



Information for third party debtors

PART 20.4 FAMILY LAW RULES 2004

SUBDIVISION 25B.2.4 FEDERAL CIRCUIT COURT RULES 2001

A person ('the applicant/payee') owed money by another person ('the respondent/payer') under an order of the Court or child support liability can enforce payment of the debt in the Family Court. One of the methods of enforcement is a Third Party Debt Notice. Under this Notice the Court directs a third party to pay money that the third party owes to the respondent to the payee instead of the respondent.

Typically, the third party is an employer of the payer or a bank or building society where the payer has money in an account.

This brochure must be served on the third party named in a Third Party Debt Notice at the same time as the Notice.

The Act, the Rules, the forms and the brochures referred to in this brochure can be obtained from www.familycourt.gov.au or www.federalcircuitcourt.gov.au.

Your responsibilities as the third party debtor

You should have received this brochure at the same time as the following document was served on you:

- Third Party Debt Notice

It is recommended that you seek legal advice.

When served with a Third Party Debt Notice, any money that you owe to the payer is affected (attached) by the Notice. This could be:

- money payable by an employer (the third party debtor) to the payer, including wages, fees, bonuses, commissions, overtime pay or other money payable in addition to or in lieu of wages, a pension, annuity, vested superannuation money, money payable in lieu of leave, or retirement benefit due or accruing to the payer
- money in an account with a financial institution (the third party debtor), or
- any other sum of money that you (as the third party debtor) owe the payer on the date the enforcement order is served on you.

You must not pay the money attached by the Notice to anyone other than the payee in compliance with the Notice. The Notice remains in place until either the total amount specified in the Notice is paid, or the Notice is set aside. Payment of all or part of a debt by you discharges the debt between you and the payer to the extent of the payment.

EMPLOYERS WHO ARE THIRD PARTY DEBTORS

- Each time a deduction is made under the Third Party Debt Notice, you must give your employee (the payer) a written notice, stating:
 - ~ the amount paid to the payee, and
 - ~ the total deductions made from the payer's earnings.
- Where a Third Party Debt Notice is in force and the payer leaves your employment, **you must**, within 21 days of the employment ceasing, advise the Court in writing of the date on which the employment ceased.

This brochure provides general information only and is not provided as legal advice. If you have a legal issue, you should contact a lawyer before making a decision about what to do or applying to the Court. The Family Court of Australia and Federal Circuit Court of Australia cannot provide legal advice.

Your rights as the third party debtor

A third party debtor may apply to the Court (*Family Law Rules 2004* Rule 20.37 or *Federal Circuit Court Rules 2001* Rule 25B.45):

- to dispute liability under the Third Party Debt Notice
- for procedural orders about the Notice, or
- to vary the terms of the Notice.

You do this by filing:

- an *Application in a Case*; and
- an affidavit stating the facts and circumstances relied upon.

You must serve a copy of the *Application in a Case* and the *Affidavit* on the payee and the payer. For information on service see the *Service Kit*.

When the Court hears your application, it may make orders including:

- an order staying the enforcement of the Third Party Debt Notice
- an order that a party produce further information or evidence
- the dismissal of the application
- the variation, suspension or dismissal of the Third Party Debt Notice
- an order that any money that has been paid out in error to the payee be paid into and held in Court, returned to the third party debtor or sent to the payer or a co-owner of the debt
- if the third party debtor has not paid what was required to be paid, an order that the third party debtor pay all or part of what was required,
- a costs order.

Note: The Court will not investigate the original order or agreement being enforced. If a person wishes to apply to vary or discharge an obligation, a separate application will be necessary. Legal advice should be sought in this circumstance.

CLAIM BY AFFECTED PERSON

A person who claims to have an interest in the debt subject to the Third Party Debt Notice may also apply for an order to determine that claim.

Failure to comply

A third party debtor must:

- comply with the Third Party Debt Notice or an order varying, suspending or discharging it; and
- not unfairly treat a payer in respect of employment because of a Third Party Debt Notice or an order made under Chapter 20 of the Family Law Rules.

Penalty: \$5500

About the words used in this brochure

- The **payee** is the person who is applying to the Court to have an obligation to pay money enforced. The payee may also be known as the applicant.
- The **payer** is the person who is obliged to pay money to the payee and to whom a debt is owed by a third party. The payer may also be known as the respondent.
- The **third party debtor** is the person to whom the third party debt notice is directed.
- **Service** means giving a copy of a document to a person in a way authorised by the Family Law Rules. The payee (applicant) must arrange to have the Third Party Debt Notice and this brochure served on the payer and the third party debtor after filing documents and obtaining the Notice issued by the Court.

Legal advice

You should get legal advice before deciding what to do. A lawyer can help you understand your legal rights and responsibilities, and explain how the law applies to your case. A lawyer can also help you reach an agreement with the other party without going to court.

You can get legal advice from a:

- legal aid office
- community legal centre, or
- private law firm.

Court staff can help you with questions about court forms and the court process, but cannot give you legal advice.

More information

For more information, including access to the *Family Law Act 1975*, the Rules of the courts and any of the forms or publications listed in this brochure:

- go to www.familycourt.gov.au or www.federalcircuitcourt.gov.au
-  **LIVE CHAT** on the websites
- call **1300 352 000**, or
- visit a family law registry near you.

AUSTRALIAN CAPITAL TERRITORY

Canberra Cnr University Ave & Childers St Canberra ACT 2600

NEW SOUTH WALES

Albury 463 Kiewa St Albury NSW 2640
Dubbo Cnr Macquarie & Wingewarra Sts Dubbo NSW 2830
Lismore L2/29-31 Molesworth St Lismore NSW 2480
Newcastle 61 Bolton St Newcastle NSW 2300
Parramatta 1-3 George St Parramatta NSW 2150
Sydney 97-99 Goulburn St Sydney NSW 2000
Wollongong L1/43 Burelli St Wollongong NSW 2500

NORTHERN TERRITORY

Alice Springs Westpoint Building, Cnr Railway Terrace & Stott Terrace Alice Springs NT 0870
Darwin Supreme Court Building, State Square, Darwin NT 0800

QUEENSLAND

Brisbane 119 North Quay Brisbane Qld 4000
Cairns L4/104 Grafton St Cairns Qld 4870
Rockhampton 46 East St (Cnr Fitzroy St), Rockhampton Qld 4700
Townsville L2/143 Walker St Townsville Qld 4810

SOUTH AUSTRALIA

Adelaide 3 Angas St Adelaide SA 5000

TASMANIA

Hobart 39-41 Davey St Hobart Tas 7000
Launceston Cnr Brisbane & George Sts Launceston Tas 7250

VICTORIA

Dandenong 53-55 Robinson St Dandenong Vic 3175
Melbourne 305 William St Melbourne Vic 3000

WESTERN AUSTRALIA

Perth Family Court of Western Australia
150 Terrace Rd Perth WA 6000
08 9224 8222

PRIVACY

The Family Court of Australia and the Federal Circuit Court treats seriously your right to privacy and information security. The *Privacy Act 1988* applies when the Court deals with administrative matters. When the Court collects information for purposes that are not administrative, such as to exercise its jurisdiction, other laws protect it. These include the Family Law Rules and the Federal Circuit Court Rules which limits access to Court files, and the *Family Law Act 1975* which restricts reporting of proceedings.