



AUSTRALIAN CAPITAL TERRITORY

Magistrates Court (Civil Jurisdiction) (Amendment) Act 1998

No. 7 of 1998

An Act to amend the *Magistrates Court (Civil Jurisdiction) Act 1982*

[Notified in ACT Gazette S150: 25 May 1998]

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

1. Short title

This Act may be cited as the *Magistrates Court (Civil Jurisdiction) (Amendment) Act 1998*.

2. Commencement

This Act commences on the day on which it is notified in the *Gazette*.

3. Principal Act

In this Act, “Principal Act” means the *Magistrates Court (Civil Jurisdiction) Act 1982*.¹

4. Substitution

Section 349 of the Principal Act is repealed and the following section substituted:

“349. Entry, search and seizure—bailiff’s powers

“(1) This section applies where, in executing a writ of execution against a judgment debtor—

- (a) a bailiff is refused entry into the judgment debtor’s premises by an occupier of the premises, after having informed, or having made reasonable attempts to inform, the occupier (orally or in writing) about the procedure in relation to the execution of the writ and the bailiff’s intention to seek an order for entry under this section if entry is refused; or
- (b) a bailiff—
 - (i) has made reasonable attempts to contact both the judgment debtor and any other occupier of the judgment debtor’s premises to obtain consent to entry of the premises; and
 - (ii) has been unable to make such contact with the judgment debtor or any other occupier of those premises.

“(2) Where this section applies, on application by a bailiff in accordance with section 123 the court may issue an order authorising the bailiff, for any purpose connected with executing the writ of execution, to enter the judgment debtor’s premises using such force as is necessary and reasonable, with the assistance of a police officer or officers if the bailiff considers such assistance to be necessary.

“(3) Without limiting the generality of subsection (2), an order under that subsection is sufficient authority for the bailiff—

- (a) to search the premises for any property that the bailiff is entitled to seize under subsection 347 (1) or 348 (1); and
- (b) to seize and remove any such property.

“(4) The court shall not make an order under subsection (2) authorising entry to a judgment debtor’s premises unless satisfied that—

- (a) the judgment debtor resides at the premises; or
- (b) there is within the premises property that the bailiff is entitled to seize under subsection 347 (1) or 348 (1) in executing the writ of execution.

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“(5) No action, suit or proceeding lies against a bailiff in relation to an act done or omitted to be done in good faith in carrying out an order of the court under subsection (2).

“(6) In this section—

‘judgment debtor’s premises’ means premises occupied by the judgment debtor.”.

NOTE

Principal Act

1. Reprinted as at 28 February 1997. See also Acts Nos. 94 and 96, 1997.

[Presentation speech made in Assembly on 30 April 1998]

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