

SHERIFF ORDINANCE 1962.

No. 35 of 1963.

An Ordinance relating to the Offices of Sheriff
and Bailiff and to Other Matters.

[Reserved 26th February, 1963.]

[Assented to 30th April, 1963.]*

BE it ordained by the Legislative Council for the Northern Territory of Australia, in pursuance of the powers conferred by the *Northern Territory (Administration) Act 1910-1961*, as follows:—

Short title. 1. This Ordinance may be cited as the *Sheriff Ordinance 1962*.

Repeal. 2.—(1.) The *Sheriff Ordinance 1911* is repealed.

(2.) The Acts and Ordinances of the State of South Australia which are specified in the Schedule to this Ordinance cease, to the extent specified in that Schedule, to apply to the Northern Territory.

References to
sheriff, &c.,
in other
Ordinances,
&c.

3. A reference to a sheriff or deputy sheriff in—
(a) an Ordinance of the Territory; or
(b) an Act or Ordinance of the State of South Australia
in force in the Territory,

shall be construed as a reference to a sheriff or deputy sheriff, as the case may be, appointed under this Ordinance.

Definitions. 4. In this Ordinance, unless the contrary intention appears—
“judge” means the Judge appointed under sub-section (1.) of section seven of the *Northern Territory Supreme Court Act 1961* or a Judge appointed under sub-section (2.) of section seven of that Act;
“officer of the sheriff” means a person appointed under this Ordinance to be a deputy sheriff, bailiff or other officer of the sheriff;

* Assent notified in the *Government Gazette* of the Northern Territory on 22nd May, 1963 (see *the* No. 21, 1963, p. 106).

“rules of court” means Rules of Court made or continued in force under section fifty-five of the *Northern Territory Supreme Court Act 1961*;

“sheriff”, in relation to a matter in which a deputy sheriff has acted, includes a deputy sheriff; and in relation to a matter in which a person appointed for that matter under section twelve or eighteen of this Ordinance has acted, includes that person;

“the court” means the Supreme Court of the Northern Territory of Australia.

5.—(1.) The Attorney-General may appoint—

(a) a person to be the sheriff; and

(b) such persons to be deputy sheriffs, bailiffs and other officers of the sheriff as the Attorney-General thinks necessary to assist the sheriff.

Appointment of sheriffs and officers.

(2.) A person so appointed holds office during the pleasure of the Attorney-General.

6. The sheriff may by writing under his hand appoint a person to be a deputy sheriff, bailiff or other officer of the sheriff for the purpose of a particular proceeding or during a period specified in the instrument of appointment.

Power of sheriff to appoint deputy sheriff, &c.

7. The sheriff is an officer of the court and shall execute any process directed to him by the court and perform all such other duties as are imposed upon him by any Act or by rules of court, the direction of the court or the judge, or this Ordinance.

Status and duties of sheriff.

8. The sheriff has power to execute the office of sheriff throughout the Territory.

Power of sheriff to act throughout Territory.

9.—(1.) A deputy sheriff may be appointed for the whole or any part of the Territory.

Powers and duties of deputy sheriff.

(2.) Subject to this section, to any directions of the sheriff and to the terms of his appointment, a deputy sheriff may exercise the powers and shall perform the duties and functions of the sheriff.

(3.) In particular a deputy sheriff shall, in accordance with the terms of his appointment, but subject to any directions of the sheriff—

(a) execute any process of the court directed to the sheriff;

(b) make return of such a process, together with the manner of its execution;

(c) receive and cause to be detained in prison or in some other place of detention any person who is committed to the custody of the sheriff; and

(d) do or perform any other thing which the sheriff is bound to do or perform.

(4.) A deputy sheriff may exercise his powers and shall perform his duties and functions—

(a) throughout the Territory, if he is appointed for the whole of the Territory; or

(b) only in that part of the Territory for which he is appointed, if he is appointed for a part of the Territory.

Status and duties of bailiffs.

10. Every bailiff appointed under this Ordinance is an officer of the sheriff and shall execute all warrants, orders and precepts of the sheriff directed to him and in all respects perform the same duties as were before the commencement of this Ordinance performed by the officers of the sheriff.

Security by bailiffs.

11.—(1.) The Attorney-General may require a bailiff to give security to the Commonwealth, by bond of himself and two responsible sureties or in such other manner as the Attorney-General requires, for the due performance by him of the duties of his office and for the due payment by him to the sheriff, or as the sheriff directs, of all moneys which come into his hands in the execution of the duties of his office.

(2.) On a bond so given, the Attorney-General may sue in the name of the Commonwealth in any court having jurisdiction up to the amount claimed.

Provision for cases where sheriff ought not to execute process.

12. Where any process is awarded or issued against the sheriff or where, in the opinion of the court or the judge, circumstances render it improper for the sheriff to execute any process, the court or the judge may direct the process to any fit person appointed by the court or the judge.

Power to commit arrested persons to prison at once.

13. Where the sheriff or an officer of the sheriff has arrested a person under or by virtue of any process, he may forthwith convey that person or cause him to be conveyed to prison to which he ought to be sent by virtue of the process issued against him.

Resistance to process.

14.—(1.) If the sheriff finds any resistance in the execution of any process, he shall take with him such assistants as he thinks desirable and go in person to the execution and,

using such assistants as he thinks necessary, may arrest the resisters and bring them before a Justice of the Peace to be dealt with according to law.

(2.) A person who resists—

- (a) the sheriff;
- (b) an officer of the sheriff; or
- (c) a person acting under the last preceding sub-section as an assistant of the sheriff,

in the execution of any process is guilty of an offence punishable on conviction by imprisonment for a term not exceeding one year.

15 A person who, having reasonable notice that he is required to assist the sheriff in arresting any person or in preserving the peace, fails without reasonable excuse to do so is guilty of an offence punishable, upon conviction—

Neglect to aid sheriff.

- (a) if the first mentioned person is a bailiff or assistant of the sheriff or a member of the police force, by a fine not exceeding One hundred pounds or imprisonment for a term not exceeding one year, or both; or
- (b) in any other case, by a fine not exceeding One hundred pounds.

16. The sheriff shall, at the request of a person delivering a process to him for execution, give a receipt for the process, stating the day and time of its delivery.

Receipt for process.

17.—(1.) Where the sheriff or any other person employed in collecting by process from any court a debt due to the Commonwealth receives from a person a sum as being due to the Commonwealth, the sheriff or the first mentioned person shall give the last mentioned person a receipt for that sum and the sheriff shall, on becoming aware of the receipt, without delay take all necessary steps to procure in respect of that sum the effective discharge of the person paying it.

Duties of sheriff on receipt of debt due to Commonwealth.

(2.) A person receiving a sum to which the last preceding sub-section applies shall account first to the sheriff and the sheriff shall give a receipt for the sum.

18 —(1.) The sheriff shall attend upon all criminal sittings of the court and upon other sittings when required to do so by the court or the judge.

Duty of sheriff to attend court.

(2.) If at any time the sheriff is not in attendance upon the court, the court or the judge may appoint a person to exercise and perform, during any period or in any matter ordered by the court or the judge, such powers and duties of the sheriff as the court or the judge specifies.

(3.) The court or the judge may issue to the person so appointed instead of to the sheriff any process or direction authorized to be issued to the sheriff.

Duty of outgoing sheriff to turn over process and prisoners to incoming sheriff.

19.—(1.) An outgoing sheriff—

(a) shall, on ceasing to be sheriff, make out and deliver to the incoming sheriff a correct list and account of—

- (i) all persons detained in his custody or lodged in prison by him;
- (ii) all processes directed to him by the court but not wholly executed by him; and
- (iii) all other matters in which duties imposed upon him by rules of court, the direction of the court or the judge or this Ordinance are not wholly performed by him,

with such particulars as are necessary to explain to the incoming sheriff the several matters intended by the outgoing sheriff to be transferred to the incoming sheriff; and

(b) shall thereupon transfer to the custody of the incoming sheriff the persons, processes and matters specified in the last preceding paragraph and all records, books and matters relating to the office of sheriff.

(2.) The incoming sheriff—

(a) shall thereupon sign and give to the outgoing sheriff a duplicate of the list and account; and

(b) shall thereupon stand charged with—

- (i) the custody of the persons so transferred to his custody; and
- (ii) the execution of the processes and the performance of the duties relating to the matters contained in the list and account.

(3.) A duplicate of the list and account, signed and given in accordance with the last preceding sub-section, shall be a good and sufficient discharge to the outgoing sheriff of and from—

(a) the custody of the persons; and

- (b) the execution of the processes and the performance of the duties relating to the matters contained in the list and account.

20. The sheriff may sell by public auction property of any kind taken in execution. Sale by sheriff.

21.—(1.) The sheriff shall not be personally liable for any wrongful act or default of an officer of the sheriff. Liability of sheriff and officers.

(2.) The sheriff and every officer of the sheriff shall be liable each for his own wrongful acts and defaults in the same manner and to the same extent as before the commencement of this Ordinance.

22.—(1.) Subject to the next succeeding sub-section, if a person is in the custody of the sheriff, an officer of the sheriff or any other person— Liability for escape.

(a) in execution or for non-performance of a judgment or order of the court;

(b) for contempt of court; or

(c) otherwise in the course of a civil proceeding,

and the first mentioned person escapes out of legal custody, the sheriff, the officer of the sheriff or the other person shall be liable to pay the damages sustained by the person at whose suit the first mentioned person was taken into custody and all costs of any proceedings to recover those damages but no further sum.

(2.) A person is not liable under the last preceding section for the escape of any prisoner from confinement in a prison.

23.—(1.) The Administrator shall satisfy any judgment obtained against the sheriff, any officer of the sheriff or any other person for a wrongful act done or default committed by the sheriff or that officer of the sheriff or other person in the execution or intended execution of his duties under this Ordinance. Liability of Administrator to satisfy judgments against the sheriff.

(2.) The sheriff or officer of the sheriff in respect of whose wrongful act or default the Administrator has paid any money under the last preceding sub-section shall be liable to indemnify the Administrator for any money so paid; but the Attorney-General may, if in his opinion it is just to do so, exempt the sheriff or any officer of the sheriff from his liability under this sub-section in any particular case.

Limitation of
actions against
sheriff, bailiffs,
&c.

24. An action against the sheriff, an officer of the sheriff or any other person for an act done or default committed in the execution or intended execution of his duties under this Ordinance shall not be brought unless the action is commenced within six months next after the date the plaintiff knew or could, by the exercise of reasonable diligence, have known the facts constituting the cause of action.

Fees and
poundage.

25.—(1.) The sheriff or an officer of the sheriff concerned in the execution of any process directed to the sheriff may demand, take and receive such fees relating to the execution of the process as are fixed by the regulations.

(2.) No poundage shall be payable to the sheriff or any officer of the sheriff for taking the body of any person in execution.

Sheriff may be
justice.

26. The sheriff shall not, by reason of holding office as sheriff, be disqualified for appointment as a Justice of the Peace.

Regulations.

27. The Administrator in Council may make regulations, not inconsistent with this Ordinance, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and, in particular, prescribing matters for or in relation to—

- (a) the amount and time of payment of fees payable to the sheriff or an officer of the sheriff;
- (b) the settlement of disputes as to the amount of fees payable in any case;
- (c) requiring execution creditors either generally or in prescribed cases to give security for payment of fees payable to the sheriff or an officer of the sheriff or to lodge a deposit on account of such fees;
- (d) empowering the sheriff or an officer of the sheriff in cases where he is requested by the execution creditor to withdraw before sale, to require the execution creditor, the execution debtor and any legal practitioner concerned to furnish him with particulars of the arrangement between the execution creditor and the execution debtor; and
- (e) regulating generally the performance of the duties of the sheriff and officers of the sheriff.

THE SCHEDULE.

Section 2.

**ACTS AND ORDINANCES OF THE STATE OF SOUTH AUSTRALIA WHICH
CEASE TO APPLY TO THE NORTHERN TERRITORY.**

Number and Year of Act or Ordinance.	Title or Short Title of Act or Ordinance.	Extent of Repeal.
15 of 1842	An Act to regulate the Appointment and the Duties of the Sheriff of the Province of South Australia	The whole
3 of 1843	An Ordinance to amend an Ordinance intituled " An Act to Regulate the Appointment and the Duties of the Sheriff of the Province of South Australia "	The whole
20 of 1852	An Act to enable the Sheriff to appoint a Deputy to perform the Duties of his Office, and to abolish the Poundage now payable on taking the body in execution	The whole
20 of 1866-7	The Equity Act, 1866	Sections 17 to 21 inclusive
24 of 1874	The Northern Territory Deputy Sheriff's Act, 1874	The whole