
SERVICE AND EXECUTION OF PROCESS.

No. 18 of 1912.

An Act to amend the *Service and Execution of Process Act 1901*, and to repeal the *Service and Execution of Process Act 1905*.

[Assented to 6th November, 1912.]

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

1.—(1.) This Act may be cited as the *Service and Execution of Process Act 1912*. Short title and citation.

(2.) The *Service and Execution of Process Act 1901* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Service and Execution of Process Act 1901–1912*.

2. The *Service and Execution of Process Act 1905* is repealed. Repeal of Act No. 5 of 1905.

3. Section three of the Principal Act is amended by omitting from paragraph (b) the words “other mesne”. Definition of “writ of summons.”

4. Section four of the Principal Act is amended by inserting after the words “issued out of” the words “or requiring the defendant to appear at”. Amendment of section 4.

C.433.

Time limited for
appearance.

5. Section eight of the Principal Act is amended by omitting all words after the words "that is to say :—" and inserting in their stead the following paragraphs :—

- "(a) If the writ is issued in the State of Western Australia (outside the cities of Perth and Fremantle) or in the Northern Territory, or is to be served in the State of Western Australia or in the Northern Territory—Forty-five days ;
- (b) If the writ is issued in any of the cities of Sydney, Melbourne, Brisbane, Adelaide, Hobart, or Launceston, or in the Territory of the Seat of Government, for service in any State other than the State of Western Australia, or in the Territory of the Seat of Government—Twenty days ;
- (c) In any other case—Thirty days."

6. Section fifteen of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section :—

Service of
summons for
offence or
complaint in
any part of the
Commonwealth.

"(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—

- (a) who is charged with any offence alleged to have been committed in that State or part, whether the offence is indictable or punishable upon summary conviction ; or
- (b) against whom complaint is made, in that State or part, of his having deserted his wife or child, or left his wife or child without means of support,

to appear and answer the charge or complaint or be dealt with according to law, the summons may be served on that person in any other State or part of the Commonwealth."

Amendment of
section 16,

7. Section sixteen of the Principal Act is amended—

- (a) by inserting after the words "requiring any person to appear and give evidence" the words "or to produce books or documents," and
- (b) by inserting after the words "the testimony of such person" the words "or the production of such books or documents."

8.—(1.) Section eighteen of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section :—

Backing of
warrants for
execution in
another State
or part.

"(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 or commitment of any person—

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

- (c) against whom complaint has been made, in that State or part, of his having deserted his wife or child or left his wife or child without means of support ; or
- (d) who has failed to comply with an order made against him in that State or part for the support or maintenance of his wife or child ; or
- (e) who has disobeyed or failed to comply with an order made in that State or part for the payment of money or for the doing of some act ; or
- (f) who has failed to pay a fine inflicted by a Court of that State or part,

any Justice of the Peace having jurisdiction in any other State or part of a State or part of the Commonwealth, in or on his way to which that person is or is supposed to be, may on being satisfied that the warrant was issued by that 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) make an indorsement on the warrant authorizing its execution within that other State or part."

(2.) Section eighteen of the Principal Act is further amended—

- (a) by omitting from sub-section (3.), paragraph (b), the words "and answer the charge" ;
- (b) by inserting at the end of sub-section (3.), paragraph (b), the words "and answer the charge or complaint or be dealt with according to law."

(3.) Section eighteen of the Principal Act is further amended by adding at the end thereof the following sub-section :—

"(5.) Any Justice of the Peace, having jurisdiction in the State or part in or on his way to which the person against whom the warrant was issued is or is supposed to be, may, before the indorsement of the warrant, issue a provisional warrant for the apprehension of that person, upon such information and under such circumstances as in his opinion justify its issue ; and the provisional warrant may be executed accordingly :

Provisional
warrant.

Provided that a person arrested under a provisional warrant shall be discharged unless the original warrant is produced and indorsed within a reasonable time."

9. Section twenty-one of the Principal Act is amended by repealing sub-section (2.) and inserting in its stead the following sub-section :—

"(2.) From the date of registration the certificate shall be a record of the Court in which it is registered, and shall have the same force and effect in all respects as a judgment of that Court, and the like proceedings (including proceedings in bankruptcy or insolvency) may be taken upon the certificate as if the judgment had been a judgment of that Court, and interest shall be payable thereunder at the rate and from the date set out therein."

Registration of
judgments and
proceedings
thereunder.

10. After section twenty-two of the Principal Act the following section is inserted :—

"22A.—(1.) The Court in which any such certificate of a judgment has been registered may, upon being satisfied that the

Costs of
proceedings
under this Act.

registration of the judgment was reasonably justified under the circumstances, order that the plaintiff's costs of registration and other proceedings under this Act, to an amount to be assessed by the Court or Judge, but not exceeding the amount prescribed, be paid by the defendant to the plaintiff.

(2.) Any such order shall be deemed to be incorporated with the certificate, and the amount payable thereunder to be payable under the certificate."

Form of
certificate

11. The Third Schedule to the Principal Act is amended by inserting in the heading of the sixth column, after the words "ordered to be paid," the words "the rate of interest (if any) payable thereon, and the date from which it is payable,".
