

THE NORTHERN TERRITORY OF AUSTRALIA

ABSCONDING DEBTORS ACT

No. 125 of 1978  
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# THE NORTHERN TERRITORY OF AUSTRALIA

No. 125 of 1978

## AN ACT

To make provision for and in respect of  
the Apprehension of certain Debtors

[Assented to 21 December 1978]

**B**E it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

### PART I - PRELIMINARY

- |  |                    |
|--|--------------------|
| 1. This Act may be cited as the <u>Absconding Debtors Act 1978</u> .   | Short title        |
| 2. This Act shall come into operation on a date to be fixed by the Administrator by notice in the <u>Gazette</u> .   | Commencement       |
| 3.(1) Part XIII of the <u>Local Courts Act</u> is repealed.  | Repeal and savings |
| (2) The repeal effected by sub-section (1) does not affect any proceedings commenced under section 248 of the <u>Local Courts Act</u> but not completed on the day upon which this Act comes into operation. |                    |
| 4.(1) In this Act, unless the contrary intention appears -   | Interpretation     |
| "applicant" means a person who applies for an order or warrant under this Act;   |                    |
| "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;  |                    |
| "Judge" has the same meaning as in the <u>Northern Territory Supreme Court Act 1961</u> of the Commonwealth;   |                    |
| "justice" has the same meaning as in the <u>Justices Act</u> ;   |                    |

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"Local Court" means a Local Court of Full Jurisdiction under the Local Courts Act;

"magistrate" has the same meaning as in the Magistrates Act;

"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;

"Supreme Court" means the Supreme Court of the Northern Territory;

"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 -

(a) for believing that the debtor owes a debt to the applicant;

(b) for believing that 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

## Absconding Debtors

(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.(1) Subject to this Act, a person may, at any time, apply to a magistrate or Judge for a warrant to issue for the arrest of a debtor for the purpose of preventing that debtor from leaving the Territory.

Application  
for warrant

(2) An application under sub-section (1) shall be -

(a) in the prescribed form; and

(b) supported by an affidavit as to all material matters in relation to which the magistrate or Judge is, under section 6(2), required to be satisfied.

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

Issue of  
warrant

(2) A magistrate or Judge shall not issue a warrant under sub-section (1) unless he is satisfied, after reasonable inquiry, as to all material matters.

(3) A warrant issued under sub-section (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. A magistrate or Judge who issues a warrant

Transmission  
to court

## Absconding Debtors

under this Part shall within 24 hours after the warrant has been issued -

(a) if the debt claimed is not more than \$2,000, transmit -

(i) the application for the warrant;

(ii) any affidavit lodged with the application; and

(iii) a copy of the warrant,

to the Clerk of the nearest Local Court; or

(b) if the debt claimed is more than \$2,000, 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

#### Execution of warrants

8. 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.

#### Endorsement

9. A person who executes a warrant issued under Part II shall endorse the warrant with the time and place of its execution.

#### Service of warrant

10. 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 - as soon as is practicable after the execution of the warrant; and

### Absconding Debtors

- (b) in any other case - upon the execution of the warrant.

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

Debtor to be  
brought  
before court

(2) The officer in charge of a police station to whom a debtor is brought in pursuance of sub-section (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 \$2,000 - before a magistrate or Judge; or
  - (ii) if the debt claimed is more than \$2,000 - before a Judge.

(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 station to receive the debtor named in the warrant into custody.

12. 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 -

Release

- (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 magistrate or Judge orders that the debtor be released from custody.

Absconding Debtors

PART IV - RESTRAINT ON TRANSFER OR  
REMOVAL OF PROPERTY

Application  
for order  
restraining  
transfer of  
removal of  
property

13.(1) Subject to this Act, a person may, at any time, apply to a Judge for an order restraining -

- (a) the transfer of any of the property of the debtor situated in the Northern Territory; or
- (b) the removal of any of the property of the debtor out of the Northern Territory.

(2) An application under sub-section (1) shall be -

- (a) in the prescribed form; and
- (b) supported by an affidavit as to the matters in relation to which the Judge is, under section 14(2), required to be satisfied.

Order res-  
training  
transfer of  
removal of  
property

14.(1) Upon an application made under section 13, a Judge or magistrate may make such order as he sees fit.

(2) A magistrate or Judge shall not make an order under sub-section (1) unless he is satisfied, that -

- (a) there are reasonable grounds for believing that 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.



### Absconding Debtors

15.(1) Subject to this section, a Judge may hear and determine an application under section 13 ex parte.

Hearing of  
applications

(2) A Judge 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 Judge 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. Subject to this Part, the magistrate or Judge before whom a debtor is brought under section 11(2)(b) or 14(2) may make such order as he thinks fit including an order -

Powers of  
court

(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;

Absconding Debtors

to himself  
not aware  
idea

(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 magistrate or Judge considers necessary or desirable for the recovery of the debt.

Release of  
debtors

17. If the magistrate or Judge referred to in section 16 is not satisfied beyond reasonable doubt as to all material matters, he shall order that the debtor be released from custody.

Failure to  
comply with  
conditions

18.(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 sub-section (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 a magistrate; or

(b) if that order was made by a Judge - bring the debtor before a Judge.

(3) The magistrate or Judge referred to in sub-section (2) may revoke the order under which the debtor was released if he 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 magistrate or Judge who revokes an order under sub-section (3) may make such further order as he thinks fit including any order which he could have made, had the revoked order not been made.

## Absconding Debtors

19.(1) A magistrate or Judge 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 under the Local Courts Act or the Northern Territory Supreme Court Act 1961 of the Commonwealth, as the case may be.

Hearing of  
claims for  
debt

(2) A magistrate or Judge 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 magistrate or Judge may make such orders as he thinks fit to enable the matter to be continued as proceedings in an action in the Local Court or the Supreme Court, as the case may be.

(4) A decision in any proceedings under this section has effect as a decision of the Supreme Court or Local Court, as the case may be, and may be enforced accordingly.

## PART VI - REVIEW

20.(1) A debtor may, at any time, apply to a Judge for an order that -

Applications  
for review

(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 a magistrate be varied or quashed.

(2) Subject to sub-section (3), an application under sub-section (1) shall be -

(a) in writing;

(b) in the prescribed form; and

(c) filed in the Supreme Court.

(3) An application under sub-section (1) may, at the discretion of the Judge, be made, heard and determined -

(a) by telephone;

## Absconding Debtors

(b) by radio; or

(c) in such other manner as the Judge may direct.

### Review

21. A Judge to whom an application is made under section 20 may make such orders as he thinks fit.

### Restraint on further applications

22. 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.

### Appeals

23. 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 a Judge under this Part.

## PART VII - MISCELLANEOUS

### Protection of persons executing warrants

24. A person who executes a warrant for the arrest of any person under this Act does not incur any civil liability if he acts reasonably and without actual knowledge of any defect in the warrant or of any lack of jurisdiction in the person who issued the warrant.

### Offence

25. 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.

### Procedure

26. Subject to -

(a) this Act;

(b) any Rules of Court; or

## Absconding Debtors

- (c) any order or direction of a magistrate or Judge,

where -

- (d) the amount of the debt is more than \$2,000 - 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 \$2,000 - 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. Nothing in this Act restricts or limits -

Other jurisdictions or powers

- (a) any other jurisdiction or powers exercisable by or vesting in the Supreme Court or a Judge thereof; or

- (b) any other remedies a person may have against a debtor.

28. The Supreme Court has jurisdiction to hear and determine all matters under Part IV, V or VI.

Jurisdiction of Supreme Court

29. The Chief Judge may make Rules of Court under the Northern Territory Supreme Court Act 1961 of the Commonwealth prescribing -

Rules of Court

- (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. 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).

Regulations

