

Enforcement of Judgments of Local Courts

Terms of Reference

In 1969 the Committee was given a general reference to review the *Local Courts Act 1904* (WA) ("the Act") and the *Local Court Rules 1961* (WA).

Background of Reference

The Commission inherited this reference from the Committee as an incomplete project in 1973.¹ When, in 1980, the Commission divided the reference into two parts it was decided that Part II, dealing with the enforcement of Local Court judgments, should be deferred pending results from statistical surveys and work that was being carried out on similar projects by the Australian Law Reform Commission and the New South Wales Law Reform Commission.² Work on the reference began again in 1991, after the Commission and the Attorney-General held a meeting to review the priority of the Commission's outstanding references. As a result of this meeting the reference was given high priority with the Government indicating a commitment to introduce legislation to reform procedures in this area. The Commission engaged Mr Archie Zariski, a Lecturer in law at Murdoch University, to prepare a discussion paper to elicit comment on the subject. The paper identified several problems with the existing system and made suggestions for a more just and efficient means of enforcing judgments or orders. It was recognised that inefficiency is undesirable because it undermines public confidence in the court system and is likely to increase the cost of credit and reduce its availability. It was also acknowledged that any recommended measures should aim to ensure that judgment debtors are free from unreasonable enforcement procedures. The major issues considered in the paper included whether there should be a system under which the court may order an employer of a judgment debtor to pay a part of each wage entitlement direct to the judgment creditor, whether the court should be able to order payment of a judgment debt by instalments and whether imprisonment should be removed from the Act as a possible consequence of failure to pay a judgment debt.

Nature and Extent of Consultation

The discussion paper was distributed for comment in February 1995 and the Commission received submissions in response from 18 organisations and individuals including the Aboriginal Legal Service of Western Australia, BankWest, the Institute of Mercantile Agents Ltd and the Law Society of Western Australia. In the preparation of its final report, the Commission took into account all the views expressed in these submissions. The final report containing the Commission's recommendations was delivered in December 1995.³

Recommendations

The Commission made a total of 116 recommendations. A number of the recommendations were aimed at improving the efficiency of the enforcement system. The Commission principally recommended that:

- The two proceedings of examination in aid and the judgment summons should be replaced with a single proceeding (the enforcement hearing) at which various orders can be made.
- Provision should be made allowing for the judgment creditor at an enforcement hearing to obtain information about the judgment debtor's financial affairs and have an appropriate order made to enforce the judgment, such as an order for payment by instalments.
- There should be provision for the attachment of earnings, such as wages and salaries, where a judgment debtor defaults under an order for payment by instalments.
- The court should have the power to punish a judgment debtor for contempt of court where the judgment debtor has the means to pay by instalments but wilfully and persistently, without honest and reasonable excuse, defaults in making the payments.

¹ The Law Reform Committee of Western Australia was formally reconstituted as the Law Reform Commission of Western Australia on 19 January 1973.

² See especially Australian Law Reform Commission, *Debt Recovery and Insolvency*, Report No 36 (1987).

³ Law Reform Commission of Western Australia, *Enforcement of Judgments of Local Courts*, Project No 16(II) (1995).

Several of the recommendations were directed at protecting the legitimate interests of judgment debtors. In this regard the Commission recommended that:

- Imprisonment for failure to pay civil debts should be abolished.
- Judgment debtors should be allowed to apply to the court for an instalment order, both at the time of the judgment and after judgment, regardless of the amount.
- There should be an expansion of the range of property exempt from execution by bailiffs to ensure that a judgment debtor is not deprived of property necessary for a frugal but dignified existence and to ensure that their ability to earn an income is not unduly impaired.

The Commission also made a number of other consequential recommendations. A comprehensive list of recommendations may be found in chapter nine of the Commission's final report.

Legislative or Other Action Undertaken

Following the release of the Commission's final report a project team was established within the Courts Services Division of the Ministry of Justice to review the civil judgment debt recovery system in light of the Commission's recommendations. In June 1997 the project team published a report proposing a uniform civil judgment debt recovery system for all courts and adopting many of the Commission's recommendations.⁴ The scope of the project team's report went beyond that of the Commission's terms of reference to include the Supreme and District Courts. The project team recommended the enactment of a new piece of legislation: the *Enforcement of Judgments Act*. The project team considered that this proposed legislation would unify the procedures across all jurisdictions and would ensure a consistent and cost-effective approach to the enforcement of outstanding civil debts. In its final report the Commission had also acknowledged the convenience of uniform procedures for enforcing judgments and had attempted to harmonise the procedures where practicable. The proposed *Enforcement of Judgments Act* would substantially implement many of the Commission's recommendations. In 1998 the Ministry of Justice Court Services Division indicated that the proposal for an enforcement of judgments Act was in the process of implementation.⁵ The third draft of the legislation was completed in 2000; however, its progress has since stalled.

Currency of Recommendations

In 1999 the Commission reinforced the need for greater efficiency and simplified procedures in the Local Court in its comprehensive review of the criminal and civil justice system.⁶ A just and efficient system for the enforcement of judgments or orders is fundamental to maintaining community confidence in the court system. In terms of achieving this purpose, the recommendations of the Commission remain current.

Action Required

Legislative action similar to the proposed *Enforcement of Judgments Act* is required to implement the Commission's recommendations.

Priority – High

This assessment is based on the desirability of updating the legislation to achieve consistency in the procedures for enforcing judgments, the need for Western Australia to achieve uniformity with other Australian jurisdictions and the anticipated benefits to the community of establishing a more just and efficient system of enforcement and recovery of civil debts. This assessment is also influenced by the relative ease of implementing the Commission's recommendations. A workable Bill for the enforcement of civil judgments has already been drafted and simply requires Cabinet approval to proceed.

⁴ Ministry of Justice Court Services Division, *Civil Judgment Debt Recovery System: Part I Legislative Recommendations Report*, 1997.

⁵ Ministry of Justice, *Annual Report 1997-1998*, 1998.

⁶ Law Reform Commission of Western Australia, *Review of the Criminal and Civil Justice System*, Project No 92 (1999).