

**Legislative Council—No 45A**

As reported with amendments, report adopted, Standing Orders suspended and passed remaining stages, 9 February 2023

South Australia

**Statutes Amendment (Civil Enforcement) Bill 2022**

A BILL FOR

An Act to amend the *Enforcement of Judgments Act 1991* and the *Sheriff's Act 1978*.

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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 *Statutes Amendment (Civil Enforcement) Act 2022*.

#### 5 2—Commencement

This Act comes into operation on a day to be fixed by proclamation.

### Part 2—Amendment of *Enforcement of Judgments Act 1991*

#### 3—Insertion of section 3A

Before section 4 insert:

#### 10 3A—Investigation notices

- (1) A judgment creditor may, by notice in writing served on a judgment debtor (an *investigation notice*), require the judgment debtor to do either or both of the following:
  - 15 (a) to provide answers to specified questions relating to the judgment debtor's means of satisfying the judgment (*material questions*);
  - (b) to produce for inspection by the judgment creditor specified documents relating to material questions.
- 20 (2) An investigation notice must specify the period (being not less than 28 days) within which its requirements must be complied with.
- (3) An investigation notice must comply with any other requirements set out in the rules of the relevant court.

- (4) If information or a document is provided to a person in accordance with an investigation notice under this section, a person who uses the information or document for a purpose other than assessing a judgment debtor's means of satisfying a judgment is guilty of an offence.

Maximum penalty: \$5 000.

#### 4—Amendment of section 6—Garnishee orders

- (1) Section 6—after subsection (1) insert:

(1a) Except where the court orders otherwise, the garnishee must pay money subject to attachment directly to the judgment creditor in accordance with the rules of the relevant court.

- (2) Section 6(2)—delete subsection (2) and substitute:

(2) Without limiting the orders that may be made under subsection (1) but subject to subsection (2a) and (2b), the court may, without the consent of the judgment debtor and, to the extent the court considers appropriate, make an order under subsection (1) attaching salary or wages.

(2a) The amounts under 1 or more orders made in accordance with subsection (2) must not, in total, reduce the net weekly amount of any wage or salary received by the judgment debtor from the garnishee to less than the designated amount.

(2b) In particular, if the court is satisfied that the amount earned by a judgment debtor in salary or wages varies significantly from period to period during a year (for example, due to the casual nature of their employment), the court must take that matter into account in order to ensure that the amounts under 1 or more orders made in accordance with subsection (2) do not, in total, reduce the net weekly amount of any wage or salary received by the judgment debtor from the garnishee to less than the designated amount during the period to which the order or orders relate.

(2c) An order may be made under subsection (1) attaching money held in a term deposit.

(2d) For the purposes of subsection (2c), an order attaching money held in a term deposit attaches to the term deposit at the time the order is made (whether or not the term deposit has matured) but the liability to pay the garnisheed amount is not incurred until the term deposit matures or is terminated by the debtor.

- (3) Section 6—after subsection (7) insert:

(7a) In this section—

***designated amount*** means the amount that is 90% of the weekly national minimum wage set out in the national minimum wage order made (from time to time) under section 285 of the *Fair Work Act 2009* of the Commonwealth;

*net weekly amount*, in relation to any wage or salary payable to a judgment debtor, means the amount payable each week to the judgment debtor after deducting any taxes or other sums that, pursuant to any Act (including any Commonwealth Act), are required to be deducted from any such money.

## 5—Amendment of section 7—Seizure and sale of property

(1) Section 7—after subsection (2) insert:

(2a) The sheriff may, on a warrant being issued under this section, by notice in writing served on a judgment debtor, require the judgment debtor to provide to the sheriff such information or documents relating to the interests of third parties in specified real or personal property owned by the judgment debtor as may be specified in the notice.

(2b) The sheriff may, on a warrant being issued under this section, by notice in writing served on a person other than a judgment debtor who the sheriff reasonably believes has or may have an interest in real or personal property owned by the judgment debtor, require the person to disclose to the sheriff—

(a) the nature of the interest; and

(b) if the interest is a security over the property—

(i) the amount secured against the property; and

(ii) the amount outstanding under the security; and

(iii) the amount and rate of interest accruing; and

(iv) any change that occurs to the terms of the security; and

(c) the amount of money that is owed to the person in relation to the property; and

(d) any other information specified by the sheriff (being information that the sheriff considers relevant to the sheriff's duties and functions under this section).

(2c) A notice under this section must comply with any requirements set out in the rules of the relevant court.

(2d) A person who refuses or fails to comply with a requirement of a notice under this section is guilty of an offence.

Maximum penalty: \$5 000.

(2) Section 7(3) and (3a)—delete subsections (3) and (3a) and substitute:

(3) The sheriff may, in relation to a warrant under this section, do any or all of the following:

(a) enter 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, is situated;

(b) seize and remove such property or documents;

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- (c) retain such property or documents 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);
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- (e) where the warrant authorises the sale of land—
- (i) take such steps as the sheriff considers necessary to prevent persons from entering the land; or
- (ii) by notice in writing direct a specified person to leave, or not to enter or attempt to enter, (or both) the land until completion of the sale;
- (f) if a person refuses to comply with a direction given under paragraph (e)(ii), or a person on the land is behaving in an unlawful manner—
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- (i) remove the person from the land using such force as is reasonably necessary for the purpose; or
- (ii) cause the person to be detained and handed over into the custody of a police officer as soon as reasonably practicable;
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- (g) give such other directions, or exercise such other powers, as may be set out in the rules of the relevant court for the purposes of this paragraph.
- (3a) The sheriff may, by notice in writing, vary or revoke a direction under subsection (3).
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- (3b) A person who contravenes or fails to comply with a direction under subsection (3) is guilty of an offence.
- Maximum penalty: \$5 000.

## Part 3—Amendment of *Sheriff's Act 1978*

### 6—Insertion of section 9DA

30 After section 9D insert:

#### **9DA—Sheriff etc may be assisted by police officers**

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- (1) The sheriff, deputy sheriff and any other officer appointed under this Act may, in the performance or exercise of their functions or powers under this or any other Act or law, be assisted by a police officer.
- (2) Without limiting any other power a police officer may have, a police officer providing assistance under this section will be taken to have the powers of the sheriff under the *Enforcement of Judgments Act 1991*.
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- (3) Without limiting a preceding subsection, the sheriff may enter into an arrangement with the Commissioner of Police in respect of the operation of this section.