



Enforcing your Judgement

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Introduction

- A judgement debt is a court order against a judgement debtor requiring them to pay monies owed to the claimant.
- Although many debtors pay once judgement has been made, this is not always the case. Where a debtor has failed to pay the debt owing, you can commence enforcement proceedings after judgement.

Introduction

1. Garnishee Order for Wages or Salary;
2. Garnishee Order for Debts;
3. Writ for the Levy of Property;
4. Writ for the Delivery of Goods;
5. Examination Notice / Examination Order; and
6. Statutory Demand / Winding up a Company.

Garnishee Orders

- Recover debt from:
 1. Debtor's bank account;
 2. Debtor's wages; or
 3. Someone who owed the debtor money.
- 2 types:
 1. Garnishee order for wages or salary; and
 2. Garnishee order for debts



Garnishee Orders for Wages or Salary

- ACT: Earnings Redirection Order
- NSW: Garnishee Order for Wages or Salary
- QLD: Warrant for the Redirection of Earnings
- TAS: Periodic Garnishee Order
- VIC: Attachment of Earnings Order

Garnishee Order for Wages or Salary

- Employer required to garnish (withhold) part of debtor's wages or salary to repay a debt.
- It is a reoccurring payment until the debt is paid or the employee no longer works at that business.



Garnishee Orders for Debts

- ACT: Regular Redirection Order
- NSW: Garnishee Order for Debts
- QLD: Warrant for Regular Redirections
- TAS: Garnishee Order Attaching a Debt
- VIC: Attachment of Debt Order

Garnishee Orders for Debts

- Allows you to recover debt owing from:
 1. The other party's bank or financial institution; or
 2. A third person who holds money on behalf of the debtor.
- Example of third parties include
 1. Principals / Head Contractors; and
 2. Real estate agents holding property for a debtor.



Writ for the Levy of Property

- ACT: Seizure and Sale Order
- NSW: Writ for the Levy of Property
- QLD: Warrant for Seizure and Sale of Property
- TAS: Warrant for Seizure and Sale of Property
- VIC: Warrant to Seize Property

Writ for the Levy of Property

- The money is used to pay the judgement debt
- Is valid for a 12 month period

Debtor's Options:

- Apply to set judgement aside
- Make an instalment application – 14 days to object to decision
- Disagree with outstanding amount of judgement debt

The sheriff will not seize the defendant's property where a genuine reason is provided by the defendant not to.



Writ for the Delivery of Goods

- ACT: Seizure and Sale Order
- NSW: Writ for the Delivery of Goods
- QLD: Warrant for Delivery of Goods
- TAS: Warrant for Delivery of Goods
- VIC: Warrant for Delivery of Goods

Writ for the Delivery of Goods

- Sheriff seizes and returns goods or recovers value of goods
- Valid for 12 months

Debtor's Options:

- Apply to set judgement aside
- Offer to return the goods or pay for the value of the goods
- Apply to court for stay of proceedings

Examination Notice

- Served on defendant – 28 days
- Requires defendant to answer questions about their:
 1. Income;
 2. Assets;
 3. Bank account and institution; and
 4. Liabilities.



Examination Order / Examination

- ACT: Enforcement Hearing Subpoena
- NSW: Examination Order
- QLD: Examination Order
- TAS: Summons for Oral Examination
- VIC: Summons for Oral Examination

Examination Order

- Debtor fails to comply if they:
 1. Ignore the notice;
 2. Inadequately fill in the notice; or
 3. Do not provide the requested documents.
- Both forms should be filed with the Court - signed documents and 3 copies
- Once the Examination Order has been served, the Court Officer will then inform the other party of the time, date and place to attend Court for examination.

Serving an Examination Order

State	Days Before Examination Hearing
ACT	14
NSW	14
QLD	14
TAS	14
VIC	7

Sole Trader – serve personally or leave at business or residential address

Corporation – serve personally, leave at company’s registered office.

Attending Court for Examination

- Informal process
- Examples of questions:
 - “How much do you currently earn?”
 - “Do you own a house and what is its market value?”
- Not answering your questions? Tell the Registrar.
- Defendant failed to attend? New date and time is set or warrant for their arrest can be issued.

Statutory Demand

S 459E Corporations Act 2001 (Cth)

CORPORATIONS ACT 2001 - SECT 459E

Creditor may serve statutory demand on company

- (1) A [person](#) may serve on a [company](#) a demand relating to:
 - (a) a single debt that the [company](#) owes to the [person](#), that is due and payable and whose [amount](#) is at least the [statutory minimum](#); or
 - (b) 2 or more debts that the [company](#) owes to the [person](#), that are due and payable and whose [amounts](#) total at least the [statutory minimum](#).
- (2) The demand:
 - (a) if it relates to a single debt--must specify the debt and its [amount](#); and
 - (b) if it relates to 2 or more debts--must specify the total of the [amounts](#) of the debts; and
 - (c) must require the [company](#) to pay the [amount](#) of the debt, or the total of the [amounts](#) of the debts, or to secure or compound for that [amount](#) or total to the creditor's reasonable satisfaction, within the [statutory period](#) after the demand is served on the [company](#); and
 - (d) must be in writing; and
 - (e) must be in the [prescribed](#) form (if any); and
 - (f) must be signed by or [on behalf of](#) the creditor.
- (3) Unless the debt, or each of the debts, is a [judgment](#) debt, the demand must be accompanied by an [affidavit](#) that:
 - (a) verifies that the debt, or the total of the [amounts](#) of the debts, is due and payable by the [company](#); and
 - (b) complies with the [rules](#).
- (4) A [person](#) may [make](#) a demand under this section relating to a debt even if the debt is owed to the [person](#) as assignee.
- (5) A demand under this section may relate to a [liability](#) under any of the following [provisions](#) of the [Income Tax Assessment Act 1936](#):
 - (aa) former section 220AAE, 220AAM or 220AAR;
 - (a) former section 221F (except [subsection](#) 221F(12)), former section 221G (except [subsection](#) 221G(4A)) or former section 221P;
 - (b) former [subsection](#) 221YHDC(2);
 - (c) former [subsection](#) 221YHZD(1) or (1A);
 - (d) former [subsection](#) 221YN(1);
 - (e) section 222AHA;and any of the [provisions](#) of Subdivision 16-B in Schedule 1 to the [Taxation Administration Act 1953](#), even if the [liability](#) arose before 1 January 1991.
- (6) [Subsection](#) (5) is to avoid doubt and is not intended to [limit](#) the generality of a reference in [this Act](#) to a debt.

- Schedule 12 of the Coronavirus Economic Response Package Omnibus Act 2020 (Cth)
– 6 months to respond to a Statutory Demand

Winding Up a Company

- Where the other party fails to comply with a statutory demand or applies to the Court to set it aside, the company will be deemed to be insolvent.
- Application for the winding up of a company:
 1. Must be able to show that company is insolvent;
 2. 3 months from date of non-compliance;
 3. Determined within 6 months unless extended.

Instalment

- Once the other party becomes aware of the enforcement, they may apply to the Court to pay by instalments.
- If approved, the employer can only take out the instalment amount from each pay.
- If the debt is to be paid through instalments, enforcement of the debt may only take place where the judgement debtor defaults by not paying one or more of the required instalments.

Stay of Enforcement

- Stops enforcement of judgement debt
- Copy of application provided to you
- You will be notified of the date of the Court Hearing
- Disagree with the stay application? Provide your reasoning at the Hearing.

Time Limitations

State	Years to Enforce Judgement
ACT	12 years
NSW	12 years
TAS	6 years
QLD	6 years
VIC	15 years

Questions



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