

## EXPLANATORY STATEMENT

Subordinate Law No. 20 of 1997

Issued by the Authority of the Judges  
of the Supreme Court of the Australian Capital Territory

### SUPREME COURT RULES (AMENDMENT)

The resident Judges of the Court (of whom there are three, including the Chief Justice) or any two of the resident Judges, may make Rules of Court for regulating the practice and procedure of the Court pursuant to section 36 of the Supreme Court Act 1933.

These amending rules deal with the procedures to apply in relation to certain writs of execution for the enforcement of judgments and orders of the court.

The writ of *fiery facias*, which is in common use in courts throughout Australia, is expressed in the form of a royal command to the Sheriff to seize in execution such of a judgment debtor's goods and other property as are authorized to be seized by law and to sell so much of the property as is sufficient to satisfy the amount of the judgment debt, costs of execution, interest on the judgment debt and any other associated costs. The writ of *venditioni exponas*, a writ in aid of a writ of *fiery fa*, requires the Sheriff to "expose to sale and sell, or cause to be sold, the real and personal estate of the judgment debtor for the best price that can be gotten for the same ...". The writ of *venditioni exponas* will issue where the Sheriff has been unable to sell property seized under a writ of *fiery facias* at a reasonable price for want of buyers and requires the Sheriff then to sell the seized property for the best price obtainable. Under the present law an unpaid judgment creditor has the right to issue both writs and the Sheriff or Registrar has no discretion to withhold issue or execution of either writ.

The amending rules require the leave of the Court to be obtained before a writ of *venditioni exponas* may be issued. Notice of an application for leave is required to be given to persons specified in new sub-rule 3A(3) of Order 44 of the Supreme Court Rules. This will enable persons who may have an interest in the sale of the property to be heard by the Court.

The Court may grant leave on such terms as the Court considers just, including directions with respect to the manner and mode of sale.