



## Magistrates' Court of Victoria

Phone: (03) 9603 9040  
Facsimile: (03) 9603 9044

Office of the Principal Registrar  
Level 7/436 Lonsdale Street  
MELBOURNE 3000

### **PRACTICE DIRECTION 9 / 2008**

### **REGISTRARS OF THE MAGISTRATES' COURT**

### **BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2002**

The *Building and Construction Industry Security of Payment Act 2002* (the Act) provides that a person who obtains adjudication for an amount of money issued by an authorised nominating authority may seek a judgment (order) in a court of competent jurisdiction.

The Magistrates' Court has made Rules (Order 28A) to facilitate the process of obtaining an order and for other matters. The Rules (SR 64/2008) operate from 23 June 2008.

In applying these Rules, registrars should take note of the following directions.

#### **MAKING AN ORDER**

The party seeking judgment must lodge with the registrar, an adjudication certificate and affidavit in support.

A registrar may make an order when satisfied by affidavit that the adjudication certificate produced by the party was issued by an authorised nominating authority and that the amount or part of the amount payable under sections 28M or 28N of the Act remains unpaid. An application under Order 10 or Order 20 of the Rules is not required, nor is a fee to be paid.

An adjudication certificate may specify an amount of interest (not a 'rate' of interest) and an amount of adjudication review fees to be paid. In determining the amount of the order, the registrar is to add all amounts set out in the certificate as a total sum and make the order for that sum less any amount that has been paid. The order is not to include an amount for costs or legal professional costs. This process constitutes the making of an order and is not registration of the certificate.

The total amount of any order made cannot exceed the jurisdictional limit of the Court. It is not open to a person to waive the excess amount to remain within this Court's jurisdiction.

An order made under the Act is enforceable in the same way as any other order of the Court and interest accrues on the amount of the order under the provisions of the *Magistrates' Court Act 1989*.

Registrars should note that a claimant cannot seek an order on the adjudication certificate if the claimant has brought an adjudication review application and the review has not been completed.

## **SETTING ASIDE AN ORDER**

A registrar must not accept a re-hearing application in respect of an order made under the Act unless the unpaid amount of the order has been paid into the Court's trust account. Normal re-hearing procedures apply once payment is made.

## **DEBT CERTIFICATE**

When an order is made by a registrar under the Act, the person who obtained the order may wish to seek payment of the amount from the "principal". To do this, the person must apply to the court constituted by a registrar for an order for the issue of a debt certificate. The application may be made at any time (including on the day that the order is made). Order 20 of the Rules does not apply to such an application.

The application must be made in writing but need not be on affidavit. If a payment is made after the order but before issue of a debt certificate, the person seeking the certificate must state the amount paid in the application. The certificate is issued only for the unpaid amount under the order. A registrar is not required to determine the identity of the principal against whom the person wishes to proceed.

Where application is made, the registrar must make an order to this effect:

*"On the application of the claimant under section 33 of [the Act], judgment having been given in these proceedings for the recovery of [amount] being an adjudicated amount ordered on [date] to be recovered as a debt, this certificate for [amount] is issued with respect to the debt."*

The form of the certificate is prescribed in Form 2 of the Building and Construction Industry Security of Payment Regulations 2003 (SR 50/2003).

A record must be kept of the date of issue of the certificate.

**Please note:** A template example of a completed debt certificate is attached in support of this Practice Direction and should be referred to by registrars when preparing these forms.

## **FEES**

A fee must not be received for the making of an order or issue of a debt certificate.



**CATHERINE RUSSO**  
Acting Principal Registrar  
Magistrates' Court of Victoria