

# SERVICE AND EXECUTION OF PROCESS.

No. 11 of 1901.

An Act to provide for the Service and Execution throughout the Commonwealth of the Civil and Criminal Process and the Judgments of the Courts of the States and of other parts of the Commonwealth, and for other purposes connected therewith.

[ Assented to 16th October, 1901.]

**B**E it enacted by the King's Most Excellent Majesty the Senate and the House of Representatives of the Commonwealth of Australia as follows :—

## PART I.—PRELIMINARY.

1. This Act may be cited as the *Service and Execution of Process Act 1901* and is divided into Parts as follows :—

Part I.—Preliminary, ss. 1-3.

Part II.—Service of Process.

Service of Writs of Summons, ss. 4-13.

Service of other Process, ss. 14-16.

Proof of Service, s. 17.

Part III.—Execution of Warrants, &c., ss. 18, 19.

Part IV.—Enforcement of Judgments, ss. 20-26.

Part V.—Rules and Regulations, ss. 27, 28.

Schedules.

2.—(1.) The Acts of the Federal Council of Australasia mentioned in the First Schedule hereto, so far as the same may be in force in any State, are hereby repealed.

Repeal of Acts  
of Federal  
Council.

(2.) This repeal shall not affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any Act so repealed, or affect any legal proceeding or remedy in respect of any such right, privilege, obligation, or liability; and any such legal proceeding or remedy may be instituted, continued, or enforced as if this Act had not been passed.

Definitions.

3. In this Act unless the contrary intention appears—

- (a) "Suit" means any suit action or original proceeding between parties or *in rem*;
- (b) "Writ of summons" includes any writ or other mesne process by which a suit is commenced or of which the object is to require the appearance of any person against whom relief is sought in a suit or who is interested in resisting such relief;
- (c) "Court" includes any Judge or Justice of the Peace acting judicially;
- (d) "Court of Record" includes any Court which is required to keep a record of its proceedings;
- (e) "Party" includes the Commonwealth or a State or any person suing or being sued on behalf of the Commonwealth or a State;
- (f) "Plaintiff" includes the King or any person suing on behalf of the King and any party seeking relief in a suit against any other party;
- (g) "Defendant" includes any party against whom relief is sought in a suit or who is required to attend the proceedings in an action as a party thereto;
- (h) "Judgment" includes any judgment decree rule or order given or made by a Court in any suit whereby any sum of money is made payable or any person is required to do or not to do any act or thing other than the payment of money.

## PART II.—SERVICE OF PROCESS.

### *Service of Writs of Summons.*

Writ of summons may be served in any part of the Commonwealth.

(31 Vict. No. 3  
(Fed. Council)  
s. 2.

Made of service.

4.—(1.) A writ of summons issued out of any Court of Record of a State or part of the Commonwealth may be served on the defendant in any other State or part of the Commonwealth.

(2.) Such service may, subject to any Rules of Court which may be made under this Act, be effected in the same manner as if the writ were served on the defendant in the State or part of the Commonwealth in which the writ was issued.

Indorsement on writ for service outside State.  
(31 Vict. No. 3  
(F.C.) s. 4.

5.—(1.) Every writ of summons for service under this Act out of the State or part of the Commonwealth in which it was issued shall, in addition to any other indorsement or notice required by the law of such State or part of the Commonwealth, have indorsed thereon a notice to the following effect (that is to say):—

"This summons [*or as the case may be*] is to be served out of the State [*or as the case may be*] of \_\_\_\_\_ and in the State [*or as the case may be*] of \_\_\_\_\_."

(2.) Every such writ of summons to which, by the law of such State or part, an appearance is required to be entered, shall have indorsed thereon a notice to the following effect (that is to say):—

“Your appearance to this summons [or as the case may be] must give an address at some place within five miles of the office of the Court of at which address proceedings and notices for you may be left.”

(3.) Every writ of summons for service under this Act shall also contain or have indorsed thereon or annexed thereto a short statement of the nature of the claim made or the relief sought by the plaintiff in the suit, and if the plaintiff sues in a representative capacity shall also state such capacity.

6. If a writ of summons or copy thereof does not bear all the indorsements hereby required it shall be ineffective for service under this Act.

7. A writ of summons for service out of the State or part of the Commonwealth in which it was issued may be issued as a concurrent writ with one for service within such State or part of the Commonwealth and shall in that case be marked as concurrent.

8. The time to be limited by the writ of summons for appearance being entered or made by the defendant shall be such as may be prescribed by the Rules of the Court out of which it is issued, but shall not be less than the following, that is to say:—

- (a) If the writ is issued or is to be served in the State of Western Australia or in the Northern Territory of the State of South Australia—Forty-five days;
- (b) In any other case—Thirty days.

9.—(1.) Every appearance entered by or on behalf of a defendant to a writ of summons served on him under this Act shall give an address at some place within five miles of the office of the Court out of which the writ was issued, at which address all proceedings and notices may be left for him.

(2.) If such address is not given or is fictitious or illusory the appearance may be set aside as irregular.

10. Any defendant who has been served under this Act with a writ of summons may apply to the Court out of which the writ was issued, or a Judge thereof, for an order compelling the plaintiff to give security for costs, and upon such application the Court or Judge may make the order.

11.—(1.) When no appearance is entered or made by a defendant to a writ of summons served on him under this Act, if it is made to appear to the Court from which the writ was issued or a Judge thereof—

- (a) that the subject-matter of the suit so far as it concerns such defendant is—

- (1) land or other property situate or being within the State or part of the Commonwealth in which the writ was issued; or

Effect where writ of summons not properly indorsed.

49 Vict. No. 3 (P.C.) s. 5, 15 & 16 Vict. c. 70 s. 20.

Concurrent writs may be issued.

15 & 16 Vict. c. 70 s. 22.

Time limited for appearance.

Rb. (F.C.) s. 6.

Appearance to state address for service.

Rb. (P.C.) s. 7, 15 & 16 Vict. c. 70 s. 23.

Order for plaintiff to give security for costs.

Proceedings where no appearance entered.

See 15 & 16 Vict. c. 70 s. 18.

Rb. (P.C.) s. 8.

- (2) shares or stock of a corporation or company having its principal place of business within that State or part ; or
  - (3) any deed, will, document, or thing affecting any such land, shares, stock, or property ; or
  - (b) that any contract in respect of which relief is sought in the suit against such defendant by way of enforcing, rescinding, dissolving, annulling, or otherwise affecting such contract, or by way of recovering damages or other remedy against such defendant for a breach thereof, was made or entered into within that State or part ; or
  - (c) that the relief sought against the defendant is in respect of a breach, within that State or part, of a contract wherever made ; or
  - (d) that any act or thing sought to be restrained or removed, or for which damages are sought to be recovered, was done or is to be done or is situate within that State or part ; or
  - (e) that at the time when the liability sought to be enforced against the defendant arose he was within that State or part ; or
  - (f) that the domicile of the person against whom any relief is sought in a Matrimonial cause is within that State or part ;
- and if it is also made to appear to such Court or Judge—
- (g) that the writ was personally served on the defendant ; or in the case of a corporation served on its principal officer or manager or secretary within the State or part in which service is effected ; or
  - (h) that reasonable efforts were made to effect personal service thereof on the defendant, and that it came to his knowledge or in the case of a corporation that it came to the knowledge of such officer as aforesaid (in which case it shall be deemed to have been served on the defendant) ;

such Court or Judge may on the application of the plaintiff order from time to time that the plaintiff shall be at liberty to proceed in the suit in such manner and subject to such conditions as such Court or Judge may deem fit, and thereupon the plaintiff may proceed in the suit against such defendant accordingly.

(2.) Any such order may be rescinded or set aside or amended on the application of the defendant.

Effect of  
judgment.  
49 Viet. No. 3  
(P.C.) s. 11.

12. When a judgment is given or made against a defendant who has been served with a writ of summons under this Act, such judgment shall have the same force and effect as if the writ had been served on the defendant in the State or part of the Commonwealth in which the writ was issued.

No increased  
jurisdiction  
conferred by this  
Part.

13. This Part of this Act does not confer on any Court jurisdiction to hear or determine any suit which it would not have jurisdiction to hear and determine if the writ of summons had been served within the State or part of the Commonwealth in which the writ was issued.

*Service of other Process.*

14.—(1.) When, in any suit in a Court of Record of a State or part of the Commonwealth, any writ (other than a writ of summons) notice decree or other process is required to be served on any party or person, such writ notice decree or process may be served on such party or person in any other State or part of the Commonwealth.

Process may be served in any part of the Commonwealth.

(2.) Such service may, subject to any Rules of Court which may be made under this Act, be effected in the same way, and shall have the same force and effect, as if the service were effected in the State or part of the Commonwealth in which the writ notice decree or process was issued.

Manner of service.

(3.) Thereupon all such proceedings may be taken as if the writ, notice, decree, or process had been served in the State or part of the Commonwealth in which it was issued.

15.—(1.) When a summons has been issued on information upon oath by any Court or Judge or Police, Stipendiary, or Special Magistrate having jurisdiction in any State or part of a State or part of the Commonwealth, commanding any person who is charged with any offence alleged to have been committed in such State or part, whether such offence is punishable by indictment or upon summary conviction, to appear to answer to such charge or to be dealt with according to law, such summons may be served on such person in any other State or part of the Commonwealth.

Summons for offence may be served in any part of the Commonwealth.

(2.) Such service may, subject to any Rules of Court or regulations which may be made under this Act, be effected in the same way, and shall have the same force and effect, as if the summons had been served in the State or part of the Commonwealth in which it was issued.

(3.) If such person fails to appear at the time and place mentioned in such summons, and it appears to such Court, Judge, or Magistrate that the summons was duly served on the defendant a sufficient time before the day appointed for the hearing, all such proceedings may be taken as if the summons had been served in the State or part of the Commonwealth in which it was issued.

16.—(1.) When a subpoena or summons has been issued by any Court or Judge, or Police, Stipendiary, or Special Magistrate in any State or part of the Commonwealth, requiring any person to appear and give evidence in any civil or criminal trial or proceeding, such subpoena or summons may upon proof that the testimony of such person is necessary in the interests of justice by leave of such Court Judge or Magistrate on such terms as the Court Judge or Magistrate may impose be served on such person in any other State or part of the Commonwealth.

Subpoena or summons to witness may be served in another State by leave of a Judge.

(2.) If such person fails to attend at the time and place mentioned in such subpoena or summons, such Court Judge or Magistrate or any other Police, Stipendiary, or Special Magistrate having jurisdiction in the State or part of the State or part of the Commonwealth in which the subpoena or summons was issued may on proof that the subpoena or summons was duly served on such person, and that a reasonable

sum was tendered to him for his expenses issue such warrant for the apprehension of such person as such Court Judge or Magistrate might have issued if the subpoena or summons had been served in the State or part of the Commonwealth in which it was issued.

(3.) Such warrant may be executed in such other State or part of the Commonwealth in the manner provided in this Act in the case of warrants issued for the apprehension of persons charged with an offence.

#### *Proof of Service.*

Mode of proof of service.

17. When any writ notice decree or other process has under the provisions of this Act been served out of the State or part of the Commonwealth in which it was issued such service may be proved—

- (a) by affidavit sworn before any Justice of the Peace having jurisdiction in the State or part of the State or part of the Commonwealth in which such service was effected, or before a Commissioner for Affidavits or Declarations, or Notary Public for that State or part; or
- (b) in any manner in which such service might have been proved if it had been effected within the State or part of the Commonwealth in which the writ notice decree or process was issued.

#### PART III.—EXECUTION OF WARRANTS, ETC.

Warrant may be backed for execution in another State.  
11 & 12 Vict. c. 49 s. 11

18.—(1.) When a warrant has been issued by any Court or Judge or any Justice of the Peace having jurisdiction in any State or part of a State or part of the Commonwealth, for the apprehension of any person—

- (a) who is charged with any offence alleged to have been committed within such State or part, whether such offence is indictable or punishable upon summary conviction; or
- (b) against whom an indictment for any such offence has been found or presented,
- (c) against whom an order for the maintenance of his wife or children has been made,

any Justice of the Peace having jurisdiction in any other State or part of a State or part of the Commonwealth, in which such person is or is supposed to be may on being satisfied that the warrant was issued by such Court or Judge or in the case of a warrant issued by a Justice of the Peace, upon proof on oath of the signature of the Justice issuing the warrant, make an indorsement on the warrant authorizing the execution thereof within such other State or part.

(2.) Such indorsement may be in the form or to the effect of the Second Schedule hereto, and shall be sufficient authority to the person bringing the warrant, and also to all constables and persons to whom the warrant was originally directed, and also to all constables or other peace officers in such other State or part, to execute the warrant in such other State or part, and to apprehend the person against whom the warrant was issued, and to bring him before a Justice of the Peace having jurisdiction in the State or part of the State or part of the Commonwealth in which the person was apprehended.

(3.) Such Justice of the Peace may—

(a) Order the person to be returned to the State or part of the Commonwealth in which the warrant was issued, and for that purpose to be delivered into the custody of the person bringing the warrant, or of the constables and persons to whom the warrant was originally directed or any of them; which order may be made by warrant under the hand of such Justice of the Peace, and may be executed according to its tenor; or

(b) admit the person to bail, on such recognizances as he thinks fit, conditioned to appear and answer the charge at an appointed time and place in the State or part of the Commonwealth in which the warrant was issued.

(4.) Such Justice of the Peace shall for the purposes of this section have the same power to remand the person and admit him to bail as he has in the case of persons apprehended under warrants issued by him; and if it be made to appear to him or to any Judge of the State that the charge is of a trivial nature, or that the application for return has not been made in good faith in the interests of justice, or that for any reason it would be unjust or oppressive to return the person either at all or until the expiration of a certain period, the Justice or Judge may discharge the person either absolutely or on bail, or order that he shall be returned after the expiration of the period named in the order, or may make such other order as he thinks just.

19.—(1.) When a writ of attachment has been issued against any person by a Court of Record of a State or a Judge thereof for a contempt of the Court or disobedience of an order thereof, such writ may—

Writ of attachment may be executed in another State.

(a) by leave of a Justice of the High Court be executed in any other State or part of the Commonwealth; or

(b) by leave of a Judge of the Supreme Court of any other State be executed in such other State.

(2.) Such leave shall be indorsed on the writ, and shall be sufficient authority to the Marshal and also to the Sheriff of the State or part of a State in which the writ was issued, and also to the Sheriff of the State or part of a State in which the writ is to be executed, and to all other officers named in such indorsement, to apprehend such person and bring him before the Court out of which such writ was issued.

#### PART IV.—ENFORCEMENT OF JUDGMENTS.

20. Any person in whose favour a judgment is given or made, whether before or after the commencement of this Act, in a suit by any Court of Record of any State or part of the Commonwealth, may obtain from the prothonotary or registrar or other proper officer of such Court a certificate of such judgment in the form and containing the particulars set forth in the Third Schedule hereto or as near thereto as the circumstances will permit, which certificate such officer is hereby required to grant under his hand and the seal of such Court.

Certificate of judgment.  
4th Vict. No. 4  
(F.C.) s. 4.

Registration of  
judgments and  
proceedings  
thereunder  
49 Vict. No. 4  
(P.C.) s. 5.

**21.—** (1.) Upon production of such certificate—

- (a) to the prothonotary, registrar, or other proper officer of any Court of like jurisdiction in any other State or part of the Commonwealth; or
- (b) if there is no Court of like jurisdiction in such other State or part, to the registrar or other proper officer of a District or County Court or other inferior Court of Record having civil jurisdiction in such State or part,

such officer shall forthwith register the same by entering the particulars thereof in a book to be kept by such officer and to be called "The Australian Register of Judgments."

(2.) From the date of such registration such certificate shall become and be a record of such Court, and shall have the same force and effect in all respects as a judgment of such Court, and the like proceedings may be taken upon such certificate as if the judgment had been a judgment of such Court.

(3.) No certificate of a judgment shall be so registered after the lapse of twelve months from the date of the judgment, unless leave in that behalf has first been obtained from the Court in which the certificate is proposed to be registered or from a Judge thereof.

Definition of  
Court for  
purposes of last  
preceding  
section.

**22.** For the purposes of the last preceding section any Court mentioned in any of the following sub-sections shall be deemed to be a Court of like jurisdiction with any other Court mentioned in such sub-section, namely:—

- (a) The Supreme Courts of the several States;
- (b) The Vice-Admiralty Courts in the States of New South Wales and Victoria, and the Supreme Court of any other State in its Admiralty jurisdiction;
- (c) District Courts and County Courts and any inferior Courts of Record having civil jurisdiction;
- (d) Small Debts Courts and Courts of Petty Sessions and any inferior Courts of Record having civil jurisdiction to hear and determine cases in a summary way.

Exemption not to  
issue unless  
affidavit of  
liability filed.  
16. (P.C.) s. 6.

**23.** No execution shall be issued or other proceedings taken upon such certificate unless an affidavit is first filed in the Court out of which it is intended to issue such execution or take such proceedings made by the person in whose favour the judgment was given or made or by some other person cognizant of the facts of the case, stating—

- (a) that the amount for which execution is proposed to be issued is actually due and unpaid; or
- (b) that an act ordered to be done remains undone; or
- (c) that the person ordered to forbear from doing an act has disobeyed the order,

and no execution shall be issued for a larger amount than that sworn to.



24. The Court in which any such certificate of a judgment has been registered and the Judges thereof shall, in respect of execution upon the certificate and the enforcement of the judgment, have the same control and jurisdiction over the judgment as if the judgment were a judgment of such Court.

Proceedings  
subject to the  
control of the  
Court—  
49 Vict. No. 4  
(F.C.) s. 7.

25.—(1.) The Court in which any such certificate of a judgment has been registered or a Judge thereof may, on the application of any person against whom the judgment has been given or made, order a stay of proceedings on such certificate.

Stay of  
proceedings

(2.) Such order may be made on such terms as to giving security, or as to making application to the Court by which the judgment was given or made, to set aside the same, or otherwise, as to the Court or Judge may seem fit.

26.—(1.) When—

- (a) Any certificate of a judgment is registered in any Court; or
- (b) Any execution is issued or other proceedings are taken in any Court upon any such certificate; or
- (c) Satisfaction of the judgment either in whole or in part is entered in any Court upon any such certificate;

Notification of  
proceedings  
upon certificate  
and of  
satisfaction of  
judgment.

the Registrar or other proper officer of that Court shall forthwith notify the same in writing under the seal of the Court to the Registrar or other proper officer of the Court in which the judgment was given or made.

(2.) When any judgment whereof a certificate has been registered in any Court has been satisfied in whole or in part, the Registrar or other proper officer of the Court in which the judgment was given or made shall forthwith, upon such satisfaction being made or notified as the case may be, enter such satisfaction upon the judgment and notify such satisfaction in writing under the seal of the Court to the Registrar or other proper officer of every other Court in which a certificate of the judgment has been registered, and such satisfaction shall thereupon be entered upon every such certificate.

#### PART V.—RULES AND REGULATIONS.

27.—(1.) The Judges of the Supreme Court of any State, or such of them as may make Rules of Court in other cases, may make rules—

Judges of  
Supreme Courts  
may make rules.

- (a) for prescribing the practice and procedure in connexion with the service of the process of the Courts of such State under this Act, and the execution and enforcement by such Courts of the process and judgments of the Courts of other States and parts of the Commonwealth; and
- (b) for prescribing the fees to be paid in connexion with the service of the process of the Courts of such State under this Act, and the execution and enforcement by such Courts of the process and judgments of the Courts of other States and parts of the Commonwealth, and the costs to be allowed to any person upon enforcing any such judgment (which fees and costs may be recovered in the same manner as any money payable under the judgment).

(2.) Until such rules have been made and as far as any made do not provide for the circumstances of any particular case the practice and procedure of the State in which the process is issued or in which the service is effected or the execution is enforced respectively shall apply as far as practicable.

Governor-  
General may  
make  
regulations.

28.—(1.) The Governor-General may make regulations for carrying out the provisions of this Act and in particular for further applying the provisions of this Act or any of them to the service of the process of the Courts of the territories of the Commonwealth, and for the execution and enforcement by such Courts of the process and judgments of the Courts of the States and of other parts of the Commonwealth.

(2.) All such regulations shall be notified in the *Gazette*, and shall thereupon have the force of law.

(3.) All such regulations shall be laid before both Houses of the Parliament within thirty days after the making thereof, if the Parliament be then sitting, and if not then within thirty days after the next meeting of the Parliament.

## SCHEDULES.

### FIRST SCHEDULE.

#### ACTS OF FEDERAL COUNCIL REPEALED.

Reference to Act.	Short Title.
49 Vict. No. 3	The Australasian Civil Process Act 1886
49 Vict. No. 4	The Australasian Judgments Act 1886
60 Vict. No. 2	The Australasian Testamentary Process Act 1897

### SECOND SCHEDULE

Section 13.

*State of Queens-*  
*land\* to wit.*

#### INDORSEMENT ON WARRANT.

WHEREAS proof upon oath has this day been made before me that the name of J.S. subscribed to the within warrant is in the handwriting of the within-mentioned (Justice of the Peace of the *State of New South Wales\**), I hereby authorize W.T., who brings me this warrant, and all other persons to whom this warrant was originally directed or by whom it may be lawfully executed, and also all constables and other peace officers of the [*State of Queensland\**], to execute this warrant within the [*State of Queensland\**], and to bring the said A.B., if apprehended within the [*State of Queensland\**], before me or before some [Justice of the Peace of the *State of Queensland\**] to be dealt with according to law.

Given under my hand this  
hundred and

day of , One thousand nine

J.L.,

A Justice of the Peace of the [*State of Queensland\**].

\*Or as the case may be.

## THIRD SCHEDULE.

Section 20.

## CERTIFICATE OF JUDGMENT.

In the

Court of

Title of suit and date of commencement.	Form or nature of suit.	Name and address of party to whom payment is to be made, or in whose favour judgment is given or made.	Name and address of party ordered to pay money, or to do or not to do any act.	Date of judgment.	Abstract of judgment stating amount (if any) ordered to be paid, and particulars of any act ordered to be done or not to be done.	Date of trial and amount of verdict, if any.

I certify that this certificate correctly and fully sets forth the particulars of a judgment given in this Court, on the            day of           , in a suit wherein A. B. was plaintiff and C. D. was defendant (or as the case may be)

Dated this            day of            19   .

L.M.

[Prothonotary, Registrar, or other proper officer.]