

Magistrates Court (Enforcement of Judgments) Act 1994

and

Magistrates Court (Civil Jurisdiction) Act 1982

Determination No 27 of 1995

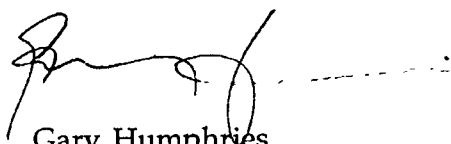
NOTICE OF COMMENCEMENT AND APPROVAL OF FORMS

In accordance with subsection 2(2) of the *Magistrates Court (Enforcement of Judgments) Act 1994*, I fix 10 April 1995 as the day on which sections 3 to 97 (inclusive) shall commence.

For the purposes of subsection 284(3) of the *Magistrates Court (Civil Jurisdiction) Act 1982* (the Act), as inserted by section 22 of the *Magistrates Court (Enforcement of Judgments) Act 1994*, I approve each of the forms numbered Form 1 and Form 72 to Form 92 (inclusive) attached to this instrument.

For the purposes of paragraph 284(4)(b) of the Act, as inserted by section 22 of the *Magistrates Court (Enforcement of Judgments) Act 1994*, I declare that the attached Form 1 supersedes the Form 1 contained in the Schedule to the Act.

Dated 31 March 1995.



Gary Humphries
Attorney-General

GENERAL FORM OF HEADING AND CONCLUSION

FORM 1

(Title of Document)

IN THE MAGISTRATES COURT
AT CANBERRA IN THE
AUSTRALIAN CAPITAL TERRITORY

NO. OF 19

BETWEEN:

.....
(FULL NAME OF PLAINTIFF/APPLICANT/JUDGMENT CREDITOR)
.....
(ADDRESS)
.....
.....

*Plaintiff/Applicant/Judgment Creditor

AND:

.....
(FULL NAME OF DEFENDANT/RESPONDENT/JUDGMENT DEBTOR)
.....
(ADDRESS)
.....
.....

*Defendant/Respondent/Judgment Debtor

*AND:

.....
(FULL NAME OF GARNISHEE/CLAIMANT)
.....
(ADDRESS)
.....
.....

*Garnishee/Claimant

(Substance of Form)

** (where no signature block appears the following should be inserted)

DATED

19

(Signature)
Registrar

or Solicitor for Plaintiff/Applicant/Judgment Creditor
or Solicitor for Defendant/Respondent/Judgment Debtor
or Solicitor for Garnishee/Claimant

*Delete if not applicable

FORM 72

(Sub-section 217(5))

WRIT OF SPECIFIC DELIVERY

TO THE BAILIFF:

1. is entitled to recovery of the following goods:
(name)

(specify goods to be recovered)

2. was ordered to deliver those goods and has
(name)
failed to comply with that order.
3. You are authorized to seize the goods described above and deliver those goods to the person specified in paragraph 1.

Application was made for this writ at on/...../19 , and the writ is issued on that day.
(time)

.....
Registrar

**APPLICATION AND AFFIDAVIT FOR THE ISSUE OF
A WRIT OF SPECIFIC DELIVERY**

TO THE REGISTRAR:

I,.....

(full name, address and occupation)

*make oath and say/*affirm:

(1) I am the judgment creditor (or the judgment creditor's solicitor)

(2) Please issue a writ for the delivery of

(specify goods)

ordered by the Court on/...../..... to be delivered.

(3) The goods were ordered to be delivered to

(name and address)

by who

(name and address)

has possession of the goods. It is believed that the goods are located at

(address)

(4) The Court ordered that the goods be delivered by/...../.....

(date)

(5) *The goods have not been delivered as ordered.

*The following goods have been returned in accordance with the order.

* Delete if not applicable

SWORN (or affirmed) at Canberra in the

Australian Capital Territory

this day of 19

Before me:

Deponent

NOTE: This form is to be used for the delivery of specific goods. If the Court's Order was for the payment of the assessed value of goods and/or consequential damages, an installment order, a garnishee order or a writ of execution should be used.

NOTICE REQUIRING FINANCIAL INFORMATION**TO THE REGISTRAR:**

The judgment creditor (the person to whom monies are to be paid by the judgment debtor by order of the Court) requests the issue of a notice requiring financial information. Judgment was made against the judgment debtor (the person required to pay money to the judgment creditor by order of the Court) on _____ 19 ____ for \$ _____ and \$ _____ is still unpaid. There is no instalment order or garnishee order in force.

Dated:

Judgment Creditor/
Solicitor for Judgment Creditor

TO THE JUDGMENT DEBTOR:

The judgment creditor (the person to whom you owe money by order of the Court) has obtained judgment against you as indicated above and may now summon you to attend Court to be examined as to your property and financial circumstances. However, if you give complete answers to all questions attached and forward the form to the judgment creditor (or the judgment creditor's solicitor) at (insert address for service of notice) you may avoid being summoned to appear at the Court.

You may come to the office of the Court within 21 days and fill in an application form for an order to pay the judgment debt by instalments. This order may be made immediately by the Registrar or subsequently by the Court. If an order is made, the judgment creditor will not be allowed to summon you to attend for examination or to take any other step for the enforcement of the judgment against you so long as the instalments are paid when due.

Registrar

	QUESTIONS	ANSWERS
1.	What is your full name?	
2.	What is your present address?	
3.	What is your occupation?	
4.	How many dependants do you support?	
5.	Do you own or are you purchasing any real property (house/land)? Give details.	
6.	Do you own or are you purchasing a motor vehicle? Give details.	
7.	Do you own or are you purchasing any furniture, other than bedroom or kitchen furniture? Give details.	

CONTINUED ON NEXT PAGE

8.	Does any person owe you any money? Give details.	
9.	Do you have any accounts with a financial institution (eg. a Bank, Building Society or Credit Union)? Give details including balances and whether held solely by you or jointly with any other person. Where possible give account numbers.	
10.	Have you any personal property or assets held either in your name or jointly with any other person? Give details.	
11.	Who is your employer? What is his/her address? How much do you receive weekly after income tax?	
12.	What other sources of income do you have? Give details.	
13.	What are the regular expenses of running your household and from whose money are these expenses paid.	
14.	What debts and other liabilities have you? Are there any judgments against you which have not been paid in full? Give details.	
15.	What arrangements are you prepared to make to pay this judgment debt?	

PLEASE SIGN

APPLICATION FOR THE ISSUE OF A SUMMONS FOR ORAL EXAMINATION OF A JUDGMENT DEBTOR

(Sub-section 295(1))

TO THE REGISTRAR:

The judgment creditor applies for the issue of a summons for the oral examination:

*of the judgment debtor; or

*of who is an *officer/former officer of a corporation.

(specify name)

*Delete as applicable

If the person to whom the oral examination summons is directed fails to attend as required, it is requested that a warrant of apprehension be issued for the arrest of the person.

A notice requiring financial information *was/was not served upon the judgment debtor on/...../.....

There is no instalment order or garnishee order in force.

Where the person to whom this application is directed is an officer/former officer of a corporation, I believe that that person:

- has sufficient knowledge of the affairs of the corporation to enable him or her to give such answers as may be required of a judgment debtor who is not a corporation, or a substantial part of those answers, at an examination; or
- has in his or her possession or control any document or thing that tends to show the true position as to the property or financial circumstances of the corporation, because (insert reasons for belief)

The amount due and unpaid on the Court judgment is calculated as follows:

(i)	amount of judgment debt (including interest awarded by the Court):	\$	
(ii)	plus judgment costs:	\$	
	<u>Sub-total</u>	\$	
(iii)	less amounts paid since judgment:	\$	
	<u>Sub-total</u>	\$	
(iv)	plus interest from the date of judgment to the date of this summons on so much of the judgment debt as remains payable from time to time calculated as follows:		
	From...../...../..... to/...../.....days @.....%	\$	
	From...../...../..... to/...../.....days @.....%	\$	etc
	<u>Sub-total</u>	\$	
(v)	Plus:		
	costs incurred since judgment	\$	
	(summarise costs incurred)		
	<u>Total amount owing</u>	\$	

DATED THIS

day of

19 .

Judgment Creditor/
Judgment Creditor's Solicitor

SUMMONS TO ATTEND FOR ORAL EXAMINATION

TO:
(judgment debtor, or if a corporation, an officer (or former officer) of the judgment debtor)

OF:
(address)

Onthe Court ordered you (or the corporation) to pay the sums of money detailed below.

(date)
You are summoned to attend before the Registrar of the Court to be orally examined on the application of the judgment creditor (the person to whom you owe money by order of the Court) as to your (or the corporation's) property and financial circumstances and your (or the corporation's) means and ability to pay the amount ordered to be paid.

The examination will be conducted by the Registrar of the Court at
(venue)
on at am/pm.
(date)

You are required to bring with you to the examination any documents or things you have in your possession, custody or control which may assist the Court in determining your (or the corporation's) property and financial circumstances including tax returns, bank records and statements, passbooks and current pay slips, and, where applicable, details of your regular household and other expenses.

IF YOU DO NOT ATTEND IN ANSWER TO THIS SUMMONS A WARRANT MAY BE ISSUED BY THE COURT FOR YOUR ARREST.

The amount due and unpaid on the Court judgment is calculated as follows:

- | | | | |
|-------|---|---------------------------|-----|
| (i) | amount of judgment debt (including interest awarded by the Court): | \$ | |
| (ii) | plus judgment costs: | \$ | |
| | Sub-total | \$ | |
| (iii) | less amounts paid since judgment: | \$ | |
| | Sub-total | \$ | |
| (iv) | plus interest from the date of judgment to the date of this summons on so much of the judgment debt as remains payable from time to time calculated as follows: | | |
| | From...../...../..... to/...../.....days @.....% | \$ | |
| | From...../...../..... to/...../.....days @.....% | \$ | etc |
| | Sub-total | \$ | |
| (v) | Plus: | | |
| | costs incurred since judgment | \$ | |
| | (Summarise costs incurred) | Total amount owing | \$ |

DATED THIS day of 19.....

REGISTRAR

**JUDGMENT CREDITOR'S APPLICATION AND AFFIDAVIT FOR ISSUE
OF WARRANT OF APPREHENSION**

TO THE REGISTRAR:

1. I

(name)

of

(address)

am *the judgment creditor/*the judgment creditor's solicitor.
2. The judgment debt remains unpaid to the extent of \$.....
3. I apply for the issue of a warrant as authorised by the Court for the apprehension of the judgment debtor (or of being an officer or former officer of the corporation).
4. No undertaking has been given to the judgment debtor by or on behalf of the judgment creditor that the warrant will not be issued. (Or state any special circumstances as to any such undertaking given).
5. I undertake to notify the Registrar immediately if while the warrant is unexecuted, the judgment debt is paid or arrangements are made for its payment.

*Delete as applicable

Sworn (or affirmed) at Canberra in the
Australian Capital Territory this
this day of 19

Before me:

.....
Deponent

FORM 78

(Sub-section 303(1))

WARRANT OF APPREHENSION

TO THE BAILIFF:

.....of.....
(name) (address)
was required under an examination summons duly served on *him/her to attend for examination before me on
.....19 , and did not so attend.
(date)

On19 , the Court authorised the issue of this warrant for that failure to attend.
(date)

You are ordered forthwith to apprehend if *he/*she is
(name)
within the Australian Capital Territory and cause *him/*her to be brought before the Registrar to be examined
as to *his/*her/*the Corporation's property and financial circumstances.

When you have apprehended the judgment debtor you are to bring *him/*her before the Registrar to be
examined.

This warrant will expire if not executed before the expiration of 3 months from this date or if it is sooner
revoked by the Court.

DATED:

REGISTRAR

NOTE: Pursuant to Section 304 of the Magistrates Court (Civil Jurisdiction) Act 1982, a police officer shall,
if called upon by the Bailiff to do so, aid and assist in the execution of the warrant.

***Delete where not applicable**

FORM 79

(Sub-sections 308(1), 313(1) and 331(2))

APPLICATION FOR INSTALMENT ORDER

TO THE REGISTRAR

This application is for -

- * an instalment order
- * the variation of an instalment order
- * the revocation of an instalment order

DETAILS OF APPLICANT:

I *the judgment debtor/creditor or solicitor for the
(name of judgment creditor/debtor) judgment debtor/creditor

of Telephone numbers:(business)
(private)
 (address)

NATURE OF ORDER SOUGHT:

[To be completed unless application is made for revocation of an instalment order.]

Please specify:

- (a) the amount of each instalment to be paid: \$.....
- (b) time when instalments are to be paid (eg, weekly/fortnightly/monthly):
- (c) date of first instalment:/...../.....
- (d) person to whom instalments are to be paid:
- (e) address at which instalments are to be paid.....
.....

REASONS FOR APPLICATION:

[If application is being made for the variation or revocation of an instalment order, it will be necessary to state what circumstances have changed or were withheld since the last instalment order and, if so, the details and particulars relating to those circumstances].

[If more space required, please attach further statement]

CONTINUED ON NEXT PAGE

OTHER RELEVANT DETAILS:

.....
Signature of Applicant

*Delete if not applicable

NOTE: IF THE APPLICATION IS MADE BY THE JUDGMENT DEBTOR, A STATEMENT OF PROPERTY AND FINANCIAL CIRCUMSTANCES MUST BE FILED WITH THIS APPLICATION.

IMPORTANT

IF YOU DO NOT UNDERSTAND THIS DOCUMENT, YOU SHOULD OBTAIN LEGAL ADVICE IMMEDIATELY. YOU MAY ALSO NEED TO OBTAIN FINANCIAL COUNSELLING.

STATEMENT OF PROPERTY AND FINANCIAL CIRCUMSTANCES

[The purpose of this form is to assist the Court to understand your financial circumstances]

I,

(full name, address and occupation)

being duly sworn, *make oath and say/*affirm:

1. I am the judgment debtor.
2. A true statement of my property and financial circumstances is listed below.

3. Amount and Source of Weekly Income:

Occupation(s):

Name(s) and address(es) of Employer(s):

.....

Use nearest whole dollars only

Gross Wage: [BEFORE Tax or other deductions] \$.....

Maintenance received (Child/Spouse): \$.....

Regular overtime (if any): \$.....

Benefits received from employer (car, telephone, expense account, etc): \$.....

Gross average earnings from self-employment or partnership for last 12 months: \$.....

Are you expecting your income to be more or less in the next 12 months? Why?

.....

If unemployed:

(i) state length of last employment,

(ii) date when last employment ceased/...../....., and

(iii) gross weekly amount earned when still employed \$.....

Pension or Benefit received or any other payment from the Department of Social Security such as Family Payments or from Department of Veterans Affairs: \$.....

Worker's compensation received: \$.....

Board or rent received: \$.....

Average weekly income from bank, building society, shares etc: \$.....

Other (give details): \$.....

.....

.....

Are you expecting a lump sum payment in the foreseeable future? YES/NO

- if Yes please give details and expected date of receipt.

.....

.....

TOTAL GROSS WEEKLY INCOME: \$.....

CONTINUED NEXT PAGE

4. Property and Assets: Use nearest whole dollars only

- A. Market value of place of residence owned: \$.....
Amount owing on mortgage: \$.....

B. Market value of any other residence or land owned other than where you live: \$.....
Amount owing on mortgage: \$.....
Market value of motor vehicle(s):
Year:.....Make/model..... \$.....
Year:.....Make/model..... \$.....

C. Cash that is readily available or can be made available:
(eg deposits on call, deposits on short-term, credit in banks, building societies etc). \$.....

BANK/BUILDING SOCIETY	BRANCH	TYPE OF ACCOUNT	ACCOUNT NUMBER	AMOUNT HELD (nearest whole dollar only)
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....
.....	\$.....

- D. Other investments including shares, debentures, bonds: \$.....

E. Money owing to you:
From:..... \$.....
From:..... \$.....
From:..... \$.....
From:..... \$.....
From:..... \$.....
[If insufficient room please attach a list]
- TOTAL: \$.....

- F. Value of interest in partnership or business: \$.....

G. State approximate re-sale value of furniture and personal goods: \$.....
Amount owing on these: \$.....

H. Other assets (give details): \$.....
.....
.....
.....

TOTAL NET VALUE: \$.....

- I. Life insurance policies: Specify, giving surrender value(s) \$.....
..... \$.....
..... \$.....
..... \$.....
..... \$.....
..... \$.....

TOTAL PROPERTY AND ASSETS: \$.....

CONTINUED NEXT PAGE

5. Are any assets jointly owned: (Give details)

.....
.....
.....
.....
.....

6. Debts, Liabilities and other Financial Obligations:

Use nearest whole dollars only

(a) **Weekly expenses:**

Income Tax (including Medicare Levy):	\$.....
Superannuation:	\$.....
Housing (mortgage, board, rent, hospital or institution)	\$.....
General Rates:	\$.....
Water and Sewerage Rates:	\$.....
Child care costs:	\$.....
Maintenance actually paid:	\$.....
Electricity and gas (fuel):	\$.....
Food/Supermarket purchases:	\$.....
Other general household expenses:	\$.....
Vehicle expenses (registration, insurance, maintenance, fuel, parking, NRMA expenses):	\$.....
Fares:	\$.....
Telephone:	\$.....
Insurance policies:	\$.....
School fees and other schooling costs:	\$.....
Clothing and shoes:	\$.....
Medical, Dental, Optical and Chemist expenses:	\$.....
Entertainment and Recreational activities:	\$.....
Payments on court orders and fines:	\$.....
Union Fees:	\$.....
Ambulance Insurance:	\$.....
Haircuts:	\$.....
Gifts (Christmas, birthdays, etc)	\$.....
Pets/Vets	\$.....
Other expenses (give details)	\$.....

.....
.....
.....
.....

TOTAL WEEKLY EXPENSES: \$.....

CONTINUED NEXT PAGE

- (b) Credit Debts outstanding (give details):
 (Hire purchase (eg, household goods, tools of trade,
 leases, credit cards, contract, personal loans,
 store accounts, guarantees being paid off, etc).

DEBT PAYABLE TO	AMOUNT OF WEEKLY INSTALLMENT	FULL AMOUNT OWING
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....
.....	\$.....	\$.....

- (c) Other Debts (give details: eg, legal/accounting expenses, trade people,
 utilities arrears, medical expenses, lay bys).

.....

7. Have any of the debts listed in Question 6 been jointly incurred YES/NO
 with any other persons? - if Yes, give details

.....

8. Give details of any other circumstances which affect you or your
 families position (eg, number and age of dependants, health, etc.)

.....

Sworn (or affirmed) at Canberra in the
 Australian Capital Territory
 this day of 19
 Before me:

.....
 Deponent

.....

**WARNING: ANY PERSON WHO MAKES A FALSE STATEMENT MAY HAVE THE
 INSTALMENT ORDER VARIED OR REVOKED**

AGREEMENT FOR PAYMENT OF JUDGMENT DEBT BY INSTALMENTS

The judgment creditor and judgment debtor agree that the amount due in respect of the judgment is \$..... calculated as follows:

- | | | |
|-------|---|------------|
| (i) | amount of judgment debt (including interest awarded by the Court): | \$..... |
| (ii) | plus judgment costs: | \$..... |
| | Sub-total | \$..... |
| (iii) | less amounts paid since judgment: | \$..... |
| | Sub-total | \$..... |
| (iv) | plus interest from the date of judgment to the date of this application or so much of the judgment debt as remains payable from time to time calculated as follows: | |
| | From...../...../.....to...../...../..... ..days @..... % | \$..... |
| | From...../...../.....to...../...../..... ..days @..... % | \$.....etc |
| | Sub-total | \$..... |
| (v) | Plus: | |
| | costs incurred since judgment: | \$..... |
| | (summarise costs incurred) | |
| | Total amount owing | \$..... |

It is further agreed that this amount be paid by instalments of \$..... perthe first payment to be made on or before19 ..

.....
JUDGMENT CREDITOR

.....
JUDGMENT DEBTOR

.....
WITNESS

.....
WITNESS

[To be signed by or on behalf of each party entering into the agreement and each signature if not of a barrister or solicitor, to be witnessed by the Registrar or a barrister, solicitor or Justice of the Peace].

AGREEMENT TO VARY OR REVOKE AN INSTALMENT ORDER

The judgment creditor and judgment debtor agree that the instalment order made on/...../..... be:

- * (a) revoked; or
- * (b) varied from today so that the amount of the instalments are \$..... perthe first payment to be made on or before...../...../.....

*delete as applicable.

.....
JUDGMENT CREDITOR

.....
JUDGMENT DEBTOR

.....
WITNESS

.....
WITNESS

[To be signed by or on behalf of each party entering into the agreement and each signature if not of a barrister or solicitor, to be witnessed by the Registrar or a barrister, solicitor or Justice of the Peace].

APPLICATION FOR GARNISHEE ORDER

I,
(full name, address and occupation)

* the judgment creditor/*the judgment creditor's solicitor *make oath and say/*affirm:

2. The judgment debt in these proceedings (including interest) remains unsatisfied to the extent of \$..... calculated as follows:

- (i) amount of judgment debt (including interest awarded by the Court): \$.....
(ii) plus judgment costs: \$.....

Sub-total \$.....

- (iii) less amounts paid since judgment: \$.....

Sub-total \$.....

- (iv) plus interest from the date of judgment to the date of this application or so much of the judgment debt as remains payable from time to time calculated as follows:

From/...../..... to/...../.....days @% \$.....
From/...../..... to/...../.....days @% \$..... etc

Sub-total \$.....

- (v) Plus:

costs incurred in attempting to recover
the amount due in pursuance of the judgment: \$.....
(summarise costs incurred)

Total amount owing \$.....

*Garnishee Order attaching earnings:

3. The judgment debtor is employed by
(name of employer)

of
(address)

as a
(name of position or description of employment)

and receives from the employer earnings in the sum of approximately \$..... per
*week/*fortnight/*month.

4. Application is made for the issue of a garnishee order attaching earnings directing that the judgment debtor's earnings be attached continuously in the sum of \$..... per *week/*fortnight/*month until the judgment debt and costs and interest are paid.

***Garnishee Order attaching debt other than earnings:**

5. The judgment debtor has an account at the
(name of financial institution)

at
(address)

The account is in the name of
and its number is

6. Application is made for the issue of a garnishee order attaching a debt (other than earnings) directing that the account specified in paragraph 5 (above) be attached until the judgment debt and costs and interest are paid.

***Delete as applicable.**

Sworn (or affirmed) at Canberra
in the Australian Capital Territory

this day of 19

.....
Deponent

Before me:

GARNISHEE ORDER ATTACHING DEBT OTHER THAN EARNINGS.

NOTE: The '**judgment creditor**' is the person to whom monies are to be paid by the judgment debtor by order of the Court. The '**judgment debtor**' is the person required to pay money to the judgment creditor by order of the Court. '**Garnishee**' means the person or organisation who owes money to the judgment debtor eg, her/his employer or bank.

THE PURPOSE OF THIS ORDER IS TO REQUIRE THE GARNISHEE TO PAY TO THE COURT THE DEBT OR MONIES PAYABLE BY THE GARNISHEE TO THE JUDGMENT DEBTOR IN PARTIAL OR FULL SATISFACTION OF THE MONIES PAYABLE BY THE JUDGMENT DEBTOR TO THE JUDGMENT CREDITOR

TO:
(full name of garnishee)

of:
(address of garnishee)

And to the judgment debtor.

Upon the application of the judgment creditor:

ORDER

IT IS ORDERED that all debts due or accruing (including a debt that will become due and payable) from the garnishee to the judgment debtor at the time of service of this order, or which will become due or payable (other than any earnings payable to the judgment debtor) be attached to the extent of \$..... to answer a judgment made in these proceedings.

(Where appropriate):

It is alleged that the garnishee is indebted to the judgment debtor in respect of Account Number in the name of at the Branch of the garnishee at

DATED THIS day of 19

REGISTRAR

SEE OVERLEAF FOR IMPORTANT NOTICE

IMPORTANT NOTICE

TO THE JUDGMENT DEBTOR:

You may apply to the Court seeking an order varying or revoking this order on the grounds that the order imposes exceptional hardship on you or on a member of your family; or apply to the Court for leave to pay the judgment debt or the balance of the judgment debt by instalments. If an instalment order is made the execution of any garnishee order attaching earnings is stayed (suspended).

TO THE GARNISHEE:

You are to pay the amount attached to the Registrar of the Magistrates Court at Canberra within 21 days of service of this order. However, where the debt attached is not due for payment to the judgment debtor within this 21 day period, payment is to be made not later than the date on which the attached debt would be due for payment to the judgment debtor. Where the debt attached is not due for payment within 21 days of service, you must notify the judgment creditor of the date on which the attached debt is or is likely to be due for payment and of the amount of the attached debt (if it is less than the amount of the judgment debt).

You are entitled to deduct the prescribed amount of \$ for costs incurred in complying with this order. Your liability to the judgment debtor is discharged to the extent of the amount actually paid in accordance with this order including the prescribed amount of \$ deducted for costs.

You may serve on the judgment creditor and the Registrar an affidavit in accordance with Form 84 stating there is no debt due or accruing to the judgment debtor. You may apply to the Court for an order varying or revoking this order on the grounds that the order would impose exceptional hardship on you or on a member of your family.

If you do not comply with this order or file an affidavit with the Registrar stating that there is no debt due or accruing, or that there is no debt that will become due or payable from you to the judgment debtor, you may be summoned to show cause why judgment should not be made against the garnishee for the sum of \$.....

NOTES:

- A. The garnishee may pay any amount attached by this order to or at the direction of the judgment creditor instead of to the Registrar if the garnishee first notifies the judgment debtor and the Registrar that he or she proposes to do so.
- B. Where a garnishee reasonably believes that at the time of service of this order, there were no earnings or other debts due or accruing from the garnishee to the judgment debtor, the garnishee may serve on the judgment creditor and the Registrar an affidavit in accordance with Form 84 to that effect containing a summary of the grounds on which that belief is based.

GARNISHEE ORDER ATTACHING EARNINGS

NOTE IN THIS FORM:

The 'judgment creditor' is the person to whom monies are to be paid by the judgment debtor by order of the Court. The 'judgment debtor' is the person required to pay money to the judgment creditor by order of the Court. 'Garnishee' means the person or organisation who owes money to the judgment debtor eg. her/his employer or bank.

THE PURPOSE OF THIS ORDER IS TO REQUIRE THE GARNISHEE TO PAY TO THE COURT THE DEBT OR MONIES PAYABLE BY THE GARNISHEE TO THE JUDGMENT DEBTOR IN PARTIAL OR FULL SATISFACTION OF THE MONIES PAYABLE BY THE JUDGMENT DEBTOR TO THE JUDGMENT CREDITOR

TO:
(full name of garnishee)

of:
(address of garnishee)

And to the judgment debtor.

Upon the application of the judgment creditor.

ORDER

IT IS ORDERED that each payment of earnings payable by the garnishee to the judgment debtor from time to time after deducting an amount (retained by the judgment debtor) calculated:

- (a) if the judgment debtor has dependants - at the rate of such amount per week as is equal to the amount of the minimum weekly wage for the time being payable pursuant to the Metal Trades (ACT) Award 1982 as originally made and as varied from time to time; or
- (b) if the judgment debtor does not have any dependants - at the rate of such amount per week as is equal to 3/4 of the amount of the minimum weekly wage for the time being payable pursuant to the Metal Trades (ACT) Award 1982 as originally made and as varied from time to time;

is attached for or towards securing payment of a total amount due of \$..... (including costs and interest to date) in respect of a judgment recovered in this action plus an amount for interest accruing at the rate of \$..... per day from the date of this order on the balance outstanding.

DATED THIS day of 19

REGISTRAR

SEE OVERLEAF FOR IMPORTANT NOTICE

IMPORTANT NOTICE

TO THE JUDGMENT DEBTOR:

You may apply to the Court seeking an order varying this order on the grounds that the order imposes exceptional hardship on you or on a member of your family, or apply to the Court for leave to pay the judgment debt or the balance of the judgment debt by instalments. If an instalment order is made, the execution of any garnishee order attaching earnings is stayed (suspended).

TO THE GARNISHEE:

1. This order attaches earnings due for payment to the judgment debtor from the date of service.
2. Payment of earnings attached must be made to the Registrar within 14 days of the day upon which the earnings fall due for payment to the judgment debtor.
3. You may:
 - (i) serve on the judgment creditor and the Registrar an affidavit stating that the judgment debtor is not employed by the you and/or that you are not indebted to the judgment debtor in respect of earnings; or
 - (ii) apply to the Court for an order varying or revoking this order on the grounds that the order would impose exceptional hardship on the you or a member of your family or the family of the judgment debtor.

NOTES:

A. Earnings comprise any sums payable to the judgment debtor:

- (1) by way of wages or salary (including fees, bonus, commission, overtime pay or other emoluments payable in addition to wages or salary); or
- (2) by way of pension, including -
 - (i) an annuity in respect of past services (whether or not the services were rendered to the person paying the annuity);
 - (ii) periodical payments in respect of compensation for the loss, abolition or relinquishment or any diminution in the emoluments of any office or employment; and
 - (iii) periodical payments in respect of compensation for the loss of wages or salary because of illness or injury;

but do not include any pension, benefit or allowance payable to the person pursuant to the Social Security Act 1991 or the Veteran's Entitlements Act 1986.

B. You may pay the amount(s) attached by this order to or at the direction of the judgment creditor instead of to the Registrar if you first notify the judgment debtor and the Registrar that you propose to do so.

CONTINUED ON NEXT PAGE

- C. You may retain from any amount attached by this order an amount for the reasonable expenses incurred by you in complying with the order, provided that it does not exceed 10% of the amount attached and that when making payment you advise the judgment creditor in writing of the total amount attached, the amount retained by you and the balance paid to the Registrar or judgment creditor. Any amount so retained by you will for the purpose of the earnings attached be deemed to have been paid by you to the judgment debtor.
- D. The amount(s) attached under this order must be reduced by any amount(s) already attached under any order of this or any other Court, as well as by the amount referred to in paragraph (a) or (b) of the above order. If you are already making deductions from the judgment debtor's earnings to meet payments required under a previous garnishee order or orders, the total amount deducted should not exceed the amount referred to in paragraph (a) or (b) of the above order. Priority of payment is established on the basis of the date of service upon you of each order. If you have queries about this aspect you should contact the Court.
- E. Where a garnishee order attaching earnings is in force and the judgment debtor ceases to be employed by the garnishee, the judgment debtor and the garnishee **must** within 21 days after the judgment debtor ceases to be so employed each notify the Court in writing:
- (a) that the judgment debtor has ceased employment with the garnishee; and
 - (b) specify the date on which the employment ceased;
- and if the judgment debtor has a new employer the judgment debtor must also state in his or her notice:
- (c) the name and address of the new employer and the place of the new employment; and
 - (d) the amount of his or her earnings from the new employer.
- F. Where a garnishee reasonably believes that at the time of service of this order there were no earnings or other debts due or accruing from the garnishee to the judgment debtor, the garnishee may serve on the judgment creditor and the Registrar an affidavit in accordance with Form 84 to that effect containing a summary of the grounds on which that belief is based.

AFFIDAVIT BY GARNISHEE

TO THE REGISTRAR AND THE JUDGMENT CREDITOR:

I,
(full name)

.....
(address)

.....
(occupation)

***make oath and say/*affirm:**

1. By a garnishee order dated/...../..... ***earnings/*debt/s** other than earnings payable by me to were attached in respect of a judgment debt.
(name of judgment debtor)
2. There are no ***earnings/debt/s** other than earnings due or accruing or that will become due and payable by me to the judgment debtor, because
(state reason)

*** delete as applicable**

Sworn (or affirmed) at Canberra in the
Australian Capital Territory
this day of 19

.....
Deponent

Before me:

.....

FORM 85

APPLICATION FOR GARNISHEE SUMMONS

I,
(full name)

.....
(address)

.....
(occupation)

*make oath and say/*affirm:

1. I am the judgment creditor (or the judgment creditor's solicitor);
2. I apply for the issue of a summons against
(name of garnishee)
3. The garnishee order attaching a debt (other than earnings) (or the garnishee order attaching earnings) made on19 , was served on the garnishee on19 , and the judgment debtor on19 .

In relation to a garnishee order attaching a debt other than earnings:

The moneys attached under the order have remained unpaid for a period exceeding 21 days from the date of service of the garnishee order or the date upon which the debt was due for payment.

In relation to a garnishee order attaching earnings:

The earnings attached under the order have remained unpaid for a period exceeding 14 days after the day on which the earnings became due for payment to the judgment debtor.

4. The garnishee resides (or carries on business) at
.....
.....

Sworn (or affirmed) at Canberra in the
Australian Capital Territory
this day of 19

.....
Deponent

Before me:

.....

FORM 86

GARNISHEE SUMMONS

To
(name of garnishee)
.....
(address of garnishee)

You are summoned to attend:

- (a) before the Court:
- (b) at
(address of Court where summons returnable)
- (c) at 10.00am on 19 , and thereafter as required to
show cause why you should not be ordered to pay all amounts attached under the garnishee
order served upon you on the day of 19 .

DATED THIS day of 19 .

REGISTRAR

NOTE: If you do not attend before the Court on the date and at the time specified, the Court may determine the matter in your absence. At the hearing of the matter you may raise for determination by the Court any question in dispute concerning your liability to pay the debt or earnings sought to be attached by the Garnishee Order.

TO THE REGISTRAR:

I,

.....

(full name, address and occupation)

make *oath and say/*affirm:

- (1) I am the judgment creditor (or the judgment creditor's solicitor).
- (2) Judgment was entered against the judgment debtor on the/...../.....
- (3) I apply for the issue of a writ of execution to seize and sell property of the judgment debtor to recover \$..... which is the amount now owing calculated as follows:

(i) Amount of judgment (including interest awarded by the Court):	\$.....
(ii) Judgment Costs:	\$.....
	<u>Sub-total</u> \$.....
(iii) Less amounts paid or credited since judgment	\$.....
	<u>Sub-total</u> \$.....
(iv) Plus interest from the date of judgment to the date of swearing this affidavit on so much of the judgment debt as remains payable from time to time calculated as follows:	
From...../...../.....to...../...../....., days @ %	\$.....
From...../...../.....to...../...../....., days @ %	\$.....
	<u>Sub-total</u> \$.....
(v) Plus	
(a) Fees payable on this writ:	\$.....
(b) Professional costs for the issue of this writ:	\$.....
(c) Costs incurred since judgment:	\$.....
(Summarise costs incurred)	
	<u>Sub-total</u> \$.....
And interest accruing at the daily rate of %.	\$
	<u>Total amount owing</u> \$.....

- (4) It is believed that the personal property of the judgment debtor can be found at
-
- (address)

- (5) I acknowledge that no payments will be accepted by or on behalf of the judgment creditor while the writ of execution remains in force without notifying the Registrar.

* Delete as applicable.

SWORN (or affirmed) by the deponent at Canberra
in the Australian Capital Territory
this day of 19

Before me:

Deponent

WRIT OF EXECUTION AGAINST PERSONAL PROPERTY

TO THE BAILIFF:

You are authorised to seize and sell the personal property of the judgment debtor which is authorised by law to be taken in execution of the amount shown below unless that amount and the costs and charges of the execution of this writ are sooner paid or the Court otherwise orders.

The amount payable to the judgment creditor is \$..... calculated as follows:

(i) Amount of judgment debt (including pre-judgment interest):		\$.....
(ii) Judgment costs:		\$.....
	<u>Sub-total</u>	\$.....
(iii) Less amount paid or credited since judgment:		\$.....
	<u>Sub-total</u>	\$.....
(iv) Plus interest from the date of judgment to/...../..... (insert date on which the application for the issue of the writ was sworn):		\$.....
	<u>Sub-total</u>	\$.....
(v) Plus		
(a) fees payable on this writ:		\$.....
(b) professional costs for the issue of this writ:		\$.....
(c) costs incurred since judgment (summarise costs incurred):		\$.....
	<u>Sub-total</u>	\$.....
TOTAL AMOUNT OWING		\$.....
AND INTEREST ACCRUING AT THE DAILY RATE OF	%.	

You are to pay the amount realised from the sale of the property seized to the Registrar.

Application was made for this writ at..... on/...../19 , and the writ is issued on that day.
(time)

Registrar

FORM 89

(Section 350)

**NOTICE TO PERSON THAT HE/SHE IS RESPONSIBLE
FOR PROPERTY OF THE JUDGMENT DEBTOR**

TO:
 (name)
 of
 (address)

The following property of the judgment debtor (specify and where necessary to identify, describe)

1.
2.
3.
4.
5.

has been seized under a writ of execution by the Bailiff of the Magistrates Court.

You are informed that you are responsible for the safekeeping of such of the property seized as is in your custody until it is sold by the Bailiff or you are otherwise notified by the Bailiff.

You will be liable to a penalty of a fine or imprisonment or both if, (except with the consent of the Court or the consent in writing of the Bailiff), you interfere with or dispose of or remove any such property or allow it to be interfered with, disposed of or removed.

DATED:

BAILIFF

TO THE JUDGMENT DEBTOR

A writ of execution has been issued against your personal property.

In executing the writ, the Bailiff is entitled to include any costs and charges incurred in the execution of the writ, including charges for items such as advertising the sale of your property and removal and storage costs. Your property is not to be sold within 6 days of the date on which it was seized unless the property is of a perishable nature or you make a request in writing for the property to be sold sooner.

THE AMOUNT PAYABLE

The amount payable to discharge this writ is \$..... plus \$..... per day for interest for each day after...../...../..... (insert date of application for writ of execution). If this amount is not paid on or before...../...../..... further expense may be incurred in arranging for the sale of the property.

You will receive from the Bailiff a list:

- (i) identifying the personal property seized; and
- (ii) the determined market value of the property seized.

A reserve price equal to 65% of the determined market value will apply to the property to be sold.

CHALLENGING THE DETERMINED MARKET VALUE

You may within 5 days of receiving the notice from the Bailiff advising you of the determined market value (or any subsequent Notice advising you of a Determined Market Value) challenge the Determined Market Value by attending at the Office of the Registrar of the Magistrates Court at Canberra and make an application to the Registrar for a determination of a higher market value for the property.

The Registrar cannot determine a higher market value for the property unless:

- (i) there is evidence from a suitably qualified and experienced person as to the true market value of the goods; and
- (ii) the Registrar is satisfied, having regard to that evidence, that the determined market value is substantially less than the true market value.

Your property will not be sold until the application has been decided by the Registrar.

THE DATE OF SALE

The property detailed above will be sold at public auction at.....on...../...../..... at

CONDITIONS OF SALE

The Bailiff shall sell the property:

- (i) in such order as, in the Bailiff's opinion, is best for the speedy execution of the writ without undue expense;
- (ii) subject to this consideration, in such order as you may specify; and
- (iii) subject to paragraphs (i) and (ii), in such order as, in the Bailiff's opinion, is best for minimising hardship to the judgment debtor or any other person.

Property will not be sold for less than the reserve price.

Where a Bailiff is of the opinion that the property seized under the Writ of Execution is more than sufficient to pay the amounts due, the Bailiff will sell so much of the property as is in his/her opinion sufficient to satisfy the amounts due under the judgment. If the property sold is not sufficient, the Bailiff will sell so much more of the property as in his/her opinion would be sufficient to satisfy the amounts due under the judgment.

APPLICATION FOR AN INSTALMENT ORDER

You may attend at the Office of the Registrar of the Magistrates Court and enquire as to whether you may make application to repay the amount due by instalments which, if granted, will prevent the sale of your property.

APPLICATION TO EXEMPT SPECIFIED PROPERTY FROM SALE

You may attend at the Office of the Registrar of the Magistrates Court and make an application to the Registrar for a declaration that specified property be exempted from sale on the basis that you or a member of your family would be likely to suffer exceptional hardship

PAYMENT PREVENTING EXECUTION

The Bailiff cannot proceed with the sale of your property where you have:

- (i) paid to the Bailiff the amount due under the judgment (or produced to the Bailiff the receipt of the Registrar for that amount); and
- (ii) paid the amount of all the proper costs and charges actually incurred up to the date of payment, including any costs associated with removing the property from the place where it was seized and advertising the sale.

ENQUIRIES

Enquiries of the judgment creditor should be directed to.....
on telephone.....

DATED THIS day of 19 .

Bailiff:.....

Contact Telephone Number:.....

**LIST OF PERSONAL PROPERTY SEIZED
UNDER A WRIT OF EXECUTION**

(Sub-section 365(7))

TO:

.....

.....

.....

By virtue of the Writ of Execution directed to me in this matter I have seized the goods listed below:

*I can find no other goods of the defendant on which I can lawfully levy. (Delete if not applicable)

DESCRIPTION OF GOODS SEIZED FOR SALE	RESERVE PRICE	HOW RESERVE PRICE DETERMINED

IF ANY PERSON CLAIMS TO BE ENTITLED TO ANY OF THE PROPERTY DETAILED ABOVE,
YOU SHOULD ADVISE THEM TO IMMEDIATELY CONTACT THE BAILIFF OF THE
MAGISTRATES COURT ON TELEPHONE:.....

BAILIFF/...../.....

IMPORTANT NOTICE

IF YOU ARE THE JUDGMENT DEBTOR PLEASE REFER TO THE 'IMPORTANT NOTICE TO
JUDGMENT DEBTOR' PREVIOUSLY DELIVERED TO YOU BY THE BAILIFF/OR ATTACHED TO
THIS NOTICE. IF YOU ARE THE JUDGMENT CREDITOR YOU ARE REQUIRED TO DEPOSIT
WITH THE COURT THE SUM OF \$..... WITHIN DAYS FROM THE DATE OF THIS
NOTICE TO MEET THE ANTICIPATED COSTS OF THE SALE.

RETURN TO WRIT OF EXECUTION

The Writ of Execution was endorsed pursuant to Regulation 10 of the Magistrates Court (Civil Jurisdiction) Regulations atam/pm this day of 19

BAILIFF

TO THE REGISTRAR:

* Delete if not applicable

* A. No levy has been made on this Writ as the amount has been paid in full and the amount paid into Court.

* *B. A levy has been made and my return is as follows:

Receipts

Security for Costs	\$.....
Paid prior to Sale	\$.....
Proceeds of Sale	\$.....

Payments

Cartage of goods	\$.....
Advertising	\$.....
Other costs a.	\$.....
b.	\$.....
c.	\$.....

Amount for judgment creditor	\$.....
Amount for judgment debtor	\$.....

All amounts are certified to be correct and the amount paid into Court is: \$.....

* C. Following a diligent search for personal property of the judgment debtor, no property has been seized on this Writ as I have been unable to find sufficient personal property of the judgment debtor to execute this warrant.

DATED THIS day of 19

.....
BAILIFF