

# **Service and Execution of Process Regulations 1993 No. 43**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1993 No. 43**

ISSUED BY THE AUTHORITY OF THE MINISTER FOR JUSTICE

*SERVICE AND EXECUTION OF PROCESS ACT 1992*

#### **SERVICE AND EXECUTION OF PROCESS REGULATIONS**

Section 132 of the *Service and Execution of Process Act 1992* ('the Act') provides, in part, that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed. The Regulations

- prescribe notices, copies of which are to be attached to the process of State and Territory courts and tribunals, when the process is served under the Act outside the State or Territory of issue;
- prescribe the form of warrants under Part 7 of the Act for the apprehension and commitment to prison of a person in a State or Territory whose liability to pay a fine imposed by a lower court of another State or Territory has not been fully discharged;
- provide for the holder of a specified office in a State or Territory to be taken, for the purposes of section 84 of the Act, to be the person in charge of the correction service of that State or Territory.

The Act provides for the service interstate of initiating process and subpoenas issued by State and Territory courts and tribunals. Service interstate of initiating process or a subpoena is effective only if copies of any prescribed notices are attached to the initiating process or subpoena. The prescribed notices set out information about the rights and obligations of the person to whom the process or subpoena is addressed.

Part 7 of the Act provides for a scheme for the interstate enforcement of fines imposed by lower courts of a State or Territory. The scheme provides for the apprehension of the person whose liability to pay the interstate fine has not been fully discharged, the taking of him or her before a court of the State or Territory of apprehension and, where appropriate, the committal of the person to serve a specified period of imprisonment in that State or Territory. The Part provides for a warrant of apprehension and warrant of commitment to be substantially in accordance with the prescribed form.

Section 84 of the Act provides for special procedures when a person under restraint (for example, a person on bail, conditionally released from prison or subject to a form of alternative sentencing or supervision) is brought before a magistrate in a State or Territory after having been apprehended under a warrant issued in another State or Territory.

In some circumstances the section requires that notice of the person's apprehension be given to the person in charge of the correction service of the State or Territory in which the person is under restraint.

Subsection 84(9) provides that the regulations may provide that, for the purposes of section 84, the holder of a specified office in a State or Territory is taken to be the person in charge of the correction service of that State or Territory.

Details of the Regulations are as follows:

Regulation 1 is formal.

Regulation 2 provides for commencement of the Regulations.

Regulation 3 defines 'the Act' for the purposes of the Regulations, and provides that reference to a form in the Regulations is a reference to numbered forms in Schedule 1.

Regulation 4 prescribes -

- Form 1 as the notice, a copy of which is to be attached to initiating Process issued by a court in a civil proceeding, when it is served interstate;
- Form 2 as the notice, a copy of which is to be attached to a court subpoena (other than one addressed to a prisoner to attend interstate to give evidence), when the subpoena is served interstate;
- Form 3 as the notice, a copy of which is to be attached to a court subpoena addressed to a prisoner in another State or Territory to attend interstate to give evidence;
- Form 4 as the notice, a copy of which is to be attached to an initiating process issued by a tribunal when it is served interstate;
- Form 5 as the notice, a copy of which is to be attached to a tribunal subpoena (other than one addressed to a prisoner to attend interstate to give evidence), when the subpoena is served interstate;
- Form 6 as the notice, a copy of which is to be attached to a tribunal subpoena addressed to a prisoner in another State or Territory to attend interstate to give evidence;
- Form 7 as the prescribed form of warrant of apprehension under Part 7 of the Act;
- Form 8 as the prescribed form of warrant of commitment under Part 7 of the Act.

Regulation 5 specifies the office-holders of a State or Territory to be taken for the purposes of section 84 of the Act, to be in charge of the correction service of the State or Territory.