

**25:**

**CIVIL:**

**ENFORCEMENT OF JUDGMENTS AND ORDERS**



# 1 Introduction

There are two ways of enforcing Court decisions, by enforcement orders and enforcement warrants. Orders can be broadly divided into two categories: money orders and non-money orders.

## 2 Money Orders

### 2.1 Procedure When Giving Judgment

All enforcement orders must be in Form 21: *Rule 14.2(2) Civil Procedure Rules*.

Immediately after you have given judgment that includes a money order, you must ask the enforcement debtor who he or she proposes to pay the money. You must then:

- make an enforcement order for payment of the debt; or
- fix a date for an enforcement conference to examine how the enforcement debtor will pay the debt: *Rule 14.3(1) Civil Procedure Rules*.

If the parties agree as to how the enforcement debtor will pay the debt, you may make an order in the terms of the agreement: *Rule 14.4(1) Civil Procedure Rules*.

The order may:

- fix a date by which the enforcement debtor will pay the debt;
- if the parties have agreed to payment by instalments, set out the dates and amounts of the instalments; or
- make any other order about payment: *Rule 14.4(2) Civil Procedure Rules*.

If you fix a date for an enforcement conference, you must direct the enforcement debtor to:

- appear in Court on the date fixed for the conference; and
- bring with him or her sufficient documents to enable him or her to give a fair and accurate picture of his or her financial circumstances: *Rule 14.3(2) Civil Procedure Rules*.

If the enforcement debtor is not present when you give your judgment, you must:

- fix a date for an enforcement conference;
- issue a summons (Form 24) requiring the enforcement debtor to appear in Court on the date fixed for the conference; and

- bring with him or her sufficient documents to enable him or her to give a fair and accurate picture of his or her financial circumstances: *Rule 14.3(3) Civil Procedure Rules*.

When fixing a date for an enforcement conference you must fix a date within 28 days of the date of the money order or if not possible, as soon as practicable after 28 days: *Rule 14.5(2) Civil Procedure Rules*.

You may also issue a summons to another person to attend the conference and give evidence about the enforcement debtor's affairs: *Rule 14.5(4) Civil Procedure Rules*.

## **2.2 Enforcement Conference**

The purpose of an enforcement conference is to determine how the enforcement debtor proposes to pay the debt: *Rule 14.5(1) Civil Procedure Rules*.

The enforcement debtor must attend the conference: *Rule 14.5(3) Civil Procedure Rules*

If the enforcement debtor does not appear, you may issue a warrant for his or her arrest if you are satisfied that the enforcement debtor:

- was present when the date was fixed, was personally served with or received the summons; and
- he or she does not have sufficient cause for not attending the conference: *Rule 14.6 Civil Procedure Rules*.

Keep in mind that the costs of enforcing a money order and interest on the amount of the order are recoverable as part of the order: *Rule 14.8 Civil Procedure Rules*.

### **Conduct of Examination**

At the conference, the enforcement creditor may ask the enforcement debtor about his or her financial affairs and how he she proposes to pay the debt: *Rule 14.7(1) Civil Procedure Rules*.

The enforcement creditor may also examine anyone else summoned to attend the conference to provide information: *Rule 14.7(2) Civil Procedure Rules*.

At the end of the enforcement conference, you must:

- if the parties have agreed, make an enforcement order on the terms agreed between the parties;
- make an enforcement order about how the debtor will pay;
- issue an enforcement warrant; or
- make another order about the payment: *Rule 14.7(3) Civil Procedure Rules*.

## **2.3 After the Enforcement Conference**

### **The Enforcement Creditor**

An enforcement creditor may enforce an enforcement order at any time within 6 years of the date of the order: *Rule 14.9(1) Civil Procedure Rules*.

After 6 years, the enforcement creditor must get leave of the Court to enforce the enforcement order: *Rule 14.9(2) Civil Procedure Rules*. See *Rule 14.9 Civil Procedure Rules*.

If the enforcement debtor does not comply with the order, the enforcement creditor may apply for an enforcement warrant: *Rule 14.11 Civil Procedure Rules*. See paragraph 3, Enforcement Warrants, below.

### **The Enforcement Debtor**

The enforcement debtor may apply to the Court to suspend the enforcement order: *Rule 14.10(1) Civil Procedure Rules*.

The application must:

- be supported by a sworn statement; and
- be filed and served on the enforcement creditor a minimum of 7 days before the application is heard: *Rule 14.10(2) Civil Procedure Rules*.

Upon hearing the application, you may:

- suspend the enforcement of all or part of the order to take account of new or newly discovered facts, or for other reasons; and
- make other appropriate orders, including making another enforcement order: *Rule 14.10(3) Civil Procedure Rules*.

## **3 Enforcement Warrants for Money Orders**

If an enforcement debtor fails to pay a money order, the enforcement creditor may apply for the issue of an enforcement warrant: *Rule 14.11(1) Civil Procedure Rules*.

An enforcement warrant can be seen as a more forceful means of enforcing the judgment of the Court. Only one enforcement warrant may be in force to enforce payment of a money order: *Rule 14.11(2) Civil Procedure Rules*.

### 3.1 Applying for an Enforcement Warrant

The enforcement creditor must file:

- an application (Form 25);
- a copy of the enforcement order;
- 2 copies of the form of warrant;
- a sworn statement, made not earlier than 2 business days before filing the application, stating:
  - ⇒ the date of the enforcement order;
  - ⇒ the amount payable under the order;
  - ⇒ the dates and amounts of any payments made;
  - ⇒ costs of previous enforcements;
  - ⇒ the interest due at the date of the statement;
  - ⇒ any other details needed to determine the amount payable, and how the amount is worked out;
  - ⇒ the daily amount of future interest; and
  - ⇒ any other information needed for the warrant: *Rule 14.12(1) Civil Procedure Rules.*

If you believe a hearing is required before issuing a warrant, you may order the enforcement debtor and enforcement creditor to attend a conference: *Rule 14.12(2) Civil Procedure Rules.*

If you grant an enforcement warrant, it must state:

- the enforcement debtor's name;
- the date the warrant ends;
- the amount recoverable under the warrant, including the costs of the enforcement plus interest;
- and anything else required by the *Civil Procedure Rules: Rule 14.13(1) Civil Procedure Rules.*

### 3.2 Enforcement Warrants

No matter which enforcement warrant you choose, all warrants are enforceable throughout Vanuatu: *Rule 14.14 Civil Procedure Rules.*

Before enforcing an enforcement warrant made by a Magistrate in another district, the person must have the warrant sealed by the Magistrate's Court in that district: *Rule 14.14 Civil Procedure Rules.*

### **Seizure and Sale of Property**

One of the main enforcement warrants authorises an enforcement officer to seize and sell all real and personal property (other than exempt property) in which the enforcement debtor has a legal or beneficial interest: *Rule 14.16(1) Civil Procedure Rules*.

When issuing such a warrant, you must give the warrant to an enforcement officer: *Rule 14.16(2) Civil Procedure Rules*.

The enforcement officer must then seize and sell property in accordance with *Rules 14.17 – 14.21 Civil Procedure Rules*.

Once the money has been received by the Court from the sale of the property seized, you must:

- first, pay the enforcement officer the costs of enforcing the warrant;
- second, pay the balance, up to the amount of the warrant, to the enforcement creditor; and
- thirdly, pay any balance remaining to the enforcement debtor: *Rule 14.21(2) Civil Procedure Rules*.

### **Redirection of Debts**

Rather than ordering the seizure and sale of property, you may issue an enforcement warrant requiring a third person to pay the enforcement creditor a debt that is:

- certain and payable;
- payable to the enforcement debtor; and
- specified in the warrant: *Rule 14.22(1) Civil Procedure Rules*.

In deciding whether to order such a warrant, you must consider:

- whether the enforcement debtor will have adequate means to pay his or her living expenses and those of his or her family;
- whether the enforcement debtor will have adequate means to pay other known liabilities;
- whether the enforcement debtor will suffer unreasonable hardship by paying the debt; and
- if it is appropriate to issue the warrant, having regard to the nature and the amount of the debt: *Rule 14.22(2) Civil Procedure Rules*.

The warrant to redirect the debt does not take effect until it is served on the third person. Once served, the third person must pay the debt to the enforcement creditor, in accordance with the warrant: *Rule 14.23 Civil Procedure Rules*.

If the third person claims the debt is not payable to the enforcement debtor, he or she may apply to the Court for directions: *Rule 14.24 Civil Procedure Rules*.

### **Redirection of Deposits**

If a depositor regularly pays money into the enforcement debtor's account, you may issue an enforcement warrant to have the financial institution of the enforcement debtor to make regular payments to the enforcement creditor, equal to the amount of the regular deposits: *Rule 14.25(1) Civil Procedure Rules*.

Such a warrant must state:

- the enforcement debtor's name;
- the date the warrant ends;
- the amount recoverable under the warrant, including the costs of the enforcement plus interest;
- anything else required by the *Civil Procedure Rules*;
- the financial institution's name;
- details of the enforcement debtor's account;
- the amount to be paid;
- the enforcement creditor's name and address; and
- how the amount is to be paid to the enforcement creditor: *Rule 14.25(2) Civil Procedure Rules*.

The enforcement warrant must then be served personally on the enforcement debtor and his or her financial institution. The enforcement warrant then comes into effect 7 days after service on the financial institution: *Rule 14.26 Civil Procedure Rules*.

See *Rule 14.27 Civil Procedure Rules* for details on the payment.

### **Redirection of Earnings**

You may direct that particular earnings of the enforcement debtor be paid by the debtor's employer to the enforcement creditor: *Rule 14.28(1) Civil Procedure Rules*.

When issuing such a warrant, you must also fix:

- the amount of each deduction; and
- the minimum amount available to the enforcement debtor as take-home pay: *Rule 14.28 Civil Procedure Rules*.

Before deciding whether to order such a warrant, or the amount to deduct, you must consider:

- whether the enforcement debtor is employed by the employer;
- whether the enforcement debtor will have adequate means to pay his or her living expenses and those of his or her family;



- whether the enforcement debtor will have adequate means to pay other known liabilities;
- whether the enforcement debtor will suffer unreasonable hardship by paying the debt: *Rule 14.28(3) Civil Procedure Rules.*

Such a warrant must state:

- the enforcement debtor's name;
- the date the warrant ends;
- the amount recoverable under the warrant, including the costs of the enforcement plus interest;
- anything else required by the Civil Procedure Rules;
- the employer's name;
- the total amount to be deducted;
- the amount to be deducted each pay day;
- the minimum amount to be available to the employee as take home pay;
- the enforcement creditor's name and address; and
- how the amount is to be paid to the enforcement creditor: *Rule 14.28(4) Civil Procedure Rules.*

The enforcement warrant must be served personally on the enforcement debtor and on his or her employer: *Rule 14.29 Civil Procedure Rules.*

The enforcement creditor must also serve on the employer a notice (Form 26) telling the employer of the effect of the order and what the employer must do: *Rule 14.29(2) Civil Procedure Rules.*

See *Rules 14.30 – 14.31 Civil Procedure Rules* for how payments are made.

### **3.3 Setting Aside Enforcement Warrants**

Either the enforcement debtor or enforcement creditor may apply for an enforcement warrant redirecting debts or earnings to be set aside, suspended or varied: *Rule 14.32(1) Civil Procedure Rules.*

If you grant an order to set aside, suspend or vary an enforcement order, the order must be served on the enforcement creditor or enforcement debtor (depending on who is applying) and the debtor, the financial institution or the employer, as the case requires: *Rule 14.32(2) Civil Procedure Rules.*

## 4 Non-Money Orders

### 4.1 Procedure When Giving Judgment

Immediately after you have given judgment that includes a non-money order, you must ask the enforcement debtor how he or she proposes to comply with the order. You must then:

- make an enforcement order; or
- fix a date for an enforcement conference to examine how the person on how he or she proposes to comply with the non-money order: *Rule 14.37(1) Civil Procedure Rules*.

If the parties agree as to how the person will comply with the non-money order, you may make an order in the terms of the agreement: *Rule 14.38 Civil Procedure Rules*.

If the person is not present when you give your judgment, you must:

- fix a date for an enforcement conference; and
- issue a summons (Form 27) requiring the person to appear in Court on the date fixed for the conference: *Rule 14.37(3) Civil Procedure Rules*.

The summons should contain a notice to the enforcement debtor to bring with him or her sufficient information to enable him or her to inform the Court how he or she proposes to comply with the order: *Rule 14.37(3) Civil Procedure Rules*

### 4.2 Suspension of Enforcement Order

A person subject to an enforcement order may apply to the Court to have the non-money order suspended: *Rule 14.40(1) Civil Procedure Rules*.

The application must be:

- supported by a sworn statement; and
- be filed and served on the other party a minimum of 7 days before the application is to be heard: *Rule 14.40(2) Civil Procedure Rules*.

Upon hearing the application, you may:

- suspend the enforcement of all or part of the order because new facts have arisen, been discovered, or for any other reason; and
- make other orders you consider appropriate, including another enforcement order: *Rule 14.40(3) Civil Procedure Rules*.

## **5 Enforcement Warrants for Non-Money Orders**

### **5.1 Applying for an Enforcement Warrant**

A person applying for an enforcement warrant to enforce a non-money order must file:

- an application with two copies of the warrant;
- a sworn statement stating that the person subject to the order has not complied with the order, and in what way he or she has not complied: *Rule 14.43(1) Civil Procedure Rules.*

Unless you order otherwise, you may issue the warrant without a hearing: *Rule 14.43(2) Civil Procedure Rules.*

### **5.2 Enforcement Warrants**

An enforcement for a non-money order must state:

- the name of the person who must comply with the order;
- the date within 1 year of issue when the warrant ends;
- what the warrant authorises;
- any other details required by the *Civil Procedure Rules.*

After issuing the warrant, you must give the warrant to an enforcement officer to be enforced: *Rule 14.43(3) Civil Procedure Rules.*

If there are several non-money warrants arising from different non-money orders, the enforcement officer must deal with them in the order they were issued: *Rule 14.43(4) Civil Procedure Rules.*

After issuing an enforcement warrant, it is enforceable throughout Vanuatu: *Rule 14.41(1) Civil Procedure Rules.*

Before enforcing an enforcement warrant made by a Magistrate in another district, the person must have the warrant sealed by the Magistrate's Court in that district: *Rule 14.41 Civil Procedure Rules.*

#### **Warrant for Delivery of Goods**

The warrant for delivery of goods authorises an enforcement warrant to seize specified goods and give them to the person entitled to them under the order: *Rule 14.47(2) Civil Procedure Rules.*

You may issue an enforcement for delivery of goods, if:

- the order for the delivery of goods does not give the person subject to the order the option of keeping the goods and paying an equivalent value; or
- the order does give the option but the person does not choose to pay the equivalent value: *Rule 14.47(1) Civil Procedure Rules.*

If the person chooses to keep the goods and pay the equivalent value, it may be enforced in the same way as a money order: *Rule 14.47(3) Civil Procedure Rules.* See paragraph 2, Money Orders, above.

### **Order to Do or Not Do an Act**

If a non-money order requires a person to do or not do an act, and that person does not comply with the order or does not comply within the time specified in the order, the person may be punished:

- for contempt;
- by seizing the person's property; or
- if it is a body corporate, by punishing an officer for contempt or seizing the officer's property: *Rule 14.48(3) Civil Procedure Rules.*

You may also enforce an order to do an act by appointing another person to do the act and ordering the person originally required to do the act to pay the costs and expenses caused by not doing the act: *Rule 14.48(4) Civil Procedure Rules.*

Such costs and expenses may be recovered under an enforcement warrant for a money order: *Rule 14.48(5) Civil Procedure Rules.* See paragraph 3, Enforcement Warrants for Money Orders, above.

## **6 Domestic Violence Protection Orders**

Domestic violence orders are unique in that unlike other orders, they are not dependent upon another proceeding to support them.

### **6.1 Applying for Domestic Violence Protection Order**

A person may file a claim for a domestic violence protection order against another member of the person's family: *Rule 16.16(1) Civil Procedure Rules.*

Note the term ‘family’ includes a person who is accepted as a member of a family, whether or not the person is related by blood or marriage to the other members of the family: *Rule 16.15 Civil Procedure Rules*.

The claim must:

- set out the order claimed and the reasons why the order should be made;
- include a statement that the claimant agrees to pay damages to the defendant if it is found that the order should not have been made;
- be in Form 30; and
- be accompanied by a sworn statement in support of the claim (Form 31): *Rule 16.16(2) Civil Procedure Rules*.

## **6.2 Hearing the Claim**

After the claim and sworn statement have been filed, the Registrar must immediately inform you of the claim: *Rule 16.17(1)(a) Civil Procedure Rules*.

You must then hear the claim as soon as possible: *Rule 16.17(1)(b) Civil Procedure Rules*.

The hearing is to be without notice to the defendant: *Rule 16.17(3) Civil Procedure Rules*. Giving notice of the hearing to the defendant could put the claimant in further danger.

The claimant may appear in person or be represented by a lawyer or any other person you approve: *Rule 16.17(2) Civil Procedure Rules*.

Due to the private and often emotional nature of such proceedings, it is important that you treat the claimant with dignity and ensure he or she is made aware the Court will use its power to protect the claimant and other family members.

Read the sworn statement accompanying the claim and be sure to check any ambiguities with the claimant.

After hearing the claim, you may:

- dismiss the claim;
- make whichever domestic violence protection order is appropriate; and
- make whatever other order is appropriate: *Rule 16.17(4) Civil Procedure Rules*.

Typically, a domestic violence protection order will encompass some or all of the following:

- a non-violence order;
- an exclusive occupation of the family home order;

- a non-molestation order; and
- costs.

Before granting an order, it is advisable to discuss each of these orders and their consequences with the claimant. This will ensure that all children or other family members are protected by the order. If necessary, allow the claimant to amend the claim to ensure it fits the situation.

If you grant an order:

- it must be in Form 32;
- it must include a statement authorising the police to arrest the defendant if he or she breaches the order, unless you exclude this power; and
- you must fix a date a maximum of 28 days later for a further hearing and write the date on the order: *Rules 16.17(4)(c), (5), (6) Civil Procedure Rules.*

### **Service of Order**

If you grant the order, you must direct a person other than the claimant to serve the order: *Rule 16.18(2) Civil Procedure Rules.*

The order must then be served on the defendant as soon as practicable and a copy must be given to the police in the area concerned: *Rules 16.18(1), (3) Civil Procedure Rules.*

## **6.3 Further Hearing**

A further hearing of the matter must be held on the date fixed, or if either party asks for an earlier date, on that earlier date: *Rule 16.19(1) Civil Procedure Rules.*

At the hearing, you must consider whether the domestic violence protection order should be continued, amended, or revoked and make an order accordingly: *Rule 16.19(2)(a) Civil Procedure Rules.*

If both parties appear, check to see that the defendant has been served with the order and is aware of the contents.

Question the defendant to see if the order has made him or her aware of the damage caused by violence and whether he or she is willing to abide peacefully with the claimant. If possible, encourage reconciliation between the parties.

If the claimant agrees to have the defendant return to the family home, tell the claimant that he or she should return to the Court immediately should there be any further violence. Ensure the defendant is aware of the serious nature with which he or she will be dealt should there be any further incidents of violence.

If both parties do not appear at the further hearing, it is often advisable to extend the order for another one or two weeks and then see if the order has had any effect on the defendant's behaviour.

If the order is continued or amended, you must give other directions about the progress of the case: *Rule 16.19(2)(b) Civil Procedure Rules*.

## **6.4 Referral to the Supreme Court**

If at any time you believe the level of real or threatened violence is serious, you may refer a domestic violence protection order to the Supreme Court: *Rule 16.20(1) Civil Procedure Rules*.

The Supreme Court will then deal with it and make appropriate orders.