

South Australia

Enforcement of Judgments Act 1991

An Act to make provision for the enforcement of judgments; and for other purposes.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Enforcement of Judgments Act 1991*.

3—Interpretation

In this Act, unless the contrary intention appears—

business debt means a debt incurred in the course of carrying on a business;

court means—

- (a) the Supreme Court; or
- (b) the District Court; or
- (c) the Magistrates Court;

judgment includes an order, declaration or decree;

judgment debt includes the costs of enforcing the judgment under this Act;

judgment creditor includes a person to whom the benefit of a monetary judgment has passed (by assignment or in any other way);

judgment debtor includes any person against whom a monetary judgment is enforceable;

land includes premises (including residential premises);

monetary judgment means a judgment for the payment of a sum of money (whether or not the judgment provides for any other form of relief);

sale of property includes conversion of the property into money by any appropriate means.

Note—

For definition of divisional penalties (and divisional expiation fees) see Appendix.

Part 2—Monetary judgments

4—Investigation of judgment debtor's financial position

- (1) The court may, on application by the judgment creditor, investigate the judgment debtor's means of satisfying a monetary judgment.
- (2) The court will, on application by the judgment creditor, issue a summons to require the judgment debtor or any other person who may be able to assist with the investigation to appear for examination before the court or to produce documents relevant to the investigation to the court.
- (3) A summons under subsection (2) must be served personally.
- (4) If a person fails to appear as required by the summons, the court may issue a warrant to have the person arrested and brought before the court.

5—Order for payment of instalments etc

- (1) The court may, on application by a judgment creditor, order the judgment debtor—
 - (a) to pay the judgment debt immediately or within a period specified by the court; or
 - (b) to pay such instalments towards the satisfaction of the judgment debt as the court specifies in the order.
- (2) An order can only be made against a natural person under subsection (1) if—
 - (a) the court has conducted an investigation into the judgment debtor's means of satisfying the judgment; or
 - (b) the court is satisfied that there are, in the circumstances of the case, proper reasons for dispensing with such an investigation.
- (3) In making such an order against a natural person, the court should have due regard to evidence placed before it as to—
 - (a) the judgment debtor's means of satisfying the judgment; and
 - (b) the necessary living expenses of the judgment debtor and his or her dependants; and
 - (c) other liabilities of the judgment debtor,

and where satisfactory evidence is placed before the court on those subjects the court should frame its order so as to ensure that it does not impose unreasonable obligations on the judgment debtor.

- (4) The court may, on application by a judgment creditor or a judgment debtor, rescind, suspend or vary an order under subsection (1).
- (5) If a judgment debtor (being a natural person) fails to comply with an order under subsection (1), the court will, on application by the judgment creditor, issue a summons (which must be served personally) to require the judgment debtor to appear for examination before the court.
- (6) If a judgment debtor fails to appear as required by the summons, the court may issue a warrant to have the judgment debtor arrested and brought before the court for examination.
- (7) If, after examination of a judgment debtor, the court is satisfied that the judgment debtor has, without proper excuse, failed to comply with the order under subsection (1), the court may commit the judgment debtor to prison for not more than 40 days (but if the order is for payment by instalments, an order for imprisonment cannot be made unless at least two instalments are in arrears).
- (8) If payment of the judgment debt or all arrears of instalments (as the case requires) is made, the judgment debtor must be discharged from custody even though the period of imprisonment has not expired.

6—Garnishee orders

- (1) The court may, on application by a judgment creditor (which may be made without notice) order that—
 - (a) money owing or accruing to the judgment debtor from a third person; or

- (b) money of the judgment debtor in the hands of a third person (including money in an ADI account),

be attached to answer the judgment and paid to the judgment creditor.

- (2) An order cannot be made under subsection (1) in respect of salary or wages unless the judgment debtor consents to the making of the order but, once that consent has been given, the extent to which the salary or wages are attached is in the discretion of the court.
- (3) If an order is made under this section on an application made without notice to the judgment debtor or the garnishee (or both), the following provisions apply:
 - (a) the order will operate to restrain the garnishee from dealing with money to which the order relates until both the judgment debtor and the garnishee have had an opportunity to be heard in the proceedings;
 - (b) the court will adjourn the proceedings to give the judgment debtor and the garnishee an opportunity to be heard;
 - (c) at the adjourned hearing the court will allow the judgment creditor and the garnishee to give evidence or make representations (or both);
 - (d) after consideration of the evidence and representations (if any), the court will confirm, vary or revoke the order.
- (4) In deciding whether to make, vary or confirm an order under this section affecting money of a natural person, the court should have due regard to any evidence placed before it as to—
 - (a) the judgment debtor's means of satisfying the judgment; and
 - (b) the necessary living expenses of the judgment debtor and his or her dependants; and
 - (c) other liabilities of the judgment debtor.
- (5) An order under this section may authorise the garnishee to retain from the money subject to attachment a reasonable sum, fixed in the order, as compensation for the garnishee's expenses in complying with the order.
- (6) If the garnishee does not comply with an order under this section—
 - (a) the garnishee commits a contempt of the court by which the order was made; and
 - (b) the garnishee becomes personally liable for payment to the judgment creditor of the amount subject to attachment.
- (7) If, because a garnishee order has been made in relation to an employee, the employer—
 - (a) dismisses the employee; or
 - (b) injures the employee in employment; or
 - (c) alters the employee's position to the employee's prejudice,the employer is guilty of an offence.

Penalty: Division 5 fine.

7—Seizure and sale of property

- (1) The court may, on application by a judgment creditor, issue a warrant of sale authorising seizure and sale of a judgment debtor's real or personal property (or both) to satisfy a monetary judgment.
- (2) The seizure and sale of personal property that could not be taken in bankruptcy proceedings against the judgment debtor cannot be authorised.
- (3) The sheriff may, in pursuance of a warrant under this section—
 - (a) enter the land (using such force as may be necessary for the purpose) on which property to which the warrant relates, or documents evidencing title to such property, are situated;
 - (b) seize and remove any such property or documents;
 - (c) place and keep any such property or documents in safe custody until completion of the sale;
 - (d) sell any property to which the warrant relates (whether or not the sheriff has first taken steps to obtain possession of the property).
- (3a) If the warrant authorises the sale of land, the sheriff may eject from the land any person who is not lawfully entitled to be on the land.
- (4) The sheriff may, in appropriate cases, leave a judgment debtor in possession of property until it is sold in pursuance of the warrant.
- (5) Subject to any contrary direction by the court—
 - (a) the sale of real property or tangible personal property will be by public auction (but if no bid that the sheriff considers acceptable is made at auction, the sheriff may proceed to sell the property by private treaty for a price not less than the highest bid);
 - (b) if there is a reasonable possibility of satisfying the judgment debt out of personal property, the sheriff should sell personal property before proceeding to sell real property.
- (6) Where any part of the judgment debtor's property consists of intangible property, the sheriff may sign any transfer or do anything else necessary to convert that property into money.
- (7) Where property of the judgment debtor seized in pursuance of the warrant consists of a bank note or other money, the sheriff must, unless it has a value greater than its face value, hand it over to the judgment creditor in full or partial satisfaction of the judgment.

8—Charging orders

- (1) A court may, on application by a judgment creditor, charge property of a judgment debtor with a judgment debt or part of a judgment debt.
- (2) Where the court makes an order under subsection (1), it may make ancillary or consequential orders—
 - (a) requiring registration of the charge; or
 - (b) prohibiting or restricting dealings with the property subject to the charge; or

- (c) providing for the sale of the property and the application of the proceeds of sale; or
- (d) relating to any other incidental or consequential matters.

9—Appointment of receiver

- (1) The court may, on application by a judgment creditor, appoint a receiver for the purpose of enforcing a judgment.
- (2) A receiver may be appointed even though no other proceedings have been taken for enforcement of the judgment.
- (3) Where a receiver is appointed, the court may make orders—
 - (a) conferring on the receiver powers—
 - (i) to take charge of property of the judgment debtor;
 - (ii) to dispose of property of the judgment debtor;
 - (iii) to divert income (other than income from employment or a pension) towards satisfaction of the judgment debt;
 - (iv) to take charge of, and carry on, a business of the judgment debtor and apply proceeds from the business towards satisfaction of the judgment debt;
 - (v) to do anything reasonably necessary for, incidental to, or consequential on, the above; or
 - (b) providing for accounts to be rendered by the receiver; or
 - (c) providing for the remuneration of the receiver; or
 - (d) relating to any other incidental or consequential matter.
- (4) A receiver's powers operate to the exclusion of the judgment debtor's powers.

10—Enforcement of monetary judgments *in rem*

Where a court gives a monetary judgement against a vessel or other object, the court may authorise its seizure and sale.

Part 3—Non-monetary judgments

11—Authority to take possession of property

- (1) The court may, on application by a person in whose favour a judgment for recovery or delivery up of possession of property has been given, issue a warrant of possession authorising the sheriff to take possession of the property and deliver it into the applicant's possession.
- (2) Where a warrant is issued under this section, the sheriff may—
 - (a) if the warrant relates to land—eject from the land any person who is not lawfully entitled to be on the land; or
 - (b) if the warrant relates to personal property—enter land and seize and take possession of that property, using appropriate means and such force as may be reasonably necessary in the circumstances.

- (3) A person who resumes possession of land or other property that is taken from the person under this section commits a contempt of the court by which the warrant was granted.

12—Enforcement of judgments by proceedings in contempt

- (1) Where a party is, by judgment of a court, ordered to do, or to refrain from doing, an act and the party contravenes or fails to comply with the judgment, the court may, on the application of the party entitled to the benefit of the judgment, issue a warrant to have the person arrested and brought before the court to be dealt with for a contempt of the court.
- (1a) For the purpose of executing a warrant issued under this section, the sheriff may enter or, where necessary, break into land where the sheriff reasonably suspects the person may be present, using such force as is reasonably necessary for the purpose.
- (2) A person cannot be dealt with under this section for failure to pay a monetary sum.

13—Execution of instruments by order of the court

- (1) If execution or endorsement of a document by a party to an action is necessary in order to give effect to a judgment, the court may—
 - (a) order the party to execute or endorse the document; or
 - (b) authorise an officer of the court to execute or endorse the document on behalf of the party.
- (2) A document executed or endorsed by an officer of the court has effect as if executed or endorsed by the party.

Part 4—Miscellaneous

14—Absconding debtors

- (1) If—
 - (a) a plaintiff has brought an action in a court for recovery of a monetary sum; and
 - (b) there are grounds for believing—
 - (i) that the defendant is about to leave the State; and
 - (ii) that the defendant's absence from the State would seriously prejudice the plaintiff's prospects of enforcing a judgment that has been, or may be, given in that plaintiff's favour,

the court may issue a summons requiring the defendant to appear for examination before the court, or issue a warrant to have the defendant arrested and brought before the court, for examination.

- (2) If, after examination of the defendant, the court is satisfied that there is good reason for doing so, it may require the defendant to give security for the satisfaction of any judgment that has been or may be given in the plaintiff's favour.
- (3) If a defendant fails without proper excuse to comply with a requirement under subsection (2), the defendant commits a contempt of the court by which the requirement was imposed.

15—Execution against unincorporated associations

Where a monetary judgment is against a partnership or other unincorporated association, the judgment may be enforced—

- (a) against the partnership property or the common property of the association; or
- (b) against the property of any person who is liable for the debts of the partnership or association.

16—Rights of purchaser of property sold in execution

- (1) The purchaser of property sold by authority of a court acquires a good title to the property subject only to registered interests and interests of which public notice has been given pursuant to statute.
- (2) If, before the date of sale of property, a person claims to have an unregistered interest in the property, and gives notice of the claim in accordance with the rules of the relevant court, the sheriff must, if the claim is not disputed or the court orders the sheriff to recognise the validity of the claim—
 - (a) pay the claimant out of the proceeds of the sale of the property, a sum sufficient to satisfy the claim; or
 - (b) where appropriate to do so, withdraw the property from sale and give possession of it to that person.

17—Stay of execution

A party against whom a judgment has been given may apply to the court for a stay of execution, and the court may, if satisfied that there is a proper reason for granting the stay, grant the stay on such terms as it considers appropriate.

18—Exercise of powers

- (1) A court may, by its rules, delegate any of its powers under this Act to officers of a class designated in the delegation.
- (2) A person dissatisfied with a decision made by an officer acting in pursuance of such a delegation may, subject to the rules, apply to the appropriate court for a review of the decision and, on such a review, the court may confirm, vary or reverse the decision.

19—Rules of court

- (1) Rules of court may be made under the *Supreme Court Act 1935* on any subject contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Rules of court may be made under the *District Court Act 1991* on any subject contemplated by, or necessary or expedient for the purposes of, this Act.
- (3) Rules of court may be made under the *Magistrates Court Act 1991* on any subject contemplated by, or necessary or expedient for the purposes of, this Act.

Legislative history

Notes

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes.

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1991	80	<i>Enforcement of Judgments Act 1991</i>	12.12.1991	6.7.1992 (<i>Gazette</i> 2.7.1992 p209)
1993	62	<i>Statutes Amendment (Courts) Act 1993</i>	27.5.1993	ss 27 & 28—1.7.1993 (<i>Gazette</i> 24.6.1993 p2047)
1994	43	<i>Statutes Amendment (Courts) Act 1994</i>	2.6.1994	9.6.1994 (<i>Gazette</i> 9.6.1994 p1669)
1996	67	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1996</i>	15.8.1996	s 19—17.10.1996 (<i>Gazette</i> 17.10.1996 p1361)
1997	59	<i>Statutes Amendment (Attorney-General's Portfolio) Act 1997</i>	31.7.1997	Pt 3 (s 5)—14.9.1997 (<i>Gazette</i> 11.9.1997 p704)
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 20)—1.7.1999 being the date specified under s 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)

Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	§
s 3		
judgment debt	inserted by 62/1993 s 27	1.7.1993
Pt 2		
s 5		
s 5(8)	amended by 67/1996 s 19	17.10.1996

s 6		
s 6(1)	amended by 33/1999 Sch (item 20)	1.7.1999
s 7		
s 7(3a)	inserted by 62/1993 s 28	1.7.1993
s 7(7)	inserted by 43/1994 s 16	9.6.1994
Pt 4		
s 12		
s 12(1a)	inserted by 59/1997 s 5	14.9.1997

Transitional etc provisions associated with Act or amendments***Statutes Repeal and Amendment (Courts) Act 1991*****8—Non-application of certain Imperial Acts**

The following Acts of the Imperial Parliament have no further force or effect in the State:

56 Geo III c. 50

8 Anne c. 14.

21—Transitional provisions—Enforcement of judgments

- (1) A judgment given by a local court of full jurisdiction will be regarded as a judgment of the District court and is enforceable under the *Enforcement of Judgments Act 1991*.
- (2) A judgment given by a local court of limited or special jurisdiction will be regarded as a judgment of the Magistrates Court and is enforceable under the *Enforcement of Judgments Act 1991*.
- (3) Any proceedings for enforcement of a judgment commenced before the commencement of this Act may be continued and completed under the law in force at the time of the commencement of those proceedings.

Historical versions

Reprint No 1—1.7.1993

Reprint No 2—9.6.1994

Reprint No 3—17.10.1996

Reprint No 4—14.9.1997

Appendix—Divisional penalties and expiation fees

At the date of publication of this reprint divisional penalties and expiation fees are, as provided by section 28A of the *Acts Interpretation Act 1915*, as follows:

Division	Maximum imprisonment	Maximum fine	Expiation fee
1	15 years	\$60 000	—
2	10 years	\$40 000	—

Division	Maximum imprisonment	Maximum fine	Expiation fee
3	7 years	\$30 000	—
4	4 years	\$15 000	—
5	2 years	\$8 000	—
6	1 year	\$4 000	\$300
7	6 months	\$2 000	\$200
8	3 months	\$1 000	\$150
9	—	\$500	\$100
10	—	\$200	\$75
11	—	\$100	\$50
12	—	\$50	\$25

Note: This appendix is provided for convenience of reference only.