

NORTHERN TERRITORY OF AUSTRALIA

ABSCONDING DEBTORS ACT

As in force at 1 January 1991

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 1 January 1991

ABSCONDING DEBTORS ACT

An Act to make provision for and in respect of the Apprehension of certain Debtors

1 Short title

This Act may be cited as the *Absconding Debtors Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

4 Interpretation

(1) In this Act, unless the contrary intention appears:

applicant means a person who applies for an order or warrant under this Act.

Court means the Local Court or the Supreme Court.

debt means a liquidated debt, whether pursuant to a judgment or otherwise, that is due and payable in the Territory.

debtor includes a person who an applicant alleges owes a debt to the applicant.

Master of the Supreme Court includes a Deputy Master of the Supreme Court.

member means a member of the Police Force.

Police Force means the Police Force of the Northern Territory.

property includes realty and personalty or an interest, whether legal or equitable, in property.

wages means:

(a) any sum due under:

(i) a contract of employment; or

- (ii) an award or industrial agreement regulating conditions of employment; and
- (b) any sum due for long service leave, annual holidays or sick leave.
- (2) A reference in this Act to the transfer of property includes a reference to the sale, or the assignment otherwise than for valuable consideration, of that property.
- (3) For the purposes of this Act, a person is satisfied as to all material matters in relation to a debtor if he is satisfied that there are reasonable grounds for believing that:
 - (a) the debtor owes a debt to the applicant;
 - (b) the debtor is about to leave the Territory;
 - (c) failure to arrest the debtor would defeat, endanger or materially prejudice an applicant's prospects of recovering a debt; and
 - (d) the debt:
 - (i) is for wages due by the debtor to the applicant; or
 - (ii) is for an amount not less than the prescribed amount.

Part II Issue of warrants

5 Application for warrant

- (1) Subject to this Act, a person may, at any time, apply to a Court for a warrant to issue for the arrest of a debtor for the purpose of preventing that debtor from leaving the Territory.
- (2) An application under subsection (1) shall be:
 - (a) in the prescribed form; and
 - (b) supported by an affidavit as to all material matters in relation to which the Court is, under section 6(2), required to be satisfied.

6 Issue of warrant

- (1) A Court may issue a warrant for which an application has been made under section 5 in accordance with this Part.

- (2) A Court shall not issue a warrant under subsection (1) unless it is satisfied, after reasonable inquiry, as to all material matters.
- (3) A warrant issued under subsection (1) shall:
 - (a) be in the prescribed form;
 - (b) specify:
 - (i) the amount of the alleged debt;
 - (ii) the costs, if any, which are claimed by the applicant; and
 - (iii) the name of the person to whom it is addressed; and
 - (c) bear such other endorsements as are prescribed.

7 Transmission to Court

A Court that issues a warrant under this Part shall within 24 hours after the warrant has been issued:

- (a) if the debt claimed is not more than \$40,000, transmit:
 - (i) the application for the warrant;
 - (ii) any affidavit lodged with the application; and
 - (iii) a copy of the warrant,to the Registrar at the nearest office of the Local Court; or
- (b) if the debt claimed is more than \$40,000, transmit:
 - (i) the application for the warrant;
 - (ii) any affidavit lodged with the application; and
 - (iii) a copy of the warrant,to the Master of the Supreme Court.

Part III Execution of warrants

8 Execution of warrants

A warrant issued under Part II may be executed in the Territory by:

- (a) the person to whom the warrant is addressed; or

(b) a member of the Police Force,

within one month from the date of issue of the warrant.

8A Circumstances in which member of Police Force may execute warrant without having warrant in his possession

- (1) Where, having regard respectively to the location of the place where a warrant under Part II is purported to have been issued and the place where it is to be executed, it is not practicable for a member of the Police Force to obtain the warrant or a copy of it, he may, if he believes on reasonable grounds that the warrant is in existence, execute it notwithstanding that he does not have it or a copy of it in his possession.
- (2) Where a member of the Police Force executes, pursuant to subsection (1), a warrant issued under Part II, he shall comply with the requirements of sections 9 and 10(a) in respect of the warrant as soon as practicable after receiving it or a copy of it.
- (3) Where a member of the Police Force has executed, pursuant to subsection (1), a warrant purported to be issued under Part II, and after that execution it is found that the warrant is not in existence, the person for the time being having custody of the person arrested in the purported execution of that warrant shall, as soon as practicable after he is satisfied that that warrant is not in existence, discharge the arrested person from custody.

9 Endorsement

Subject to section 8A(2), a person who executes a warrant issued under Part II shall endorse the warrant with the time and place of its execution.

10 Service of warrant

A person who executes a warrant issued under Part II shall serve the debtor with a copy of the warrant:

- (a) where the person serving the warrant is a member of the Police Force – subject to section 8A(2), as soon as is practicable after the execution of the warrant; and
- (b) in any other case – upon the execution of the warrant.

11 Debtor to be brought before Court

- (1) A person who executes a warrant issued under Part II shall immediately take the debtor to the nearest police station.

- (2) The officer in charge of a police station to whom a debtor is brought in pursuance of subsection (1) shall:
 - (a) hold the debtor in custody; and
 - (b) within 24 hours of, or as soon as practicable after, receiving the debtor into custody, bring the debtor:
 - (i) if the debt claimed is not more than \$40,000 – before a Court; or
 - (ii) if the debt claimed is more than \$40,000 – before the Supreme Court.
- (3) An endorsement in accordance with section 9 is sufficient authority for any officer within the meaning of the *Prisons Act* who is in charge of a prison or police prison to receive the debtor named in the warrant into custody.

12 Release

The member in charge of a police station referred to in section 11(1) or the officer referred to in section 11(3) shall release a debtor held in custody if:

- (a) the debtor:
 - (i) tenders to the applicant the amount of money specified in the warrant as the debt and costs; or
 - (ii) deposits with that member or the officer for payment into court that amount of money to abide the determination of the claim;
- (b) the applicant consents in writing to the release; or
- (c) a Court orders that the debtor be released from custody.

Part IV Restraint on transfer or removal of property

13 Application for order restraining transfer or removal of property

- (1) Subject to this Act, a person may, at any time, apply to a Court for an order restraining:
 - (a) the transfer of any of the property of the debtor situated in the Territory; or

- (b) the removal of any of the property of the debtor out of the Territory.
- (1A) Where an application under subsection (1)(a) relates to property which, in the opinion of the applicant, is not more than \$40,000 in value, the application shall be made to the Local Court and, in any other case, to the Supreme Court.
- (2) An application under subsection (1) shall be:
 - (a) in the prescribed form; and
 - (b) supported by an affidavit as to the matters in relation to which the Court is, under section 14(2), required to be satisfied.

14 Order restraining transfer or removal of property

- (1) Upon an application made under section 13, a Court may make such order as it thinks fit.
- (2) A Court shall not make an order under subsection (1) unless it is satisfied that there are reasonable grounds for believing that:
 - (a) the debtor owes a debt to the applicant;
 - (b) the debtor has an interest in property situated in the Territory;
 - (c) the property in which the debtor has an interest is about to be:
 - (i) transferred; or
 - (ii) removed from the Territory;
 - (d) failure to make the order would defeat, endanger or materially prejudice the applicant's prospects of recovering the debt; and
 - (e) the debt:
 - (i) is for wages due by the debtor to the applicant; or
 - (ii) is for an amount not less than the prescribed amount.

15 Hearing of applications

- (1) Subject to this section, a Court may hear and determine an application under section 13 ex parte.
- (2) A Court may order that:
 - (a) a copy of the application under section 14 be served on; or

- (b) notice of that application be given to,
any person.
- (3) If a person other than the debtor has an interest in property specified in an application under section 13 the Court shall order that:
 - (a) a copy of the application be served on; or
 - (b) notice of that application be given to,
that person, and that person may take part in the proceedings as if he were a party thereto.

Part V Hearing of proceedings

16 Powers of Court

Subject to this Part, the Court before whom a debtor is brought under section 11(2)(b) or 14(2) may make such order as it thinks fit including an order:

- (a) that the debtor be released, either conditionally or unconditionally, from custody;
- (b) that the debtor undertakes, in writing in a form approved by the court, that he will not leave the Territory or a specified part of the Territory, as the case may be, until an amount of money specified by the court is paid;
- (c) that the debtor give security, either with or without surety, for the payment of a specified sum;
- (d) that the debtor pay a specified sum to the applicant or to another person;
- (e) that the debtor pay a specified sum into court to await the finalization of any other action upon the debt;
- (f) that the debtor be committed to prison:
 - (i) in such a manner;
 - (ii) for such a period; or
 - (iii) under such conditions,
as the court considers just; and

- (g) that the applicant take such action within such time and in such manner as the Court considers necessary or desirable for the recovery of the debt.

17 Release of debtors

If the Court referred to in section 16 is not satisfied beyond reasonable doubt as to all material matters, it shall order that the debtor be released from custody.

18 Failure to comply with conditions

- (1) A member of the Police Force may arrest without a warrant a debtor who is conditionally released from custody under section 17 and who that member reasonably suspects has failed, or is about to fail, to comply with a condition to which his release from custody was subject.
- (2) A member of the Police Force who arrests a debtor under subsection (1) shall within 24 hours of, or as soon as practicable thereafter, the arrest of the debtor:
 - (a) if the order under which the debtor was released from custody was made by a magistrate – bring the debtor before the Local Court; or
 - (b) if that order was made by the Supreme Court – bring the debtor before a Judge.
- (3) The Court referred to in subsection (2) may revoke the order under which the debtor was released if it is satisfied that:
 - (a) there has been a failure by the debtor to comply with a condition under which the debtor was released; or
 - (b) the debtor is about not to comply with that condition.
- (4) A Court who revokes an order under subsection (3) may make such further order as it thinks fit including any order which he could have made, had the revoked order not been made.

19 Hearing of claims for debt

- (1) A Court before whom proceedings are brought under this Act may, subject to this section, hear and determine a claim for the alleged debt as if the proceedings under this Act were proceedings for the recovery of the alleged debt.

- (2) A Court shall not hear and determine a claim for a debt in any proceedings brought under this Act unless the debtor and the creditor agree.
- (3) The Court may make such orders as it thinks fit to enable the matter to be continued as proceedings in an action in the Court.
- (4) A decision in any proceedings under this section has effect as a decision of the Court, and may be enforced accordingly.

Part VI Review

20 Applications for review

- (1) A debtor may, at any time, apply to the Supreme Court for an order that:
 - (a) any warrant issued against him be set aside;
 - (b) he be discharged from custody; or
 - (c) any order previously made under this Act by the Local Court be varied or quashed.
- (2) Subject to subsection (3), an application under subsection (1) shall be:
 - (a) in writing;
 - (b) in the prescribed form; and
 - (c) filed in the Supreme Court.
- (3) An application under subsection (1) may, at the discretion of the Supreme Court, be made, heard and determined:
 - (a) by telephone;
 - (b) by radio; or
 - (c) in such other manner as the Supreme Court may direct.

21 Review

The Supreme Court may make such orders in respect of an application under section 20 as it thinks fit.

22 Restraint on further applications

If:

- (a) a warrant issued under this Act is set aside; or
- (b) an order made under this Act is quashed,

under this Part, the applicant shall not make any further application for a warrant under Part II or an order under Part IV against the debtor in respect of the same debt or part thereof within 6 months after the date of that warrant or order, as the case may be, unless the applicant introduces further information in support of his application that was not and could not reasonably have been introduced at the time when the warrant or order set aside or quashed, as the case may be, was applied for.

23 Appeals

Proceedings in the nature of an appeal brought by any person from any order made under this Act shall not in any way restrict or limit the powers of the Court under this Part.

Part VII Miscellaneous**24 Protection of persons executing warrants**

- (1) A person who executes under this Act a warrant for the arrest of a person does not incur any civil liability if he acts reasonably and without actual knowledge of a defect in the warrant or of lack of jurisdiction in the person who issued the warrant.
- (2) A member of the Police Force who executes under section 8A(1) a warrant purported to be issued under Part II does not incur any civil or criminal liability if, after that execution, it is found that the warrant is not in existence.

25 Offence

A person shall not falsely, frivolously, vexatiously or oppressively make an application under section 5 (which relates to applications for warrants) or 14 (which relates to applications for orders restraining the transfer or removal of property).

Penalty: \$4,000 or imprisonment for 2 years.

26 Procedure

Subject to:

- (a) this Act;
- (b) any Rules of Court; or
- (c) any order or direction of the Court,

where:

- (d) the amount of the debt is more than \$40,000 – the practice and procedure applicable to proceedings in the Supreme Court shall, in so far as is practicable, apply to proceedings under this Act; or
- (e) the amount of the debt is not more than \$40,000 – the practice and procedure applicable to proceedings in the Local Court shall, in so far as is practicable, apply to proceedings under this Act.

27 Other jurisdictions or powers

Nothing in this Act restricts or limits:

- (a) any other jurisdiction or powers exercisable by or vesting in the Supreme Court; or
- (b) any other remedies a person may have against a debtor.

29 Rules of Court

The Chief Justice may make Rules of Court under the *Supreme Court Act* prescribing:

- (a) the practice and procedure to be followed;
- (b) the forms to be used; and
- (c) the fees to be paid,

under this Act.

30 Regulations

The Administrator may make regulations not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act (matters in respect of which Rules of Court may be made under section 29 excepted).

ENDNOTES

1 KEY

Key to abbreviations

amd = amended	od = order
app = appendix	om = omitted
bl = by-law	pt = Part
ch = Chapter	r = regulation/rule
cl = clause	rem = remainder
div = Division	renum = renumbered
exp = expires/expired	rep = repealed
f = forms	s = section
Gaz = <i>Gazette</i>	sch = Schedule
hdg = heading	sdiv = Subdivision
ins = inserted	SL = Subordinate Legislation
lt = long title	sub = substituted
nc = not commenced	

2 LIST OF LEGISLATION

Absconding Debtors Act 1978 (Act No. 125, 1978)

Assent date	21 December 1978
Commenced	5 December 1980 (<i>Gaz</i> G49, 5 December 1980, p 1)

Statute Law Revision Act 1979 (Act No. 98, 1979)

Assent date	10 August 1979
Commenced	26 October 1979 (<i>Gaz</i> G43, 26 October 1979, p 1)

Absconding Debtors Act 1979 (Act No. 114, 1979)

Assent date	28 September 1979
Commenced	1 August 1981 (s 2, s 2 <i>Local Courts Act (No. 2) 1979 (Act No. 115, 1979 and Gaz</i> G29, 23 July 1981, p 10)

Statute Law Revision Act (No. 2) 1981 (Act No. 63, 1981)

Assent date	20 July 1981
Commenced	20 July 1981

Statute Law Revision Act (No. 4) 1981 (Act No. 4, 1982)

Assent date	12 February 1982
Commenced	12 February 1982

Absconding Debtors Amendment Act 1983 (Act No. 22, 1983)

Assent date	24 June 1983
Commenced	24 June 1983

Local courts (Consequential Amendments) Act 1989 (Act No. 14, 1989)

Assent date	5 June 1989
Commenced	s 6: 5 June 1989; rem: 1 January 1991

3 LIST OF AMENDMENTS

s 3	rep No. 14, 1989, s 7
s 4	amd No. 98, 1979, s 4; No. 63, 1981, s 2; No. 14, 1989, s 7
ss 5 – 6	amd No. 14, 1989, s 7
s 7	amd No. 114, 1979, s 3; No. 14, 1989, s 7
s 8	ins No. 22, 1983, s 3
s 9	amd No. 22, 1983, s 4
s 10	amd No. 22, 1983, s 5
s 11	amd No. 114, 1979, s 3; No. 14, 1989, s 7
s 12	amd No. 14, 1989, s 7
s 13	amd No. 98, 1979, s 4; No. 4, 1982, s 3; No. 22, 1983, s 6; No. 14, 1989, s 7
s 14	amd No. 14, 1989, s 7
s 15	amd No. 63, 1981, s 2; No. 14, 1989, s 7
ss 16 – 18	amd No. 14, 1989, s 7
s 19	amd No. 63, 1981, s 2; No. 14, 1989, s 7
s 20	amd No. 14, 1989, s 7
s 21	sub No. 14, 1989, s 7
s 23	amd No. 14, 1989, s 7
s 24	sub No. 22, 1983, s 7
s 26	amd No. 114, 1979, s 3; No. 14, 1989, s 7
s 27	amd No. 14, 1989, s 7
s 28	rep No. 14, 1989, s 7
s 29	amd No. 63, 1981, s 2