
- (2) For the purpose of determining whether money, in an account with a financial institution, standing to the credit of the judgment debtor alone or jointly with another or others is an available debt for the purposes of Part 4 Division 5, the following conditions are to be disregarded —
  - (a) a condition that a demand must be made before any money or share is withdrawn;
  - (b) a condition relating to the manner in which or the place at which any such demand is to be made;
  - (c) a condition that a passbook, receipt or other document must be produced before any money or share is withdrawn;
  - (d) a condition that notice is required before any money or share is withdrawn;
  - (e) a condition that any money or share must not be withdrawn for any specified period;
  - (f) a condition prescribing a minimum amount in respect of any withdrawal;
  - (g) a condition that a minimum balance must be maintained in the account;
  - (h) a condition relating to the account prescribed by the regulations for the purposes of this subclause.
- (3) Any charge on any money, in an account with a financial institution, standing to the credit of a judgment debtor alone or jointly with another or others, being a charge created by the rules of the institution or the law under which the institution is registered or regulated, is to be disregarded for the purposes of a debt appropriation order.
- (4) Subclause (3) does not affect the rights of a financial institution to set off or appropriate the whole or a part of an amount standing to the credit of a judgment debtor alone or jointly with another or others.

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- (5) So much of the money standing to the credit of the judgment debtor alone or jointly with another or others in an account with a financial institution of which the judgment debtor is a member as is the minimum amount that must be maintained in the account in order that the judgment debtor retains the membership is not an available debt.

**2. Debts owed to judgment debtor and others jointly**

- (1) For the purpose of determining a judgment debtor's interest in an available debt that is or will be or may be owed to the judgment debtor jointly with another or others (the "**joint owners**"), each joint owner is to be presumed to have an equal interest in the debt.
- (2) The presumption that joint owners have an equal interest in an available debt may be rebutted by the judgment creditor, the judgment debtor or another joint owner.
- (3) If, on an application by a person referred to in subclause (2), a court is satisfied that the interests of the joint owners are not equal, the court may by order decide the extent of the judgment debtor's interest in the available debt.

**3. Available debts, court may exempt certain portions**

- (1) If an available debt is money payable for the use of property owned by the judgment debtor alone or jointly with another or others, the court by order may exempt from payment under a debt appropriation order that applies to the debt so much of the debt as is required by the judgment debtor to keep or maintain the property.
- (2) If an available debt is money payable under an agreement with the judgment debtor, the court by order may exempt from payment under a debt appropriation order that applies to the debt so much of the debt as is required by the judgment debtor to perform the agreement.
- (3) The court may exempt from payment under a debt appropriation order that applies to an available debt so much of the debt as is required by the judgment debtor to meet his or her necessary living expenses, including those of his or her dependents.

**4. Debts payable on conditions**

- (1) If—
- (a) the payment of an available debt to a judgment debtor depends on the judgment debtor fulfilling a condition;
  - (b) a debt appropriation order applies to the available debt; and
  - (c) the condition will unreasonably prevent or delay payment of the debt by the third person to the judgment creditor under the order,
- the court may by order —
- (d) require the third person to disregard the condition; or
  - (e) specify some other means of fulfilling the condition.
- (2) An order must not be made under subclause (1) that has the effect of requiring the third person to make a payment to the judgment creditor before the earliest time that the third person could have been required to make the payment to the judgment debtor under the terms of the third person's obligation to the judgment debtor.

### Notes

<sup>1</sup> This is a compilation of the *Civil Judgments Enforcement Act 2004*. The following table contains information about that Act <sup>1a, 4, 5</sup>.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Civil Judgments Enforcement Act 2004</i>	28 of 2004	14 Oct 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

#### Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Housing Societies Repeal Act 2005</i> s. 20 <sup>2</sup>	17 of 2005	5 Oct 2005	To be proclaimed (see s. 2(3) and (4))
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15 <sup>3</sup>	38 of 2005	12 Dec 2005	To be proclaimed (see s. 2)

<sup>2</sup> On the date as at which this compilation was prepared, the *Housing Societies Repeal Act 2005* s. 20 had not come into operation. It reads as follows:

“

**20. *Civil Judgments Enforcement Act 2004* amended**

- (1) The amendments in this section are to the *Civil Judgments Enforcement Act 2004*.
- (2) Section 45 is amended in the definition of “financial institution” as follows:
  - (a) after paragraph (c) by inserting —  
“ or ”;
  - (b) by deleting paragraph (d) and “or” after it.

”.

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<sup>3</sup> On the date as at which this compilation was prepared, the *Planning and Development (Consequential and Transitional Provisions) Act 2005* s. 15, which gives effect to Sch. 2, had not come into operation. It reads as follows:

“

**15. Acts in Schedule 2 amended**

The Acts mentioned in Schedule 2 are amended as set out in that Schedule.

”.

Schedule 2, cl. 9 reads as follows:

“

**Schedule 2 — Consequential amendments**

[s. 15]

**9. Civil Judgments Enforcement Act 2004**

Section 106 is amended in the definition of “declared areas” by deleting “the *Metropolitan Region Town Planning Scheme Act 1959*” and inserting instead —

“ the *Planning and Development Act 2005* ”.

”.

<sup>4</sup> The *Courts Legislation Amendment and Repeal Act 2004* Pt. 22 contains transitional provisions about enforcing judgments given before that Part commenced. Part 22 and the *Civil Judgments Enforcement Act 2004* commenced on 1 May 2005. Part 22 reads as follows:

“

**Part 22 — Transitional provisions**

**Division 1 — Provisions about enforcing judgments**

**143. Interpretation**

(1) In this Part —

“**commencement**” means the commencement of this Part;

“**court fee**”, for an application, does not include any fee payable in connection with serving the application to the Sheriff or any other person;

“**enforcement process**” means any writ, warrant, order, or other process, issued by a court for or in connection with enforcing a judgment or order of the court.

- (2) This Part does not limit the operation of the *Interpretation Act 1984* Part V.

**144. Judgments not satisfied before commencement**

If immediately before commencement a judgment of the Supreme Court, District Court or Local Court is unsatisfied, then on commencement —

- (a) if proceedings to enforce the judgment are pending or any process for the enforcement of the judgment is in force, section 145 applies;
- (b) otherwise, the judgment may be enforced under and subject to the *Civil Judgments Enforcement Act 2004*.

**145. Pending proceedings to enforce a judgment**

- (1) If immediately before commencement proceedings for or in connection with enforcing a judgment are pending in a court, then on commencement either —

- (a) the proceedings may be continued under the law in force immediately before commencement, despite the enactment of the *Civil Judgments Enforcement Act 2004*; or
- (b) the person entitled to the benefit of the judgment may discontinue the proceedings and commence proceedings under the *Civil Judgments Enforcement Act 2004* to enforce the judgment.

- (2) If proceedings are continued under subsection (1)(a) —
- (a) no enforcement process may be issued under the law in force immediately before commencement for or in connection with enforcing the judgment; but
  - (b) subject to the *Civil Judgments Enforcement Act 2004*, the court may make any order under that Act that substantially corresponds with any order that the court could have made in the proceedings under the law in force immediately before commencement.

- (3) If proceedings under the *Supreme Court Act 1935* section 126(2) or the *Local Courts Act 1904* section 130 are continued under subsection (1)(a), they are to be taken to be a means inquiry held under the *Civil Judgments Enforcement Act 2004* for the purposes of subsection (2)(b).

- (4) Subsection (2)(a) does not prevent the issue of any warrant or writ in connection with conducting any proceedings that are continued under subsection (1)(a).

- (5) No court fee shall be payable for commencing proceedings as permitted by subsection (1)(b) by a person who has discontinued proceedings as permitted by that subsection.

**146. Pending process to enforce a judgment**

- (1) If immediately before commencement any enforcement process is in force, then on commencement the process continues in force under the law in force immediately before commencement until —
- (a) the process ceases to be in force under that law;
  - (b) the process ceases to be in force under subsection (6)(a); or
  - (c) the expiry of 12 months after commencement,
- whichever happens first, and may be served, dealt with, or executed, under the law in force immediately before commencement which continues to apply to and in respect of the process.

- (2) If —
- (a) on commencement a copy of a writ of *feri facias* is in the Register maintained under the *Transfer of Land Act 1893*, having been served on the Registrar and entered in that Register under section 133 of that Act; or
  - (b) after commencement a copy of a writ of *feri facias* is entered in that Register under section 133 of that Act, having been served on the Registrar under that section,

then —

- (c) despite subsection (1) the *Transfer of Land Act 1893* section 133 (as inserted by this Act) applies to and in respect of the writ as if the writ were a property (seizure and sale) order that had been —
  - (i) issued under the *Civil Judgments Enforcement Act 2004*; and
  - (ii) registered under the *Transfer of Land Act 1893* section 133 (as inserted by this Act) at the time when the copy of the writ was so served;
- (d) if the sale period referred to in the *Transfer of Land Act 1893* section 133 (as inserted by this Act) in respect of the writ expires at a time after the writ ceases to be in force under the law in force immediately before commencement, the writ is to be taken to remain in force until the sale period expires, despite that law; and
- (e) subject to paragraphs (c) and (d), subsection (1) applies to and in respect of the writ.

- (3) In subsection (2), a reference to a writ of *feri facias* includes a reference to a warrant of execution issued out of a Local Court under the *Local Courts Act 1904*.
- (4) If immediately before commencement any enforcement process is in force but unexecuted, the person for whose benefit the process was issued may apply for an order under the *Civil Judgments Enforcement Act 2004* to enforce the judgment or order.
- (5) No court fee shall be payable on making an application under subsection (4) for an order under the *Civil Judgments Enforcement Act 2004*.
- (6) If on an application made under subsection (4) an order is made under the *Civil Judgments Enforcement Act 2004* —
  - (a) the unexecuted process referred to in subsection (4) ceases to be in force; and
  - (b) the order made under the *Civil Judgments Enforcement Act 2004* has the same priority as the unexecuted process referred to in subsection (4) has immediately before it ceases to be in force under paragraph (a).

**147. Existing bailiffs and their assistants, termination of appointment etc.**

- (1) On commencement the following offices are abolished and the persons holding them cease to do so —
  - (a) a bailiff appointed under the *District Court of Western Australia Act 1969* section 28(1);
  - (b) a person appointed under the *District Court of Western Australia Act 1969* section 28(2) by a bailiff to assist the bailiff;
  - (c) a bailiff appointed under the *Local Courts Act 1904* section 16;
  - (d) a person appointed under the *Local Courts Act 1904* section 16 by a bailiff to assist the bailiff.
- (2) If immediately before commencement a person who is not a police officer is a bailiff appointed under the *Local Courts Act 1904* section 16, then on commencement the person is entitled to be appointed as a bailiff under the *Civil Judgments Enforcement Act 2004* section 107 for a term of 5 years as from commencement.
- (3) If immediately before commencement a person who is a police officer is —
  - (a) a bailiff appointed under the *District Court of Western Australia Act 1969* section 28(1); or

- (b) a bailiff appointed under the *Local Courts Act 1904* section 16,

then on commencement the person is taken to have been appointed as a bailiff under the *Civil Judgments Enforcement Act 2004* section 107.

**Division 2 — General**

**148. Transitional regulations**

- (1) If this Act does not provide sufficiently for a matter or issue of a transitional nature that arises as a result of the repeal or amendment of any Act by this Act and the coming into operation of any of the Acts referred to in section 3, the Governor may make regulations prescribing all matters that are required, necessary or convenient to be prescribed for providing for the matter or issue.
- (2) Regulations made under subsection (1) may be expressed to have effect before the day on which they are published in the *Gazette*.
- (3) To the extent that a provision of regulations made under subsection (1) has effect before the day on which it is published in the *Gazette*, it does not —
  - (a) affect in a manner prejudicial to any person (other than the State or an agency of the State) the rights of that person existing before the day of publication; or
  - (b) impose liabilities on any person (other than the State or an agency of the State) in respect of anything done or omitted to be done before the day of publication.

<sup>5</sup> This Act has a retrospective amendment effective from 1 May 2005 see the *Acts Amendment (Justice) Act 2008* s. 24. The effect of this retrospective amendment has not been included in this document. To see the provision as amended by the retrospective amendment see the document as at 31 Mar 2008.