

A GUIDE TO ENFORCEMENT HEARINGS
(Effective 09/17)

The Enforcement Hearing (EH) process can only be started after you have obtained a judgment against a debtor in the Magistrates Court or in QCAT (for smaller minor debts). All states have some form of EH process in place however this information sheet deals with the Queensland process only.

Often once you have obtained a judgment against a debtor, you are often left wondering what the next step should be in the recovery process. Does the debtor own any property, are they employed or self employed, what is their income, what other debts do they owe and to whom, what assets do they have ? All of these questions are important in considering the next step after judgement.

Remember, sometimes the judgement alone will create sufficient inconvenience for the debtor if it remains unpaid. The judgement is automatically listed by the Magistrates Court against the Equifax (formerly VEDA) credit file of the judgement debtor/s. Most providers of credit in any form will search the records of Equifax to establish an applicant's credit worthiness. This includes banks, finance companies, telco's, utilities providers, real estate agents for rental applications, retail stores and a multitude of others. If an applicant has an unpaid judgment their likelihood of being approved in today's credit climate is next to none. If they pay your debt out we will ask the court to list the judgement as "paid", this will make their credit file appear slightly more attractive to credit providers, but only slightly.

Considering the effects of a judgement and the costs of enforcing that judgement against the value of the debt you are chasing, leads us to next questions. What to do.....

An enforcement hearing in short will require that the judgement debtor complete a Statement of Financial Position (Form 71) detailing all of their assets, liabilities, income and expenses. This allows you to consider the next most appropriate step in the recovery process.

The first step is for Nexus to post a Form 71 Statement of Financial Position to the debtor. They debtor has 14 days to complete and return this form to us along with evidentiary documents supporting they statement, such as pay slips, bank statements etc. Using this information, we can then consider the most appropriate recovery action to take.

If however, the judgment debtor does not return the Form 71 and supporting evidence within 14 days, we may then make an application to the court to have an Enforcement Hearing Summons issued. Nexus will arrange an application to be made to the court for the issue of an EH Summons on your behalf.

Once filed, the court will set a date for the hearing requiring that the judgment debtor attend at the court at a set date and time to explain their financial circumstances, complete the Form 71 and show evidence of their financial position. The hearing will generally be held in the court closest to where the debtor resides. Nexus will arrange for a qualified agent to attend on your behalf at the hearing. You will then receive a detailed report with our suggestion as to the most appropriate method of recovery based upon the information provided.

If a judgment debtor fails to appear at court on the day of the hearing and fails to give an acceptable reason as to why they could not appear, we may then arrange for a warrant to be issued for the apprehension (arrest) and detention of the debtor until a hearing can be held. Issuing an arrest warrant is at the discretion of the Magistrates and is not a given, we do however always seek a warrant in the event of no show from the debtor.

The costs involved are as follows:

1. Preparation and filing of an Enforcement Hearing Summons (includes serving the pre-hearing Form 71): \$240.00
2. Solicitors Professional Fees (only if the original claim was filed in the Magistrates Court): \$330.00
3. Attendance at the hearing by a properly qualified agent: \$110.00

(Note if the originating claim was filed in the Magistrates Court using our solicitors, the fees in item 1 above are not charged, only the fee in Item 2 above is payable, in addition to the appearance fee in Item 3). Many of our claims are filed in QCAT so items 1 and 3 and the most common fees)

The EH Summons must be served on the debtor personally, Nexus will arrange service of the document and provided the debtor is served in the Brisbane Metro or a major regional centre, the cost of that service is included in our fee at Item 1 above. This cost may increase if multiple attempts need to be made to effect personal service on the debtor or the debtor resides in a rural or remote area. Most agents will make 3 attempts to serve the document for the one fee. Your total outlays may be around \$360.00 to complete the EH Process.

It is important to note that the EH process is NOT a method of enforcing your debt as such, it is merely a method of establishing to the best extent possible the true financial position of the judgment debtor. This then allows you to consider the next step in recovering the debt.

The cost of an Enforcement Hearing are generally not recoverable against a judgement debtor.

We are happy to discuss the process with you in more detail any time, this document is offered as a guide only an is not conclusive in terms of the process or possible outcomes.