

Western Australia

Civil Judgments Enforcement Regulations 2005

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Civil Judgments Enforcement Regulations 2005

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Civil Judgments Enforcement Regulations 2005

Part 1 — Preliminary

1. Citation

These regulations are the *Civil Judgments Enforcement Regulations 2005*.

2. Commencement

These regulations come into operation on the day on which the *Civil Judgments Enforcement Act 2004* comes into operation or on the day of their publication in the *Gazette*, whichever is the later.

3. Terms used in these regulations

In these regulations, unless the contrary intention appears —

“approved form” means a form approved by the chief executive officer under regulation 103;

“business day” means a day other than —

(a) a Saturday or Sunday; or

(b) a day that is a public holiday in the place to which the document is sent or delivered or at which it is given;

“Form”, if followed by a number, means the form of that number in Schedule 4 completed in accordance with these regulations;

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

“ordinary service” means to serve in accordance with regulation 79;

“personal service” has a meaning corresponding with the meaning of “serve personally”;

“serve personally” means to serve in accordance with regulation 78.

Part 2 — Interest on judgment debts

4. Interest on unpaid amount of judgment sum

- (1) The rate of interest for the purposes of the Act section 8(1)(a) is 6.00% per annum.
- (2) The waiver of the payment of the whole or a part of the interest by a judgment creditor under the Act section 8(3) must be in writing.

Part 3 — Provisions applying to all judgments

5. Application by one party under the Act section 9(1)(b)

If a request is made to a court under the Act section 9(1)(b) for permission for an application or request to be made at another registry of the court, the court may, before giving the permission, give any person who might be affected by the granting of the permission an opportunity to make a submission in writing to or be heard by the court by a date specified by the court.

6. Costs against judgment creditor

Where an order is made against a judgment creditor under the Act section 10 —

- (a) if the amount of that order and the judgment debt owed to the judgment creditor are equal, neither the amount of the order nor the judgment debt is enforceable; or
- (b) if the amount of that order and the judgment debt owed to the judgment creditor are unequal, only the balance is enforceable.

7. Leave to enforce a judgment

- (1) An application for the leave of the court to enforce a judgment under the Act section 13(1) must be in an approved form supported by an affidavit.
- (2) The applicant for leave does not have to give notice of the application to the person against whom an order under the Act to enforce a judgment is to be sought unless the court so orders.

8. Conditional judgment

- (1) A judgment creditor who has obtained a judgment upon condition who does not fulfil that condition is to be taken to have abandoned the benefit of that judgment.

- (2) Unless the court that gave the judgment otherwise directs, any other person interested may take any proceedings which either —
- (a) are warranted by the judgment; or
 - (b) might have been taken if no such judgment had been given.

9. Suspension order

- (1) An application under the Act section 15(1) must be supported by an affidavit stating the special circumstances relied upon to justify the making of an order suspending the enforcement of all or part of a judgment.
- (2) A person who makes an application under the Act section 15(1) must, not less than 3 working days before the hearing of the application, personally serve a copy of the application and affidavit on the person entitled to the benefit of the judgment.
- (3) In subregulation (2) —
“working day” means a day which is not an excluded day as defined in the *Interpretation Act 1984* section 61(2).
- (4) If a person against whom a judgment is given —
- (a) obtains, under the Act section 15, an order suspending the enforcement of all or part of a judgment; and
 - (b) knows that the Sheriff has been given an enforcement order relating to the judgment,
- that person must, by ordinary service, give a copy of the suspension order to the Sheriff.

Part 4 — Enforcement of monetary judgments

Division 1 — General

10. Review of amount of the judgment debt sought to be recovered

- (1) If a judgment creditor applies to a court under the Act section 19(1) for an enforcement order, the court may request the judgment creditor to satisfy it that the amount of the judgment debt sought to be recovered by the enforcement order is correct.
- (2) If the judgment creditor fails to satisfy the court by such means and by such time as the court specifies in the request that the amount of the judgment debt sought to be recovered by the enforcement order is correct, the court may refuse to make the enforcement order sought by the judgment creditor.
- (3) Despite the amount of the judgment debt sought to be recovered by the judgment creditor, the court may, subject to the Act, make the enforcement order sought by the judgment creditor but for an amount that it is satisfied is the correct amount of the judgment debt.

11. Error in calculation of amount of judgment debt

- (1) If a judgment debtor believes that the amount of the judgment debt sought to be recovered or recovered by an enforcement order is incorrect the judgment debtor may apply, in an approved form supported by an affidavit, to the court for an order under the Act section 105.
- (2) The judgment debtor must give the judgment creditor a copy of the application and affidavit by ordinary service.
- (3) The judgment creditor may make a response to the court in writing supported by an affidavit.

- (4) Before making an order under the Act section 105, the court may require the judgment creditor and the judgment debtor to appear before it at a place and time specified by the court.
- (5) The court may make an order under the Act section 105 even if the judgment creditor or the judgment debtor does not appear before it at the specified place and time.

12. Application by judgment creditor under the Act section 22(1)

If an application is made to a court under the Act section 22(1) for one or more additional enforcement orders against the debtor in respect of the judgment, the court may, before making an additional enforcement order, give the debtor an opportunity to make a submission in writing to the court by a date specified by the court.

13. Accounts: Act section 24(2)

- (1) A request for an account under the Act section 24(2) is —
 - (a) to be in writing;
 - (b) to specify that the matters to be shown in the account are those required to be given under the Act section 24(2); and
 - (c) to be given to the judgment creditor by ordinary service.
- (2) An account given in response to a request under the Act section 24(2) is —
 - (a) to be in writing;
 - (b) to disclose the matters required to be given under the Act section 24(2); and
 - (c) to be given to the person who requested it by ordinary service or any other means specified by that person in the request.

Division 2 — Means inquiry

14. Location of means inquiry

- (1) A means inquiry is to be held at the registry of the court where the documents relating to the action or matter in which the judgment was given are being held (the “**prescribed registry**”).
- (2) The judgment creditor or judgment debtor may apply for a means inquiry to be held at a place where the court has a registry that is specified in the application other than the prescribed registry (the “**specified registry**”).
- (3) The judgment creditor or judgment debtor must state in the application the reasons for applying for a means inquiry to be held at the specified registry.
- (4) If the court is satisfied that it would be more convenient, or fair, to the judgment creditor and the judgment debtor if a means inquiry were conducted at another registry, the court may order accordingly.
- (5) Before making a decision under subregulation (4), the court is to give the party to the means inquiry that did not make the application under subregulation (2) an opportunity in the manner and within the time specified by the court to —
 - (a) respond to the request for the means inquiry to be held at the specified registry; and
 - (b) make a submission as to the matters referred to in subregulation (4).

15. Issue and service of summons to attend means inquiry

A summons issued under the Act section 29(1) must be issued not less than 7 clear days and be served not less than 5 clear days before the day on which the person summoned is required to attend the means inquiry.

16. Production before the inquiry

If a summons issued under the Act section 29(1) or (2) requires a person to produce evidence but does not require the person to give oral evidence, the person may, instead of producing the evidence at the trial, deliver the evidence to the court personally or by post at least 2 clear days before the first day of the inquiry.

17. Statement of financial affairs

If required to do so by a summons to attend a means inquiry issued under the Act section 29, a judgment debtor must duly complete and produce at the means inquiry a statement of financial affairs in an approved form.

Penalty: \$1 000.

18. Warrant: the Act section 29(4)

A warrant to arrest a person under the Act section 29(4) must be in the form of Form 1.

19. Service of summons: the Act section 31(3)

A summons issued under the Act section 31(3) must be served by personal service.

20. Review of amount of the judgment debt sought to be recovered

- (1) If, at a means inquiry or the hearing of an application under the Act section 31(3), the judgment debtor alleges that the amount of the judgment debt sought to be recovered is incorrect, the court may request the judgment creditor to satisfy it that the amount of the judgment debt sought to be recovered is correct.
- (2) If the judgment creditor fails to satisfy the court by such means and by such time as the court specifies in the request that the amount of the judgment debt sought to be recovered is correct, the court may refuse to make an enforcement order.

- (3) Despite the amount of the judgment debt sought to be recovered by the judgment creditor, the court may make an enforcement order under the Act section 31(1)(a) or (4) but for an amount that it is satisfied is the correct amount of the judgment debt.

21. Notice of certain orders

If —

- (a) a time for payment order;
- (b) an instalment order; or
- (c) an earnings appropriation order,

is made under the Act section 31 in the circumstances referred to in the Act section 31(4)(b), the judgment creditor must serve a copy of the order on the judgment debtor by ordinary service within 7 days of the order being made.

Penalty: \$1 000.

Division 3 — Earnings appropriation order

22. Service of an earnings appropriation order

A judgment creditor must serve the earnings appropriation order on the third person under the Act section 36(2) by ordinary service.

23. Service of notice under the Act section 37(4)

A judgment creditor must give a notice to a third person under the Act section 37(4) by ordinary service.

24. Expenses of obeying an earnings appropriation order

For the purposes of the Act section 39(a), the prescribed amount is —

- (a) for the first payment of an amount to the judgment creditor from the earnings of a judgment debtor in accordance with an earnings appropriation order, \$10.00; and

(b) for a second or subsequent such payment, \$5.00.

25. Service of an objection to an earnings appropriation order

Service of a copy of the objection on the judgment creditor and judgment debtor under the Act section 40(3) must be by ordinary service.

26. Notice to court of allowance of objection by judgment creditor

If a judgment creditor allows an objection under the Act section 41(1), the judgment creditor must give notice of the fact to the court by ordinary service within 7 days of the allowance being made.

Penalty: \$500.

27. Objection to earnings appropriation order

- (1) A notice under the Act section 41(3) must be given by ordinary service.
- (2) Notice of the allowance of an objection required to be given under the Act section 41(5) must be given by ordinary service.

Division 4 — Debt appropriation order

28. Application

An application for a debt appropriation order under the Act section 49(1) must be made in an approved form supported by an affidavit.

29. Service of debt appropriation order

A judgment creditor must serve the debt appropriation order on the third person under the Act section 50(2) by ordinary service.

30. Service of notice under the Act section 51(7)

A judgment creditor must give a notice to a third person under the Act section 51(7) by ordinary service.

31. Expenses of obeying an earnings appropriation order: the Act section 53(1)

For the purposes of the Act section 53(1), the prescribed amount is —

- (a) for the first payment of an amount to the judgment creditor from the available debt of a judgment debtor in accordance with a debt appropriation order, \$10.00; and
- (b) for a second or subsequent such payment, \$5.00.

32. Service of an objection to an earnings appropriation order

The court must serve a copy of the objection on the persons referred to in the Act section 54(3) by ordinary service.

33. Notice to court of allowance of objection by judgment creditor

If a judgment creditor allows an objection under the Act section 55(1), the judgment creditor must give notice of the fact to the court by ordinary service within 7 days of the allowance being made.

Penalty: \$500.

34. Objection to debt appropriation order

A notice under the Act section 55(3) must be given by ordinary service.

Division 5 — Property (seizure and sale) order

35. Property that cannot be seized and sold under a property (seizure and sale) order

- (1) For the purposes of the Act section 76(b), the following wearing apparel and personal items are prescribed —
 - (a) wearing apparel of the judgment debtor to the value of \$1 250;
 - (b) wearing apparel of a dependant of the judgment debtor to the value of \$1 250;
 - (c) family diaries, photographs and portraits;
 - (d) medical and dental aids and equipment.
- (2) For the purposes of the Act section 76(c), the following household property items are prescribed —
 - (a) kitchen and dining furniture and implements to the value of \$1 250;
 - (b) bedroom furniture and bedding of the judgment debtor to the value of \$500;
 - (c) bedroom furniture and bedding of a dependant of the judgment debtor to the value of \$200;
 - (d) laundry equipment to the value of \$200;
 - (e) electrical goods used for family entertainment to the value of \$300;
 - (f) books, software, computers and other equipment, used by a dependant of the judgment debtor for educational purposes to the value of \$3 000.
- (3) For the purposes of the Act section 76(d), ordinary tools of trade, plant and equipment, professional instruments and reference books to the value of \$2 500 used by the judgment debtor to earn income by personal exertion are prescribed.

[Regulation 35 amended in Gazette 13 Dec 2005 p. 5984-5.]

36. Separate property (seizure and sale) order for costs

If —

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

a person entitled to enforce the judgment by a property (seizure and sale) order may apply for separate property (seizure and sale) orders to enforce payment of the money and costs when each becomes payable, but a second order must only be for costs.

37. Other information to be included in a property (seizure and sale) order

For the purposes of the Act section 60(1)(d) the following information is prescribed —

- (a) if an application is made for a property (seizure and sale) order by the judgment creditor's lawyer —
 - (i) the name and business address of the lawyer; and
 - (ii) the reference number, if any, of the lawyer's file;
- (b) the address of each place at which the judgment creditor believes that real or personal property of the judgment debtor is located or may be found.

38. Service of property (seizure and sale) order on Sheriff

- (1) A property (seizure and sale) order made by the Supreme Court or the District Court is served on the Sheriff under the Act section 60(2) by serving it by ordinary service on the Sheriff at the Sheriff's Office at Perth.
- (2) A property (seizure and sale) order made by the Magistrates Court is served on the Sheriff under the Act section 60(2) by serving it by ordinary service —

- (a) on the Sheriff at the Sheriff's Office at Perth; or
- (b) on the bailiff whose office is nearest to the place where there is property that may be seized under the order.

39. Notice of application under the Act section 69(2)

An application under the Act section 69(2) must be given to the judgment debtor by ordinary service.

40. Seizure notice, further information

For the purposes of the Act section 77(2)(e) the following information is prescribed —

- (a) information about the Sheriff's powers of entry and seizure under the Act;
- (b) information about how a person may make a claim to property seized by the Sheriff under the Act Part 4 Division 6 Subdivision 4;
- (c) information about the consequences of removing property seized by the Sheriff under the Act;
- (d) information about the consequences of obstructing a person carrying out an order that is made by a court and addressed to the Sheriff.

41. Certain notices to judgment debtor and Sheriff

- (1) If an order is made under the Act section 69(2)(c) or (5) on the application of the judgment creditor and in the absence of the judgment debtor, the judgment creditor must serve a copy of the order on the Sheriff and the judgment debtor by ordinary service within 7 days of the order being made.

Penalty: \$1 000.

- (2) If an order is made under the Act section 69(2)(c) or (5) on the application of the Sheriff and in the absence of the judgment debtor, the Sheriff must serve a copy of the order on the judgment debtor by ordinary service within 7 days of the order being made.

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Part 4 Enforcement of monetary judgments

Division 5 Property (seizure and sale) order

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(3) If a property (seizure and sale) order is registered under —

- (a) the *Transfer of Land Act 1893* section 133(4); or
- (b) the *Registration of Deeds Act 1856*,

the judgment creditor must give the Sheriff, at the office at which the order was served under regulation 38(2), and the judgment debtor by ordinary service within 7 days of the registration written notice of —

- (c) the date of registration of the order; and
- (d) the amount that is required to satisfy the order, including the Sheriff's commission and costs of carrying out the order.

Penalty: \$1 000.

(4) If —

- (a) the amount that is reasonably likely to be realised from selling the judgment debtor's saleable interest in any personal property under a property (seizure and sale) order will not be sufficient to satisfy the judgment debt; or
- (b) the amount that is realised from selling the judgment debtor's saleable interest in any personal property under a property (seizure and sale) order is not sufficient to satisfy the judgment debt,

the judgment creditor may in writing instruct the Sheriff to sell the judgment debtor's interest in real property specified in the instruction.

(5) An instruction is not to be given under subregulation (4) unless a property (seizure and sale) order in respect of the real property specified in the instruction is registered under —

- (a) the *Transfer of Land Act 1893* section 133(4); or
- (b) the *Registration of Deeds Act 1856*.

(6) An instruction given under subregulation (4) must be accompanied by —

- (a) a certified copy of the certificate of title of the land showing that the order is registered under the *Transfer of Land Act 1893* in respect of the judgment debtor's saleable interest in the land; or
- (b) a copy of the memorial for the order registered under the *Registration of Deeds Act 1856* in respect of the judgment debtor's saleable interest in the land,

as the case may be.

42. Mode of sale

Property, whether real or personal, offered for sale by the Sheriff under the authority of a property (seizure and sale) order by public auction may be sold in one lot or in several lots.

43. Priority of orders, establishing by ballot

- (1) A ballot under the Act section 73(c) to determine the priority between 2 or more property (seizure and sale) orders is to be conducted at such place and time as the Sheriff thinks fit.
- (2) The Sheriff is to give each judgment creditor named in a property (seizure and sale) order which is to be the subject of a ballot under the Act section 73(c) notice by such means as the Sheriff thinks fit —
 - (a) that a ballot is to be conducted;
 - (b) the place and time at which the ballot is to be conducted; and
 - (c) that the judgment creditor may attend the ballot.

44. Procedure for conducting ballot

- (1) A ballot under the Act section 73(c) is not to be conducted unless at least one person other than the Sheriff is present.
- (2) A ballot under the Act section 73(c) is to be conducted in the following manner and sequence —

- (a) in the presence of those attending the ballot, the Sheriff is to write on separate cards of the same size, material and colour the number of the property (seizure and sale) order assigned to it by the court;
 - (b) the Sheriff is to place the cards in separate envelopes of the same size, material and colour and seal the envelopes;
 - (c) the Sheriff is to place the sealed envelopes in a ballot box that is opaque;
 - (d) the Sheriff is to shake and rotate the ballot box and allow any other person present who wishes to do so to shake and rotate it;
 - (e) the Sheriff is to open the ballot box;
 - (f) the Sheriff is to draw one of the envelopes from the box, open the envelope, remove the card from the envelope and mark on the card the number 1 to show that the property (seizure and sale) order with that number recorded on the card has first priority;
 - (g) the Sheriff is to repeat the process referred to in paragraph (f) until all other envelopes have been drawn from the ballot box, but is to mark on each card a number showing the sequence in which it was drawn from the box.
- (3) A property (seizure and sale) order with a number recorded on a card drawn from the box has priority according to the order in which it was so drawn.

45. Account of sale under property (seizure and sale) order

If property is sold by the Sheriff under a property (seizure and sale) order, the Sheriff must, on the request of the judgment debtor, furnish the judgment debtor with a detailed account in writing of the sale, and of the application of the proceeds of the sale.

Division 6 — Interpleader

46. Notice of claim

A claim under the Act section 83(1) must be given to the Sheriff by ordinary service.

47. Notice by Sheriff to judgment creditor

- (1) The notice required by the Act section 83(3)(b) to be given by the Sheriff to the judgment creditor must be given by ordinary service.
- (2) The judgment creditor must within 14 days after notice of the claim is given to the judgment creditor by the Sheriff give notice to the Sheriff stating whether the claim is admitted or disputed.

48. Admitting claim

- (1) If the judgment creditor admits the claim and gives notice as required by regulation 47(2), the judgment creditor is liable to the Sheriff for any fees of the Sheriff and expenses incurred by the Sheriff before the Sheriff receives the notice admitting the claim.
- (2) The court may, on application by the Sheriff, make an order for payment by the judgment creditor to the Sheriff of the fees or expenses referred to in subregulation (1).
- (3) An application by the Sheriff must be in writing and 3 clear days' notice in writing of the application must be given by the Sheriff to the judgment creditor.

49. Application by the Sheriff

- (1) An application under the Act section 84(2) must be made in an approved form.

- (2) If the Sheriff makes an application under the Act section 84(2), the court to which the application is made must give by ordinary service notice of the place and time of the hearing to —
 - (a) the Sheriff;
 - (b) the judgment creditor; and
 - (c) the claimant.
- (3) If the claimant files notice of withdrawal of the claim in the court and gives notice in writing of the withdrawal to the Sheriff before the time of the hearing, the property seized by the Sheriff or the proceeds of the sale of the property must be dealt with and disposed of as if the claim had not been made.

50. Location of interpleader proceedings

- (1) In the case of interpleader proceedings in the District Court or the Magistrates Court, the proceedings are to be held at the place where the court has a registry that is nearest to the place where the property the subject of the proceedings is located.
- (2) If the District Court or the Magistrates Court is satisfied that it would be more convenient or fair to the parties if the whole or a part of the interpleader proceedings were conducted at another place in the State (whether or not a registry of the Court is there), the Court may order accordingly.
- (3) An order may be made under subregulation (2) only on the application of a party of which any other party has had notice.
- (4) If a Court makes an order under subsection (2) it may make any necessary ancillary or consequential order.

51. Interpleader proceedings

- (1) The claimant must, at least 5 clear days before the time of the hearing, file with the court 3 copies of the particulars of any property alleged to be the property of the claimant and of the claimant's grounds for the claim.

- (2) The name, address and description of the claimant must be fully set out in those particulars.
- (3) The court must immediately give the Sheriff and the judgment creditor a copy of the particulars by ordinary service.
- (4) A hearing in relation to a claim is to proceed as if the claimant were the plaintiff, and the judgment creditor the defendant.
- (5) The Sheriff need not attend the hearing unless required to do so by order of the court.

52. Power to delay sale

- (1) The Sheriff may, in his or her discretion, delay selling any property in respect of which a claim has been made under the Act section 83(1) until a court has adjudicated on the claim.
- (2) The Sheriff is to be allowed such costs out of pocket only as the court may order for the keeping of continued possession of the property under subregulation (1).

53. Other information as to claim

For the purposes of the Act section 83(2)(e) the following information is prescribed —

- (a) information as to possession of the property;
- (b) information as to the claimant's interest in the property;
- (c) details of, and a copy of, any document that supports the claimant's claim to possession of or interest in the property.

Division 7 — Receivers and special remedies

54. Application

- (1) An application under the Act section 86(1) must be in an approved form supported by an affidavit.

- (2) In special circumstances an application for an order under the Act section 86(1) may be made in the absence of the judgment debtor on affidavit.
- (3) On the hearing of an application under subregulation (2) the court may —
 - (a) make an order under the Act section 86(1)(c) or (d); and
 - (b) direct that the application be heard on a date fixed by the court.
- (4) The application and the affidavit evidence proposed to be used in support of the application must be served by personal service on the judgment debtor by the judgment creditor at least 4 clear days before the date fixed for hearing the application.
- (5) The court may, where proper cause exists, dispense with service under subregulation (4).

55. Form of order

An order under the Act section 86(1) must be in an approved form.

56. Receiver's security

- (1) If a receiver is appointed by an order under the Act section 86(1)(b), unless the order otherwise directs, a person must not act as a receiver under the order until he or she has given security under this regulation.
- (2) If a person is required to give security under this regulation the person must give security approved by the court duly to account for what is received as receiver and to deal with it as the court directs.
- (3) The security referred to in subregulation (2) must, unless the court otherwise orders, be by recognisance in an approved form taken before a person authorised to administer oaths, or if the amount for which security is to be given does not exceed \$7 500, by an undertaking.

- (4) The recognisance or undertaking must be filed in the registry of the court in which the receiver was appointed, and must be kept as a record until duly vacated.

57. Accounts

- (1) A receiver must file in the court in which the receiver was appointed accounts at such intervals or on such dates as the court may order.
- (2) Each of those accounts must be verified by affidavit.
- (3) The receiver on filing an account must obtain an appointment with the court for the purpose of passing the account.
- (4) The account together with a notice of the appointment must be served by the receiver on the judgment creditor and the judgment debtor.
- (5) A certificate of the court stating the result of a receiver's account must from time to time be taken.

58. Payment of balances by receiver

The court is to fix the days upon which the receiver must pay to the judgment creditor the amount shown by the receiver's account as due from the receiver, or such part of the amount as the court may certify as proper to be paid by the receiver.

59. Default by receiver

- (1) In this regulation —
“prescribed rate” means the rate of interest prescribed under regulation 4(1).
- (2) If the receiver fails —
- (a) to file an account or affidavit;
 - (b) to attend for the passing of any account of the receiver;
 - (c) to make any payment; or
 - (d) to perform any duty,

the receiver may be required on a summons taken out by the judgment creditor or the judgment debtor, to attend before the court in which the receiver was appointed to show cause for the failure.

- (3) The court may give such directions as it thinks proper including, if necessary —
 - (a) the discharge of the receiver;
 - (b) the appointment of another receiver; and
 - (c) the payment of costs.
- (4) Without limiting subregulation (3), if a receiver fails —
 - (a) to attend for the passing of any account of the receiver;
 - (b) to file any account;
 - (c) to pay to the judgment creditor on the date fixed by the court any sum shown by the receiver's account as due from the receiver,

the court may —

- (d) disallow any remuneration claimed by the receiver in any subsequent account; and
- (e) if the receiver has failed to pay any sum to the judgment creditor, charge the receiver with interest at the prescribed rate on that sum while in the receiver's possession as receiver.

60. Accounts to be deposited

When a receivership has been completed, the accounts must be deposited with the court in which the receiver was appointed.

61. Sheriff may be appointed as receiver

- (1) The Sheriff may be appointed as receiver.
- (2) The Sheriff is not required to give any security unless the court specially directs security to be given.

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

62. Location of default inquiry

- (1) A default inquiry is to be held at the registry of the court where the documents relating to the action or matter in which the judgment was given are being held (the “**prescribed registry**”).
- (2) The judgment creditor or judgment debtor may apply for a default inquiry to be held at a place where the court has a registry that is specified in the application other than the prescribed registry (the “**specified registry**”).
- (3) The judgment creditor or judgment debtor must state in the application the reasons for applying for a default inquiry to be held at the specified registry.
- (4) If the court is satisfied that it would be more convenient, or fair, to the judgment creditor and the judgment debtor if a default inquiry were conducted at another registry, the court may order accordingly.
- (5) Before making a decision under subregulation (4), the court is to give the party to the default inquiry that did not make the application under subregulation (2) an opportunity in the manner and within the time specified by the court to —
 - (a) respond to the request for the default inquiry to be held at the specified registry; and
 - (b) make a submission as to the matters referred to in subregulation (4).

63. Notice to judgment creditor

A notice under the Act section 88(4) must be given by ordinary service.

64. Default inquiry summons: the Act section 89(1)

A summons issued under the Act section 89(1) must be served not less than 5 clear days before the day on which the person summoned is required to attend the default inquiry.

65. Warrant: the Act section 89(4)

A warrant to arrest a person under the Act section 89(4) must be in the form of Form 1.

66. Proof of non-compliance

Proof of non-compliance under the Act section 90(5) must be provided by an affidavit.

67. Judgment creditor's advice

The advice that the judgment creditor is required to give the Sheriff under the Act section 91 must be given in writing by ordinary service.

68. Notice of arrest of person

A person who arrests another person (the “**arrested person**”) on a warrant issued under the Act section 90(5) is immediately after the arrest of that person to notify in writing the court that issued the warrant the date of the arrest and the prison to which the arrested person was delivered.

69. Advice that judgment debtor should be released

The advice the Sheriff must give the superintendent of the prison in which a debtor is imprisoned under the Act section 92(3) that the debtor should be released is to be —

- (a) in an approved form; and
- (b) signed by the Sheriff, a person appointed under the Act section 112(1), a Deputy Sheriff, bailiff or assistant bailiff.

70. Judgment creditor's request that person be released

The judgment creditor's request to the Sheriff under the Act section 92(2)(c) that a person be released must identify —

- (a) the imprisonment order under which the person was imprisoned; and
- (b) the person to be released.

71. Superintendent to be advised of judgment debt outstanding

The superintendent of the prison in which a person is imprisoned on a warrant issued under the Act section 90(5) is to be advised by the Sheriff of the amount of the judgment debt outstanding —

- (a) at the time the person is imprisoned;
- (b) when requested to do so by the superintendent; and
- (c) when the amount outstanding is reduced by a payment to the Sheriff.

72. Notice of release of person

If the superintendent of a prison releases a person under the Act section 92(2), the superintendent is to advise the Sheriff in writing that the person has been released.

Part 5 — Miscellaneous enforcement provisions

73. More than one enforcement order

If —

- (a) one or more additional enforcement orders has been made against a judgment debtor under the Act section 22 on the application of a judgment creditor; and
- (b) the Sheriff is not responsible for enforcing all of the orders,

the judgment creditor must immediately advise the Sheriff if the judgment creditor receives a payment in satisfaction of the judgment debt under an order that the Sheriff is not responsible for enforcing.

74. Application for renewal of order or warrant

An application under the Act section 102(2) or (3) must be in an approved form supported by an affidavit.

75. Amending or cancelling orders

An order made under the Act section 103(2) must be served by ordinary service.

76. Suspension of enforcement

- (1) The Sheriff must suspend the enforcement of an enforcement order if directed to do so in writing by the judgment creditor or judgment creditor's lawyer.
- (2) The judgment creditor or judgment creditor's lawyer may at any time afterwards withdraw such direction and lodge with the Sheriff a written instruction to enforce the enforcement order.

77. Return to enforcement order

- (1) A judgment creditor who has obtained an enforcement order may serve a notice on the Sheriff requiring the Sheriff within

the time specified in the notice (being not less than 7 days) to give the judgment creditor a written statement as to whether or not the order has been enforced and, if so, the manner in which the order has been enforced.

- (2) If the Sheriff fails to comply with such notice, the person serving it may apply to the court for an order directing the Sheriff to comply with the notice.

Part 6 — Service

Division 1 — General

78. Personal service: how effected

If a document —

- (a) is required to or may be served or given under the Act;
or
- (b) is required to or may be served or given by order of a court under the Act,

by personal service or served personally, or personally given or given personally, it is to be served or given in accordance with Division 2 or 4.

79. Ordinary service: how effected

If a document —

- (a) is required to or may be served or given under the Act or by order of a court by ordinary service; or
- (b) the Act or the court does not specify the means by which the document is to be served or given,

it is to be served or given in accordance with Division 3 or 4.

80. Address for service

- (1) If a person to be served with or given a document is an individual, the address for service is the usual place of residence or principal place of business of the individual.
- (2) If a person to be served with or given a document is a partnership, the address for service is the principal place of business of the partnership.
- (3) If a person to be served with or given a document is a corporation, the address for service is the registered office or principal place of business of the corporation.

81. Acceptance by lawyer or agent

If a lawyer makes on a copy of a document a note that he or she accepts the document on behalf of a person, the document is to be taken, unless the lawyer is shown not to have had authority to represent the person, to have been duly served on or given to that person on the date on which the lawyer makes the note or on such earlier date as may be proved.

82. Apparently ineffective service

- (1) A person must not rely on apparently ineffective service.
- (2) If service is ineffective, the person seeking service must apply for substituted service in accordance with regulation 83.

83. Substituted service

- (1) If for any reason it is impractical to serve or give a document in the manner set out in the regulations, the court may, on an application in an approved form by the person required to serve or give that document, order that, instead of using such a manner, such steps be taken as are specified in the order for the purpose of bringing the document to the notice of the person to be served with or given the document.
- (2) If the court makes an order under subregulation (1), the court may order that the document is to be taken to have been served or given on the happening of any specified event, or on the expiry of any specified time.

84. Documents served by enforcement officer

- (1) If a document is served by an enforcement officer, the enforcement officer must lodge a certificate of service in the court.
- (2) The certificate must be in an approved form.

85. Documents served by other persons

- (1) If a document is served by a person other than an enforcement officer, the person must lodge in the court an affidavit of service completed by the person who served the document.
- (2) The affidavit of service must state when, where, how and by whom service was effected.

86. Court may inquire into service

- (1) If any dispute arises or the court has reason to doubt that a document has been duly served or given, the court may examine witnesses to decide whether or not the document was duly served or given.
- (2) If the court is satisfied that notice of a document has come to a person's knowledge, the court may, in special circumstances, order that a document that has not been duly served on or given to the person is to be taken to have been duly served or given.

87. Time of service

- (1) A document that is served or given by pre-paid post is to be taken to have been served or given 2 business days after the day on which the document was posted.
- (2) A document that is served or given by email or fax is to be taken to have been served or given —
 - (a) if the whole document is sent before 5.00 p.m. on a working day, on that day;
 - (b) otherwise, on the next working day.

Division 2 — Personal service

88. Service of a document on an individual

A document may be served personally on an individual by —

- (a) leaving the document with the individual or, if the individual is a person under a legal disability, with the individual's parent or guardian;
- (b) if the individual or the individual's parent or guardian, as the case may be, does not accept the document, putting it down in his or her presence and advising him or her of the nature of the document;
- (c) leaving the document with a person who is authorised in writing to receive documents on behalf of the individual;
- (d) leaving the document at the individual's usual or last known place of residence with a person who is believed, on reasonable grounds, to have reached 18 years of age; or
- (e) leaving the document with a lawyer who is representing the individual and is authorised to accept the document.

89. Service of a document on a partnership

A document may be served personally on a partnership by —

- (a) leaving the document with one of the partners;
- (b) if the partner does not accept the document, putting it down in the partner's presence and advising the partner of the nature of the document;
- (c) leaving it at the partnership's principal or last known place of business with a person who, on reasonable grounds, is believed to be in charge of the business at the time of service; or
- (d) leaving the document with a lawyer who is representing the partnership and is authorised to accept the document.

90. Service of a document on a corporation

A document may be served personally on a corporation by —

- (a) delivering it to a person who, on reasonable grounds, is believed to be a director, manager or secretary of the corporation; or

- (b) leaving the document with a lawyer who is representing the corporation and is authorised to accept the document.

91. Service of a document on a public authority

A document may be served personally on a public authority by —

- (a) delivering it to a person who, on reasonable grounds, is believed to be the chief executive officer of the public authority; or
- (b) leaving the document with a lawyer who is representing the public authority and is authorised to accept the document.

Division 3 — Ordinary service

92. Ordinary service

- (1) Ordinary service of a document is effected —
 - (a) by delivering it, or sending it by pre paid post to the usual or last known place of residence or principal or last known place of business, as the case may be, of the person to be served with or given the document; or
 - (b) by email or fax under regulation 94 or 95.
- (2) Ordinary service of a document may be effected by personal service.
- (3) Nothing in this regulation prevents a person from consenting to being served with or given a document in a manner other than in accordance with this regulation.

Division 4 — Service by email or fax

93. Email and fax address for service

A person to be served with or given a document under the Act or by order of a court under the Act may consent in writing to

the document being served on or given to the person by email or fax at an email address or fax number specified in writing by the person.

94. Service of documents by email

If a person has provided an email address under regulation 93, the person may be served with or given a document by sending the document by email to that address.

95. Service of documents by fax

If a person has provided a fax number under regulation 93, the person may be served with or given a document by sending the document by fax to that number.

Part 7 — Miscellaneous

96. Warrants, effect of and procedure on

- (1) In this regulation —
“**arrest warrant**” means a warrant issued under the Act section 29(4) or 89(4).
- (2) Subject to the Act section 102, an arrest warrant remains in effect until the person concerned is brought before the court under the warrant or appears voluntarily in the court, whichever happens first.
- (3) When a person has been arrested under an arrest warrant (an “**arrested person**”), the arrested person —
 - (a) must be brought before the court as soon as practicable;
 - (b) may be brought before the court at any place where it is sitting; and
 - (c) must be brought before the court in person or, if that is not practicable, by means of a video link or audio link between the court and the place where the person is in custody.
- (4) An audio link must not be used under subregulation (3) unless a video link is not available and cannot reasonably be made available.
- (5) When an arrested person is brought before the court, the court may release the person on an undertaking in the form of Form 2 to attend at the means inquiry or default inquiry, as the case may be, to —
 - (a) give oral evidence;
 - (b) in the case of a means inquiry, produce to the court, for use in the inquiry, any record or thing that is or may relate to the matters listed in the Act section 26 and that was detailed in the summons; or

- (c) in the case of a default inquiry, 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 was detailed in the summons.
- (6) For the purpose of ensuring that an arrested person attends in accordance with his or her undertaking, the court may make an order that requires any or all of the following —
 - (a) the arrested person agree in his or her undertaking to forfeit a sum of money specified in the order if the person does not attend in accordance with his or her undertaking;
 - (b) the arrested person deposit with the court as a security —
 - (i) the sum of money specified under paragraph (a);
 - (ii) a record or thing and the means by which it can be realised if the person does not attend in accordance with his or her undertaking;
 - (c) one or more sureties to enter into a surety undertaking under which he or she agrees to forfeit a sum of money specified in the order if the arrested person does not attend in accordance with the person's undertaking;
 - (d) one or more sureties to deposit with the court as a security —
 - (i) the sum of money specified under paragraph (c);
 - (ii) a record or thing and the means by which it can be realised if the arrested person does not attend in accordance with the person's undertaking.
- (7) On the application of the arrested person or on its own initiative, the court may at any time amend or cancel an order made under subregulation (6).
- (8) If an arrested person is no longer required to give oral evidence or to produce a record or thing, the court must make any

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consequential orders needed in relation to any thing done under an order made under subregulation (6).

- (9) An undertaking may be entered into before the judicial officer who made the order requiring the undertaking or any person referred to in the *Bail Act 1982* section 29.
- (10) The person before whom an undertaking is entered into must comply with the *Bail Act 1982* section 30 which applies, with any necessary changes, as if the arrested person were a defendant and the undertaking were a bail undertaking.
- (11) An arrested person who, without a reasonable excuse, contravenes his or her undertaking commits an offence.
Penalty: \$1 000.
- (12) The *Bail Act 1982* Part VI (other than section 35(1)) applies, with any necessary changes, in relation to any surety undertaking required by an order made under subregulation (6)(c) in the same way as it applies in relation to a surety undertaking required by a grant of bail under that Act.
- (13) The *Bail Act 1982* sections 60, 62, 64 and 65 apply, with any necessary changes, in relation to an arrested person, surety and an undertaking, in the same way as they apply respectively in relation to a defendant, surety and a bail undertaking, but the penalty for an offence under section 60 is \$500 and under section 62 is \$1 000.

97. Register

The Sheriff is required to keep an accurate and up to date register in such manner and form as the Sheriff determines and is to record in the register details of a property (seizure and sale) order received by the Sheriff and the date and time when it was received.

98. Bailiff to keep records

A bailiff must —

- (a) keep records and make returns to the Sheriff according to the forms and in the manner from time to time directed and approved by the Sheriff;
- (b) keep the records available for inspection by the Sheriff at all times; and
- (c) keep a record of every enforcement order which the bailiff has been required to enforce.

99. Other duties of bailiff

A bailiff must —

- (a) enforce, as soon as possible after delivery to the bailiff, every enforcement order the bailiff is authorised by the Sheriff to enforce;
- (b) advise the Sheriff at times specified by the Sheriff what the bailiff has done to enforce each such order;
- (c) at all reasonable times give to the Sheriff all information which the Sheriff may reasonably require as to the enforcement or non-enforcement of any enforcement order.

100. Extension or abridgment of time

- (1) A court may extend or abridge any time fixed by these regulations or by any order fixing, extending or abridging time.
- (2) A court may extend or abridge time under subregulation (1) before or after the time expires whether or not an application for extension is made before the time expires.
- (3) Any time fixed by these regulations or by any order fixing, extending or abridging time may be extended by consent without an order of the court.

101. False or misleading information

- (1) A person must not do any of the things set out in subregulation (2) —

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- (a) in relation to a statement of financial affairs required to be completed under regulation 17;
- (b) in a certificate of service lodged by an enforcement officer under regulation 84(1);
- (c) in a declaration lodged under regulation 105(5);
- (d) in an application under regulation 107;
- (e) in relation to the compliance, or purported compliance, with any requirement of the Act to give a court information.

Penalty: \$1 000.

- (2) The things to which subregulation (1) applies are —
 - (a) making a statement which the person knows is false or misleading in a material particular;
 - (b) making a statement which is false or misleading in a material particular, with reckless disregard as to whether or not the statement is false or misleading in a material particular;
 - (c) providing information that the person knows is false or misleading in a material particular; or
 - (d) providing information that is false or misleading in a material particular, with reckless disregard as to whether the information is false or misleading in a material particular.

102. Seal

- (1) An order, warrant, summons or notice issued by a court under the Act is to be sealed with the seal of the court.
- (2) If an order, warrant, summons or notice issued by a court under the Act is sealed with the seal of the court it is not necessary for it to be signed by an officer of the court.

103. Approval of forms by the chief executive officer

- (1) Under the Act section 119(2)(c), to the extent that forms of applications, orders and other documents are not prescribed under the Act, the chief executive officer is authorised from time to time to approve forms of applications, orders and other documents.
- (2) A form for an application or request under the Act, whether prescribed under the Act or an approved form, may require that the application or request be supported by an affidavit.

Part 8 — Enforcement costs

104. Terms used in this Part and Schedule 1

In this Part and Schedule 1 unless the contrary intention appears —

“individual” does not include a public officer of the Commonwealth, of this State or any other State, or of any Territory acting in the course of his or her duties as such an officer;

“non-profit association” means a society, club, institution or body that is not for the purpose of trading or securing pecuniary profit for its members from its transactions;

“small business” means —

- (a) an individual or individuals in partnership who wholly own and operate a business undertaking that has less than 20 full-time equivalent employees and partners;
- (b) a corporation that has less than 20 full-time equivalent employees and that is not a subsidiary of a corporation that has 20 or more full-time equivalent employees;
- (c) a company as defined in the *Companies (Co-operative) Act 1943* that has less than 20 full-time equivalent employees and that is not, under section 130(1) of that Act, deemed to be a subsidiary company of another company or corporation that has 20 or more full-time equivalent employees;
- (d) a corporation as defined in the *Statutory Corporations (Liability of Directors) Act 1996* section 4 that has less than 20 full-time equivalent employees and that is not a body that would be a subsidiary, if the corporation were a corporation to which the *Corporations Act 2001* of the

Commonwealth applies, of a corporation within the meaning of the *Corporations Act 2001* of the Commonwealth or the *Statutory Corporations (Liability of Directors) Act 1996* that has 20 or more full-time equivalent employees;

“**subsidiary**” has the meaning given to that term in section 9 of the *Corporations Act 2001* of the Commonwealth.

105. Fees to be paid

- (1) Subject to the provisions of these regulations, the fees specified in Schedules 1 and 2 are to be paid in respect of or in connection with the matters mentioned in those Schedules.
- (2) The fees and other amounts specified in Schedule 3 are 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.
- (3) In relation to a matter specified in Schedule 1 column 2, the fee shown opposite the matter —
 - (a) in the columns headed “Fee for individual” apply if an individual is required to pay the fee; or
 - (b) in the columns headed “Fee for person other than an individual” apply if a person other than an individual is required to pay the fee,as the case requires.
- (4) A note to an item in Schedule 1, 2 or 3 has effect according to its tenor as if it were a provision of these regulations.
- (5) On the lodgment of Form 3 duly completed with the court, a person that is a small business or a non-profit association is to be charged fees specified in Schedule 1 as if the person were an individual.

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- (6) Subregulation (5) does not apply to fees payable by more than one person if at least one of those persons is not a small business or a non-profit association.
- (7) A person who has lodged a form under subregulation (5) must immediately advise the court if the person ceases to be a small business or a non-profit association.
Penalty: \$1 000.
- (8) Whether or not the person has complied with subregulation (7), the person is not entitled to be charged fees as if the person were an individual if the person is not a small business or a non-profit association.
- (9) If a person is charged a fee under subregulation (5) when the person was not a small business or a non-profit association, the court may —
 - (a) order that the person pay the difference between the fee the person paid and the fee that the person would otherwise have been required to pay; and
 - (b) make orders to enforce the order for the payment.
- (10) An order under subregulation (9)(b) may provide that an application or request made under the Act by the person is not to be dealt with by the court or that no other matter or thing is to be done by the court for the benefit of the person until the sum ordered to be paid is paid.
- (11) Despite the provisions of these regulations, no fee referred to in Schedule 2 item 5 is payable where the judgment debt is paid out within half an hour of the Sheriff's entry.

106. Fees to be paid in advance

Subject to the provisions of these regulations, the fees specified in the Table to this regulation are to be paid in advance.

Table

Schedule 1 item 1

Schedule 2 item 19

Schedule 2 item 1	Schedule 3 item 1
Schedule 2 item 6	Schedule 3 item 2
Schedule 2 item 18	Schedule 3 item 3

107. Court may remit certain fees

- (1) This regulation applies to fees specified in Schedule 1 and Schedule 3 items 1 and 2.
- (2) The court may in a particular case for financial hardship or if it is in the interests of justice to do so direct —
 - (a) that a fee be waived or reduced;
 - (b) that the whole or part of a fee be refunded; or
 - (c) that the payment of the whole or a part of a fee be deferred until such time, and upon such conditions, if any, as the court thinks fit.
- (3) For the purpose of assessing financial hardship, the court is to have regard to —
 - (a) in the case of an individual, the income, day to day living expenses, liabilities and assets of the individual; or
 - (b) in the case of a corporation or incorporated association, the income, liabilities and assets of the corporation or incorporated association.
- (4) The court may direct that the payment of the whole or a part of a fee be deferred until such time, and upon such conditions, if any, as the court thinks fit if the filing is attended by urgency that overrides the requirement of payment of the fee at the time of filing.
- (5) The payment of a fee is to be waived in relation to the following persons —
 - (a) the holder of one of the following cards issued by the Department of Social Security of the Commonwealth —
 - (i) a health care card;

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- (ii) a health benefit card;
 - (iii) a pensioner concession card;
 - (iv) a Commonwealth seniors health card;
 - (b) the holder of any other card issued by the Department of Social Security or the Department of Veterans' Affairs of the Commonwealth that certifies entitlement to Commonwealth health concessions;
 - (c) a prisoner or person lawfully detained in a public institution;
 - (d) a person under 18 years of age;
 - (e) a person in receipt of a youth training allowance, or an AUSTUDY allowance, as defined in section 23(1) of the *Social Security Act 1991* of the Commonwealth;
 - (f) a person in receipt of benefits under the Commonwealth student assistance scheme known as the ABSTUDY Scheme;
 - (g) a person granted legal aid in respect of the proceedings in relation to which the fee would otherwise be payable.
- (6) An application for a fee to be waived, reduced, refunded or deferred must be in the form of Form 4.
- (7) Form 4 must be completed in accordance with the directions specified in it.
- (8) The court may, before determining the application, require the applicant to provide the court with such further information as the court requires either in writing or orally.
- (9) A fee, payment of which has been deferred until an event occurs, becomes payable when that event occurs.
- (10) A person who makes a statement or representation in an application under subregulation (6) that the person knows or has reason to believe is false or misleading in a material particular commits an offence.

Penalty: \$1 000.

- (11) If a fee payable by a person is waived, reduced, refunded or deferred in accordance with a direction under subregulation (2) and the court is satisfied, having given the person an opportunity to make a written submission, that the person has made a statement or representation in an application under subregulation (6) that the person knows or has reason to believe is false or misleading in a material particular, the court may revoke the direction and so much of the fee as was waived, reduced, refunded or deferred is to be paid by the person within 5 days of being given notice of the revocation of the direction and, if it is not so paid, is recoverable as an unpaid fee under regulation 109(2).
- (12) Despite the provisions of these regulations, a fee is not to be charged in respect of an application under this regulation.

108. Resolution of disputes as to enforcement costs

- (1) If a question arises as to the enforcement costs payable or applicable in a particular case, on an application in the form of Form 5 that question is to be determined by the Principal Registrar of the court.
- (2) Any person affected by the determination under subregulation (1) may have it reviewed by the court in a summary manner.
- (3) Despite the provisions of these regulations, no fee is payable in relation to the determination of a question under subregulation (1) or a review under subregulation (2).

109. Recovery of unpaid fees

- (1) This regulation applies to fees prescribed in Schedule 1 and Schedule 3 items 1 and 2.
- (2) Any unpaid fee is a debt due to the State and may be recovered by action in a court of competent jurisdiction.

r. 110

110. Enforcement costs where Sheriff does not perform function

If a function of the Sheriff under an enforcement order made under the Act is performed or a warrant issued under the Act is executed by a person appointed under the Act section 112(1), the enforcement costs or costs and fees otherwise payable to the Sheriff are due and payable to the person appointed under that section.

111. Deposit on account of certain fees or expenses

(1) If the Sheriff is required or requested to —

- (a) carry out an enforcement order made under the Act; or
- (b) execute a warrant issued under the Act,

the Sheriff may, at any time and at any stage of the process, specify the deposit that the judgment creditor is required to pay in anticipation of the fees or expenses that will or may be payable in respect of carrying out the order or executing the warrant or a stage of that process.

(2) Subregulation (1) does not apply to commission in respect of —

- (a) the enforcement of a judgment of the Supreme or District Court; and
- (b) carrying out a property (seizure and sale) order made by the Magistrates Court.

(3) If the Sheriff is required or requested to do 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, the Sheriff may, at any time and at any stage of the process, specify the deposit that the person for whose benefit the thing is to be done is required to pay in anticipation of the fees or expenses that will or may be payable in respect of doing the thing or a part of the thing.

(4) If the Sheriff specifies a deposit under subregulation (1) or (3), the person required to pay the deposit must do so before the

Sheriff carries out the function in respect of which the deposit has been specified.

- (5) If a person has deposited an amount in excess of the fees or expenses which are found to be payable, the Sheriff must, upon the amount actually payable being ascertained, return the amount so deposited in excess.

112. Enforcement costs if enforcement of judgment does not proceed

If the enforcement of a judgment by a property (seizure and sale) order or a property (seizure and delivery) order is stopped by the judgment creditor or the person entitled to the benefit of the judgment, enforcement costs incurred in respect of its enforcement, including commission if chargeable, must be paid by the judgment creditor or the person entitled to the benefit of the judgment.

113. Particulars of arrangement where enforcement by a property (seizure and sale) order is discontinued

Despite regulation 112, if —

- (a) property has been seized under a property (seizure and sale) order;
- (b) the judgment creditor and the judgment debtor enter into an arrangement on condition that the Sheriff will be requested by the judgment creditor to withdraw from possession of the property; and
- (c) the Sheriff upon request of the judgment creditor has withdrawn from possession of the property,

commission on the full amount of the judgment debt immediately becomes due and payable by the judgment creditor to the Sheriff unless the judgment creditor gives the Sheriff, within 14 days of the request to withdraw from possession of the property, full particulars of the arrangement reached between the judgment creditor and the judgment debtor.

r. 114

114. Particulars of arrangement where enforcement by a property (seizure and delivery) order is discontinued

Despite regulation 112, if —

- (a) property has been seized under a property (seizure and delivery) order;
- (b) the person entitled to the benefit of the judgment and the person required to give possession of the property enter into an arrangement on condition that the Sheriff will be requested by the person entitled to the benefit of the judgment to withdraw from possession of the property; and
- (c) the Sheriff upon request of the person entitled to the benefit of the judgment has withdrawn from possession of the property,

commission on the value of the property seized immediately becomes due and payable by the person entitled to the benefit of the judgment to the Sheriff unless that person gives the Sheriff, within 14 days of the request to withdraw from possession of the property, full particulars of the arrangement reached between that person and the person required to give possession of the property.

115. Transitional: *Courts Legislation Amendment and Repeal Act 2004* section 148(1)

If under the *Courts Legislation Amendment and Repeal Act 2004* section 145(2)(b) a court makes an order under the *Civil Judgments Enforcement Act 2004* that substantially corresponds with any order that the court could have made in the proceedings under the law in force immediately before commencement of the *Courts Legislation Amendment and Repeal Act 2004* Part 22, this Part applies to that order as if the order had been made under the *Civil Judgments Enforcement Act 2004*.

Schedule 1 — Court fees

[r. 105]

Item	Matter	Judgment not exceeding \$7 500		All other judgments	
		Fee for individual \$	Fee for person other than an individual \$	Fee for individual \$	Fee for person other than an individual \$
1.	For an application or request under the Act Note 1: The fee is payable only once on the first application or request by a judgment creditor or other person entitled to the benefit of the judgment. Note 2: No fee is payable in relation to interpleader proceedings. Note 3: No fee is payable for registering a judgment or order of a court or tribunal of the State for the purpose of enforcing the judgment or order. Note 4: No fee is payable for an application or request brought by a person other than a judgment creditor or other person entitled to the benefit of the judgment. Note 5: The fee payable on an application relating to an order made in the exercise of the jurisdiction referred to in the <i>Residential Tenancies Act 1987</i> section 12A is the fee payable on an application in relation to a judgment not exceeding \$7 500.	55.50	83.00	90.50	135.50
2.	Registering a judgment in a court under section 105(1) of the <i>Service and Execution of Process Act 1992</i> of the Commonwealth	68.50	91.50	68.50	91.50

[Schedule 1 amended in Gazette 23 Jun 2006 p. 2175-6.]

Schedule 2 — Sheriff's fees

[r. 105]

Item	Matter	Fee \$
1.	(a) Service of any process when personal service is not required under the Act	28.50
	(b) Service of any process when personal service is required under the Act	39.50
	(c) Service by post, including postage	20.00
	Note 1: The fee under paragraphs (a) and (b) is payable whether or not the service is successful and covers up to 3 attempts at service at the same address.	
	Note 2: The fee is not payable in respect of any process that is served in conjunction with any process requiring attendance at a court by the party to be served.	
	Note 3: The fee includes the completion of any certificate of the service.	
2.	For enforcing a judgment by means of a property (seizure and sale) order	72.50
	Note 1: The fee is payable whether or not the Sheriff's functions under the order are performed and covers up to 3 attempts to perform the functions at the same address.	
	Note 2: The fee includes —	
	(a) receipt of the order;	
	(b) attendances and inquires before attempting seizure;	
	(c) service of any notice required before seizure;	
	(d) seizure and preparing an inventory of any personal property seized;	
	(e) granting walking possession; and	
	(f) making a report to the creditor.	
3.	For enforcing a judgment by means of a property (seizure and delivery) order	72.50

Item	Matter	Fee \$
	<p>Note 1: The fee is payable whether or not the Sheriff's functions under the order are performed and covers up to 3 attempts to perform the functions at the same address.</p> <p>Note 2: The fee includes —</p> <ul style="list-style-type: none"> (a) receipt of the order; (b) attendances and inquires before attempting seizure and delivery; (c) an appointment to deliver property; (d) removal of a person from land; (e) supervision of lock and security changes to premises; (f) securing seized property; (g) delivering seized property to the person entitled to it in accordance with the order; and (h) making a report to the person entitled to the benefit of the order. 	
4.	Inspection of personal property under seizure	38.50
	<p>Note 1: If the Sheriff has several enforcement orders, one fee is payable for the first enforcement order in priority.</p>	
5.	For possession of personal property under seizure per day	4.15
	<p>Note 1: Payable for actual possession of personal property seized.</p> <p>Note 2: The fee is payable for a maximum of 10 days.</p> <p>Note 3: If this fee is paid, a fee is not payable under item 16(d).</p>	
6.	If travel is necessary to perform a function under an enforcement order, to serve a process or document, to make an arrest under a warrant or for an attempt, attendance or inspection from the Sheriff's or a bailiff's office —	
	(a) for each kilometre travelled (one way) in the metropolitan area	1.00
	(b) for each kilometre travelled (one way) outside the metropolitan area	1.10
	<p>Note 1: If more than one of the matters referred to in item 6 is done in relation to the same person or on different persons at the same address, only one fee for kilometres travelled is to be charged.</p> <p>Note 2: The Sheriff may allow an enforcement officer an additional fee for travel to meet or partially offset any additional expenses arising from special and unusual circumstances.</p>	

Civil Judgments Enforcement Regulations 2005

Schedule 2 Sheriff's fees

Item	Matter	Fee \$
7.	Preparation for the sale of real or personal property ... Note 1: The fee includes — (a) REVS and other official records searches; (b) bill of sale or encumbrance searches or investigation; (c) carrying out an advertising program; and (d) preparing particulars and conditions of sale.	135.00
8.	Attendance at sale Note 1: The fee includes — (a) conducting a sale; and (b) cancelling a sale.	61.00
9.	Commission for enforcing a judgment by means of a property (seizure and sale) order or for money recovered by the Sheriff or judgment creditor after seizure under the order — (a) For amounts up to and including \$13 500, a fee at the rate of (b) For the balance over \$13 500, a fee at the rate of	5.00% 2.50%
	<p>Note 1: For the purpose of this item, “seizure” includes —</p> <p>(a) in respect of real property, registering a property (seizure and sale) order under the <i>Transfer of Land Act 1893</i> or the <i>Registration of Deeds Act 1856</i>;</p> <p>(b) the seizure of personal property in the possession or apparent possession of the judgment debtor; or</p> <p>(c) the seizure of books of account in the possession of the judgment debtor.</p> <p>Note 2: If money is recovered as a consequence of a sale conducted by a licensed auctioneer instructed by the Sheriff, commission is to be charged at one half the rate prescribed in item 9.</p> <p>Note 3: If a sale, whether by public auction or otherwise, is conducted by the Sheriff without the involvement of an auctioneer or agent, the commission rate prescribed in item 9(a) is to be increased by 1.00%.</p> <p>Note 4: Commission is to be calculated on the amount recovered or the judgment sum, whichever is the lesser.</p>	
10.	Commission for delivering possession of property. Personal property, assessed on the value of the property delivered — (a) For amounts up to and including \$13 500, a fee	

Item	Matter	Fee \$
	at the rate of	5.00%
	(b) For the balance over \$13 500, a fee at the rate of	2.50%
	Real property, assessed on the annual rental value of the property delivered —	
	(a) For amounts up to and including \$13 500, a fee at the rate of	5.00%
	(b) For the balance over \$13 500, a fee at the rate of	2.50%
	Note 1: If real property is delivered in accordance with a property (seizure and delivery) order made by the Magistrates Court, the maximum amount payable under this item is \$198.50.	
11.	On the execution of an arrest warrant of any kind —	
	(a) for arresting the person	72.50
	(b) for conveying the person to a court or a custodial place and releasing the person from arrest or custody	72.50
	(c) for each 30 minutes after 2 hours and 30 minutes that an enforcement officer is required to keep the person in custody until he or she is conveyed to a court or a custodial place	19.25
	Note 1: The fee under paragraph (a) is payable whether or not the Sheriff's functions under the warrant are performed and includes up to 3 attempts to perform the functions at the same address.	
	Note 2: The fee under paragraph (a) includes —	
	(a) receipt of the warrant; and	
	(b) attendances and inquiries before attempting arrest; and	
	(c) giving any notice; and	
	(d) making any report.	
12.	For each half hour or part of a half hour that it is necessary for an enforcement officer to engage an assistant to perform a function —	
	(a) in relation to the execution of an arrest warrant; or	
	(b) in accordance with a property (seizure and delivery) order; or	
	(c) in accordance with a property (seizure and	

Civil Judgments Enforcement Regulations 2005

Schedule 2 Sheriff's fees

Item	Matter	Fee \$
	sale) order	19.25
13.	If an enforcement officer is necessarily put to and incurs extra trouble and expense in the discharge of a function incidental to his or her office, employment or engagement or for the performance of a function not otherwise provided for in this Schedule.	A sum or additional sum that the Sheriff may reasonably allow.

Item	Matter	Fee \$
14.	For auctioneer's or agent's commission, advertising and sundry expenses on account of sale by auction or otherwise of real or personal property, whether or not the sale takes place.	A fee fixed in accordance with a recognised scale of charges for auctioneers or agents in the State or such other fee as the Sheriff may reasonably allow.
15.	If a sale of real or personal property takes place by auction or private contract or if no sale takes place — <ul style="list-style-type: none"> (a) for advertising and giving publicity to the sale or intended sale, printing catalogues and bills and distributing and posting them; (b) for labour, if any, employed in lotting and showing personal property, preparing catalogues and, if a sale takes place by auction, attending the sale and supervising the removal of property by its purchaser; (c) travelling expenses. 	The sums actually and reasonably paid.
16.	<ul style="list-style-type: none"> <i>[(a) deleted]</i> (b) For out of pocket expenses incurred by an enforcement officer while performing a function in accordance with an enforcement order or executing a warrant; (c) For clerical assistance when necessary; (d) For storing personal property which has been seized and insuring the property for loss due to fire, theft or damage and, in the case of a motor vehicle, for accident and third party risk; 	The sums actually and reasonably paid.

Civil Judgments Enforcement Regulations 2005

Schedule 2 Sheriff's fees

Item	Matter	Fee \$
	(e) For removal or cartage expenses;	
	(f) For agistment, costs of care and feed and other necessary costs in respect of animals or livestock under seizure, whether or not they are removed.	
17.	If GST (as defined in section 195-1 of the <i>A New Tax System (Goods and Services Tax) Act 1999</i> of the Commonwealth) is payable on a service listed in this Schedule of fees, the fee for the service is the applicable fee in this Schedule, increased by 10%.	
18.	Issue of a duplicate of an enforcement order or a document.	14.50
19.	Copies of documents —	
	(a) Copies of enforcement orders, for each page	1.50
	(b) For certifying that a document is a true copy, an additional fee of	11.00

[Schedule 2 amended in Gazette 23 Jun 2006 p. 2176-7.]

Schedule 3 — Fees to be paid for anything done by the Marshal in Admiralty

[r. 105]

\$

1.	For receiving and entering a warrant or release	64.00
2.	For receiving and entering a writ of summons, decree, order, commission, or other instrument under the seal of the Supreme Court	26.00
3.	For service of writ of summons	61.00
4.	For executing a warrant for the arrest of a ship or other property	150.50
5.	For service of a writ of summons at the same time as a warrant of arrest is executed, in lieu of items 3 and 4	183.00
6.	For the execution of an attachment — for each person ...	61.00
7.	For the release from arrest of a vessel, goods, or person .	38.50
8.	For attending the discharge of cargo, or removal of a vessel or goods, per hour	38.50
9.	For the execution of a commission of appraisement or sale, or appraisement and sale, in addition to the fees paid to the appraiser or auctioneer	129.50
10.	For the execution of a decree or order, commission, or other instrument other than those herein provided	61.00
11.	Commission on the gross proceeds of a vessel or goods, etc., sold —	
	For amounts up to and including \$63 000 a fee at the rate of	4%
	For the balance over \$63 000 a fee at the rate of	2%
12.	(a) For retaining possession of a vessel with or without cargo, or of a cargo without a vessel, the expenses per day actually paid in respect of a shipkeeper or shipkeepers	The sum actually and reasonably paid.

- (b) For each day or part of a day that the Marshal retains possession of a vessel with or without cargo, or of a cargo without a vessel, in addition to (a) above 38.50

NOTE: If the possession is for a lengthy period, this fee may be reduced at the discretion of the Marshal.

- (c) For the safe custody of property under arrest The sum actually and reasonably paid.

NOTE: No fee is payable for the custody and possession of property under arrest if it consists of money in a bank, or of goods stored in a bonded warehouse, or if it is in the custody of a customs house officer, or other authorised person.

13. If the Marshal or any of his or her officers is required to travel for the purpose of discharging his or her duty, in addition to the above fees. Reasonable expenses for travelling, board, and maintenance.
14. If the Marshal or other person employed under the Marshal is necessarily put to and incurs extra trouble and expense in the discharge of any duty incidental to his or her office or employment or for any duty or service not herein provided. A sum or additional sum that the Marshal may reasonably allow.

[Schedule 3 amended in Gazette 23 Jun 2006 p. 2177.]

Schedule 4 — Forms

[r. 18, 65, 96, 105, 107, 108]

1. Warrant: the Act section 29(4) or 89(4)

Form 1	
WESTERN AUSTRALIA <i>Civil Judgments Enforcement Act 2004</i> WARRANT FOR ARREST	..... COURT LOCATION:..... Court Ref No:
Judgment creditor	Name:
Lawyer	Name:
File Ref No	
Contact/Address Details	..........
Judgment Debtor	Name:
Person to be arrested	To the Sheriff of Western Australia and the Bailiff delegate at
	..... (name)
	..... (address)
	was required under summons to attend a means inquiry/default inquiry* and did not so attend as ordered by the summons. You are commanded by this warrant issued under the <i>Civil Judgments Enforcement Act 2004</i> section 29(4)/ 89(4) * to arrest the person to be arrested and bring him or her before the court.

<p>The amount of the judgment debt outstanding at the time of issue of this warrant is \$</p>
<p>Warrant issued by:</p> <p>Signature:</p> <p style="text-align: center;">Supreme Court Judge/District Court Judge/Magistrate</p> <p>Date:</p> <p><i>Under the Civil Judgments Enforcement Act 2004 section 102 a warrant has effect for 12 months after the day on which it is issued. Its operation may be extended under that section.</i></p>
<p>Execution details</p> <p>This person arrested on/...../..... at hours</p> <p>at:</p> <p>by:</p> <p>Signature:</p> <p>Date:</p> <p><small>* <i>Strike out those that are not applicable</i></small></p>

2. Undertaking to appear: regulation 96

Form 2							
<p style="text-align: center;">WESTERN AUSTRALIA <i>Civil Judgments Enforcement Regulations 2005</i> UNDERTAKING TO APPEAR</p> COURT						
	LOCATION:.....						
	Court Ref No:						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%; padding: 5px;">Arrested person</td> <td style="padding: 5px;">Name:.....</td> <td style="padding: 5px;">Date of birth:</td> </tr> <tr> <td style="padding: 5px;"></td> <td style="padding: 5px;">Address:.....</td> <td style="padding: 5px;"></td> </tr> </table>	Arrested person	Name:.....	Date of birth:		Address:.....		
Arrested person	Name:.....	Date of birth:					
	Address:.....						
Matter in which arrested person is required	<i>[Set out the parties to the matter in which the arrested person is required.]</i>						

Undertaking by arrested person	<p>I undertake to appear personally before the above Court</p> <p>on: [date of means inquiry/ default inquiry]</p> <p>at: [time of inquiry]</p> <p>at: [place of inquiry]</p> <p>to give evidence/produce to the court, for use in the inquiry, any record or thing that was detailed in the summons in the above matter*.</p> <p>I agree that if I do not obey the above undertaking I will forfeit \$ to the Crown.</p> <p>Signed:</p> <p>In the presence of: [Signature, name and official title.]</p> <p>Date:</p>
Is a surety required?	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Amount: \$</p>
Surety agreement [If required]	<p>Name:</p> <p>Address:</p> <p>I agree to forfeit \$ to the Crown if the above arrested person does not obey the above undertaking.</p> <p>Signed:</p> <p>In the presence of: [Signature, name and official title.]</p> <p>Date:</p>
<p>The original to be kept by the Court.</p> <p>Copy to be given to the arrested person and surety (if any).</p> <p>* <i>Strike out those words that are not applicable</i></p>	

3. Declaration that a person is a small business or a non-profit association

<p>Form 3 <i>Civil Judgments Enforcement Regulations 2005</i> <i>(Regulation 105(5))</i> Declaration that a person is a small business or a non-profit association</p>	
Supreme Court/District Court/Magistrates Court	No. of 2
Applicant:	..... Full name
	..... Address
	..... Name of small business/non-profit association*
	..... Position held by applicant in the small business/non-profit association*
<p>I declare that the person in respect of which the application is made is a small business¹ or a non-profit association² within the meaning of that term in the <i>Civil Judgments Enforcement Regulations 2005</i>.</p>	
Signature of applicant:	
Date:	
<p><i>Note: It is an offence under the Civil Judgments Enforcement Regulations 2005 regulation 101 for a person to make a statement or representation in this declaration that is false or misleading. The maximum fine is \$1 000.</i></p>	
<p>¹ Under the Civil Judgments Enforcement Regulations 2005 regulation 104 a small business is — an individual or individuals in partnership who wholly own and operate a business undertaking that has less than 20 full-time equivalent employees and partners; a corporation that has less than 20 full-time equivalent employees and that is not a subsidiary of a corporation that has 20 or more full-time equivalent employees; a company as defined in the Companies (Co-operative) Act 1943 that has less than 20 full-time equivalent employees and that is not, under section 130(1) of that Act, deemed to be a subsidiary company of another company or corporation that has 20 or more full-time equivalent employees;</p>	

a corporation as defined in the Statutory Corporations (Liability of Directors) Act 1996 section 4 that has less than 20 full-time equivalent employees and that is not a body that would be a subsidiary, if the corporation were a corporation to which the Corporations Act 2001 of the Commonwealth applies, of a corporation within the meaning of the Corporations Act 2001 of the Commonwealth or the Statutory Corporations (Liability of Directors) Act 1996 that has 20 or more full-time equivalent employees.

² *Under the Civil Judgments Enforcement Regulations 2005 regulation 104 a non-profit association is a society, club, institution or body that is not for the purpose of trading or securing pecuniary profit for its members from its transactions.*

** Strike out those words that are not applicable*

4. Application to remit fees

<p>Form 4</p> <p>Civil Judgments Enforcement Regulations 2005</p> <p>(Regulation 107)</p> <p>Application to remit fees</p>	
Supreme Court/District Court/Magistrates Court	No. of 2
Applicant:	..... Full name
	..... Address

Fee:	MDL No.
<p>The following reason is the reason¹ for applying to have the above fee waived/ reduced/ refunded/ deferred*.</p> <p>.....</p> <p>.....</p> <p>.....</p>	
<p>¹ <i>The reasons available are financial hardship or that it is in the interests of justice to do so.</i></p> <p>* <i>Strike out those that are not applicable.</i></p>	
<p>If the reason is that it is in the interests of justice to do so, why is that so?</p> <p>.....</p> <p>.....</p> <p>.....</p>	

If the reason is financial hardship the information required in the following part of this form must be provided by the applicant if the applicant is a natural person.			
I am employed as a by Their business address is			
I am unemployed/ a pensioner* and registered with the Department of Social Security at			
I am single/ married/ separated.*			
I have/ do not have* a dependant wife/ husband/de facto partner* and dependant children.			
My weekly/fortnightly* income and expenditure is as follows (in whole dollars) —			
Income		Expenditure	
Wage/salary/benefit (net)		Rent/board	\$
Self	\$	Mortgage payment	\$
Spouse	\$	Maintenance for dependants	\$
De facto partner	\$	Food	\$
Total	\$	Electricity/gas	\$
Money in bank or other financial institution		Telephone	\$
Self	\$	Water	\$
Spouse	\$	Rates and taxes	\$
De facto partner	\$	Court orders	\$
Total	\$	Lease or other (give details)	\$
Income from investments	\$	Other debts owing (give details)	\$

Other income	\$		
Money owed to me	\$		
TOTAL		TOTAL	
ASSETS		VALUE	
		\$	
My assets and liabilities are as follows —			
House or other real property (give addresses)			
.....		
.....		
TOTAL			
Motor vehicles (car, utility, motor cycle, truck, etc.)			
Make and model	Reg. No.		
TOTAL			
Home contents			
Television	yes / no		
Video recorder	yes / no		
Stereo system	yes / no		
Furniture	yes / no		
Dishwasher	yes / no		
Microwave oven	yes / no		
Collection of coins, stamps, etc.			
Other collectables			

Interest in business or company		
Other assets		
TOTAL		
LIABILITIES		
Mortgage to for \$		
Other to for \$		
Time to pay order for \$		
TOTAL		
If the reason is financial hardship the information required in the following part of this form must be provided by the applicant if the applicant is a corporation or incorporated association.		
INCOME		\$
LIABILITIES		\$
ASSETS		VALUE
		\$
Signature of applicant:		
Date:		
<p>* <i>Strike out words that are not applicable.</i> <i>Note: It is an offence under the Civil Judgments Enforcement Regulations 2005 regulation 101 for a person to make a statement or representation in this declaration that is false or misleading . The maximum fine is \$1 000.</i></p>		

5. Application for determination of dispute about enforcement costs

<p>Form 5 Civil Judgments Enforcement Regulations 2005 (Regulation 108) Application for determination of dispute about enforcement costs</p>	
Supreme Court/District Court/Magistrates Court*	No. of..... 20.....
Application:	To the Principal Registrar for a determination under the <i>Civil Judgments Enforcement Regulations 2005</i> regulation 108 of a question regarding enforcement costs.
Applicant:	..... Full name
	..... Address
 Date of birth	..... MDL No.
Disputed enforcement cost:	The disputed enforcement cost is
	Payable under the <i>Civil Judgments Enforcement Regulations 2005</i> Schedule 1/2/3* item
	I dispute — <input type="checkbox"/> that the enforcement cost is payable <input type="checkbox"/> the amount of the enforcement cost <input type="checkbox"/> other [give details].....
I dispute the enforcement cost because:	
.....	
Signature of applicant:	.....
Date:	...../...../20.....
* <i>Strike out words or numbers that are not applicable.</i>	

Notes

- ¹ This is a compilation of the *Civil Judgments Enforcement Regulations 2005* and includes the amendments made by the other written laws referred to in the following table.

Compilation table

Citation	Gazettal	Commencement
<i>Civil Judgments Enforcement Regulations 2005</i>	28 Apr 2005 p. 1483-559	1 May 2005 (see r. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>Civil Judgments Enforcement Amendment Regulations 2005</i>	13 Dec 2005 p. 5984-5	13 Dec 2005
<i>Civil Judgments Enforcement Amendment Regulations 2006</i>	23 Jun 2006 p. 2175-7	1 Jul 2006 (see r. 2)